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I. Background

The ISO submitted an initial compliance filing, with proposed tariff revisions, on May 11, 2001, in response to a

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Commission Order issued on April 26, 2001. In the October 23 Order, the Commission accepted in part and rejected in part the ISO's initial compliance filing with respect to issues related to outage coordination.

The ISO has now submitted its compliance tariff sheets, as directed in the October 23 Order. The proposed tariff revisions include, among other things: (1) a

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requirement that an Operator report Forced Outages to the ISO within forty-eight hours of the occurrence; (2) a list of specific factors that the ISO considers relevant to determine if a Forced Outage was intended to manipulate the market; and (3) a modification specifying that provisions concerning unduly significant market impacts are applicable only with respect to Reliability Must-Run Units or facilities that form part of the ISO Controlled Grid. The tariff sheets are proposed to be made effective May 29, 2001, consistent with the findings in the October 23 Order.

Notice of the November 7 and November 8 filings was published in the Federal Register, 66 Fed. Reg. 59,587 (2001), with motions to intervene and protests due on or before December 7, 2001. Timely protests were filed by Southern California Edison Company (SoCal Edison), Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC (collectively, Duke Energy), Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC (collectively, Mirant), Reliant Energy Power Generation, Inc. and Reliant Energy Services (collectively, Reliant) and Cogeneration Association of

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San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, et al., 95 FERC - 61,115 (2001).

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Operator is defined in the ISO Tariff as the operator of facilities that comprise the ISO Controlled Grid or a Participating Generator.

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Forced Outages are defined in the ISO Tariff as outages for which sufficient notice cannot be given to allow them to be factored into the Day-Ahead Market or Hour-Ahead Market scheduling processes.

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California (CAC) and Energy Producers and Users Coalition
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(EPUC) (collectively, CAC/EPUC).

II. Discussion

A. Reporting of Forced Outages

In the October 23 Order, the Commission directed the ISO to shorten the time line associated with the reporting of questionable Forced Outages by operators so that the ISO6 may report to the Commission within a seven-day time frame. The ISO proposes to revise its tariff provisions related to Forced Outages to include a requirement that within forty-eight hours of the occurrence of the Forced Outage, the Operator is required to provide the ISO with a detailed explanation of the Forced Outage. While the ISO notes that the reporting time may seem brief, the ISO created a generic

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Forced Outage reporting form in an effort to ease the burden on the generators.

All protesting parties object to this forty-eight hour reporting requirement. Duke Energy, Mirant and Reliant state that the ISO's proposal places an undue burden on generators, particularly in light of the level of detail the ISO is requesting in the reporting form. Duke Energy and Reliant also state that much of the outage information requested by the ISO is already in the ISO's possession. Duke Energy suggests that the Commission direct the ISO to modify its Tariff to provide that Forced Outage information reports be due by the close of business on the second business day following a Forced Outage and that the Commission should also clarify that the ISO has seven business days in which to submit its outage reports to the Commission. Reliant requests that the Commission require the ISO to narrow the scope of the questions in its reporting form to only require the reporting of data that are relevant and not already in the ISO's possession.

SoCal Edison states that some of the most crucial information may not be available within forty-eight hours since unit components may need to be disassembled and

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On December 14, 2001, CAC/EPUC filed an amended protest raising no additional issues.

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97 FERC at 61,355.

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The ISO developed a generic form, which includes twenty-two items, that generators must fill out in order to provide information to the ISO regarding any Forced Outage.

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analyzed. SoCal Edison notes that the 48-hour requirement is particularly unreasonable when the reporting deadline falls on a weekend. Additionally, SoCal Edison states that the ISO should encourage the generators to submit additional data after the reporting time deadline and prior to the submission of data to the Commission, in order to reach an accurate conclusion of the nature of the outage. Mirant suggests that the ISO allow generators seventy-two hours following the occurrence of a Forced Outage, excluding weekends and holidays, to report to the ISO. This would reduce the burden on generators while still providing time for the ISO to review the reports and forward information to the Commission within the seven-day time frame. CAC/EPUC argues that forty-eight hours is too short a time to provide any useful explanation in many cases. CAC/EPUC suggests that the original tariff language be restored, allowing the generator seven days to make its report to the ISO, and requiring the ISO to report any questionable outages within an additional seven days.

Commission Determination

The Commission concludes that the items to be reported on the ISO's generic form are reasonable given the ISO's operating needs and concerns. The Commission notes that the first thirteen items are used to identify the unit, the time frame, the personnel involved, the anticipated remedy, and how the outage was initially handled. Item 14 simply reflects standard operating procedure for most generators, which is to see if their more efficient units can be kept on line during periods of high demand in order to meet existing scheduling opportunities in the most efficient fashion. Item 15 reflects an engineering factor that should be readily available in the normal course of business.

Items 16-19 concern a generator's recent bidding behavior, outage history (within the last 45 days) and whether a requested outage was denied or canceled by the ISO. Item 16 should be readily available based on the company's computerized records of its scheduling and bidding behavior. Items 17 through 19 are available based on the company's records and may be available in the records of the ISO, but the specific regulatory concern of a quick decision is most effectively handled by the generator providing the ISO with a single package containing all the relevant information. While the ISO may have this information available in its data base, the ISO has to examine on a daily basis all of the generating outages affecting its grid. As such, it is more efficient for the generators to provide the information on generation outages on one form to

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assist the ISO in meeting its obligation to monitor outages. Items 20 through 22 address previous failures of the same equipment and the responsiveness of maintenance practices to the previous failures.

Further, notwithstanding our acceptance of the proposed reporting form, we believe that the ISO, in its role of monitoring forced outages, should have a system in place that ties its existing data systems together. This would enable it to quickly gather the outage information that it already has access to rather than requiring generators to file it. Accordingly, we will direct the ISO to develop a system for doing so and to file a revised form with the Commission within 90 days of the date of this order.

We also accept the ISO's proposal that generators report outages to the ISO within 48 hours. The ISO is responsible for monitoring all outages. Given the ISO's operating needs and that it must deal with a multitude of generators providing information at any given time, it is reasonable that the ISO have the bulk of the time within the seven-day window for receiving and reporting outages to the Commission.

B. Explanation of Forced Outages

In the October 23 Order, the Commission directed the ISO to amend section 2.3.3.9.5 of its Tariff to list all of the specific factors the ISO considers relevant in determining if a forced outage was intended to manipulate the market and to require that those factors be addressed in

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the detailed explanation for the Forced Outage. The ISO has provided a list of ten factors that it will consider when evaluating a Forced Outage to determine if it may have been the result of gaming or other questionable action by an Operator. These factors are as follows: (1) If the Forced Outage coincided with certain market conditions such that the Forced Outage may have influenced market prices or the cost of payments associated with out-of-sequence dispatches, out-of-market dispatches, or Real Time Market dispatches above the Marginal Proxy Clearing Price or Non-Emergency Clearing Price Limit, as applicable; (2) If the Forced Outage coincided with a change in the bids submitted for any units or resources controlled by the Operator or the Operator's Scheduling Coordinator; (3) If the ISO had recently rejected a request for an outage for, or to shut down, the Generating Unit experiencing the Forced Outage; (4) If the timing or content of the notice of the Forced

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97 FERC at 61,355.

Outage provided to the ISO was inconsistent with subsequent reports of or the actual cause of the outage; (5) If the Forced Outage or the duration of the Forced Outage was inconsistent with the history or the past performance of the Generating Unit or similar Generating Units; (6) If the Forced Outage created or exacerbated congestion; (7) If the Forced Outage was extended with little or no notice; (8) If the Operator had other alternatives to resolve the problems leading to the Forced Outage; (9) If the Operator took reasonable action to minimize the duration of the Forced Outage; or (10) If the Operator failed to provide the ISO an explanation of the Forced Outage within forty-eight hours or failed to provide any additional information or access to the generating facility requested by the ISO within reasonable time.

Mirant states that the ISO's Compliance Filing proposes subjective factors in determining whether a Forced Outage was intended to manipulate the market. Specifically, Mirant notes that the first and ninth factors are inherently subject to interpretation. Mirant is concerned that placing these subjective judgments in the hands of an entity with close ties to market participants combines the ability and incentive for manipulation. CAC/EPUC states that the ten factors are, for the most part, nonjudgmental and neutral statements which describe events that can occur innocently or without gaming and leaves vast discretion to the ISO, which could result in false reports to the Commission or discriminatory treatment by the ISO. As examples, CAC/EPUC asserts regarding the third factor that if a generator is concerned that some equipment is likely to fail, and its request for an outage is denied, then a forced outage becomes almost inevitable even where the generator is acting in good faith. Additionally, CAC/EPUC states that the fifth factor incorrectly assumes that every outage of a unit will be similar. Finally, CAC/EPUC notes that the eighth factor could be problematic when dealing with a Qualifying Facility (QF) which must consider the requirements of its thermal host as well as the generator itself when determining whether to declare a Forced Outage. CAC/EPUC suggests that the list of factors be rewritten so that each factor explicitly contains some evidence of bad faith.

Commission Determination

The Commission accepts the factors proposed by the ISO. The ISO will use these factors as a preliminary screen. A Forced Outage may have had the effect of increasing a generator's ability to manipulate the market and may have resulted in market prices being higher than would have

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otherwise been the case. Given the preliminary nature of the screen and the short time period involved, the factors may necessarily involve subjective judgments.

Significantly, however, the result of a preliminary screen is not binding. Rather, it merely brings to the attention of the Commission and the ISO information concerning Forced Outages that may warrant further explanation. The Commission and the ISO must then determine what actually occurred. The Commission's expectation is that the ISO and the generators will, in the seven-day period after the start of a Forced Outage, make every effort to communicate expeditiously and in good faith to resolve any issues regarding the appropriateness of the Forced Outage. It is only if such issues cannot be resolved that they would be referred to the Commission for further investigation. At that time, generators will have every opportunity to submit whatever evidence they believe necessary to justify the Forced Outage.

C. Maintenance Outage Cancellation Requests by the ISO

In the October 23 Order, the Commission rejected the ISO's use of "unduly significant market impacts" as a criterion for canceling scheduled generator maintenance outages without prejudice to its refileing the proposal with

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further justification. The Commission stated that the ISO's authority to cancel previously scheduled maintenance outages on the grounds of "market impacts" is vague and not fully justified as applied to generators. In its compliance filing, the ISO has modified its Tariff and Outage Coordination Protocol (OCP) to specify that the provisions concerning unduly significant market impacts are applicable only with respect to Reliability Must-Run Units, which provide reliability to the ISO Controlled Grid, or transmission facilities that form part of the ISO Controlled Grid.

Mirant states that the ISO has failed to completely remove the unduly significant market impacts criterion from its Tariff and OCP, and thus does not comply with the Commission's directives. Therefore, Mirant states that the Commission should reject this portion of the Compliance Filing.

Commission Determination

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97 FERC at 61,356.

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We disagree with Mirant. In the October 23 Order, the Commission rejected the ISO's use of unduly significant market impacts as a criterion for canceling scheduled generator maintenance outages. The ISO's proposed tariff language concerns generator outages only for Reliability

Must-Run Units which provide reliability to the ISO grid in load pockets, i.e., when transmission is limited, and for transmission outages, for which the Commission has previously accepted the use of the "unduly significant

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market impact" criterion. Accordingly, we will accept this proposed revision.

D. Other Intervenor Concerns

Duke Energy states that, based on its informal discussions with the ISO staff, the ISO's staff apparently interprets the term "Forced Outage" as used in proposed Tariff section 2.3.3.9.5 more broadly than the definition of "Outage" in the ISO Tariff. Duke Energy requests that the Commission direct the ISO to clarify that the Forced Outage Reporting Requirement is limited to those cases where a unit actually separates or disconnects from the grid. Duke Energy argues that deratings, short curtailments, and other minor variations in scheduled output should not trigger a reporting obligation. In the alternative, if the Commission deems reporting certain deratings or curtailments necessary, Duke Energy requests that only forced deratings or curtailments above a certain "benchmark" would require submission of a Forced Outage report.

Commission Determination

The October 23 Order did not direct any change to the ISO's definition of "Forced Outage," and therefore this issue is beyond the scope of this compliance filing.

E. Other Tariff Revisions and Effective Date

Our review indicates that the remaining tariff revisions comply with our October 23 Order. Consistent with our October 23 Order, the tariff revisions are accepted for filing, effective May 29, 2001.

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See California Independent System Operator Corp., 91 FERC - 61,341 at 62,155 (2000), order on reh'g, 94 FERC - 61,343 (2001).

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The Commission orders:

(A) The ISO's proposed tariff revisions related to outage coordination are hereby accepted for filing, to become effective on May 29, 2001, as discussed in the body of this order.

(B) The ISO is hereby directed to submit a further compliance filing, reflecting a revised form to implement its monitoring of forced outages, within 90 days of the date of this order, as discussed in the body of this order.

(C) Rate schedule designations will be provided in a future order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.