

97 FERC ¶ 61, 215  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Reliant Energy Power Generation, Inc.,  
Reliant Energy Services, Inc.,  
Mirant Americas Energy Marketing, LP,  
and Mirant California, LLC,

Complainants

v.

Docket No. EL02-7-000

The California Independent System  
Operator Corporation,

Respondent.

ORDER GRANTING IN PART AND DENYING IN PART COMPLAINT

(Issued November 20, 2001)

In this order, we grant in part and deny in part the complaint filed by Reliant Energy Power Generation, Inc., Reliant Energy Services, Inc., Mirant Americas Energy Marketing, LP, and Mirant California, LLC (collectively Complainants) against the California Independent System Operator Corporation (the ISO), as discussed below.

This order is in the public interest because our action will require the ISO to operate in accordance with the terms of its Tariff to ensure that all market participants are treated in a non-discriminatory manner.

I. Background

\_\_\_\_\_The ISO Tariff imposes a creditworthiness requirement on utility distribution companies (UDCs), Scheduling Coordinators, and metered subsystems. Under that requirement, Southern California Edison Company (SoCal Edison), the California Department of Water Resources (DWR) and Pacific Gas and Electric Company (PG&E),

among others, must either maintain an Approved Credit Rating or post security in an amount sufficient to cover their outstanding liability for transactions controlled through the ISO grid. The Commission's order on creditworthiness issued on February 14, 2001 (February 14 Order)<sup>1</sup> provided third-party suppliers assurances of a creditworthy buyer for all energy delivered to the loads throughout the ISO. In an order issued April 6, 2001 (April 6 Order),<sup>2</sup> the Commission granted a motion filed by a group of California generators to require the ISO to comply with the February 14 Order. In the April 6 Order, the Commission directed the ISO to ensure the presence of a creditworthy buyer for all power, scheduled or unscheduled, that third-party suppliers provided to UDCs that did not meet the creditworthiness provisions of the ISO Tariff. The ISO in a "Market Notice Re Credit Issues" posted on its website on April 13, 2001 stated that DWR would be the creditworthy third-party for SoCal Edison's and PG&E's net short positions.

In an order issued November 7, 2001 (November 7 Order),<sup>3</sup> the Commission stated that DWR and its marketing arm, the California Energy Resources Scheduler (CERS) (collectively DWR/CERS) : (1) have been acknowledged by the ISO to have assumed the obligations of Scheduling Coordinator for the net short load under the Tariff; and (2) function as a Scheduling Coordinator for all scheduled and unscheduled transactions made on behalf of DWR/CERS, including transactions where DWR/CERS serves as the creditworthy counterparty for the applicable portion of PG&E's and SoCal Edison's (noncreditworthy UDCs') loads. Thus, DWR/CERS had to abide by the requirements of the Tariff and the terms of its Scheduling Coordinator Agreement<sup>4</sup> with the ISO, and pay

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<sup>1</sup>California Independent System Operator Corporation, *et al.*, 94 FERC ¶ 61,132, reh'g denied, 95 FERC ¶ 61,026 (2001) (denying rehearing on tariff creditworthiness amendment). This order addressed an ISO proposal to waive the creditworthiness requirement in its Tariff in response to the imminent credit downgrades of SoCal Edison and PG&E. In that order, the Commission authorized the ISO to waive the creditworthiness requirement as applied to resources owned by PG&E or SoCal Edison to meet their own loads. Because neither PG&E nor SoCal Edison had sufficient resources to satisfy their load service obligations, the Commission required these companies to obtain a creditworthy party for their net short positions, *i.e.*, power that is not self-supplied by the UDCs.

<sup>2</sup>California Independent System Operator Corporation, *et al.*, 95 FERC ¶ 61,026, reh'g denied, 95 FERC ¶ 61,391, reh'g denied, 96 FERC ¶ 61,267 (2001).

<sup>3</sup>California Independent System Operator, 97 FERC ¶ 61,151 (2001).

<sup>4</sup>See Service Agreement No. 102 under FERC Electric Tariff, Original Volume No. 1 accepted by delegated letter order dated June 4, 1998. This contractual relationship is also binding on DWR/CERS.

for the net short positions of the noncreditworthy UDCs. The Commission also found that the ISO was obligated under its Tariff and the Commission's creditworthiness orders to invoice, collect payments from and distribute payments to DWR, for the net short positions of the noncreditworthy UDCs.

## II. Instant Pleadings

### Complaint

On October 18, 2001, Complainants filed a complaint against the ISO alleging that the ISO is acting in a discriminatory and unduly preferential manner in violation of the ISO's Tariff, the Federal Power Act (FPA) and the Commission's policies and orders by granting advantages to DWR/CERS. They further allege that the ISO's actions are causing injury to Complainants and other market participants in California, and are threatening the viability of the ISO market.

Complainants allege that the ISO is providing preferential treatment to DWR/CERS. This is so, Complainants allege, because the ISO is buying energy from DWR/CERS outside of, and in preference to, the mechanisms provided in the ISO Tariff. In particular, Complainants allege that the ISO is circumventing its merit order "BEEP Stack,"<sup>5</sup> that ranks supplemental energy bids available for balancing energy in economic merit order, and is instead purchasing balancing energy from DWR/CERS through so-called out-of-market (OOM) transactions.<sup>6</sup> The Complainants also allege that the ISO is sharing confidential information with DWR/CERS, providing it with a competitive advantage that enables DWR/CERS to facilitate the OOM transactions, in violation of its Tariff and the FPA.

Complainants request that the Commission impose on the ISO the following remedial actions: (1) the ISO must not provide bid, availability, demand and other data to any market participant or Scheduling Coordinator unless the data is simultaneously made available to everyone; (2) the ISO must enforce all scheduling requirements in its Tariff without exception for any entity; (3) the ISO must comply with its Tariff provisions requiring acceptance of all suppliers' supplemental and balancing energy offers (bids) before issuing any OOM calls; (4) the ISO must treat all OOM calls made by DWR/CERS or any other Scheduling Coordinator as bilateral contracts that are outside

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<sup>5</sup>Balancing Energy Ex Post Price.

<sup>6</sup>Complainants further argue that the ISO is contravening the dispatch and bid provisions of its Tariff by classifying such purchases as out-of-market, but allowing compensation outside of the OOM provisions of its Tariff.

the ISO settlement process; (5) the ISO should create a 60-minute energy market (in addition to the 10-minute market) that will be deployed 30 minutes prior to real-time, available to all Scheduling Coordinators so that out-of-state and in-state suppliers can provide 60-minute duration supplemental energy in an equal and manageable market manner; and (6) the ISO must provide market transparency by posting on its website, within 24 hours, the detailed reasons and circumstances that explain all of the ISO's non-market actions (such as OOM) to solve any reliability or operational problems.

Thus, Complainants argue that the ISO is allowing the DWR to procure and sell energy without following the rules set out in the ISO's Tariff, and is also actively assisting in these Tariff violations. Complainants seek an immediate cease and desist order against the ISO and an investigation of all discriminatory and preferential practices by and between the ISO and DWR, including collusion and market manipulation. Complainants also request that the Commission find that the ISO is in violation of the FPA and the ISO Tariff and to initiate enforcement proceedings, and the imposition of penalties under sections 314 and 316 (a) of the FPA,<sup>7</sup> and any other relief as the Commission deems appropriate.

#### The ISO's Answer

On October 29, 2001, the ISO filed an answer to Reliant's Complaint. The ISO asks that the complaint be dismissed for the following reasons: (1) Complainants have not shown a violation of the FPA, the ISO Tariff or the Commission's orders as DWR/CERS' role as the only creditworthy entity backing the ISO's markets, both real-time and forward capacity, distinguishes its information needs and manner of ISO interaction from those of the Complainants; (2) deference should be given to the Commission's current dispute resolution process dealing with the complex situation giving rise to this complaint; (3) Complainants violated Rules 203 and 206, 18 C.F.R. §§ 385.203 and 206 (2001), by failing to note that both their general concerns and the majority of specific complaints are pending in Docket No. ER01-889 and the PG&E bankruptcy proceeding; and (4) the Commission's jurisdiction over the ISO and the State of California's jurisdiction over DWR/CERS means that the Commission may be unable to afford the full relief and remedies the Complainants seek.

The ISO contends that for the Complaint to have merit the Complainants must be "similarly situated" to DWR/CERS. The ISO argues that Complainants have failed to make such a showing.

The ISO asserts that DWR/CERS' role as guarantor of third-party real-time

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<sup>7</sup>16 U.S.C. §§ 825m and 825o (1994)

transactions allows DWR/CERS to receive the nonpublic information that other market participants do not receive. The ISO justifies its actions by arguing that DWR/CERS fiduciary obligation to conserve public funds results in: (1) conditioning its continued provision of credit support on access to certain non-public information and (2) flexibility to seek out reliable, least-cost power through mechanisms other than the BEEP Stack. According to the ISO, the information it provides to DWR/CERS does not unduly disadvantage Complainants. The ISO also argues that it has informed the Commission of DWR/CERS requirements for information and requested waivers if needed. Furthermore, the ISO claims that under its mandate to maintain grid reliability it must issue out-of-sequence and OOM calls to compensate for the unreliability of the BEEP Stack. The ISO points to Section 2.3.5.1.5 of its Tariff, as modified by Amendment 30, for the requisite authority and flexibility for the ISO to make out-of-sequence and OOM calls when needed to ensure grid reliability. The ISO argues that if the BEEP Stack were reliable, the ISO would have a reduced need to make OOM calls. Also, the ISO contends that DWR/CERS will only be provided the information so long as the need for DWR/CERS to act as guarantor exists. The ISO also argues that the Complainants ignore their own failure, and that of other suppliers, to comply with dispatch instructions which threaten reliability, and thus have contributed to DWR/CERS' preference for bilateral transactions and the ISO's need to rely on OOM calls.

Finally, the ISO advocates the continuation of the current Commission-sponsored informal problem-solving procedures, or alternatively, addressing Complainants' concerns within the ISO market redesign efforts. According to the ISO, this will allow Complainants and others to work with the ISO and DWR/CERS to stabilize the BEEP Stack markets and eliminate the need for DWR/CERS as guarantor of real-time transactions.

### III. Notice of Complaint, Interventions and Protests

\_\_\_\_ Notice of the complaint was published in the Federal Register, 66 Fed. Reg. 54,000 (2001), with interventions, comments or protests due on or before October 29, 2001. California State Assembly, Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California, the Cities of Redding and Santa Clara, California and the M-S-R Public Power Agency, City and County of San Francisco, Dynegy Power Marketing, Inc., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC and Cabrillo Power II LLC (Dynegy *et al.*), El Paso Merchant Energy L.P., Inc., NEO California Power LLC (NEO), Northern California Power Agency (NCPA), PG&E, Portland General Electric Company (Portland), PPL EnergyPlus, LLC, PPL Montana, LLC and PPL Southwest Generation Holdings, LLC, RAMCO Inc., Sunrise Power Company, LLC, Turlock Irrigation District and Williams Energy Marketing & Trading Company (Williams) filed timely motions to intervene.

California Municipal Utilities Association (CMUA), Duke Energy North America LLC and Duke Energy Trading and Marketing LLC (Duke Energy), Enron Power Marketing, Inc. (EPMI) and Coral Power, L.L.C. (Coral), Independent Energy Producers Association (IEP), Metropolitan Water District of Southern California (Metropolitan), Modesto Irrigation District (MID), Southern California Edison Company (SoCal Edison), Sacramento Municipal Utility District (SMUD) and Western Power Trading Forum (WPTF) filed timely motions to intervene and comments. The California Electricity Oversight Board (EOB) filed a timely motion to intervene and protest. The California Public Utilities Commission (CPUC) filed a timely notice to intervene, protest and motion for summary disposition. On October 31, 2001, Constellation Power Source, Inc. (Constellation) filed an untimely motion to intervene.

Duke Energy, Dynegy et al., EPMI and Coral, IEP, NEO, Portland, Williams and WPTF support the Complaint and the relief requested.<sup>8</sup>

NCPA agrees with the Complainants that serious flaws exist in the California energy markets but disagrees that the remedies proposed will adequately cure these flaws.

MID supports the remedies sought by the Complainants, except for the creation of a new 60-minute market. MID argues that until a full investigation of the root of the problems with the current market is completed, creating a new market will only cause additional problems. According to CMUA,<sup>9</sup> the problems with imbalance energy market dysfunction are rooted in the current ISO system design that implicitly encourages large volumes of imbalance energy transactions, because the underlying system design does not require accurate scheduling or predictable behavior from either load or resources. CMUA suggests a bifurcated solution that would grant some of the requested relief to the Complainants: first, by immediately increasing transparency of ISO system operation and placing the contested transactions outside the ISO settlement systems; and second, by instituting an immediate inquiry as to how the ISO system design can be modified to reduce the size of the imbalance energy needs, and consequently put the California electric system on a more stable footing.

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<sup>8</sup>Duke Energy, EPMI and Coral, and IEP also request the Commission to note the lack of independence between the ISO and DWR/CERS, and investigate the effect of this relationship on governance and manipulation of the markets that has resulted from the preferential treatment of DWR/CERS by the ISO. NEO requests the Commission to institute hearing proceedings under section 206 of the FPA to ensure that the ISO's practices, particularly with DWR, result in just and reasonable rates and, until that time, to make available the possibility of refunds and other equitable relief.

<sup>9</sup>Metropolitan and SMUD filed motions supporting CMUA's motion.

SoCal Edison argues that penalties against the ISO are inappropriate because the ISO makes no profits, has no access to any funds of its own, and will pass any charges, including penalties, through Scheduling Coordinators, to the customers thereby increasing the price they (the customers) pay for energy. SoCal Edison contends that neither section 314 nor section 316 of the FPA is appropriate for levying penalties against the ISO, as both the Commission and the ISO have processes underway to correct the problems that underlie the Complaint, including a proposed tariff revision the ISO plans to file in the near future. SoCal Edison discourages dealing with Reliant's Complaint in isolation, and argues that issues of creditworthiness, compliance with dispatch instructions and underscheduling penalties must be first resolved so that the ISO does not need to depend on DWR for energy purchases.

CPUC argues that the exercise of market power by generators, the Commission's creditworthiness orders<sup>10</sup> and the mismatch between the ISO Tariff as designed and the procedures necessary to resolve the problems in the California energy market have necessitated the participation of DWR/CERS in the energy markets for purchases that would have otherwise been made by the ISO. CPUC also contends that the Tariff was not designed to accommodate the concept of credit backing for real-time purchases, or the concept of a third party purchasing power at the ISO's request for use in real-time. CPUC asserts that the ISO has had OOM authority prior to DWR/CERS' participation in the markets and in the past the ISO's OOM purchases were commonly made at prices higher than the eventual prices resulting from the BEEP Stack. CPUC argues that the ISO requests DWR/CERS to provide power when it appears that it cannot rely on the BEEP Stack to reliably supply necessary power. CPUC further claims that in the past the ISO would have engaged in these transactions itself, but under current market conditions needs the assistance of DWR/CERS to complete these transactions.

CPUC states that the Complainants' allegations that DWR/CERS is receiving preferential treatment have no merit. It contends that it is more appropriate for the generators to offer sufficient energy at reasonable prices ahead of time such that OOM calls are not necessary, rather than penalize DWR/CERS for carrying out requests from the ISO for actions undertaken to resolve the problems faced by the California energy markets. CPUC argues that the energy bid into the BEEP Stack is both more expensive and less reliable than energy obtained through OOM transactions over the interties.

The EOB seeks dismissal of the Complaint based on arguments similar to those made by the ISO and CPUC. EOB also states that in its role as a Scheduling Coordinator for the noncreditworthy UDCs' net short positions, DWR/CERS relies on demand data

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<sup>10</sup>FERC required the ISO to assure a creditworthy purchaser for all real-time energy purchases.

from the UDCs and other publicly available information on the ISO's OASIS website.

On November 13, 2001, Complainants filed an answer to the ISO's answer.

V. Discussion

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2001), the timely filed motions to intervene and notice of intervention serve to make the entities that filed them parties to this proceeding. We find that good cause exists to grant the untimely, unopposed motion to intervene filed by Constellation, given its interest in this proceeding, the early stage of the proceeding and the absence of any undue prejudice or delay. With respect to Complainants' answer to the ISO's answer, Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2001), generally prohibits an answer to an answer. We are not persuaded to allow the proposed answer, and accordingly will reject the answer.

B. Commission Decision

Scheduling Provisions

\_\_\_\_\_As we stated in our November 7 Order, DWR has assumed responsibility for purchases by the ISO, and because DWR functions as a Scheduling Coordinator for the net short positions of PG&E and SoCal Edison, DWR must abide by the requirements of the ISO Tariff and its Scheduling Coordinator Agreement. Based on this finding, we reject the ISO's contention that DWR/CERS is not acting directly as the Scheduling Coordinator for the net short loads of the noncreditworthy UDCs. Therefore, to the extent DWR continues to procure energy in conjunction with its role as Scheduling Coordinator for the net short positions of PG&E and SoCal Edison, it must follow the ISO's Schedules and Bids Protocol set out in the ISO's Tariff.<sup>11</sup>

The ISO Tariff requires any Scheduling Coordinator offering supplemental energy to the ISO to provide certain information in their bids, including price. The ISO's Tariff requires dispatch in its real-time market according to a specified order. Specifically, the ISO is required to place resources available for real-time dispatch in a merit order of ascending incremental and descending decremental price bids based on specified criteria.<sup>12</sup> Subsequently, the ISO dispatches real-time energy in a least-cost

<sup>11</sup>ISO Tariff §§ 2.2.6.

<sup>12</sup>ISO Tariff § 2.5.22.5.

order from the merit order BEEP bids. If the ISO continues to allow DWR/CERS, as a Scheduling Coordinator, the flexibility to operate outside of these bounds based on its role as a creditworthy backer, it is engaging in discriminatory conduct prohibited under the Tariff.

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Confidential Information

We reject the ISO's argument that DWR/CERS, as the sole creditworthy backer of the ISO's real-time operations, is entitled to privileged information not made available to other market participants. We find that since DWR/CERS is a Scheduling Coordinator and therefore a market participant, it should not be privy to confidential market information that is not available to other market participants. Complainants allege that the ISO provides DWR/CERS with time-sensitive information regarding the ISO's forecasted net shortage of generation for the upcoming operating hour.<sup>13</sup> We find that information regarding the ISO's forecasted net shortage of generation should be disclosed to all market participants simultaneously or to none at all. Preferential disclosure to DWR is unacceptable.

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OOM Calls

Complainants allege that the ISO is violating its authority by either (1) facilitating OOM calls by or through DWR/CERS when there is energy available in the BEEP stack or (2) invoicing OOM power acquired in this manner, which is in violation of its Tariff. The ISO Tariff provides that OOM calls are only permitted when energy is not available through the BEEP stack and other specified circumstances, such as when the energy available in the BEEP stack is not sufficient to meet load.

The ISO contends that it issues OOM calls when necessary to maintain grid reliability. The ISO argues that regardless of whether there is energy available in the BEEP stack, if ISO dispatch orders are not followed, OOM calls must be made to ensure grid reliability. The ISO admits that DWR/CERS, as the only creditworthy backer of OOM calls, is directly involved in those calls and engages in bilateral transactions with the sellers of imbalance energy to procure energy in conjunction with its role as the sole creditworthy party.<sup>14</sup>

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<sup>13</sup>The ISO confirms these allegations in its Answer to this Complaint. See ISO Answer at 4.

<sup>14</sup>ISO Answer at 9.

The ISO must adhere to the dispatch and schedules protocol of its Tariff. The ISO itself acknowledges that under its Tariff the ISO is the only entity that possesses the authority to make OOM calls to ensure grid reliability.<sup>15</sup> Therefore, we find that the ISO is violating the terms of its own Tariff by allowing DWR to become involved in OOM calls. To the extent that DWR is procuring energy in conjunction with its role as a Scheduling Coordinator for the net short positions of PG&E and SoCal Edison, it must follow the ISO's Schedules and Bids Protocol.<sup>16</sup> The ISO Tariff does not permit OOM calls to be used as a tool for any market participant to satisfy its load.

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#### 60-Minute Market

We deny Complainants' request that the ISO be required to create a 60-minute energy market, in addition to the 10-minute market, to be deployed 30 minutes prior to real-time. We find that Complainants have provided insufficient support regarding what benefits such a market would provide. We reject the request without prejudice to an adequately-supported filing by the ISO or others.

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#### Other Matters

We find merit in Complainants' argument that the ISO should provide market transparency by posting on its website the detailed reasons and circumstances regarding all of its non-market actions (i.e., deviations from the BEEP stack). We find that such transparency may help alleviate some of the scheduling and dispatch problems alluded to by the ISO, as well as establishing a better understanding among all parties concerning problems in market operations. Thus, we require the ISO to post such information on its website.

We disagree with the ISO's argument that DWR/CERS is not similarly situated to other Scheduling Coordinators. As discussed above, we have found that DWR/CERS is a Scheduling Coordinator that must abide by the ISO's Schedules and Bids Protocol set out in the ISO's Tariff. The ISO may not engage in discriminatory conduct prohibited under the ISO Tariff and, thus, must treat DWR/CERS as any other Scheduling Coordinator. The fact that Complainants are not creditworthy backers or guarantors of the ISO's real-time operations is irrelevant to our determination in this proceeding.

Additionally, with respect to the ISO's argument that the BEEP Stack has become

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<sup>15</sup>ISO Answer at 8-9.

<sup>16</sup>ISO Tariff § 2.2.6.

unreliable because power suppliers are, at times, refusing to respond to the ISO's dispatch instructions, we emphasize that power suppliers are obligated to respond to all dispatch instructions of the ISO and that if power suppliers fail to do so, the ISO should promptly report these violations to the Commission.

Finally, we do not find that an investigation is necessary at this time. We have determined that Complainants have not raised genuine issues of material fact that would warrant instituting an investigation. The ISO does not deny the preponderance of the allegations raised by Complainants. The ISO admits that it has been providing discriminatory treatment to DWR/CERS based on the assumption that DWR/CERS's role as sole guarantor affords it such treatment.<sup>17</sup> Accordingly, the ISO must enforce the provisions of its Tariff.

The Commission orders:

The Complaint is granted in part and denied in part, as discussed in the body of this order.

By the Commission.

( S E A L )

David P. Boergers,  
Secretary.

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<sup>17</sup>ISO Answer at 5.