

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL REGULATORY ENERGY COMMISSION**

San Diego Gas & Electric Company,
et al.

) Docket Nos. EL00-95-058,
) EL00-98-050, EL00-107-009,
) EL00-97-003, EL00-104-008,
) EL01-1-009, EL01-2-003 and
) EL01-68-011

**ANSWER OF THE CALIFORNIA INDEPENDENT
SYSTEM OPERATOR CORPORATION TO MOTIONS TO PROTESTS TO THE
JUNE 24, 2002 COMPLIANCE FILING**

On June 24, 2002, the California Independent System Operator Corporation (“ISO”)¹ submitted a compliance filing and proposed Tariff revisions (“June 24 Compliance Filing”)² as directed in the Commission’s May 15, 2002 “Order Accepting In Part And Rejecting In Part Compliance Filings,” 99 FERC ¶ 61,158 (May 15, 2002) (the “May 15 Order”) in the above-captioned dockets. In the June 24 Compliance Filing, the ISO submitted the Tariff revisions needed to comply with the May 15 Order, and described the ISO’s implementation procedures for:

- (1) waivers from the Must Offer Obligation;
- (2) payment of Minimum Load Costs relating to the Must Offer Obligation;
- (3) allocation of Minimum Load Costs;
- (4) implementation of the 7 percent reserve deficiency;
- (5) recovery of emissions and start-up fuel costs based upon Gross Loads;
- (6) removal of the requirement to consider gas portfolios for justification of recovery of start-up fuel costs;

¹ Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

² The ISO concurrently submitted a June 24, 2002 Compliance Report, setting forth a proposed process for retrospective Minimum Load Cost Compensation.

- (7) application of the ten percent credit adder;
- (8) calculation of the Market Clearing Price for Ancillary Services;
- (9) use of real time metering to calculate the Market Clearing Price; and
- (10) removal of certain penalty provisions from the ISO Tariff.

The Commission's June 28, 2002, Notice of Filing directed parties to comment on the ISO's June 24 Compliance Filing on or before July 15, 2002.

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213, the ISO submits its Answer to the protests concerning the June 24 Compliance Filing in the above-captioned dockets. As detailed below, the several protests are without merit with the exception of the one modification the ISO describes herein. Accordingly, the ISO urges that the Commission accept the ISO's proposed Tariff revisions without condition and with only the single modification as the ISO agrees to below.

I. BACKGROUND

On April 26, 2001, the Commission issued its "Order Establishing Prospective Mitigation and Monitoring Plan for the California Wholesale Electric Markets and Establishing an Investigation of Public Utility Rates in Wholesale Western Energy Markets" in the above-captioned dockets ("April 26 Order").³ In the April 26 Order, the Commission set forth, among other things, a requirement that all sellers, including non-public utilities, that voluntarily make sales through the ISO's market or use the ISO's interstate transmission grid, must offer all of their available power in real time during reserve deficiencies.

On rehearing of the April 26 Order, the Commission issued an order on

³ 95 FERC ¶ 61,115 (2001).

June 19, 2001,⁴ in which, among other things, the Commission expanded the Must Offer Obligation to require all utilities that own or control generation in California to offer power in the ISO's spot markets.

As detailed below, only three (3) protests to the June 24 Compliance Filing were filed and all such protests are narrowly focused upon the ISO's prospective proposed process for granting waivers from the Must Offer Obligation and determining eligibility for recovery of Minimum Load Costs.

II. ANSWER TO PROTESTS⁵

Three parties filed protests.⁶ All filings focused on the Must Offer Obligation.

A. Reasons For Waiver Decisions

In the May 15 Order, the Commission accepted in part and rejected in part the ISO's proposed procedures for granting waivers from the Must Offer Obligation. The Commission directed the ISO to propose a process wherein each generator be informed that the ISO had granted or denied a waiver or has revoked a prior existing waiver and that the ISO provide the reason(s) for each such decision. However, the Commission specifically ordered that though the reason(s) must be non-discriminatory, ISO waiver decisions may not include consideration

⁴ *San Diego Gas & Electric Company, et. al*, 95 FERC ¶61,418(2001) ("June 19 Order").

⁵ While all three filings are styled as protests, such pleadings are substantive in nature, and thus the ISO urges that it is entitled to respond to these pleadings notwithstanding the label applied to them. *Florida Power & Light Company*, 67 FERC ¶ 61,315 (1994). Moreover, the Commission has held that good cause exists when an answer will facilitate the decisional process, help resolve complex issues, clarify the issues in dispute or a party's position on the issues, lead to a more accurate and complete record or provide useful and relevant information which will assist the decision making process. Thus, to the extent that this answer is deemed an answer to protests, the ISO requests waiver of Rule 213 (18 C.F.R. §385.213) to permit it to make this answer. *East Tennessee Natural Gas Company*, 79 FERC ¶61,124 at 61,569 (1997); *Great Lakes Gas Transmission, L.P.*, 66 FERC ¶ 61,115 at 61,194 (1994); *Tennessee Gas Pipeline Company*, 55 FERC ¶ 61,362 at 62,306 n.7 (1994); *Transwestern Pipeline Company*, 50 FERC ¶61,362 n.19 (1980); *Transwestern Pipeline Company*, 50 FERC ¶61,211 at 61,672 n.5 (1980); *Enron Corporation*, 78 FERC ¶ 61, 179 at 61, 733, 61, 741 (1997); *El Paso Electric Company*, 68 FERC ¶ 61, 181 at 61, 899 and n. 57 (1994).

⁶ Parties include: Dynegy Power Marketing, Inc., El Segundo Power, LLC, Long Beach Generation LLC, Cabrillo Power I LLC and Cabrillo Power II LLC (collectively, "Dynegy"); Reliant Energy Power Generation, Inc and Reliant Energy Services, Inc (collectively, "Reliant"); and Williams Energy Marketing & Trading Company ("Williams").

of market costs or competitive market outcomes.⁷ Accordingly, in its June 24 Compliance Filing, the ISO stated it will “inform each Must-Offer Generator who is not on an outage, not scheduled to run under a bilateral agreement, or not under ISO Dispatch, if a waiver is granted or denied, the period of any such Waiver Denial Period and the reason(s) for the ISO’s decision.” June 24 Compliance Filing, Transmittal Letter at 3. In its January 25, 2001 Compliance Filing submitted in response to the December 19, 2001 Order, the ISO had proposed use of a “unit commitment computer program for making waiver decisions based upon economic and competitive market considerations. Inasmuch as the Commission, in its May 15 Order, denied using economic and competitive market factors in making waiver decisions, the ISO cannot use its unit commitment computer program, and instead is limited to a simpler granting of waivers based upon a first principle of first come, first served basis, modified as needed for specific locational and operating criteria and system conditions.

Reliant asserts that the June 24 Compliance Filing is deficient because it “fails to meet the Commission’s requirement that the CAISO must provide a generator with the reason(s) for a decision to accept, deny or revoke a waiver.” Reliant at 5. Reliant argues that explanations from the ISO that a waiver decision is based upon “system reliability” or “system conditions” are inadequate and do not convey sufficient information to permit a generator to determine for itself if there is a reasoned basis for the ISO’s decision. As such, Reliant is concerned that a generator cannot “put together an argument for bringing the issue to the Commission for review.” Reliant at 6-7. Reliant specifically proposes that “the CAISO should be required to define the general reasons for a waiver decision (including details of the test or standard to be applied to determine what resources are needed for ‘system reliability’), or to provide specific operational reasons for each waiver decision.” Reliant at 7.

⁷ 99 FERC at 61,630 *et seq.*

In its May 15 Order, the Commission directed the ISO to grant exemptions “so as to (1) provide for sufficient on-line generating capacity to meet operating reserve requirements and (2) to account for other physical operating constraints. . . .”⁸ Accordingly, the ISO bases all decisions regarding waivers first and foremost upon prudent transmission system operating practices designed to ensure grid reliability. Generating Units may be required to stay on-line or come on-line to run at Minimum Load for a range of reasons including when the ISO reasonably anticipates it will need such units for Dispatch in real time to meet forecasted Load. Such reasons are the everyday reality of operating a dynamic transmission system. Indeed, under the former integrated utility regime, any control area operator constantly modified the number and type of units committed to meet changing forecasts of Load and Supply and changing system conditions such as transmission facility constraints, resource unit outages, de-ratings and other variations in operational performance.

The ISO documents the hours and times it denies, grants and revokes waivers for all Generating Units to demonstrate a non-discriminatory and fair process for granting waivers. Given that the Commission has forbidden the use of more sophisticated criteria for waiver determinations such as least cost or competitive market outcomes, the ISO, perforce, can only seek to ensure that all Generating Units are fairly considered for receipt of a waiver. To do so, the ISO will continue, as it has done in the past, as a first pass, to grant waivers on a first come, first served basis. In all cases, and especially when the ISO preferentially must act on a waiver for one unit over another that would otherwise be next in the queue, the ISO will record its reasons, and to the extent such reasons are not confidential or commercially sensitive, share such information with the relevant Generating Unit. Such reasons may be related to location of a unit in light of a system condition such as transmission congestion or wildfires, or,

⁸ May 15 Order Filing, slip op. at 7.

alternatively, one unit may be required over another due to, e.g., ramping rate, start-up time or total available capacity.

In sum, given the dynamic operational reality of the transmission grid and the Commission's prohibition upon the ISO's use of the more equitable and transparent considerations of costs and competitive outcomes, the ISO is restricted to making decisions solely based upon system conditions, unit operating performance, and locational considerations, all against a background of maintaining equity in the decision process for waiver based upon first come, first served. As such, these considerations constitute the reasons the ISO provides to units for waiver decisions. Finally, the ISO documents all such decisions. Therefore, the June 24 Compliance Filing is fully compliant with the Commission's orders regarding reasons for waiver decisions and Reliant's protest in this regard should be dismissed.

B. To Ensure Grid Reliability and A Non-Discriminatory Waiver Process, Generating Units Scheduled In The Day-Ahead Market Are Not Eligible For Minimum Load Cost Compensation For the Full 24-Hour Period

Two parties argue that the ISO should pay their minimum load costs when their Generating Units are running at Minimum Load while staying on-line in between bilateral Schedules. See Reliant at 2-5; Williams at 2-5. For the reasons set forth below, and as detailed in the June 24 Compliance Filing, the ISO must make the majority of its unit commitment decisions (waiver decisions) at the close of the Day-Ahead Market. Moreover, the Scheduling patterns and operating criteria, including Minimum Down Time for the majority of Generating Units that are subject to the Must Offer Obligation are such that most units cannot both perform their forward bilateral Schedules and go off-line for the few hours they may not be scheduled because they can not start-up again in time to meet their next bilateral commitment.

1. The Majority of Must-Offer Generating Units Cannot Serve Their Typical Peak Hour Bilateral Schedules And Go Off-Line During Non-Scheduled Off-Peak Hours

There are 108 Generating Units, representing a total of 21,488 MW, subject to the Must Offer Obligation in California. Of these units, 61 Generating Units, with a total of 17,349 MW, have Minimum Down Times greater than eight (8) hours. Thus approximately 81 percent (%) of the capacity that is subject to the Must Offer Obligation comes from Generating Units that have Minimum Down Times greater than eight hours. The majority of these units schedule in blocks of approximately 16 hours across the peak hours beginning at approximately 7:00 am through approximately 11:00 pm. Given the operating Minimum Down Time of eight hours, as listed in each unit's Participating Generator Agreement ("PGA") with the ISO, these units cannot go off-line in the off-peak hours of 11:00 pm through 6:00 am and still meet their bilateral commitments. Simply put, the majority of Generating Units must run at Minimum Loads during hours they may not be forward Scheduled because the units cannot shut down and return on-line in time to perform their next commercial contract. The ISO has not granted a Waiver Denial Period to these units, and indeed, the ISO had made prudent unit commitment decisions regarding waivers at the close of the Day-Ahead Market excluding these units from the equation because the ISO knows these units will be self-committed for the full 24 hours.

In a related concern, Dynegey, at 3, noted that the ISO failed to make clear that the ISO would determine waivers in a manner consistent with the information contained in a Generating Unit's PGA. The ISO confirms now that such data are at the foundation of waiver decisions. Thus, the ISO is aware that the majority of Must-Offer Generating Units are fully self-committed, accordingly to the terms on file in their PGAs, on a full 24-hour basis.

Given the complexity and contentiousness surrounding implementation of the Must Offer Obligation, the ISO now respectfully requests the Commission to rule directly on the question whether the Commission requires the ISO to compensate generating units for minimum load costs that are incurred in hours in which:

- (1) the unit must remain on-line to serve its own upcoming bilateral Schedule, and
- (2) the unit is not required by the ISO to meet capacity and reserve obligations under the Must Offer Obligation.

Stated otherwise, should Market Participants, through ISO compensation of Minimum Load costs, subsidize units that must otherwise pay their own Minimum Load costs because such units must stay on-line to perform their commercial contracts? A direct response from the Commission on this point would significantly improve the ability of the ISO and Market Participants to work together and implement the Must Offer Obligation in an effective and equitable way.

2. The ISO Must Make A Majority Of The Waiver Decisions At The Close Of The Day-Ahead Market to Ensure Adequate Capacity In Real Time

A second reason why the ISO cannot accommodate multiple waiver requests within a Trade Day is because, as detailed in the June 24 Compliance Filing, it must make the basic decisions about what units it may need in real time at the time of the close of the ISO's Day-Ahead Market. Specifically, due to the high degree of operational complexity involved in forecasting system conditions, quantifying capacity estimated to be required in real time and then notifying each unit whether or not it is granted a waiver, the ISO must plan for reliability at the close of the Day-Ahead Market. It would defy prudent practice, violate MORC, and be operationally unsustainable to leave such critical planning to the Hour-Ahead or Real Time Markets. The ISO must make considered and non-discriminatory waiver decisions at the close

of the Day-Ahead Market and thus seek to ensure that there will be adequate capacity available in real time. Given that system conditions are dynamic and forecasts more accurate the closer to real time, the ISO may make additional waiver decisions throughout the operating day, but the bulk of such decisions must, due to the physical operating characteristics of the resources the ISO relies on, be made ahead of time. Accordingly, the ISO must consider units with Schedules in the Day-Ahead Market as being self-committed for the full Trade Day. Such units may change their Schedules in the ensuing 24 Hour-Ahead Markets, even to the extent of reducing their Schedules to zero. The ISO must make waiver decisions based upon Schedules submitted to the Day-Ahead Market and operationally cannot constantly change operating reserve requirements and on-line capacity and system balancing to account for varying Schedules throughout the Trade Day. Units may elect to either stay on-line throughout the Trade Day or go off-line if they can do so while still serving their Schedules, but the ISO cannot factor such units into its grid management decisions made at the close of the Day-Ahead Market. Thus the protests of Reliant and Williams should be dismissed as operationally impossible. These protests also should be dismissed because the Must Offer Obligation is not designed as a subsidy for operating costs that a Generating Units incurs as it run at Minimum Load in between bilateral contracts. Treating it otherwise would generate the ultimate irony – that an extraordinary measure taken to prevent suppliers from withholding generation from a market subject to the exercise of market power would be twisted to try to subsidize and guarantee the recovery of costs that heretofore could only have been recovered from participating in the market.

3. To Ensure A Non-Discriminatory Waiver Process, The ISO Must Grant Waivers Equitably To All Units, Using a Common Time Frame To Make Such Decisions

A third reason why the ISO cannot do other than exclude Generating Units with Schedules in the Day-Ahead Market from waiver decisions is the Commission's requirement to implement waiver decisions in a non-discriminatory manner. To ensure that the ISO grants waivers impartially to all such eligible units, there must be a cut-off point for the initial waiver decisions. The Day-Ahead Market provides for a transparent line-up of units, ranked by first come, first served, such that the ISO can identify those units that, all other factors being equal, are next-in-line for waivers. Indeed, were Generating Units that had Schedules in the Day-Ahead Market eligible to seek a waiver at any hours in the relevant Trade Day, such units would unfairly increase their chances of being granted a waiver or of receiving Minimum Load Cost Compensation at the expense of all the units queued up at the Day-Ahead Market. This would happen by a unit contriving to increase its chances of a waiver by submitting Schedules in the Day-Ahead Market and then canceling such Schedules in the Hour-Ahead Market and subsequently seeking a waiver.

Moreover, and of critical impact on grid reliability, the ISO must make resource commitment decisions based upon a snapshot of expected unit commitment and availability. The Day-Ahead Market provides such a fair snapshot, and after close of the Day-Ahead Market the ISO can make orderly, informed and reasoned decisions that are fair to Market Participants. During real time the ISO can fine-tune the commitment decisions made after the Day-Ahead Market to reflect system conditions and contingencies. On the other hand, neither the ISO nor any other transmission grid operator can accurately and reliably assess total capacity needs, consider start-up times, ramp rates, Minimum Run and Minimum Down Times

for every hour against a portfolio of units already running under Waiver Denial Periods. The complexity is too great and the ISO cannot undertake such risks to reliability of the transmission grid. It is therefore prudent for the ISO to conduct the process of issuing waivers once a day – following the Day-Ahead Market.

4. Only Generating Units Running At Minimum Load In A Waiver Denial Period Are Eligible For Minimum Load Cost Compensation

As provided for in its June 24 Compliance Filing, the ISO will pay the Minimum Load costs for all Generating Units that the ISO determines must operate to comply with reliability criteria. To that end, generators are assumed to be under an ISO waiver of the Must Offer Obligation, and therefore not eligible to recover their Minimum Load costs, unless the ISO expressly has informed the unit it is to run under a Waiver Denial Period or has revoked such unit's waiver and required it to run in accordance with the Must Offer Obligation. Generators must not assume that the mere act of operating at Minimum Load with no forward Schedules will qualify them to recover their Minimum Load costs from the ISO. If the ISO requires units that are not operating to operate, it will notify them to revoke their waiver so that the unit must start-up so as to operate in compliance with the Must Offer Obligation. As detailed below, all Generating Units with schedules in the Day-Ahead Market are deemed to be running to serve bilateral contracts for the entire Trade Day. Such units are not eligible for recovery of Minimum Load costs incurred when such units run at Minimum Load because they are staying on-line to perform under upcoming bilateral Schedules and not to comply with the Must Offer Obligation. In summary, only those units that the ISO has confirmed are required to operate by expressly denying or revoking a waiver of compliance with the Must Offer Obligation are eligible to have their Minimum Load costs paid by the ISO.

C. The Tolerance Band Is Measured As Any Deviation Greater Than 5 MW or Three Percent (3%) Of the Generating Unit's Maximum Output

Both Reliant and Dynegy discuss the tolerance band and ask whether it is to be measured against the unit's operation at the unit's minimum operating point or some other level. Reliant at 5; Dynegy at 3. The ISO agrees to clarify prior proposed Tariff Section 5.11.6.1.1 to clarify that "[w]hen on an hourly basis, a Must-Offer Generator produces a quantity of Energy **at the unit's Minimum Load** that varies by more than the greater of: (i) five (5) MWh or (ii) an hourly Energy amount equal to three (3) percent (%) of the unit's maximum operating output, the Must-Offer Generator shall not be eligible to recover Minimum Load cost for any such hours within a Waiver Denial Period." Emphasis added to the modification proposed.

III. CONCLUSION

For the foregoing reasons, the Commission should accept the ISO's June 24 Compliance Filing in this proceeding without modification except as set forth in this filing.

Respectfully submitted,

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Dated: July 30, 2002



July 30, 2002

The Honorable Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

**Re: San Diego Gas & Electric Company, et al.
Docket Nos. EL00-95-058, EL00-98-050, EL00-107-009, EL00-97-003, EL00-104-008,
EL01-1-009, EL01-2-003 and EL01-68-011**

Dear Secretary Salas:

Enclosed for electronic filing please find the Answer of the California Independent System Operator Corporation to Protests to the June 24, 2002 Compliance Filing in the above-referenced dockets.

Thank you for your assistance in this matter.

Respectfully submitted,

Margaret A. Rostker
Counsel for The California Independent
System Operator Corporation

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-captioned dockets.

Dated at Folsom, California, on this 30th day of July, 2002.

Margaret A. Rostker
Counsel for The California Independent
System Operator Corporation