

Docket Nos. ER02-2043-000, et al.

UNITED STATES OF AMERICA 101 FERC * 61,081
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 Nos. ER02-2043-000 ER02-2043-001 ER02-2046-000 and ER02-2046-001 (Not Consolidated)
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ORDER REJECTING PARTICIPATING GENERATOR AGREEMENT AND METER
SERVICE AGREEMENT

(Issued October 25, 2002)

1. In this order, we reject the California Independent System Operator Corporation's (CA ISO) filing of an unexecuted Participating Generator Agreement (PGA) between CA ISO and Valero Refining Company - California (Valero). We also reject an unexecuted Meter Service Agreement (MSA) between CA ISO and Valero. This order will benefit customers because it will encourage investment in new generation, especially customer-owned on-site generation. This new generation will reduce the overall demands imposed on the CA ISO-controlled grid, thereby enhancing reliability.

BACKGROUND

2. On June 6, 2002, CA ISO filed an unexecuted PGA in Docket No. ER02-2043-000 and an unexecuted MSA in Docket No. ER02-2046-000 (collectively, June filings) with Valero that it deemed necessary as a result of Valero's construction of a 47 MW cogeneration unit (Cogeneration Unit #1) at Valero's petroleum refining facility in Benicia, California (Refining Facility). Valero states that the output of Cogeneration Unit #1 will be dedicated solely to helping to meet the Refining Facility's on-site load requirements of approximately 50MW. Valero intends to continue to purchase from the Pacific Gas & Electric Company (PG&E) all of its additional power requirements.

3. On April 18, 2002, Valero executed, pursuant to Rule 21 of PG&E's retail electric service tariff, a Generating Facility Interconnection Agreement (GFIA) with PG&E that provides for Valero's interconnection of its Cogeneration Unit #1 with PG&E's 230kV/12kV transformer at PG&E's Bahia Substation. On May 9, 2002, CA ISO sent a letter to Valero indicating that it would disapprove this interconnection unless Valero executed a PGA and an associated MSA.[1] CA ISO's position is that Valero's interconnection is on the high side of the transformer and constitutes interconnection to the CA ISO grid and, thus, requires the execution of a PGA and an associated MSA. Valero's position is that the interconnection is governed by Rule 21 of

PG&E's tariff and that a PGA and MSA are not required

4. On May 24, 2002, CA ISO and Valero executed an Interim Agreement (Interim Agreement) to allow Valero's interconnection to PG&E's Bahia Substation. CA ISO and Valero reserved their respective positions as to whether Valero is required to execute a PGA and an associated MSA with CA ISO and, if so, the form of these agreements until this issue is decided by the Commission. Additionally, under the Interim Agreement, Valero provides CA ISO with certain information related to the operating characteristics of Cogeneration Unit #1 that CA ISO regards as necessary to maintain the reliability of the CA ISO's transmission grid.

5. Additionally, both Valero and CA ISO agreed that, to the extent Valero is required to execute a PGA and an associated MSA, these agreements should be subject to the outcome of Docket No. ER98-997-000.[2] CA ISO also requests a waiver of the 60-day notice requirement so that the PGA and MSA can become effective May 24, 2002.

6. On July 31, 2002, the Commission's Office of Markets, Tariffs and Rates - West requested additional information from CA ISO to show how Valero's Cogeneration Unit #1 is interconnected to the CA ISO-controlled grid, documents relating to alternative points of interconnection, and a detailed description of the scheduling responsibilities of PG&E and Valero for Valero's net purchases and of the interconnection and operation of Valero's Cogeneration Unit #1 facility. On August 28, 2002, CA ISO submitted additional information (Supplemental Filing).

NOTICE OF FILING AND RESPONSIVE PLEADINGS

7. Notice of CA ISO's filing of the unexecuted PGA with Valero in Docket No. ER02-2043-000 was published in the Federal Register,[3] with comments, protests, or interventions due on or before June 27, 2002. Timely motions to intervene were filed by Valero and the Cogeneration Association of California. CA ISO filed an answer on July 12, 2002.

8. Notice of CA ISO's filing of the unexecuted MSA with Valero in Docket No. ER02-2046-000 was published in the Federal Register,[4] with comments, protests, or interventions due on or before June 27, 2002. Timely motions to intervene were filed by Valero and the Cogeneration Association of California. CA ISO filed an answer on July 12, 2002.

9. Notice of CA ISO's Supplemental Filing in Docket Nos. ER02-2043-001 and ER02-2046-001 was published in the Federal Register,[5] with comments, protests, or interventions due on or before September 18, 2002. A motion to intervene in Docket Nos. ER02-2043-001 and ER02-2046-001 was filed by Valero on September 18, 2002 (September Protest). On October 18, 2002, CA ISO filed an answer to Valero's protest.

DISCUSSION

Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[6] the timely, unopposed motions to intervene in Docket Nos. ER02-2043-000, ER02-2046-000, ER02-2043-001 and ER02-2046-001 by those who filed serve to make them parties to

these proceedings. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise permitted by a decisional authority.[7] We are not persuaded to allow the answers filed by CA ISO and accordingly will reject them.

Docket Nos. ER02-2043-000 and ER02-2043-001

11. CA ISO contends that a generating unit of 1 MW or greater, such as Valero's, is subject to the gross metering requirement of the CA ISO Tariff, and to avoid Imbalance Energy charges, must schedule on a gross basis as well.[8] CA ISO states that to obtain the right to schedule over the CA ISO-controlled grid, a generator must sign a PGA.

12. CA ISO also contends that Valero must sign a PGA because Valero's Cogeneration Unit #1 is interconnected with the CA ISO-controlled grid. CA ISO argues that no generator can generate at a transmission voltage directly without using intermediate step-up transformers. CA ISO claims that like other directly connected generators, Valero's Cogeneration Unit #1 is connected from the generator output through a step-up transformer to the 230 kV bus.

13. Valero disagrees and notes that the Commission recently rejected a CA ISO filing based on similar circumstances.[9] It argues that the CA ISO Tariff only requires entities that seek to participate in CA ISO's markets (meaning to sell power) to sign a PGA. Specifically, Valero states that in both the pro forma PGA language and Section 5 of the CA ISO tariff, the term "generator" is used in context as any generating unit interconnected to the CA ISO-controlled grid and planning to participate in CA ISO's markets.

14. Valero states that it will not participate in the CA ISO markets. It will not use the output of Cogeneration Unit #1 to participate in CA ISO's market by scheduling Energy or Ancillary Services or by submitting Bids through a Scheduling Coordinator. Instead, Valero states, it intends to use the output of Cogeneration Unit #1 solely to satisfy its on-site refining load. Valero states that it has demonstrated its intention not to sell Energy or Ancillary services in the GFIA that it executed with PG&E. Paragraph 5.1 of the GFIA provides that the power produced by Cogeneration Unit #1 shall be used solely to serve Valero's onsite load. In its September Protest, Valero also adds that it has installed a megawatt control system that will regulate the output of Cogeneration Unit #1 in conjunction with its refinery load so that at no time will output from Cogeneration Unit #1 exceed its refinery load, thereby ensuring that electricity from Cogeneration Unit #1 will not be sent onto the CA ISO-controlled

grid.

15. In its September Protest, Valero further states that CA ISO has mischaracterized the manner in which Cogeneration Unit #1 connects to the CA ISO-controlled grid. Valero states that during the planning for the installation of Cogeneration Unit #1, it determined that it was not economical or logistically feasible to directly connect to CA ISO (i.e., PG&E's 230kV Bahia Substation). Valero established a more efficient way to optimize the distribution of power produced by Cogeneration Unit #1 by constructing a 12kV substation facility that allows Cogeneration Unit #1 to serve refinery loads at distribution level voltage without having to use the CA ISO-controlled grid. Valero contends that contrary to CA ISO's assertion, the design of this substation facility eliminates the need to generate directly through a step-up transformer. Specifically, the newly installed substation intercepts three feeder lines at the 12kV portion of the lines between Valero's 230kV/12kV Switch House. Therefore, Valero argues that the power is produced, distributed and consumed entirely on Valero's facilities without having to use any portion of the 230kV ISO-controlled grid.

16. Valero states that because Cogeneration Unit #1 will not produce enough electricity to meet the Refining Facility's needs, Valero will need to remain connected to PG&E's Bahia Substation. Valero states that it draws its net power requirements from one of three feeder lines that connect its 12kV facility to PG&E's Bahia Substation.

17. Valero also argues that its refusal to sign a PGA will not undermine the reliability of the CA ISO-controlled grid. Paragraph 5.1 of the GFIA provides that Valero shall attempt in good faith to regulate the output of Cogeneration Unit #1 to PG&E's electric system. In addition, Valero states that it is installing a megawatt control system that will regulate the output of Cogeneration Unit #1 to satisfy the requirements of the GFIA and Rule 21 of PG&E's electric service tariff.

18. Valero contends that requiring it to take on the obligations of a participating generator would deprive Valero of its ability to plan and direct the operation of Cogeneration Unit #1 for the benefit of the Refining Facility. Instead, CA ISO could effectively expropriate the capacity of Cogeneration Unit #1 for the benefit of other entities in CA ISO's control area.

19. Consistent with our previous finding in California ISO, we find Valero's arguments to be persuasive, since the language in the CA ISO Tariff and the pro forma PGA (as discussed in paragraph No. 12) is directed to generators that are interconnected to the CA ISO-controlled grid and that plan to participate in the CA ISO markets.

20. In addition to the fact that it will not participate in the CA ISO markets, we find Valero's arguments persuasive that the output of the unit will not reach the CA ISO-controlled grid, but is rather distributed over Valero's 12kV facilities and used entirely to meet refinery loads. Therefore, Valero is not

required to execute a PGA with CA ISO for Cogeneration Unit #1.

21. We note that CA ISO has not shown that Valero's operation of the generation unit at issue will impair reliability. As part of the Interim Agreement, Valero agreed to coordinate with CA ISO to provide gross telemetry, scheduling of outages, respond to CA ISO operating orders to alleviate system emergencies, and complying with applicable standards and agreements of the Western Electricity Coordinating Council to enable CA ISO to fulfill its responsibilities as Control Area Operator. We will direct Valero to continue to coordinate and provide this information to CA ISO, since Valero is a net purchaser of supplemental requirements. We also find that the operating characteristics and telemetry data will assist CA ISO in maintaining reliability given the potential fluctuation in load from a scheduled outage of Cogeneration Unit #1. Thus, we direct Valero to continue to provide CA ISO with the information to assist in maintaining system reliability.

Docket Nos. ER02-2046-000 and ER02-2046-001

22. Valero also challenges CA ISO's attempt to impose a MSA for the same reasons it opposes the PGA. Valero argues that the MSA is not applicable to Cogeneration Unit #1 because Cogeneration Unit #1 does not meet the definition of an "ISO Metered Entity" in the CA ISO tariff and the pro forma MSA, since Valero does not intend to participate in CA ISO's markets.

23. We agree. According to the tariff definition of an "ISO Metered Entity," an entity must meet several conditions, one of which is that the entity will participate in CA ISO's markets. Valero will not participate in CA ISO's markets. Accordingly, we find that Valero is not obligated to execute a MSA with CA ISO. The Commission orders:

(A) The California Independent System Operator Corporation's unexecuted PGA for Valero Refining Company's Cogeneration Unit #1 is rejected, subject to the conditions described above.

(B) The California Independent System Operator Corporation's unexecuted MSA for Valero Refining Company's Cogeneration Unit #1 is rejected, subject to the conditions described above.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.

Footnotes

[1]The PGA establishes the terms and conditions to govern the

manner in which participating generator facilities will interface with the CA ISO-controlled grid. Requirements include the certification of bidding and scheduling and data requirements relating to major incidents including emergencies that affect reliability. The purpose of the MSA is to establish terms in which those CA ISO Metered Entities will make metered data available to the CA ISO.

[2]This proceeding is addressing the appropriate form of PGA for Qualifying Facilities under the Public Utility Regulatory Policies Act of 1978.

[3]67 Fed. Reg. 41,709 (2002).

[4]67 Fed. Reg. 41,710 (2002).

[5]67 Fed. Reg. 58,409 (2002).

[6]18 C.F.R. * 385.214 (2002).

[7]18 C.F.R. * 385.213(a)(2) (2002).

[8]CA ISO relies on Section 5 of the CA ISO Tariff, which provides that "[t]he ISO shall not be obligated to accept Schedules or Adjustment Bids or bids for Ancillary Services relating to Generation from any Generating Unit interconnected to the ISO-controlled grid unless the relevant Generator undertakes in writing to the ISO to comply with all applicable provisions of this ISO Tariff as they may be amended from time to time ..."

[9]California Independent System Operator Corp., 100 FERC * 61,055 (2002) (California ISO).