99 FERC 61, 158
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, Docket No. EL00-95-058
Complainant,
v.
Sellers of Energy and Ancillary Services
Into Markets Operated by the California
Independent System Operator and the
California Power Exchange,
Respondents.

Investigation of Practices of the California Docket No. EL00-98-050
Independent System Operator and the
California Power Exchange

Public Meeting in San Diego, California Docket No. EL00-107-009

Reliant Energy Power Generation, Inc., Docket No. EL00-97-003
Dynegy Power Marketing, Inc., and
Southern Energy California, L.L.C.,
Complainants,
v.
California Independent System Operator
Corporation,
Respondent

California Electricity Oversight Board Docket No. EL00-104-008
Complainant,
v.
All Sellers of Energy and Ancillary Services
Into the Energy and Ancillary Services Markets
Operated by the California Independent System
Operator and the California Power Exchange,
Respondents

California Municipal Utilities Association, Docket No. EL01-1-009
Complainant,
v.
All Jurisdictional Sellers of Energy and Ancillary

Services Into Markets Operated by the California Independent System Operator and the California Power Exchange,
Respondents

CAlifornians for Renewable Energy, Inc. (CARE), Docket No. EL01-2-003
Complainant,
v.
Independent Energy Producers, Inc., and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange; All Scheduling Coordinators Acting on Behalf of the Above Sellers; California Independent System Operator Corporation; and California Power Exchange Corporation,
Respondents

Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council Docket No. EL01-68-011

ORDER ACCEPTING IN PART AND REJECTING IN PART COMPLIANCE FILING

(Issued May 15, 2002)

In this order, we accept in part and reject in part the California Independent System Operator's (ISO's) January 25, 2002 compliance filing (January 25 compliance filing), submitted in response to an order issued on December 19, 2001.[1] This acceptance in part and rejection in part reflects the appropriate implementation of our previous findings regarding the California markets and will promote a more efficient operation of the wholesale electricity markets in California to the benefit of all customers.

Background

A. January 25, 2002 Compliance Filing

Over an eight-month period, the ISO submitted four compliance filings and proposed tariff revisions in response to Commission orders addressing the high price of electricity in the

[1] San Diego Gas & Electric Co., et al., 97 FERC 61,293

(2001) (December 19 Compliance Order).

markets operated by ISO and the California Power Exchange (PX). In the first such order, issued on December 15, 2000, the Commission established certain remedies to alleviate the extremely high electricity prices in California.[2] In response, ISO submitted a compliance filing on January 2, 2001 that implemented the Commission's directives.

On May 11, 2001 (May 11 filing), the ISO made another compliance filing and proposed tariff revisions in response to the Commission's April 26, 2001 order that established a prospective mitigation and monitoring plan for wholesale markets operated by the ISO.[3] The May 11 filing, among other things, provided for the ISO's implementation of the Commission's directives regarding a requirement for all sellers that own or control generation in California to offer all of their available power in the ISO's real-time energy market and a price mitigation mechanism for the ISO's real-time energy market during system emergencies.

On rehearing of the April 26 order, the Commission issued an order on June 19, 2001 that modified and expanded the mitigation plan and extended price mitigation to wholesale spot markets throughout the Western Systems Coordinating Council (WSCC). On July 10, 2001 (July 10 filing), the ISO submitted a new compliance filing in response to the June 19 order on rehearing. On July 30, 2001, the ISO filed revised tariff sheets as an[4] amendment to its May 11 and July 10, 2001 compliance filings.

The December 19 Compliance Order addressed the ISO's compliance filings and proposed tariff revisions filed on January 2, May 11, July 10 and July 30, 2001, and directed ISO to make an additional filing. Further, the Commission issued two other orders on December 19, 2001 addressing issues in the Western markets.[5]

[2] San Diego Gas & Electric Co., et al., 93 FERC 61,294 (2000), on reh'g, 97 FERC 61,275 (2001).

[3] San Diego Gas & Electric Co., et al., 95 FERC 61,115 (2001) (April 26 order), order on reh'g, 95 FERC 61,418 (2001) (June 19 order), on reh'g, 97 FERC 61,275 (2001), being issued concurrently.

[4] The December 19 Compliance Order, 97 FERC 61,293 at 62,360-61, describes these Commission orders and ISO compliance filings in greater detail.

[5] San Diego Gas & Electric Co., et al., 97 FERC 61,275 (2001) (order on rehearing); and San Diego Gas & Electric Co., et al., 97 FERC 61,294 (2001) (order temporarily modifying the (continued...)

On January 25, 2002, the ISO submitted its compliance filing in response to the December 19 Orders.[6]

B. Notice of Filings and Interventions

Notice of the January 25 and January 29 filings was published in the Federal Register, 67 Fed. Reg. 6703, with motions to intervene and protests due on or before February 15, 2002. 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), 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, Inc. (collectively, Reliant), Dynegy Power Marketing, Inc., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC (collectively, Dynegy), Modesto Irrigation District (Modesto), Northern California Power Agency (NCPA), Transmission Agency of Northern California (TANC), Williams Energy Marketing & Trading Company (Williams) and the City of Redding, California, the City of Santa Clara, California, the City of Palo Alto, California, and the M-S-R Public Power Agency (collectively, Cities/M-S-R).

On March 4, 2002, the ISO filed an answer to the motions to intervene, requests for clarification, comments and protests to the January 25 Compliance Filing.

Discussion

A. Procedural Matters

Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. 213(a)(2) (2001), prohibits answers to protests unless otherwise permitted by the decisional authority. We find that good cause exists to allow the ISO's answer because it assists us in our decision-making process.

B. Issues Raised in the January 25 Compliance Filing

1. Must-Offer Obligation

[5] (...continued)
west-wide price mitigation methodology or "Winter Price Order").

[6] On January 29, 2002, the ISO submitted an amendment to include a revised tariff sheet that was inadvertently omitted from the January 25 compliance filing.

a. Procedures for Exemptions from the Must-Offer Obligation

Under the ISO's tariff provisions regarding the Must-Offer Obligation, Section 5.11.4, Obligation to Offer Available Capacity, provides that all Must Offer Generators shall offer to sell all available generation in all hours in the Imbalance Energy market. The ISO had proposed an exemption procedure to this requirement in a July 20, 2001 market notice. In the December 19 Compliance Order, the Commission found that the ISO's proposal to grant exemptions of the Must-Offer Obligation under certain conditions was reasonable.[7] Accordingly, the Commission directed the ISO to make a compliance filing incorporating into its Tariff, with enough specificity to ensure that these procedures are non-discriminatory and transparent to market participants, the provision for exempting generators from the Must-Offer Obligation.

As part of its compliance with the December 19 Compliance Order, the ISO has included Section 5.11.6, which provides procedures where generators may seek an exemption to the Must-Offer Obligation. Under this provision, the ISO, in its sole discretion, will grant such exemptions so as to: (1) minimize the start-up and Minimum Load Costs necessary to meet the ISO's forecasted Demand; (2) provide sufficient on-line generating capacity to meet operating reserve requirements; (3) provide for a reasonable assurance of competitive market outcomes; and (4) account for other physical operating constraints, including generating unit minimum up and down times. If this exemption request is not granted, the ISO defines this as a "Waiver Denial Period". Finally, the ISO may revoke exemptions as necessary due to outages, changes in load forecast, or changes in system conditions. Therefore, in summary, generators are under the Must-Offer Obligation if they are not scheduled to run under a bilateral agreement[8], not on a planned or forced outage, or if they have not been granted an exemption.

Duke and Reliant argue that the ISO's proposal gives it the ability to deny exemptions arbitrarily and capriciously and the Commission should shift the burden to the ISO to demonstrate good cause as to why a generator's request for an exemption should not be granted. Additionally, Duke states that the ISO's first exemption criterion discriminates against the most efficient generators and is a disincentive to construction of more

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97 FERC 61,293 at 62,363.

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The ISO's Tariff appears to construe the bilateral agreement more generally as a self-commitment period which it defines as the hours when must-offer generators submit energy schedules, ancillary service bids or self provision schedules.

efficient generation in California. Finally, Duke objects to the third exemption criterion as being vague and overly broad. Reliant states that the ISO's exemption procedures make no attempt to provide transparency as to decisions and that the ISO should be required to inform a generator that its exemption request has been accepted or denied, and when an exemption has been revoked. Reliant also argues that such notification must be timely made and should include an explanation of the reason for the ISO decision, with reference to specific criteria.

In its response, the ISO states that it fails to understand Duke's objection to the first criterion since more efficient generating units have reduced costs and, thus, are more attractive units for bilateral transactions. The ISO dismisses Duke's objection to the third criterion as re-arguing a previously settled issue.

Commission Determination

The Commission's April 26 Order set forth that the purpose of the Must-Offer Obligation is to ensure that all units that are able to run but are not already scheduled to run are made available to the ISO in the real-time market.[9] The Must-Offer Obligation is designed to ensure that the ISO will be able to call upon available resources in the real-time market to the extent energy is needed. A generator that has available energy in real time should be willing to sell that energy since it has no alternative purchaser. Additionally, the Commission noted that the Must-Offer Obligation should provide the ISO adequate capacity to help meet operating requirements.

In conditionally approving the ISO's proposed exemption procedures from the Must-Offer Obligation, the Commission intended to assist generators with long start-up times and high Minimum Load Costs and to provide flexibility to the ISO regarding the balancing of load and resources. Therefore, we find the ISO's proposal that exemptions will be granted so as to (1) provide sufficient on-line generating capacity to meet operating reserve requirements and (2) to account for other physical operating constraints of generating units reasonable.

However, the Commission did not specify that the exemption procedures be used to minimize costs incurred under the Must-Offer Obligation by Market Participants. While minimization of costs is generally desirable in the context of our Must-Offer Obligation, where the primary focus is to ensure that there is sufficient energy to meet load, the exemption procedure should not be used to minimize costs to the detriment of reliability. Therefore, we reject the ISO's proposal criteria to grant

[9] April 26 Order at 61,357.

exemptions to minimize the start-up and Minimum Load Costs necessary to meet the ISO's forecasted demand.

We also reject the ISO's proposal to use the exemption procedure to provide a reasonable assurance of competitive market outcomes. This is consistent with our rejection of a similar proposal by the ISO regarding the cancellation of planned generation outages on the grounds of market impacts.[10]

We agree with Reliant that the ISO must revise its Tariff to provide that a generator be informed that a waiver request has been accepted, denied, or revoked, including the reason(s) for the decision, which must be non-discriminatory. With respect to the ISO's Tariff provision that such exemptions be granted by the ISO at its sole discretion, we find this provision not unreasonable as such discretion is reviewable by the Commission. Generators can file complaints if they believe the ISO has used its discretion in an arbitrary or discriminatory manner. With respect to the intervenors concerns regarding transparency, we believe that with our required Tariff modifications, this requirement will be met.

b. Payments of Minimum Load Costs

In the December 19 Compliance Order, the Commission directed the ISO to compensate a generator for its actual costs during each hour when the 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 ISO.[11] The order states that these costs should be directly invoiced to the ISO and the ISO should recover these costs consistent with the methodology utilized for the recovery of emissions and start-up fuel costs. In determining the fuel costs for units running at their minimum load, the Commission directed the ISO to multiply the minimum point on the unit's heat rate curve by the average of the mid-point of the monthly bid-week gas prices for the three spot markets reported by Gas Daily for California to determine the fuel payment for each hour that a generating unit is in minimum load status.

i. Recovery of Minimum Load Costs - Netting of Revenues

The ISO proposes to compensate generating units for "unrecovered Minimum Load Costs," defined as "the portion of the Minimum Load Costs that are not recovered from profits through

10
97 FERC 61,066 at 61,356.
11
December 19 Compliance Order, 97 FERC 61,293 at 62,363.

participation in the ISO markets during the Waiver Denial Period."

In the instant compliance filing, the ISO has set forth procedures to determine each Scheduling Coordinator's (SC) unrecovered Minimum Load Costs. Specifically, to determine the unrecovered Minimum Load Costs, the ISO will perform two calculations: (1) determine the profits a SC has made in the market during the period (calculated as the difference between revenues received and operating costs); and (2) calculate Minimum Load Costs for the same time period.[12] The difference between items (1) and (2) will be the unrecovered Minimum Load Costs. The ISO states that this procedure ensures that the generator is made whole for its Minimum Load Costs and market participants do not subsidize other market activity or otherwise pay twice for the same energy.

Williams, Duke and Reliant argue that the ISO's netting proposal would not compensate generators for their actual costs incurred during each hour the unit is in minimum load status and, thus, is not in compliance with the Commission's December 19 Order that directed the ISO to compensate generators for their actual costs during each hour. Reliant also argues that the ISO's proposed "netting" results in an unjust and unreasonable subsidization of Minimum Load Costs that violates the principle of cost causation.

In its answer, the ISO states that the protests on this issue are attempts to shift costs more appropriately recovered under bilateral contracts to ISO market participants.

Commission Determination

Our December 19 Order required the ISO to pay Minimum Load Costs to each generator for each hour that generator was operating at minimum load status. The ISO's proposed "netting procedure" is not in compliance with this requirement and is hereby rejected. Accordingly, the ISO is directed to revise its Tariff to reflect the payment of Minimum Load Costs for each hour the generator was operating at minimum load status. The ISO has requested clarification/rehearing of this issue of reimbursement of minimum load operating costs in Docket No. EL00-95-056, et

[12] Minimum Load Costs would be calculated as the sum, for all hours that a unit runs at minimum load in compliance with the Must-Offer requirement, of: (1) the product of the unit's average heat rate at the unit's minimum operating level and the proxy figure for natural gas costs and the unit's minimum operating level; and (2) the product of the unit's minimum operating level and $6/MWh.

al., and we are concurrently issuing an order in that proceeding which addresses this issue.

ii. Limitation on Minimum Load Cost Recovery

The ISO has proposed to pay Must-Offer generators Minimum Load Costs if they: (1) do not submit any Energy Schedules, Ancillary Service Schedules, self provision Schedules or bids in the Hour-Ahead markets for any hours during such Waiver Denial Period[13]; and (2) do not, over an hour, produce a quantity of energy that varies by more than 5 MWh or is equal to 3 percent of the unit's maximum operating output.[14]

Duke, Williams, Mirant and Dynegy protest the ISO's proposed denial of Minimum Load Costs to generators that have imbalances greater than 5 MWh or 3 percent of the unit's maximum operating output because limitation was not part of the Commission's December 19 Compliance Order. Mirant and Duke also object to the ISO's proposal requiring any unit that submits an hour-ahead energy schedule during any hour of a Waiver Denial Period to forfeit minimum load payments for all hours of the Waiver Denial Period. These parties argue that, faced with the knowledge that entering into a contract for a time period of as little as one hour will mean forfeiting the ability to recover Minimum Load Costs from the ISO for a potentially longer Waiver Denial Period, generators that bring their units on-line in response to the Must-Offer Obligation will reasonably demand that any prospective buyer make them whole for these forfeited revenues or will elect not to enter into the voluntary forward contract. Duke also argues that the submission of a schedule or bid by a Must-Offer generator does not reflect a unit commitment decision for the entire Must-Offer period, and therefore, cannot be presumed to recover costs for hours when the unit is not dispatched. Williams and Dynegy contend that the ISO's potential limitation on payment is contrary to the Commission's directive that the ISO compensate generators for their actual costs during each hour.

In it answer, the ISO notes that its proposed 5 MWh deviation allows for operational flexibility. Therefore, market participants should not be required to pay Minimum Load Costs for generating units that are unresponsive or undertake uninstructed deviations. The ISO also states that protests over denial of cost recovery upon submittal of a bid or schedule is an attempt

[13] Under the ISO's definition of Waiver Denial Period, all hours outside of self-commitment periods for which exemptions are not granted constitute the Waiver Denial Period. Thus, under this definition, all generators who did not seek an exemption are covered under the Waiver Denial Period.

[14] Proposed ISO Tariff section 5.11.6.1.1.

to make the ISO subsidize Minimum Load Costs for generators which they should more appropriately recover in bilateral contracts. In response to the arguments that generators should not forfeit all Minimum Load Cost recovery during the entire Waiver Denial Period, the ISO states that this is consistent with the Commission's position that costs associated with performance of bilateral transactions should be included in the contracts themselves and not cost-shifted to Market Participants.

Commission Determination

First, we note that the ISO, in its answer, agrees with the protesting parties that submission of bids for Ancillary Services into either the Day-Ahead or Hour-Ahead Markets should not cause the generator to forego Minimum Load Cost recovery for the Waiver Denial Period.[15] With respect to the ISO's proposed eligibility restriction of Minimum Load Cost recovery for units that produce a quantity of energy that varies by more than the greater of 5MWh or an hourly energy amount equal to 3% of the unit's maximum operating output, we find this proposal reasonable. We agree with the ISO that units at minimum load should not have significant changes in output and that units partially committed to bilateral contracts that may have variability are not eligible for recovery of Minimum Load Costs.

With respect to the ISO's proposal to deny Minimum Load Costs for all hours based on the submission of a schedule or bid for a particular hour, we agree with the protesting parties that this denial is inconsistent with our directive in the December 19 Compliance Order. The Must-Offer Obligation and accompanying payment of Minimum Load Costs was not intended to serve as a disincentive for generators to either bid in the Imbalance Energy market or to enter into sales in the bilateral spot market, but rather was intended to make available to the market uncommitted energy and thus prevent any withholding.[16] The ISO is again directed to pay Minimum Load Costs in each hour when a generating unit is under the Must-Offer Obligation.

iii. Heat Rate Curve

[15] The ISO agrees to not only modify its Tariff accordingly but also when a generator is awarded Ancillary Services in an Hour-Ahead market, the generator shall forfeit minimum load cost recovery only for that hour.

[16] We also note the ISO's proposed limitation of minimum load cost recovery based solely on the fact that for hours in which must-offer generators submit bids appears inconsistent with Section 5.11.5 of the ISO's Tariff which states that for each operating hour must-offer generators shall submit supplemental energy bids for all of their available generation to the ISO.

Dynegy argues that the ISO's proposed formula calculating Minimum Load Costs relies on an improper definition of heat rate. Specifically, Dynegy argues that the ISO's proposal to calculate minimum load payments based on "the unit's average heat rate ... at the unit's minimum operating level" contradicts the Commission's directive to multiply the minimum point on the units' heat rate curve by the gas proxy price.

In response to Dynegy's protest, the ISO states that the average heat rate curve is the appropriate curve for calculating Minimum Load Cost recovery.

Commission Determination

In the December 19 Compliance Order, the Commission stated that: for the purpose of determining the fuel costs for units running at their minimum load, we direct the ISO to multiply the minimum point on the unit s heat rate curve by the average of the mid-point of the monthly bid-week gas prices for the three spot markets reported by Gas Daily for California (i.e., the gas costs used to determine proxy prices) to determine the fuel payment for each hour that a generating unit is in minimum load status. By this, we mean that the ISO should use the minimum point on the heat rate curve for the hours when the generator is in minimum load status. We acknowledge that the Tariff does not reflect the discussion in our December 19 Compliance Order verbatim. However, we agree with the ISO that the use of the average heat rate curve is appropriate for determining the fuel costs for a unit running at minimum load. Accordingly, we find the point on the average heat rate curve representing minimum load, coupled with the natural gas proxy price, provides for full recovery of a unit's Minimum Load Costs. This was the Commission's intent in the December 19 Compliance Order. We find the ISO's Tariff language as provided in Section 5.11.6.1.2 is reasonable and, hereby accepted for filing.

iv. Retroactive Recovery of Minimum Load Costs

Reliant and Dynegy have also submitted comments regarding retroactive recovery of Minimum Load Costs. Reliant proposes that generators review their own operating data and submit to the ISO and the Commission a report showing which generating units meet the Commission's requirements.

In response, the ISO states that it is reviewing the record of transactions to determine how to most fairly compensate generators for prior compliance with the Must-Offer Obligation and will file a status report to set forth a proposed retroactive calculation of Minimum Load Costs.

Commission Determination

The ISO should work with the generators to ascertain both the appropriate level of and the specific generators entitled to such costs during the retroactive period and make a compliance report with the Commission within 30 days of this order detailing such recovery.

c. Allocation of Minimum Load Costs

i. Definition

In its compliance filing, the ISO proposes to allocate Minimum Load Costs as follows:

> For each such hour, the total unrecovered Minimum Load Costs shall be allocated to each Scheduling Coordinator in proportion to the sum of that Scheduling Coordinator's Load and Demand within California outside the ISO Control Area that is served by exports to the sum of the Control Area Gross Load and the projected Demand within California outside the Control Area that is served by exports.

Commission Determination

We find the ISO's proposed tariff language difficult to interpret as to whether it conforms to our December 19 Compliance Order which requires the use of gross load as the basis for the assessment of minimum load, emissions and start-up fuel costs because all users of the transmission grid will be assigned these costs consistent with the ISO's markets performing a reliability function.[17] However, our review of the ISO's Tariff provision regarding the rate for emissions cost charge which utilizes "the sum of the Control Area Gross Load and the Demand within California outside of the ISO Control Area that is served by exports from the ISO control Area of all Scheduling Coordinators"[18] should be used for the allocation of Minimum Load Costs. Accordingly, the ISO is directed to revise its Tariff to consistently apply such language.

ii. Reasonableness of Allocation

Dynegy argues that the ISO's proposed allocation of Minimum Load Costs to Export load located outside of the ISO control area is unreasonable. SoCal Edison argues that Minimum Load Costs should not be assessed to Control Area Gross Load and California Exports

[17] December 19 Compliance Order at 62,370.

[18] Section 2.5.23.3.6.3 of the ISO Tariff.

Commission Determination

With respect to SoCal Edison and Dynegy's arguments, we find that these protests are outside the scope of this compliance filing in as much as they go to the reasonableness of using gross load as the appropriate allocator to recover these costs. Furthermore, this issue will be addressed in the compliance rehearing order being issued concurrently with this order.

2. Implementation of the 7 Percent Reserve Deficiency

In the December 19 Compliance Order, the Commission directed the ISO to amend its Tariff regarding the declaration of system emergencies to reflect a definition of a Stage 1 System Emergency to occur when reserves fall below 7 percent, and thus, a new mitigated reserve deficiency MCP must be calculated.[19] This change was to be made effective May 29, 2001.[20]

In its compliance filing, the ISO states that the Commission's direction to use a seven percent reserve margin does not comport with the WSCC's Minimum Operating Reserve Criteria (MORC) definition of a Stage 1 System Emergency. Therefore, as an alternative, the ISO has proposed a new Tariff term, "Price Mitigation Deficiency Reserve," defined as "Any clock hour in which the ISO's maximum actual reserve margin is below seven percent." The ISO requests the Commission to adopt this new term whenever a Price Mitigation Reserve Deficiency occurs.

Duke asks the Commission to reevaluate the appropriate threshold for resetting the Non-Emergency Maximum Market Clearing Price in light of the ISO's disclosure of actual reserve requirements. Duke also states that the Commission should evaluate the degree to which California's WSCC reserve requirement fluctuates significantly over an hour, a day, or a month. Reliant asks the Commission to reject the ISO's proposal to distinguish system emergencies from Price Mitigation Reserve Deficiency and direct the ISO to revise its Tariff so that system emergencies are declared at the same point at which price mitigation changes are triggered. Mirant requests that the Commission direct the ISO to apply the new definition for a Stage 1 System Emergency on a prospective basis only. Dynegy argues that the ISO's alternative proposal is inconsistent with the requirement of the December 19 Compliance Order requiring the ISO to establish a fixed percentage definition to reserve emergencies

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December 19 Compliance Order at 62,364.

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The rehearing order being issued concurrently determines that the appropriate effective date is December 19, 2001.

in order to avoid the appearance of manipulation of the market by the ISO and, therefore, must be rejected.

Commission Response

We find that the ISO's proposed new Tariff term ("Price Mitigation Deficiency Reserve") is reasonable and consistent with the intent of the Commission's December 19 Compliance Order to remove from the ISO any discretion regarding the declaration of system emergencies for purposes of recalculating the mitigated market clearing price. We disagree with Dynegy's argument regarding inconsistent application of the reserve emergency requirement. The December 19 Compliance Order required the ISO to modify its Tariff to recalculate the mitigated prices when reserves in California fall below 7 percent. We find that the ISO's Tariff changes have complied with that directive. Duke's request for the Commission to reevaluate the appropriate threshold for resetting the mitigated market clearing price is outside the scope of this compliance filing and is addressed in the rehearing order being issued concurrently. Additionally, we will deny Reliant's request that the Tariff be revised so that price mitigation and system emergencies are declared at the same point. For purposes of implementing our mitigation plan, these provisions need not be identical. Finally, the Commission directs the ISO to make the revisions regarding the Stage 1 System Emergency effective as of December 19, 2001, consistent with our findings in the rehearing order being issued concurrently with this order.

3. Recovery of Emissions and Start-Up Fuel Costs

a. Gross Load

In the December 19 Compliance Order, the Commission stated that gross load is the most appropriate basis for assessing emissions and start-up fuel costs because it is consistent with the ISO's Real Time Imbalance Energy Market performing a reliability function.[21] In its compliance filing, the ISO revised its Tariff to state that total gross load is the basis for assessment for emissions and start-up fuel costs.

Modesto, TANC, NCPA, and Cities/M-S-R (Government Entities) protest that the rates for emissions and start-up fuel costs should be based on the sum of the Control Area Gross Load and the projected demand within California outside the ISO Control Area that is served by exports from the ISO Control Area. They also object to the ISO's proposal to assess these costs to Load that is not served by the ISO-controlled grid. SoCal Edison states that the ISO's compliance filing is inconsistent with regard to

[21] 97 FERC at 62,370.

emissions and start-up fuel cost charges and is severely deficient if it intends to assess these charges based on scheduling coordinator Control Area Gross Load. Specifically, SoCal Edison states that the ISO has calculated the unit rates for emissions and start-up fuel charges using Control Area Gross Load but allocated the rate among customers based on Metered Demand.

In its answer, the ISO states that the Government Entities' assertion is without merit and that the ISO's compliance filing contains the precise language proposed to and accepted by the Commission. Additionally, the ISO agrees with SoCal Edison's argument regarding the inconsistent application of emissions and start-up fuel charges based on Control Area Gross Load.

Commission Determination

The concerns raised by the Government Entities are denied. Our review indicates that the ISO, except for the issue raised by SoCal Edison, has correctly implemented in its Tariff sheets our findings regarding use of gross load as the basis for the allocation of emissions and start-up fuel costs. With respect to SoCal Edison's concern, the ISO agrees with SoCal Edison's position regarding the inconsistent allocation of emissions and start-up fuel charges, and is therefore instructed to revise Sections 2.5.23.6.1 and 2.5.23.7.1 of its Tariff to levy emissions and start-up fuel costs charges against all Scheduling Coordinators based upon each Scheduling Coordinator's Control Area Gross Load.

b. Gas Portfolio

In its December 19 Compliance Order, the Commission clarified that sellers need not submit their entire gas portfolio in order to justify actual start-up fuel costs.[22] In its compliance filing, the ISO revised its Tariff, effective December 20, 2001, to remove the requirement that sellers submit cost data for their entire gas portfolio.

Reliant and Dynegy argue that the ISO only eliminated this requirement as of December 20, 2001, but should have removed the provision entirely since the December 20, 2001 effective date may be used to deny recovery for start-up fuel costs for past periods.

In response to Dynegy's and Reliant's argument, the ISO states that the Commission does require submission of gas portfolio data expressly to support requests for cost recovery above the calculated gas proxy price.

[22] Id.

Commission Determination

We agree with Dynegy and Reliant. The Commission never directed the ISO to require the submission of the entire gas portfolio data for purposes of justifying recovery of actual start-up fuel costs. Accordingly, we direct the ISO to revise its Tariff sheets to make this Tariff change effective June 20, 2001.

4. Ten Percent Credit Risk Adder

In the December 19 Rehearing Order, the Commission affirmed its June 19 Order in which the Commission directed the ISO to add 10 percent to the Market Clearing Price to generators for all[23] prospective sales in its markets to reflect credit uncertainty. In its compliance filing, the ISO proposes revisions to its Tariff, to be effective December 20, 2001, clarifying the applicability of the ten percent adder.

Dynegy argues that the ISO's compliance filing continues to leave out transactions eligible for the adder, such as compensation for Minimum Load Costs and payments for Uninstructed Imbalance Energy. Reliant also argues that the ISO's proposal fails to meet the Commission's directive by limiting payment of the credit risk adder to Instructed Imbalance Energy transactions, instead of using the more inclusive Imbalance Energy definition. Dynegy and Reliant also argue that the Tariff amendments regarding application of the adder were incorrectly made effective December 20, 2001 and that the correct effective date for the adder should be June 21, 2001. Reliant also notes that in the Refund Hearing,[24] the credit risk adder is to be applied to transactions beginning January 5, 2001 through June 20, 2001.

In its answer, the ISO states that Uninstructed Imbalance Energy is not the subject of an agreed-upon transaction with the ISO, but only a consequence of a generator's voluntary decision to produce additional output or a operator's loss or lack of control, and therefore, ineligible for the credit adder. Additionally, the ISO states that compliance with the Must-Offer Obligation is a condition of participation in the ISO markets and not a transaction entered into between the ISO and the Generator. As such, minimum load cost recovery properly excludes the ten percent credit adder. The ISO agrees with Dynegy and Reliant that the correct effective date for the credit adder is June 21, 2001. However, the ISO disagrees with Reliant's attempt to apply the adder retroactively to January 5, 2001.

[23] 97 FERC 61,275 at 62,210-11.

[24] Id., at 62,211.

Commission Determination

With respect to Uninstructed Imbalance Energy, we agree with the ISO that this transaction is only a consequence of a generators' voluntary decision to produce additional output, and therefore, ineligible for the ten percent credit adder. However, we disagree with the ISO regarding the exclusion of the adder for Minimum Load Costs. Minimum Load Costs paid by SCs are incurred to maintain the reliability of the ISO's grid, and are therefore eligible for the ten percent credit adder. Additionally, the ISO agrees with Dynegy and Reliant that the correct effective date for the adder should be June 21, 2001. Accordingly, we direct the ISO to modify its Tariff to reflect an effective date of June 21, 2001. Reliant's argument regarding retroactive recovery is outside the scope of this compliance filing.

5. Calculation of the Market Clearing Price

a. Ancillary Services

In the December 19 Compliance Order, the Commission stated that the price established for Ancillary Services should be as of the time the transaction was entered into, not the time that delivery actually occurs and directed the ISO to modify its Tariff to reflect this finding.[25] In its compliance filing, the ISO amended its Tariff to implement the Commission's directive effective December 20, 2001.

Duke argues that, while the ISO made these tariff revisions in its compliance filing, the ISO incorrectly made this modification effective on a prospective basis beginning December 20, 2001. Duke states it was the Commission's clear intent in its granting of rehearing that the pricing of ancillary services be retroactively applied from June 21, 2001 forward. As such, the Commission should direct the ISO to clarify that its Tariff changes apply retroactively and that the relevant market clearing prices for ancillary services will be recalculated from June 21, 2001 forward. Similarly, Williams argues that the ISO failed to explain why this modification would be applied prospectively only, and states that the ISO should be required to make this revision effective as of June 20, 2001.

In its answer, the ISO states that the Commission, in modifying its prior order and directing the ISO to use a new method, did not provide for retroactive application to change the way the ISO implemented the pricing for Ancillary Services prices prior to the December 19 Rehearing Order. Therefore, the ISO states that it properly proposed to apply the new pricing method

[25] December 19 Compliance Order, 97 FERC at 62,367.

prospectively only on the first day of compliance, December 20, 2001.

Commission Determination

We agree with the Intervenors. It was the clear intent of our December 19 Orders that the ISO make this change consistent with our directives in the May 25 Order. Accordingly, we direct the ISO to modify its Tariff to reflect an effective date of June 21, 2001, as correctly noted by Reliant; not June 20, 2001 as incorrectly suggested by Williams.

b. Real-Time Metering

In the December 19 Compliance Order, the Commission directed the ISO to modify its Tariff to remove the requirement that a Participating Generator Agreement (PGA) must be signed in order to set the mitigated Market Clearing Prices or to justify bids above the mitigated Market Clearing Prices.[26] In response, the ISO proposes to require generating units that do not operate under a signed PGA with the ISO, to have real-time telemetry to permit the ISO to validate those bids so as to prevent resources that cannot respond to a Dispatch instruction from setting the MCP.

Dynegy argues that the Commission did not require such real-time metering and that if out-of-state generators are required to install real-time meters, such generators will choose not to participate in the ISO spot markets which would result in a substantial amount of capacity being removed from the competitive spot energy market. Reliant and Mirant argue that there is no basis for the real-time telemetry requirement, and therefore should be rejected.

In its answer, the ISO notes that the protests are misplaced and fail to acknowledge the real danger of market power abuses and portfolio substitution should a resource be permitted to influence the ISO Real Time Market under a scheme of bait and switch. The ISO also states that it has not been able to determine any other way besides real-time telemetry to verify compliance with ISO Dispatch Notices and eligibility to set the MCP.

Commission Determination

In its July 10 Compliance Filing, the ISO proposed that only suppliers that have signed PGAs be allowed to set the mitigated Market Clearing Prices and that real-time visibility through

[26] December 19 Compliance Order, 97 FERC at 62,368.

telemetry be necessary to determine which generator set the mitigated reserve deficiency Market Clearing Price. In the December 19 Compliance Order, the Commission stated that it did not require a PGA to be signed in order to set the mitigated Market Clearing Prices and that the capability exists to determine a unit's Proxy Price without having signed a PGA.[27] In the order on rehearing of the December 19 Compliance Filing being issued concurrently with this order, the Commission denies rehearing of the ISO's request to require generating units to have real-time telemetry in order to set the Market Clearing Price. Therefore, the ISO is directed to revise its Tariff to remove this requirement.

A. Penalty Provisions

In the December 19 Compliance Order, the Commission found that there was no need for the ISO to impose any penalty either for a failure to report a forced outage or a failure to respond to a dispatch request, and thus ordered the ISO to remove those penalty provisions effective June 21, 2001.[28] In its compliance filing, the ISO modified its Tariff to provide that, effective June 20, 2001 through September 30, 2002, the ISO will not levy penalties against Market Participants for either a failure to report forced outages or a failure to respond to a Dispatch instructions.

Dynegy argues that the ISO fails to remove these penalty provisions from the Tariff, and, instead leaves these penalties in place after the termination of the mitigation period. Reliant also states that the ISO incorrectly places in its Tariff an effective date of June 20, 2001 instead of June 21, 2001.

In its answer, the ISO states that it has complied with the Commission's directive by suspending application of the penalty provisions during the period coincident with the mitigation program. The ISO agrees with Reliant that the Tariff had an incorrect effective date and that the correct effective date should be June 21, 2001.

Commission Determination

We agree with the intervenors that this provision should be deleted from the Tariff. The Commission's December 19 Compliance Order required that these penalty provisions be removed from the ISO's Tariff and noted that the ISO had not presented any new evidence supporting the need for continuation of such provisions. To the extent the ISO believes that these penalties are necessary

27 December 19 Compliance Order at 62,368.

28 December 19 Compliance Order at 62,367.

at the end of the current mitigation period, it is free to file for their inclusion with appropriate justification. Additionally, the ISO admits that it used an incorrect effective date for suspension of the penalty provisions. Accordingly, we direct the ISO to modify its Tariff to reflect an effective date of June 21, 2001.

6. Other Tariff Revisions

Our review indicates that the remaining tariff revisions comply with our December 19 Orders and are accepted for filing.

The Commission orders:

(A) The ISO's compliance filing submitted on January 25, 2002, as amended, is hereby accepted in part and rejected in part, as discussed in the body of this order.

(B) The ISO is hereby directed to submit a compliance filing, as discussed in the body of this order, within thirty (30) days of the date of this order.

(C) The ISO is hereby informed that rate schedule designations will be given in a future order. Consistent with our prior orders, the ISO is hereby directed to promptly post the Tariff sheets as revised in this order on the Western Energy Network.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,

Deputy Secretary.