

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

Southern California Edison Company and
Pacific Gas and Electric Company

Docket No. EL01-34-000

ORDER DEFERRING ACTION ON REQUEST FOR SUSPENSION OF
UNDERSCHEDULING PENALTY AND ISSUING REQUEST FOR INFORMATION

(Issued April 6, 2001)

In this order, we defer action on the request of Southern California Edison Company (SoCal Edison) and Pacific Gas and Electric Company (PG&E) to suspend the penalty for underscheduled load. Also, in this order, we instruct the California Independent Operator Corporation (ISO) to file a report with input from SoCal Edison, PG&E and others on monthly projections of underscheduled load.

I. Background

A. Commission Order

On December 15, 2000, the Commission issued an order adopting specific remedies to address dysfunctions in California's wholesale bulk power markets and to ensure just and reasonable wholesale power rates by public utility sellers in California.¹ In the December 15 Order, among other things, the Commission established an underscheduling penalty as part of its comprehensive price mitigation plan. The Commission determined that the underscheduling problem jeopardized reliable system operations by forcing the ISO to satisfy far more load in real time than the market was intended to supply (*i.e.*, approximately five percent). Therefore, the December 15 Order required all market participants to preschedule their load and imposed penalties when

¹San Diego Gas & Electric Company, *et al.*, 93 FERC ¶ 61,294 (2000), reh'g pending (December 15 Order).

real time load exceeds more than five percent of an entity's scheduled load. The December 15 Order also established a 10 MW minimum deviation to accommodate smaller entities. In an attempt to apply a balanced approach, the December 15 Order also required that generators that participate in the ISO energy markets receive payment only for replacement reserves or energy, but not both.²

B. Subsequent Events

On January 16, 2001, Moody's Investor Service and Standard & Poor's Corporation lowered the credit and debt ratings of SoCal Edison to "junk" or "near junk" status. On January 16 and 17, 2001, these rating services downgraded PG&E's credit and debt ratings to junk status. On January 31, 2001, the California Power Exchange Corporation (PX) notified the Commission that it had suspended the operation of its Day-Ahead and Day-Of markets.

On January 17, 2001, the Governor of California issued an emergency proclamation giving the California Department of Water Resources (DWR) authority to enter into arrangements to purchase power in order to mitigate the effects of electrical shortages in the state.³ DWR began purchasing under this authority the next day. On January 19, 2001, the Governor signed the first of several bills appropriating \$400 million from the General Fund for DWR's purchases for sale to SoCal Edison and PG&E.⁴

On March 20, 2001, the ISO filed Tariff Amendment No. 38 which, among other things, proposes to suspend the underscheduling penalty provision through May 31, 2001.⁵

II. Instant Complaint

On February 2, 2001, SoCal Edison and PG&E filed a request for immediate suspension of the underscheduling penalty adopted by the Commission in its

²December 15 Order at 61,982.

³Proclamation, Cal. Gov. (Jan. 17, 2001).

⁴S.B. 7, 2001-2002 Legis., 1st Ex. Sess. (Cal.) (to be codified at CAL. WATER CODE § 200).

⁵We will address the issues in proposed Amendment No. 38 in a future order.

December 15 Order. In their filing, SoCal Edison and PG&E recognize that the purpose of the penalty was to alleviate the reliance on the ISO's energy imbalance market to meet load. They note, however, that certain events have made it impossible for them to expand their forward purchases: (1) that the PX has suspended operating certain markets; and (2) they have experienced credit and supply problems. SoCal Edison and PG&E maintain that given these circumstances, the underscheduling penalty cannot provide an incentive to their procurement strategy and instead amounts to an additional tax on their already expensive energy purchases.

III. Notices and Responsive Pleadings

Notice of SoCal Edison and PG&E's filing was published in the Federal Register, with comments, protests, and motions to intervene due on or before March 2, 2001.

Timely unopposed motions to intervene were filed by the Sacramento Municipal Utility District; Turlock Irrigation District; Mirant California, LLC, Mirant Potrero, LLC, and Mirant Delta, LLC (Mirant); Reliant Energy Power Generation, Inc., and Reliant Energy Services, Inc.; Universal Studios, Inc. (Universal); Enron Energy Services, Inc. (Enron); Duke Energy North America, LLC, and Duke Energy Trading and Marketing, LLC (Duke); the City of Vernon (Vernon); and the ISO. The California Electricity Oversight Board (Board) filed a motion to intervene out-of-time. The Public Utilities Commission of the State of California (California Commission) filed a motion to intervene out-of-time.

Enron, the California Commission and the ISO filed comments supporting the request to suspend the penalty provision. The ISO notes that the penalty was necessary to reduce the historical over-reliance on the imbalance market which has at times satisfied high levels of total system load. However, the ISO states that the penalty is currently placing an additional burden on SoCal Edison, PG&E and their ratepayers at a time when they are under extreme financial duress and that the penalty is not having the desired effect of encouraging forward contracting given the current market situation. According to the ISO, suspension of the penalty provision until May 31, 2001, will allow either the State of California to remedy the situation so that SoCal Edison and PG&E will be able to enter into forward purchases or DWR to procure sufficient supply on behalf of SoCal Edison and PG&E, eliminating the need for the ISO to assess the underscheduling penalty.

Mirant notes that the Commission's December 15 Order adopted a balanced approach to provide incentives to both supply and load to eliminate the underscheduling problem. Mirant argues that because these provisions were designed to work together, if one provision (the load penalty) is suspended, then the other provision (the generator penalty) should also be suspended. Mirant maintains that doing otherwise would upset the

balance set forth in the December 15 Order. Finally, Mirant states that the provisions should be re-instituted when SoCal Edison and PG&E regain their former creditworthiness.

Universal, Duke, and Vernon filed comments opposing SoCal Edison and PG&E's request to suspend the penalty. Universal, Duke and Vernon maintain that suspending the underscheduling penalty would only exacerbate reliability problems by removing the incentive for market participants to enter into forward contracts for the majority of their loads. Universal states that the reliability of supply should be ensured for all customers by continuing to require that at least 95 percent of the projected loads are scheduled.

IV. Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2000), the timely, unopposed motions to intervene serve to make the above listed intervenors parties to this proceeding. We find good cause to grant the late, unopposed motions to intervene of the California Commission and the Board given the early stage of the proceeding, their interest in the proceeding and the absence of any undue prejudice or delay.

In the December 15 Order, the Commission recognized that the lack of forward purchases and any resulting underscheduling of load threatened the reliability of the ISO controlled system by forcing over-reliance on the ISO's real-time imbalance market to supply load. The underscheduling problem caused the ISO to operate a sizeable real-time energy market, rather than to merely supply the balancing services needed to reliably operate the ISO grid.⁶ This in turn was one of the causes for the high energy prices in the ISO's imbalance market. Therefore, the Commission adopted the penalty provision as one component of the market mitigation measures. This penalty provision was intended to be an incentive for the IOUs to rely less on the spot market (*i.e.*, no more than five percent) and to encourage in part a more balanced supply with forward contracts.

SoCal Edison and PG&E argue that since the issuance of the December 15 Order, certain events have fundamentally changed the conditions under which the Commission instituted the underscheduling penalty. Most significantly, they argue that their current credit problems have forced them to rely on the ISO's real-time imbalance market

⁶See December 15 Order at 61,995, where we noted that in some hours the ISO had been called on to provide as much as 6,000 MWs of load in real-time as the supplier of last resort.

because of their inability to procure alternative forward purchases.

Subsequent to the issuance of our December 15 Order, the State of California and DWR began negotiating forward purchases. A recent report prepared by DWR indicates that this effort has resulted in forward contracts for only 2,247 MWs of electricity during the remainder of this year, significantly less than is needed.⁷ If this report is correct and a substantial amount of new forward contracts are not signed for this summer, a significant amount of load will continue to be supplied in the most volatile spot market (*i.e.*, the ISO's real-time imbalance market) which will in turn strain the ISO's ability to reliably operate the grid. We note that the ISO states that it is currently supplying approximately 15 percent of the system load in the real-time market.

We are also troubled by the ISO's position that a suspension of the penalty through May 31, 2001 is necessary to give the State of California or DWR more time to procure additional forward supply arrangements. The most important remedy in our December 15 Order was moving load into longer-term contracts as soon as possible. Simply put, the Commission is concerned that at this late date the appropriate amount of long-term contracts have not been executed on behalf of SoCal Edison and PG&E and long-term supply may not be available because it has been contracted to serve other load. In light of these concerns, the Commission will require further information on the current and projected market situation prior to considering whether to grant the request to suspend the penalty provision.

Specifically, we will require that the ISO file a comprehensive report within 15 days of the date of this order with input from the State of California, DWR, SoCal Edison and PG&E quantifying the amount of load that SoCal Edison and PG&E will serve through forward purchases and the projected amount of load that will continue to be supplied through the ISO's imbalance market for each calendar month from April 2001 through September 2001.⁸ This report should include the following:

- Monthly load forecasts for SoCal Edison and PG&E including high and low load scenarios derived from the use of mild and extreme weather projections. The ISO may include as a separate item in the net monthly load forecast any electricity conservation projections.

⁷Summary of California Department of Water Resources Power Purchase Contract Efforts, dated March 14, 2001.

⁸We do not intend to grant any extensions of time to file this report.

- Monthly projections supplied by SoCal Edison and PG&E to the ISO of the amount of their load that will be self supplied from their own resources (including purchase power contracts).
- The total amount of generation from Qualifying Facilities (QF) resources that are currently under contract with SoCal Edison and PG&E and monthly projections of the amount of SoCal Edison's and PG&E's load to be supplied from the QFs.
- Monthly projections of the amount of SoCal Edison and PG&E load that will be served by the former PX block forward contracts that were "commandeered" pursuant to executive orders signed by the Governor of California.⁹
- Monthly projections of the amount of generation that will be available and under contract for each month under the ISO's Request for Bids to Provide Reliability Generation filed in Docket No. ER01-929-000.
- Monthly supply projections based on purchase power contracts executed by the State of California identifying whether the supply is from existing resources or from new capacity additions and whether the resource is located within the ISO Control Area or whether it must be imported.
- Monthly supply projections based on currently unexecuted forward contracts. If projections for unexecuted contracts are included, the ISO must also include the generation source and supplier of the forward power, whether the resource is existing or a new capacity addition, whether the resource is located within or outside the ISO control area and the expected start date of the contract.
- Monthly projections of the amount of the SoCal Edison and PG&E load that will remain unscheduled and that will potentially need to be supplied through the ISO imbalance market.
- Monthly projections of any deficiencies between the high and low load forecasts and the total amount of available generation (classified by within control area generation or imports) on a total ISO control area system basis.

⁹See CA Exec. Order Nos. D-20-01 and D-21-01.

- Monthly projections of the amount of total system load that will be potentially supplied through the ISO imbalance market.
- To the extent the ISO projects a net shortage of resources, the report must provide a detailed explanation of all contingency plans or strategies to deal with the shortage.
- A statement by the ISO, based upon the above projections, regarding any expected operational problems that may result from a suspension of the penalty provision.

Given our decision to defer action on the request to suspend the penalty provision, we have not addressed intervenors' comments in this order, but will address these comments in a future order.

The Commission orders:

(A) We hereby defer action on the request for suspension of the penalty for underscheduling of load, as discussed in the body of this order.

(B) We hereby instruct the ISO to file a comprehensive report within 15 days of this order, as discussed in the body of this order.

By the Commission. Commissioner Massey concurred with a separate statement attached.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern California Edison Company and
Pacific Gas and Electric Company

Docket No. EL01-34-000

(Issued April 6, 2001)

MASSEY, Commissioner, concurring:

I concur with today's order. It reaches no decision whether to grant the request to suspend the penalty for underscheduled load in the California ISO until we receive more data.

My preference, however, would have been to suspend the penalty for the past period in this order. Given the extraordinary adverse market conditions, PG&E and SoCal Edison could not possibly have avoided the underscheduling penalty. Ultimately, ratepayers or perhaps California taxpayers will pay all of part of these penalties unless the Commission suspends them. I see no reason for those people to bear an additional burden of perhaps hundreds of millions of dollars arising from the utilities' failure to perform the impossible.

I concur with today's order to express this strong concern.

William L. Massey
Commissioner