

111 FERC ¶ 61,207
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

California Independent System
Operator Corporation

Docket Nos. ER03-1046-005
ER03-1046-006

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued May 10, 2005)

1. In an order issued on August 5, 2004,¹ the Commission granted, in part, and denied, in part, the requests for rehearing of the Commission's order in this proceeding on the California Independent System Operator Corporation's (CAISO or ISO) Amendment No. 54 revisions to its open access transmission tariff (ISO Tariff).² These revisions implemented the Phase 1B elements of the CAISO's Real Time Imbalance Energy Market. In the August 5 Order, the Commission also accepted, in part, and rejected, in part, the CAISO's November 21, 2003 and March 11, 2004 compliance filings. In this order, we deny the requests for rehearing of the August 5 Order and accept the CAISO's September 7, 2004 compliance filing submitted in response to the August 5 Order. This order benefits customers by clarifying and implementing measures to improve market efficiency and enhance communication between the CAISO and market participants.

Background

2. In an order issued on July 17, 2002,³ the Commission conditionally approved a staged implementation of the CAISO's Market Redesign Technology Upgrade (MRTU) proposal (formerly known as MD02) to be implemented in three Phases: Phase 1 - market power mitigation measures, real-time economic dispatch and the use of a single

¹ *California Indep. Sys. Operator Corp.*, 108 FERC ¶ 61,142 (2004) (August 5 Order).

² *California Indep. Sys. Operator Corp.*, 105 FERC ¶ 61,091 (2003) (October 22 Order).

³ *California Indep. Sys. Operator Corp.*, 100 FERC ¶ 61,060 (2002).

energy bid curve; Phase 2 - an integrated forward market, including an energy market and procedures for procurement of ancillary services; and Phase 3 - implementation of the full network model, redesigned firm transmission rights, and the integration of congestion management with energy and ancillary services markets. Phase 1B of the implementation schedule consisted of real-time economic dispatch and penalties for uninstructed deviation (UDPs).

3. On July 8, 2003, the CAISO sought approval to implement the Phase 1B elements of the Real Time Imbalance Energy Market, including approval of UDPs, Real Time Economic Dispatch (RTD), and inclusion of multiple ramp rates and other operational constraints into dispatch decisions. These ISO Tariff revisions were identified as Amendment No. 54.

4. In the October 22 Order, the Commission accepted, in part, and rejected, in part, the Amendment No. 54 ISO Tariff revisions and ordered the CAISO to make a compliance filing. The CAISO submitted compliance filings on November 21, 2003 and March 11, 2004. In the August 5 Order, the Commission granted, in part, and denied, in part, the requests for rehearing of the October 22 Order and the CAISO's compliance filings. On September 7, 2004, the CAISO submitted a compliance filing in response to the August 5 Order. On September 17, 2004, the CAISO notified the Commission of its intent to implement Phase 1B on September 30, 2004 for the October 1, 2004 real time market.

5. Requests for rehearing of the August 5 Order were filed by the CAISO, Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SoCal Edison). Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C. (Duke) and Dynegy Power Marketing, Inc., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, Cabrillo Power II LLC and Williams Power Company, Inc. (Dynegy/Williams) filed answers to the CAISO's request for rehearing.

Notice of Filing and Pleading

6. Notice of the CAISO's September 7, 2004 compliance filing was published in the *Federal Register*, 69 Fed. Reg. 56,208 (2004), with protests and interventions due on or before September 28, 2004. Sacramento Municipal Utility District (SMUD) filed a timely motion to intervene. No protests to the compliance filing were filed.

Discussion

A. Procedural Matters

7. Inasmuch as SMUD is already a party to these proceedings,⁴ we dismiss its intervention request.

8. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2004), prohibits answers to requests for rehearing. Accordingly, we will reject the answers of Duke and Dynegy/Williams to the CAISO's request for rehearing.

B. Minimum Load Cost Compensation (MLCC)

1. Revocation of MLCC

9. In Amendment No. 54, the CAISO proposed to monitor a resource's energy production on a Settlement Interval basis and revoke: (1) MLCC during a Waiver Denial Period when energy production in a Settlement Interval varies by more than the tolerance band; or (2) MLCC and bid cost recovery in a Settlement Interval when energy within that interval varies from the total expected output by more than the tolerance band.

10. In the October 22 Order, the Commission rejected the ISO's proposal to deny compensation to a must-offer generator for either minimum load costs or bid costs for energy dispatched above minimum load when it generates outside of the tolerance band within a Settlement Interval. The Commission found that the proposed language revoking payment for minimum load costs contravened its directive that the ISO must compensate a generator under the must-offer obligation for that generator's minimum load costs. The Commission also found that the proposed language that would deny bid cost recovery to a must-offer generator whose energy output varies from its expected output by more than the tolerance band was inconsistent with the proposal for UDPs which are assessed only against energy generated outside of the tolerance band.

11. In its November 21, 2003 compliance filing, the CAISO stated that it would set the variable PERF_STAT,⁵ as defined in section 2.6.1 of Appendix D of the Settlements

⁴ See October 22 Order, 105 FERC ¶ 61,091 at P 8 & App. A.

⁵ The CAISO's software uses the variable "PERF_STAT" to indicate whether a particular generating resource is eligible to recover its bid costs for any given interval. A resource which is eligible will be assigned a PERF_STAT = 1; a resource which is not eligible will be assigned a PERF_STAT = 0.

and Billing Protocol (SABP) and used in section 2.6 of Appendix D of the SABP, to 1 in every interval in which the unit could be producing Instructed Imbalance Energy. To this end, the ISO proposed revisions to section 2.6.1 of Appendix D of the SABP.

12. The ISO also asserted that, while the Commission expressly stated that must-offer resources dispatched above minimum load are not to be subject to the tolerance band, the Commission did not extend the same treatment to non-must-offer resources. The ISO proposed to eliminate bid cost recovery payments for those intervals in which the non-must-offer resource does not operate within the tolerance band amount of the Dispatch Operating Point. Therefore, the ISO submitted the following modifications: (1) ISO Tariff section 5.11.6.1.1 exempting must-offer generators from any tolerance band requirements for an interval in which the ISO dispatches energy above minimum load, and (2) related changes to section 2.9 of Appendix D of the SABP. The ISO also proposed modifications to ISO Tariff section 11.2.4.1.1.1 to distinguish the bid cost recovery for must-offer resources and non-must-offer resources.

13. In the August 5 Order, the Commission found that, in its filing on proposed Amendment No. 58, the CAISO correctly interpreted the Commission's October 22 Order as holding that "the application of UDP (as governed by the Tolerance Band) is sufficient to ensure compliance with Dispatch Instructions without also putting MLCC and Bid Cost Recovery at risk due to non-compliance with a Dispatch Instruction."⁶ The Commission explained that, while the proposal would apply only to non-must-offer generators and thus deals only with bid cost recovery, the same logic still applied. The Commission found unconvincing the CAISO's argument that UDPs would not be a sufficient deterrent to generators who could choose not to perform at all and still receive compensation. The Commission stated that it had put into place market behavior rules⁷ which, in combination with vigilant market monitoring and UDPs, should be more than adequate safeguards against this type of behavior. Therefore, the Commission rejected the CAISO's proposal to eliminate bid cost recovery payments for non-must-offer resources operating outside the tolerance band amount of the Dispatch Operating Point.

14. On rehearing of the August 5 Order, PG&E argues that the Commission's rejection of the ISO's proposal is unsupported by factual evidence and relies upon monitoring and behavioral rules which market participants may not have adequate information to enforce. PG&E asserts that market participants do not have the data to examine whether sellers operated outside of tolerance bands to obtain additional revenue

⁶ August 5 Order, 108 FERC ¶ 61,142 at P 71 (*quoting* CAISO Amendment No. 58 Transmittal Letter at 4).

⁷ See *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004).

because the ISO does not release data, if any, until many months after the operating day. PG&E states that the penalties for inappropriate behavior depend on a two-step process (*i.e.*, ISO monitoring of behavior and reporting of such behavior to the Commission for enforcement), until the CAISO demonstrates that it has established an independent Governing Board. As a result, PG&E requests that the Commission clarify the following in order to effectively deter gaming of minimum load and bid recovery payments: (1) the ISO should immediately disclose information to the Commission with a subsequent notice, if necessary, of any instance in which sellers are acting in contravention of the behavioral rules, and (2) the Commission, through its Office of Market Oversight and Investigation, will vigorously investigate and enforce such reported behavior. PG&E adds that, since the Commission has not implemented proposed ISO Tariff section 20.3.5,⁸ the basis for mitigation claimed in the August 5 Order does not exist currently.

15. PG&E's arguments are misplaced. The Commission's Market Behavior Rule 1 requires market-based rates sellers to "[o]perate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable power market."⁹ Further, the market behavior rules provide that the market monitor, in this case the CAISO's market monitoring staff, should alert the Commission when the market monitor becomes aware of possible violations of Commission-approved tariff requirements or of the market behavior rules.¹⁰ In response to PG&E's concerns, we believe that the Commission has put into place effective market behavior rules, that the CAISO's market monitoring staff is well-equipped to monitor for violations of these rules, and that the Commission's Office of Market Oversight and Investigation will vigorously enforce such violations.

2. Recovery of Minimum Load Costs by Must-Offer Generators

16. In Amendment No. 54, the CAISO proposed to revise ISO Tariff section 5.11.6.11 to provide that the MLCC payment for an hour will only be made as an uplift payment to the extent that instructed energy payments during that hour are insufficient to

⁸ *Citing California Indep. Sys. Operator Corp.*, 106 FERC ¶ 61,179 at P 164 (2004).

⁹ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 at P 18.

¹⁰ *Id.* at P 184.

cover minimum load costs. This revision was not discussed in the ISO's filing transmittal letter. In the October 22 Order, the Commission did not reach a determination on the revision to ISO Tariff section 5.11.6.1.1.

a. **Netting Ex-Post Revenues Against Minimum Load Costs**

17. On rehearing of the October 22 Order, intervenors requested clarification of the Commission's determination on and/or rejection of the CAISO's proposal for netting of market revenues against MLCC payments. They argued that the proposed revision to ISO Tariff section 5.11.6.1.1 would permit the ISO to pay minimum load costs of eligible must-offer generators as an uplift payment only to the extent those costs are not covered by the ex-post imbalance energy market revenues. Intervenors asserted that the proposed tariff revision was not only inconsistent with the representations made by the ISO in its transmittal letter but also contravened Commission orders that had rejected such an MLCC netting proposal. The California Generators¹¹ also requested that the Commission clarify that the ISO had not been authorized to net ex-post revenues against minimum load costs under any circumstances, including a daily, hourly or Settlement Interval (10-minute) basis. If the Commission accepted the proposed netting, Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. requested that the Commission direct the ISO to retain the pre-Amendment No. 54 compensation mechanism until MRTU Phases 2 and 3 were implemented or until the stakeholder processes produced an agreed upon alternative approach which addressed the amount of reserves the ISO requires and the mechanism for procuring them.

18. In the August 5 Order, the Commission agreed with intervenors that the proposed tariff language was contrary to the representations made by the CAISO in its transmittal letter and, therefore, rejected the provision to net ex-post revenues against minimum load costs.

19. On rehearing of the August 5 Order, PG&E argues that the Commission improperly modified the October 22 Order without factual evidence or support. PG&E contends that, if there is a stream of payments which meet (and potentially exceed) those costs occurring at the same time as the costs are incurred, the Commission may not rationally award double payments. PG&E asserts that, given the magnitude of double payment for minimum load costs, bid recovery and imbalance energy payments, the Commission cannot reverse its approval of the ISO's proposal to minimize excess payments without a substantial record, including hearings and factual evidence.

¹¹ The California Generators include Dynegy/Williams, the Western Power Trading Forum, and Independent Energy Producers of California.

20. In its request for rehearing, the CAISO states that it did not propose to use profits from Imbalance Energy sales above a unit's minimum operating level to pay minimum load costs in another hour. It further states that, if the Commission considered "ex-post revenues" as revenue for Imbalance Energy sales above the minimum operating level, then the Commission rejected an idea that the ISO did not propose. The ISO states that "ex-post revenues" are all market revenues paid to a generating unit, including the Uninstructed Imbalance Energy payment that is currently paid for the minimum operating level energy in addition to separately paying for the minimum load costs. The ISO contends that its proposal would have eliminated a double payment that occurs when the ISO pays (1) the minimum load costs for the minimum operating level energy and (2) the Uninstructed Imbalance Energy price for the same quantity of minimum operating level energy because the minimum operating level energy is not treated as Instructed Imbalance Energy or scheduled in a forward market. It adds that, under its proposal, the supplier would keep the revenues above its minimum load costs in the intervals in which the Instructed Imbalance Energy exceeded the equivalent \$/MWh minimum load cost price.

21. The ISO requests that the Commission clarify: (1) the definition of "ex-post revenues" and (2) whether the double payment is meant to provide suppliers with an additional fixed cost recovery measure. The CAISO requests that the Commission explicitly state that it intends to provide a double payment for the minimum operating level energy to assist generators in the recovery of fixed costs in the absence of other mechanisms. The CAISO requests that, if the Commission intends to provide an additional stream of fixed cost recovery through its action, the Commission not make this payment permanent and reconsider its position at a future time. It also requests that the Commission identify the conditions whereby the double payment should be eliminated, such as (1) the adoption of a short-term bilateral contract product by the ISO or (2) implementation of a resource adequacy requirement in California.

22. In its rehearing request, SoCal Edison seeks clarification that the inappropriate double payment of must-offer units for minimum load energy will not continue once the CAISO implements the Phase 1B UDPs.

23. Currently, must-offer generators receive MLCC and the imbalance energy price for minimum load energy while operating under the must-offer obligation. Prior to the implementation of Phase 1B, the must-offer generator's minimum load energy was called uninstructed imbalance energy. Upon implementation of Phase 1B on October 1, 2004, the must-offer generator's minimum load energy is now called instructed imbalance energy. We reject SoCal Edison's, PG&E's and the CAISO's argument that the payments to must-offer generators are inappropriate "double payments." The Commission has previously held that the revenues received by generators for energy sales in the imbalance energy market are, under market-based rate authority, intended to

compensate the generators for recovery of fixed costs.¹² Further, the Commission has found that generators subject to the must-offer obligation should have the ability to recover their costs for complying with the CAISO's instructions to keep their units on-line at minimum load status in order to be available for dispatch instructions issued by the CAISO. The Commission has found that a generator must be compensated for its actual costs during each hour when that generator is: (1) not scheduled to run under a bilateral agreement; (2) not on a planned or forced outage; and (3) running in compliance with the must-offer obligation but not dispatched by the CAISO.¹³

24. The Commission's prior orders have been consistently clear that it is appropriate to pay must-offer generators for their minimum load costs and the imbalance energy produced as a result of running at minimum load. Our position on this issue has not changed due to the implementation of Phase 1B. We find the "double payment" argument to be a collateral attack on prior Commission orders and therefore reject it. We also reject the CAISO's request that the Commission identify the conditions whereby its policies should be changed. The Commission will evaluate payments made to must-offer generators when that issue is ripe for review. Resource adequacy in California and the implementation of the other phases of the MRTU proposal will impact the Commission's decision regarding compensation to must-offer generators. It is premature at this time to identify the exact conditions when specific components of the must-offer payments may be eliminated.

25. Regarding the CAISO's requested clarification of what constitutes "ex-post revenues," we find clarification of this term to be unnecessary. In its September 7, 2004 compliance filing, the CAISO has satisfactorily complied with our directive to pay eligible must-offer generators for imbalance energy in addition to being paid its minimum load costs.¹⁴ This imbalance energy payment will be equal to the Resource Specific Settlement Interval Ex Post Price times that amount of energy actually delivered.

¹² *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Serv.*, 99 FERC ¶ 61,159, *reh'g denied*, 100 F.E.R.C. ¶ 61,050 (2002), *reh'g denied*, 105 FERC ¶ 61,065 (2003).

¹³ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Serv.*, 97 FERC ¶ 61,293 (2001), *reh'g denied*, 99 FERC ¶ 61,159 (2002).

¹⁴ See ISO Tariff section 5.11.6.1.1.2.

b. Definition of Generator's MLCC

26. In its November 21, 2003 compliance filing, the CAISO modified proposed section 2.9 to Appendix D to the SABP to define a generator's MLCC "as the market revenue deficit below its minimum load costs," rather than as all of a generator's minimum load costs.

27. Intervenors alleged that, through this proposed revision, the ISO was attempting to implement an impermissible netting procedure. They claimed that this material change was not authorized by the October 22 Order and was not described in the ISO's compliance filing transmittal letter. They further argued that this change contravened Commission orders which required the ISO to pay minimum load costs during each hour that a generator runs without a bilateral schedule pursuant to the ISO's denial of a must-offer waiver and which rejected a previous ISO MLCC netting proposal. Intervenors requested that the Commission reject this provision.

28. In its answer, the CAISO stated that section 2.9 of Appendix D of the SABP was the mathematical equivalent of ISO Tariff section 5.11.6.1.1 that was approved by the Commission in the October 22 Order. It claimed that, consistent with ISO Tariff section 5.11.6.1.1, the formula in section 2.9 of Appendix D of the SABP defined MLCC as any shortfall that may arise from paying minimum load energy at the imbalance energy price. It explained that section 2.9 only described an uplift amount added to the imbalance energy payment made to minimum load energy, not an amount to be netted from any payment for minimum load energy. It stated that netting would occur only if the ISO were using revenues to offset minimum load costs. It added that, if a generator received monies for its minimum load energy in excess of its unit's minimum load costs, then the generator could retain those excess revenues.

29. In the August 5 Order, the Commission agreed with intervenors that the proposed language in section 2.9 to Appendix D to the SABP defining a generator's MLCC "as the market revenue deficit below its minimum load costs," rather than as all of a generator's minimum load costs was misleading. The Commission directed the CAISO to submit a revised definition of MLCC in this section.¹⁵

30. On rehearing of the August 5 Order, PG&E argues that the Commission did not provide a clear explanation for (1) rejecting the ISO's definition of MLCC, which PG&E believes is consistent with the October 22 Order or (2) indicating that MLCC should be defined as "all of a generator's minimum load costs." PG&E contends that the Commission accepted the ISO proposal that an uplift for minimum load costs would only

¹⁵ As noted above, the CAISO has satisfactorily complied in its September 7, 2004 compliance filing with the Commission's directive. *See supra* at P 25.

be paid “to the extent the Instructed Imbalance Energy Payments would not be sufficient to cover,” these costs, which included assessing compliance on a ten-minute basis to synchronize with the settlement system. PG&E states that the Commission indicated that generators would recover “either minimum load costs or bid costs for energy dispatched above minimum load.” PG&E asserts that the Commission has not provided a substantial reason for its change in position. PG&E adds that, due to the magnitude of current payments and the duplication of payments of MLCC and Instructed Energy, the Commission cannot accede to requests for broad market increases in revenue without establishing the specific factual need for such payments and the means to reduce excess payments.

31. Contrary to PG&E’s assertion, the Commission has not changed its position. As noted above, the Commission’s prior orders have found that it is appropriate to pay must-offer generators for their minimum load costs and the imbalance energy produced as a result of running at minimum load.¹⁶ The Commission rejected the proposed definition at issue because it was not consistent with this Commission determination. PG&E’s argument is, in effect, a collateral attack on those prior Commission orders; accordingly, we deny this request for rehearing.

C. Compliance Filing in Response to August 5 Order

32. In the August 5 Order, the Commission directed the CAISO to submit a compliance filing with the revisions directed therein.¹⁷ We find that the CAISO’s September 7, 2004 compliance filing complies with our directive. Pursuant to the CAISO’s September 17, 2004 notice of implementation of Phase IB, the CAISO notified the Commission and market participants that Phase IB would be implemented on October 1, 2004. Accordingly, we accept for filing the proposed revisions in the compliance filing to become effective on October 1, 2004.

The Commission orders:

(A) The requests for rehearing are hereby denied, as discussed in the body of this order.

¹⁶ See *supra* at P 23-24.

¹⁷ August 5 Order, 108 FERC ¶ 61,142 at P 100.

(B) The CAISO's proposed compliance filing is hereby accepted for filing, without suspension or hearing, to become effective on October 1, 2004, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.