

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

San Diego Gas & Electric Company

v.

Docket No. EL00-95-012

Sellers of Energy and Ancillary Services
Into Markets Operated by the California
Independent System Operator Corporation
and the California Power Exchange Corporation

ORDER REJECTING COST JUSTIFICATIONS FOR RATES
IN EXCESS OF THE PROXY MARKET CLEARING PRICE
AND ORDERING REFUNDS

(Issued October 5, 2001)

I. Introduction

In this order, we reject cost justifications submitted by Dynegy Power Marketing, Inc. (Dynegy), Reliant Energy Services, Inc. (Reliant), Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC (Mirant) and Williams Energy Services Corporation (Williams) for wholesale sales in the California Independent System Operator Corporation's (ISO) and Western Systems Coordinating Council (WSCC) markets in excess of the proxy market clearing price (mitigated price)¹ in July 2001 because they are either untimely filed and/or unsupported, and order refunds.²

¹For purposes of this order, we use the terms "proxy market clearing price" and "mitigated price" interchangeably.

²This order concerns only spot market transactions that occurred during the month
(continued...)

We also note that sellers who made wholesale sales in the spot markets in California and the rest of the WSCC in excess of the mitigated price during July 2001, but did not file cost justifications within the time period provided for doing so, are not entitled to receive more than the mitigated price.

II. Background

By order issued on April 26, 2001, the Commission established price mitigation for sales in the ISO's spot markets (ancillary services and imbalance energy), effective May 29, 2001.³ Under the April 26 Order, transactions above the proxy market clearing price during operating reserve deficiency hours would be subject to refund.⁴ At the end of each month in which a generator submits a bid higher than the market clearing price, the generator must file with the Commission and the ISO, within seven days of the end of the month, its complete justification, including a detailed breakdown of all of its component costs, for each transaction exceeding the market clearing price established by the proxy bid. The refund obligation will end 60 days from the date of each such filing, unless the Commission, within that period, notifies the seller otherwise.⁵ The April 26 Order also established an inquiry into whether a price mitigation plan similar to the one for California should be implemented in the WSCC.

By order issued on June 19, 2001, the Commission, inter alia, prescribed a market-driven price mitigation mechanism applicable in all hours to all wholesale sales in the spot markets in California and the rest of the WSCC commencing on June 20, 2001.⁶

²(...continued)
of July 2001.

³San Diego Gas & Electric Co., et al., 95 FERC ¶ 61,115 (2001), reh'g pending (April 26 Order).

⁴Periods of reserve deficiency are those periods beginning when Stage 1 is declared by the ISO.

⁵April 26 Order, 95 FERC at 61,359.

⁶San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Service into Markets Operated by the California Independent System Operator Corp. and the California Power Exchange Corp., et al., 95 FERC ¶ 61,418 (2001), reh'g pending (June 19 Order). The June 19 Order refers to "spot markets" or "spot market sales" as "sales (continued...)

Under the June 19 Order, in all hours, all spot market transactions above the proxy market clearing price would be subject to refund. The June 19 Order explained the price mitigation mechanism as follows:

Sellers dissatisfied with these [mitigated] prices have two options. They may propose cost-based rates for their entire portfolio of generating facilities in the WSCC in a section 205 filing with cost support including a reasonable rate of return on investment that reflects the unique conditions in California. Alternatively, although we believe the mitigated price to be adequate, sellers can seek to justify each transaction above the mitigated price. Any such justifications, however, cannot include premiums to compensate for credit risk, since our market-clearing price for the ISO's markets already reflects an adder for this risk. Similarly, a seller's emission costs cannot be used to justify exceeding the market-clearing price because our order allows each seller to recover its emission costs directly from the ISO. Claims of opportunity costs will not be considered because energy that is available in real-time cannot be sold elsewhere. Also, as explained elsewhere, marketers will not be allowed to justify prices higher than the mitigated prices because they must be price takers. Finally, while our approach allows recovery of gas costs, we will consider justifications based on higher actual gas costs if conditions in natural gas markets change significantly (assuming, of course, that suppliers can document and support their gas purchasing portfolio and allocation among all generating units at the relevant time).^{7]}

⁶(...continued)

that are 24 hours or less and that are entered into the day of or day prior to delivery." 95 FERC at 62,545 n.3. The June 19 Order provided that the price mitigation will terminate on September 30, 2002.

⁷95 FERC at 62,564 (footnote omitted). The Commission also recognized that, while emission costs outside of California were de minimis at that time, that may change, and that sellers could be subject to entirely new costs resulting from changes in circumstances. The Commission stated that it will consider such costs on a case-by-case basis. Id., n.75.

Of the sellers to the ISO that had transactions in excess of the proxy market clearing price in the month of July 2001, only Dynegy, Reliant, Williams and Mirant filed cost justifications for that month. Dynegy filed its cost justifications on August 9, 2001; Reliant filed its cost justifications on August 7, 2001; and Williams filed its cost justifications on August 7, 2001. Mirant filed its cost justifications on August 8, 2001, and filed a revision on September 7, 2001.⁸ On October 2, 2001, Mirant filed a motion requesting that the Commission waive the seven-day deadline and accept Mirant's August 8, 2001 cost justification filing, as amended, for consideration on its merits.

III. Discussion

Dynegy, Reliant, Williams and Mirant filed cost information regarding transactions in excess of the mitigated price that occurred during the period from July 1 - July 31, 2001, the period covered by the June 19 Order.⁹

As noted above, under the procedures established by the April 26 Order, cost justifications for transactions in excess of the mitigated price are due within seven days of the end of the month. Cost justifications for July were due on or before August 7, 2001. Dynegy's cost justifications (filed on August 9) and Mirant's cost justifications (filed on August 8 and revised on September 7) were thus untimely filed.¹⁰ We reject

⁸ Dynegy, Reliant, Williams and Mirant requested confidential treatment for their filings pursuant to section 388.112 of the Commission's regulations. 18 C.F.R. § 388.112 (2001).

⁹Williams also restates its general objections to the Commission's pricing methodology and the ordering of refunds and indicates that it intends to raise such issues on rehearing of the June 19 Order. As noted above, this order is addressing cost justification for transactions in excess of the mitigated price during the month of July 2001. This order is not addressing objections to the June 19 Order.

¹⁰Dynegy requests waiver of the requirement to file its cost justifications for May and June transactions within seven days of the end of the month. It explains that it did not have software in place to gather the information required to estimate cost justifications for May and June. It also seeks a waiver to file its cost justifications for July two days out of time. We reject its request for waiver regarding the May and June transactions. Dynegy had ample time between issuance of the April 26 Order and the deadlines for submitting those cost justifications to advise the Commission of any difficulties and request relief. It failed to inform the Commission before the fact, and we

(continued...)

Dynegy's and Mirant's cost justifications both because they are untimely and because neither company supported in detail its actual costs for its transactions.¹¹ Therefore, consistent with the April 26 Order and the June 19 Order, Dynegy and Mirant must refund amounts in excess of the mitigated price.

Based on our review of Reliant's cost justifications, we find that Reliant has not supported costs above the mitigated price established pursuant to the June 19 Order. The information submitted by Reliant merely reflects its attribution of gas transportation and fuel costs to the specific transactions. That is not consistent with the requirements of the June 19 Order. In particular, Reliant did not identify any significant change in the natural gas markets, and Reliant did not document its entire gas portfolio or the allocation among all of its resources during the relevant time. Therefore, consistent with the April 26 Order and the June 19 Order, Reliant must refund amounts in excess of the mitigated price.

Williams did not provide any actual cost support for its transactions beyond restating general objections to the Commission's pricing methodology. Therefore, consistent with the April 26 Order and the June 19 Order, Williams must refund amounts in excess of the mitigated price.

To the extent that other sellers in California and the rest of the WSCC had transactions in excess of the mitigated price during July 2001, and those sellers have not filed cost justifications for such transactions, the time for them to justify such transactions has lapsed, and they are not entitled to receive more than the mitigated price for such transactions.

¹⁰(...continued)

are not persuaded by its explanation. See San Diego Gas & Electric Co., et al., 96 FERC ¶ 61,254 at 62,003 (2001) (September 7 Order). Therefore, we will deny waiver. Further, Dynegy offers no explanation for filing its July cost justification out of time, and we will deny that request for waiver.

Mirant also requests waiver of the seven-day deadline. It states that its resources were spread thin by its participation in highly accelerated Commission proceedings in the Pacific Northwest and the California markets and its participation in the California bulk power markets. We are not persuaded by Mirant's argument, and we will deny waiver.

¹¹See September 11 Order (rejecting cost justifications, for June transactions, that were untimely and lacking detailed cost support).

Finally, Dynegy notes that it did not also submit its cost justification filing to the ISO as required by the April 26 Order. Dynegy argues that there is insufficient confidentiality protection in place between Dynegy and the ISO given the ISO's lack of independence. Dynegy proposes that after entering into an appropriate bilateral confidentiality agreement, the ISO may review Dynegy's cost justification at Dynegy's legal counsel's offices in Sacramento, California. In the June 19 Order, the Commission expressly required the ISO to treat all cost data in a confidential manner.¹² Accordingly, if Dynegy has concerns with respect to the ISO's treatment of confidential materials, it should file a complaint with the Commission.

The Commission orders:

(A) Dynegy's, Reliant's, Williams's and Mirant's cost justifications for rates in excess of the proxy market clearing price for the period July 1, 2001 through July 31, 2001, are hereby rejected, as discussed in the body of this order.

(B) Dynegy, Reliant, Williams and Mirant are hereby ordered to refund amounts in excess of the ISO's proxy market clearing price, as discussed in the body of this order.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

¹²95 FERC at 62,566.