98 FERC 61, 187
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation — Docket No. ER02-651-000

ORDER ACCEPTING IN PART AND REJECTING IN PART
TARIFF AMENDMENT NO. 41

(Issued February 26, 2002)

On December 28, 2002, the California Independent System Operator Corporation (Cal ISO) filed Amendment No. 41 proposing changes to its Open Access Transmission Tariff relating to use of interest received on default payments, a "safe harbor" mechanism for sharing confidential information, and a cap on decremental bids. As discussed below, we accept in part and reject in part Cal ISO's Amendment 41. This order benefits customers because it requires the Cal ISO to justify proposed changes to the tariff.

BACKGROUND

The Cal ISO proposes to revise Section 6.5.2 in the ISO Tariff to provide that interest on default payments in the Tariff's Surplus Account will go first to pay unpaid creditor balances and then to offset the Grid Management Charge (GMC). The Cal ISO also proposes to add a new Section 20.3.4 creating a "safe harbor" mechanism that will allow the Cal ISO to provide confidential information to government agencies that have their own established confidentiality provisions and procedures. The Cal ISO further proposes to amend the definition of Non-Emergency Clearing Price Limit in Section 2.5.23.3.1.2 to establish a price cap to negative prices that will be symmetrical to the price cap applied to positive prices. Finally, the Cal ISO is proposing to correct a typographical error, the misspelled word "provided", in Section 9.2.6. With the exception of Section 6.5.2, the Cal ISO proposes a February 26, 2002 effective date for the Amendment No. 41 revisions. The Cal ISO proposes a November 1, 2001 effective date for revised Section 6.5.2 so that default interest arising from transactions in November 2001 will be paid to unpaid creditors.

NOTICE, INTERVENTIONS AND PROTESTS

Notice of Cal ISO's Amendment No. 41 was published in the Federal Register, 67 Fed. Reg. 1338 (2002), with motions to intervene or protests due on or before January 18, 2002. Timely motions to intervene were filed by the Northern California Power Agency, the City of Vernon, California, the Metropolitan Water District of Southern California, the Modesto Irrigation District, the California Department of Water Resources, Turlock Irrigation District, and Constellation Power Source, Inc.

The Attorney General of the State of California (California Attorney General), California Department of Water Resources (California DWR), Duke Energy North America LLC and Duke Energy Trading and Marketing, LLC (Duke Energy), Independent Energy Producers Association (IEPA), Cogeneration Association of California and the Energy Producers and Users Coalition (CAC/EPUC), Mirant America Energy Marketing, LP, Mirant California LLC, Mirant Delta, LLC, and Mirant Potrero LLC (collectively Mirant), Reliant Energy Power Generation, Inc. and Reliant Energy Services (collectively Reliant), the Cities of Redding, Santa Clara and Palo Alto, California and the M-S-R Public Power Agency (collectively Cities/M-S-R), Sacramento Municipal Utility District (SMUD), Williams Energy Marketing & Trading Company (Williams), and Western Power Trading Forum filed timely motions to intervene and protests. The Public Utilities Commission of the State of California (California PUC) filed a notice of intervention and limited protest. The California DWR filed supplemental comments on February 14, 2002.

Southern California Edison Company and the California Electricity Oversight Board filed motions to intervene out-of-time. Dynegy Power Marketing, Inc. filed a motion to intervene and protest out of time on January 23, 2002.

On February 4, 2002, the Cal ISO filed an answer to the protests. On February 19, 2002, Reliant filed a Motion to Strike Cal ISO's Answer.

Summary of Protests

1. Use of Interest Earned on Default Payments

While generators generally support the idea of using interest received to pay creditors first before offseting the Cal ISO's GMC, many raise concerns about the lack of a detailed explanation of the Cal ISO's allocation plan. Generators assert that Cal ISO's proposal is unnecessarily vague and lacks a clearly-defined allocation methodology. The California DWR raises concerns regarding how these provisions would work procedurally.

2. Confidentiality Provisions

Numerous protestors have concerns about the protection of confidential market information once it is released from the Cal ISO.[1] They point out that, once in the hands of other state agencies, such information would no longer be subject to the specific protections laid-out in the Cal ISO Tariff (including an obligation to inform the market participant of requests for information and to assist them in protecting their information). Protestors also point out that the Cal ISO has failed to identify any changed circumstances that warrant departure from the current policy, and has provided no examples of instances where the EOB was unable to obtain information through current procedures.

3. Symmetrical Limit on Negative Decremental Bids

While Mirant and Dynegy do not protest a symmetrical negative price-limit, they do request changes in the tariff sheets to properly reflect the Commission's December 19 2001 order instituting a West-wide winter season methodology for mitigating prices through April 30, 2002.[2] They highlight that the Cal ISO has not filed with the Commission new tariff sheets reflecting changes to the mitigation methodology as discussed in the December 19 Order.

Reliant protests setting limits on negative decremental bids.[3] Reliant asserts that the Cal ISO does not provide any explanation of how sellers may exercise market power through low bids, does not allege that sellers have done so, and provides no

[1] Cities/M-S-R and CAC/EPUC raise concerns about FERC's access to confidential information. However, this issue has already been decided and does not need to be re-visited here. See PJM Interconnection, L.L.C., 93 FERC 61,269 (2000); New England Power Pool Participants Committee, 95 FERC 61,105 (2001), reh'g, 95 FERC 61,428 (2001); and New York Independent System Operator, Inc., 95 FERC 61,432 (2001).

[2] See Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council, 97 FERC 61,294, (2001) (December 19 Order); reh'g pending.

[3] Currently, in real-time the Cal ISO receives bids from generators to increase generation (inc-bids) or to decrease generation (dec-bids) in the energy imbalance market in order to account for differences between day-ahead load and load in real-time. Positive dec-bids are currently limited by the Commission's market mitigation plan, i.e., $108/MWh. However, negative dec-bids are currently not subject to any limit, and the Cal ISO has seen negative dec-bids larger than $108/MWh. The Cal ISO proposes to set a negative limit symmetrical to the upper limit.

rationale for how negative bid caps should be set. Reliant further asserts that negative bids can originate from costs incurred in "dec-ing" including start up costs to bring generation units back on-line, wear and tear costs of ramping generation units up and down, the risk of being unable to meet obligations in later hours because the units are off-line, and lost market opportunities while off-line.

DISCUSSION

Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.214 (2001), each timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding. The California PUC's notice of intervention also serves to make it a party to this proceeding. Given the lack of undue prejudice and the parties' interests, we also find good cause to grant pursuant to 18 C.F.R. 385.214(d) (2001), the unopposed, untimely motions to intervene filed by Southern California Edison Company, the California Electricity Oversight Board and Dynegy Power Marketing, Inc.

Rule 213(a)(2) of the Commission's Rule of Practice and Procedure, 18 C.F.R. 385.213(a)(2) (2001), prohibits answers to protests unless otherwise permitted by the decisional authority. We find that good cause exists to allow the Cal ISO's answer because it provides information that assists us in the decision-making process.

Commission Ruling

1. Use of Interest Earned on Default Payments

We agree with the commenters that the Cal ISO's proposed tariff revisions do not provide a sufficient description of how the Cal ISO will apply the interest on default payments and how it will allocate such payments among market participants. We therefore reject, without prejudice, the Cal ISO proposed changes regarding interest on default payments.

We note that in its supplemental comments, the California DWR asserts that "the Cal ISO already has employed Amendment 41's application of default interest prior to Commission sanction of such an approach." We remind the Cal ISO that it must seek and

receive approval of tariff modifications by this Commission before effecting proposed changes.[4]

2. Confidentiality Provisions

The Cal ISO asserts that revision of its confidentiality provisions is necessary to allow it "...to expedite information requests, [and establish] ... equity and symmetry among the regulatory entities." (Filing at p.3). In its Answer, however, the Cal ISO asserts that its "safe harbor" proposal would apply only to the California Electricity Oversight Board (CEOB). This is in contrast to statements in its original filing and tariff sheets which clearly state that the Cal ISO would "provide confidential information to government agencies," (Filing at p.1) provided "the other agency has adequate confidentiality arrangements in place." (Proposed Tariff sheet 292A). However, the Cal ISO has given no examples of instances where the CEOB was unable to gain access to confidential information through standard procedures under state law and the current tariff. In fact in its Answer, the Cal ISO admits "[t]he CEOB can, and does, acquire the same information now through subpoena." The Commission rejects the proposed changes in confidentiality procedures as unsupported.

3. Symmetrical Limit on Negative Decremental Bids

Our preliminary analysis of the proposed symmetrical negative price limit indicates that the proposal has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We will accept the proposed negative limit for filing, suspend it for five months, to be effective July 26, 2002, and subject to a further order by the Commission.[5]

4. Corrections of tariff sheets

We accept the proposed correction of the typographical error in Cal ISO Tariff Section 9.2.6.

Mirant and Dynegy point out that section 2.5.23.3.1.2 of the Cal ISO Tariff continues to state "the 'Non-Emergency Clearing

[4] See Dynegy Power Market, Inc. v. California Independent System Operator Corp., 98 FERC 61,074 (2002).

[5] We note two pending matters that relate to this case: Docket No. EL02-51-000, in which the California Electricity Oversight Board protests the use of negative decremental bids, and Docket No. ER02-922-000, in which the Cal ISO is proposing extensive changes to the incremental and decremental bid process. We will address these matters in a separate Commission order.

Price Limit' [NECPL] shall equal 85% of the highest hourly Zonal Marginal Proxy Clearing Price," which is inconsistent with the Commission's December 19 Order. We note, however, that on January 25, 2002, the Cal ISO made a compliance filing in Docket No. EL00-95-058 as required by the December 19 Order. As such, the issue raised by Mirant and Dynegy will be addressed in a subsequent order in that proceeding.

The Commission orders:

(A) The Cal ISO's proposed changes regarding interest on default payments and the proposed revisions to its confidentiality provisions are hereby rejected as discussed in the body of this order.

(B) The symmetrical negative limit on decremental bids is hereby accepted and suspended for 5 months, to be effective July 26, 2002, subject to refund, and subject to a further order by the Commission, as discussed in the body of this order.

(C) The proposed correction to the Cal ISO Tariff Section 9.2.6. is hereby accepted, effective February 26, 2002.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,

Deputy Secretary.