

116 FERC ¶ 61,069
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Independent Energy Producers Association
Complainant

v.

Docket No. EL05-146-000

California Independent System Operator Corporation
Respondent

ORDER ON COMPLAINT AND OFFER OF SETTLEMENT

(Issued July 20, 2006)

1. On August 26, 2005, the Independent Energy Producers Association (IEP) filed a complaint (Complaint) against the California Independent System Operator Corporation (CAISO). The Complaint alleges that the existing must-offer obligation under the CAISO tariff is flawed and no longer just and reasonable. The Complaint also requests that the Commission direct the CAISO to replace the existing must-offer obligation and related minimum load cost compensation tariff provisions with an interim set of tariff provisions. For the reasons discussed below, the Commission finds that the compensation to generators under the must-offer obligation is no longer just and reasonable. The Commission also finds that the rates and cost allocation mechanism under the contested offer of settlement (Offer of Settlement) filed in this proceeding have not been shown to be just and reasonable. Therefore, this order establishes paper hearing procedures to review evidence on whether the rates and cost allocation under the Offer of Settlement or some other rates and cost allocation are just and reasonable with respect to the must-offer obligation.

Background

2. In an order issued on April 26, 2001,¹ the Commission established a prospective mitigation and monitoring plan for the California wholesale electric markets. One of the fundamental elements of the plan was the implementation of a must-offer obligation, pursuant to which most generators serving California markets are required to offer all of their capacity in real time during all hours if it is available and not already scheduled to run through bilateral agreements. The CAISO implemented the must-offer obligation beginning July 20, 2001.

3. In an order issued on June 17, 2004,² the Commission recognized the California Public Utilities Commission's (CPUC) plan to phase in resource adequacy requirements and suggested that if the CAISO determines that the resource adequacy requirements are sufficient to meet its operational needs, the resource adequacy requirements and obligations could serve to replace the existing must-offer obligation.³ Additionally, on July 8, 2004,⁴ the Commission advised that if IEP believed the current must-offer obligation to be unjust and unreasonable, it may seek to initiate a section 206 proceeding to challenge the justness and reasonableness of the current method and seek an alternative proposal.⁵ On August 26, 2005, IEP filed the Complaint under section 206 of the Federal Power Act (FPA).⁶

¹ *San Diego Gas & Electric Co., et al.*, 95 FERC ¶ 61,115 at 61,355-57 (2001) (April 26, 2001 Order), *order on reh'g, San Diego Gas & Electric Co., et al.*, 95 FERC ¶ 61,418 (2001) (June 2001 Order), *order on reh'g, San Diego Gas & Electric Co., et al.*, 97 FERC ¶ 61,275 (2001), *order on reh'g, San Diego Gas & Electric Co., et al.*, 99 FERC ¶ 61,160 (2002), *petition pending sub nom. Public Utilities Commission of the State of California, et al. v. FERC*, 9th Cir. Nos. 01-71051, *et al.* (placed in abeyance Aug. 21, 2002).

² *California Independent System Operator Corp.*, 107 FERC ¶ 61,274 (June 17, 2001 Order), *order on reh'g*, 108 FERC ¶ 61,254 (2004).

³ See June 17, 2001 Order at P 26-28.

⁴ *California Independent System Operator Corp.*, 108 FERC ¶ 61,022 (July 8, 2004 Order), *order on reh'g*, 109 FERC ¶ 61,097 (2004).

⁵ July 8, 2004 Order at P 116.

⁶ 16 U.S.C. § 824e (2000).

4. On November 14, 2005, IEP requested that the Commission defer action on the Complaint pending settlement discussions with the parties.⁷ On November 18, 2005, Commission Staff convened a technical conference to discuss the issues raised in the Complaint.

5. On March 31, 2006, certain parties (the Settling Parties⁸) filed the Offer of Settlement that proposes the institution of a Reliability Capacity Services Tariff (RCST). The RCST, which was initially proposed by IEP in the Complaint, modifies the existing Commission-imposed must-offer obligation under the CAISO tariff, as well as other market design elements. The Settling Parties state that the Offer of Settlement resolves the Complaint.

The Complaint

6. The Complaint alleges that the must-offer obligation is seriously flawed and no longer just and reasonable for several reasons: (1) generators are not compensated for the capacity that they provide to the CAISO in the day-ahead market under the must-offer obligation; (2) the mere existence of the must-offer obligation has created the perverse incentive for load-serving entities (LSEs) to forgo forward contracting opportunities because the CAISO can and does use the must-offer obligation as a backstop to meet LSEs' load; and (3) must-offer obligation energy (along with reliability must-run energy) generally is excluded from the volume of energy used to establish the CAISO's market-clearing price, resulting in the CAISO energy prices being artificially suppressed and the market receiving inadequate price signals to invest in new generation or transmission infrastructure.

7. The Complaint further contends that the must-offer obligation operates today quite differently from the manner envisioned in April 2001. Recognizing that the must-offer obligation was implemented in response to tight regional supply conditions and market dysfunctions during the California energy crisis, IEP asserts that as the market has evolved, the manner in which the CAISO uses the must-offer obligation has turned the must-offer obligation into a free capacity product. Thus, according to IEP, the must-offer obligation fails to provide generators with just and reasonable compensation.

8. IEP asserts that the CAISO currently uses the must-offer obligation to commit and dispatch units that have not otherwise been scheduled to ensure the reliability of the CAISO grid. IEP acknowledges that the CAISO has an obligation to ensure this

⁷ IEP and the CAISO filed joint motions to continue deferral of action on the Complaint on December 9, 2005, and on December 19, 2005.

⁸ The Settling Parties are IEP; the CAISO; the CPUC; Pacific Gas and Electric Company (PG&E); San Diego Gas & Electric Company (SDG&E); and Southern California Edison Company (SoCal Edison).

reliability but asserts that the value of capacity must be reflected in market prices in order to signal the need for new investment. IEP argues that the generators currently providing capacity services must receive appropriate compensation for keeping the capacity available.

9. The Complaint also alleges that the impact of the must-offer obligation is to provide the CAISO, on behalf of load in its control area, with access to capacity at very low prices, while preventing the generator from serving load outside California. IEP argues that the ability of buyers to obtain access to energy at bid-capped prices of \$250/MWh or less provides them with little incentive to forward contract for physically deliverable capacity in the market to meet their loads.

10. In addition to the lack of investment activity, IEP argues that existing units likely face early retirement due to insufficient net revenues received under the must-offer obligation. IEP asserts that in spite of the impending supply and demand imbalances forecasted in southern California, the must-offer obligation continues to allow the CAISO to operate generating units in the region without compensating them for the reliability services they provide. IEP concludes that continuing operations under the must-offer obligation likely will force additional retirements, and either exacerbate shortages or create the need for additional reliability must run agreements.

11. In support of its contentions, IEP cites data showing that the earnings of units directed to operate under the must-offer obligation fail to recover their fixed costs. IEP estimates that units operating under the must-offer obligation have recently only realized \$28-\$45/kW-yr in fixed costs contributions. IEP contends that these payments often are lower than that which is required to adequately compensate unit owners for those operation and maintenance investments that are required for the generators to remain operational. IEP contends that the current payment structure provides no incentive to re-power or to develop new power plants.

12. IEP asserts that there are material compensation problems over both the long-term and short-term. Citing the Commission's Reliability Compensation Issues (RCI) policy,⁹ IEP asserts that over the long-term the RCI are confirmed by the CAISO's markets' inability to signal the need for investment in southern California, creating a supply/demand imbalance marked by serious reports of impending retirements/shortages. IEP states further that there is evidence that the longer-term compensation problems (lack of new investment signals) will lead to an immediate concern if short-term compensation mechanisms fail to be remunerative.

⁹ See FERC Staff Letter to CAISO, Docket Nos. ER02-1656-026 and ER02-1656-019 at 4 (filed Jan 18, 2005) (concerning Market Redesign and Technology Upgrade and market power mitigation).

The Offer of Settlement

13. Under the Offer of Settlement, the RCST will provide a backstop procurement mechanism to the CAISO and establish both the price for procuring backstop generation capacity as well as the method for allocating the costs incurred. The CAISO will procure capacity on behalf of load serving entities (LSEs) that are short of meeting either local or system-wide resource adequacy requirements, established by either the CPUC or local regulatory authority. Additionally, if the resources under contract for capacity are not sufficient to meet operational needs, the Offer of Settlement provides for a capacity payment to uncontracted capacity dispatched by the CAISO.

14. Under the Offer of Settlement, the price of procuring backstop capacity is based on the estimated cost of new entry. This price is then adjusted by such variables as estimated peak energy rents for the reference resource, monthly shaping factors, and the actual performance of the RCST resource. Procurement costs incurred for meeting resource adequacy requirements are allocated to deficient resource adequacy entities. Costs incurred under the must-offer obligation are to be allocated in accordance with the final Commission decision in the Amendment 60 proceeding.¹⁰ Costs related to the Offer of Settlement's bid adder proposal are allocated using the existing grid operations charge methodology set forth in the CAISO tariff. The Offer of Settlement also includes provisions related to mitigation measures and ancillary dispatch decisions.

15. Although the complaint requested that the Commission replace the existing must-offer obligation with the RCST, the Offer of Settlement does not propose to terminate the must-offer obligation. Rather, it provides a capacity payment to generators that are called to provide service under the must-offer obligation.¹¹

16. The Offer of Settlement, as originally proposed, contemplated the CAISO purchasing local resources for 2006. However, after further study of local requirements, the CAISO has determined that all local resources are under contract for 2006, and the Settling Parties filed to withdraw that component of the Offer of Settlement.¹²

¹⁰ California Independent System Operator Corp., Docket No. ER04-835-000.

¹¹ Under the Settlement, non-resource adequacy/reliability must-run generators dispatched under the must-offer obligation are compensated with a capacity payment equal to 1/17 of the monthly RCST charge. The bid adder for frequently mitigated units is \$40/MWh. For both the must-offer obligation and bid adder, total compensation is limited to the maximum RCST payment. The CAISO has proposed that the must-offer obligation remain in place until the Market Redesign and Technology Upgrade is implemented.

¹² Joint Reply Comments of the Settling Parties at 3.

Procedural Matters

The Complaint

17. Notice of the Complaint was published in the *Federal Register*, 70 Fed. Reg. 53,652 (2005), with motions to intervene, comments and protests due on or before September 16, 2005. This date was subsequently extended to October 3, 2005. The following intervened in support of the Complaint: Silicon Valley Leadership Group; Duke Energy North America, LLC (Duke); West Coast Power LLC (West Coast); Mirant¹³; Calpine Corporation (Calpine); Constellation¹⁴; Silicon Valley Leadership Group (SVLG) and Electric Power Supply Association. The following intervened in opposition to the Complaint: Pacific Gas and Electric Company (PG&E); California Municipal Utilities Association (CMUA); California Department of Water Resources State Water Project (CDWR); California Public Utilities Commission (CPUC); Six Cities¹⁵; Metropolitan Water District of Southern California (Metropolitan); and City of Santa Clara, Silicon Valley Power (SVP). There were several intervenors that took no position.¹⁶

18. SoCal Edison intervened in support of IEP's contention that the must-offer obligation should be revised to provide just and reasonable compensation but in opposition to IEP's proposed compensation mechanism. The California Electricity Oversight Board (Oversight Board) filed a motion to intervene and comments one day out-of-time requesting that the Commission deny the Complaint and convene a technical conference to examine IEP's proposal.

19. The CAISO filed an answer to the Complaint. IEP filed a motion for leave to answer and limited answer to the CAISO's answer. The CAISO filed an answer to IEP's motion for leave to file an answer. Powerex Corp. (Powerex) and SDG&E filed interventions and answers to the Complaint.

¹³ Mirant Americas Energy Marketing, LP; Mirant California, LLC; Mirant Delta, LLC and Mirant Potrero, LLC.

¹⁴ Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.

¹⁵ Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California.

¹⁶ Northern California Power Agency (NCPA); Sacramento Municipal Utility District (SMUD); City of Redding, City of Santa Clara, and M-S-R Public Power Agency; Modesto Irrigation District (Modesto); Williams Power Company, Inc.; Cogeneration Association of California and the Energy Producers and Users Coalition; and Alliance for Retail Energy Markets (AREM).

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. The Commission concludes that the Oversight Board's late intervention will not unduly delay the proceedings or prejudice any other party and the requested intervention is granted. We will likewise accept IEP's limited answer because it has provided information that assisted us in our decision-making process.

The Offer of Settlement

21. Notice seeking comments in relation to the Offer of Settlement was published in the *Federal Register*, 71 Fed. Reg. 24,668 (2006), with motions to intervene, comments and protests due on or before April 20, 2006. Pursuant to Rule 602(f), reply comments were due May 1, 2006. SVP; Metropolitan; CMUA; NCPA; Six Cities; SMUD; CDWR; Oversight Board; Powerex; AReM and Modesto filed comments generally opposing the Offer of Settlement. West Coast; Mirant and Calpine filed comments in support of the Offer of Settlement. Constellation filed comments in support and limited protest of the Offer of Settlement. Sempra Global; PPM Energy, Inc.; and Energy Users Forum filed timely motions to intervene. The Settling Parties, CPUC, CAISO, IEP, CDWR, CMUA, Metropolitan and SVP filed timely reply comments. On May 2, 2006, PG&E filed a motion for leave to file reply comments out of time and reply comments. On May 4, 2006, the CAISO filed a motion to file supplemental reply comments and reply comments in response to the reply comments filed by the NCPA and CMUA. On May 11, 2006, IEP filed a motion to strike portions of NCPA's comments. On May 15, CMUA filed a motion for leave to file additional reply comments and reply comments. On May 18, CDWR filed an answer in support of CMUA's motion for leave and additional reply comments.

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214 (2006), the timely unopposed motions to intervene and notices of intervention serve to make the entities that filed them parties to this proceeding. We grant PG&E's motion for leave to file reply comments out of time.

23. Although the Commission's rules governing settlements only provide for initial comments and reply comments,¹⁷ we grant the motions by the CAISO, CMUA and CDWR to file supplemental pleadings, because the pleadings provided information that assisted us in our decision-making process. As to IEP's motion to strike portions of NCPA's comments on the grounds that they are baseless and frivolous, and in contravention of the Commission's rules on professional conduct, we will deny IEP's motion. We do not find that NCPA's pleading is in contravention of our rules on professional conduct.

¹⁷ 18 C.F.R. § 385.602(f) (2006).

Comments

The Complaint

24. Prior to entering into the Offer of Settlement, PG&E, SoCal Edison, CPUC, and the CAISO asserted that IEP has not met or may have not met its burden to show that the must-offer obligation is unjust and unreasonable and that IEP fails to establish that the current market conditions no longer justify the must-offer obligation. The CAISO stated that it recognizes its current market structure for addressing reliability concerns fails to induce appropriate investment in the infrastructure necessary to ensure long-term service reliability. However, the CAISO stated that this does not mean that the compensation of units operating under the must-offer obligation is unjust and unreasonable.

25. However, Powerex, SVLG, and Duke state that the must-offer obligation process is unjust and unreasonable. Powerex argues that the must-offer obligation was implemented during a time when LSEs' contractual ability was constrained, and it was intended to ensure that there was sufficient generation capacity available to the CAISO in real time. Powerex and EPSA are concerned that, due to the use of must-offer obligation, the value of capacity is not being reflected in market prices. EPSA argues that generators providing capacity and reliability services to the CAISO must receive appropriate compensation in order to ensure appropriate investment in necessary infrastructure.

26. Six Cities states that IEP has presented a persuasive case that generators are not receiving the same level of compensation for must-offer obligation dispatches that they would receive for reliability must run dispatches. However, Six Cities warns that the effect of higher capacity costs to incent new generation would be severely undercut if the entities which are causing those costs to be incurred through insufficient generation of capacity procurement are able to spread those costs to a larger group of entities.

27. West Coast supports IEP's remedy that must-offer obligation be removed from the CAISO tariff. West Coast argues that without immediate market reforms, including the termination of the must-offer obligation, significant new retirement decisions are projected. West Coast asserts that the Commission should take decisive action to end California's reliance on existing generators without providing just and reasonable compensation. Constellation asserts that the elimination of the non-compensatory features of the must-offer obligation is a critical part of the efforts by the CAISO, regulators and market participants to improve California's energy market structures. Mirant states that it generally supports the Complaint.

The Offer of Settlement

28. Non-settling parties raise a number of issues concerning the Offer of Settlement. Certain intervenors¹⁸ argue that they were excluded from settlement negotiations. SVP argues that while parties are free to engage in private settlement talks, they cannot be allowed to force a settlement that levies costs on other participants, without their consent. SVP and Six Cities assert that the Commission cannot approve a settlement that adversely impacts non-settling parties without making an independent determination that the rates, terms and conditions included in the settlement offer are just, reasonable and in accordance with the public interest. They argue that no such analysis can be made on the record before the Commission now.

29. In reply comments, the CAISO asserts that there is simply no basis for the claims of some commenters that their exclusion from settlement negotiations (if that had in fact occurred) denied them due process. According to the CAISO, the due process to which parties opposed to a settlement are entitled is the very process of which they avail themselves in filing their comments once a settlement has been filed.

30. IEP argues that *Trailblazer Pipeline Company*¹⁹ demonstrates that consensus is not a pre-requisite for approving settlements. IEP further asserts that claims that a broader consensus would have been achieved had any or all of the protesting parties been involved in the settlement discussion are entirely speculative, and in any event, irrelevant to the Commission's consideration of the Offer of Settlement. According to IEP, there is nothing in the Commission's rules or in the FPA that requires all parties to a proceeding to participate in settlement discussions, or agree to the outcome, in order for those discussions to produce a settlement which the Commission can approve.

31. Six Cities asserts that the CAISO has not demonstrated any need for an additional procurement mechanism to maintain reliability and that there has been no showing of any benefits to offset the overcompensation of incumbent generators and risks of over-procurement, gaming, and inconsistent incentives. Six Cities contends that the most appropriate response to the issues raised by the Complaint would be for the CAISO to use the reliability must-run process to resolve local reliability problems. Six Cities argues that a reliability must-run approach should resolve IEP's compensation concerns, since, as the Complaint noted, reliability must-run contracts guarantee total fixed-cost recovery.

32. Non-settling parties also assert that there is a general lack of support for RCST costs and the allocation of those costs. CDWR states that the Settlement does not provide evidence justifying the \$73 per kw-year capacity price. Six Cities alleges that the proposed capacity payment is substantially higher than the capacity costs for incumbent

¹⁸ CMUA, NCPA, SVP, among others.

¹⁹ 85 FERC ¶ 61,345 (1999).

generators. According to Six Cities, there is no justification for either the target RCST availability or the “shaping factors” used in the RCST capacity payments calculation. Six Cities further argues that the presumed heat rate for the proxy unit is unreasonably high and will result in overcompensation of RCST units.

33. In reply, the CAISO and IEP maintain that RCST costs and cost allocation mechanism are not unreasonable. IEP notes that the parties that must pay the majority of the costs derived from the capacity payment are signatories to the Offer of Settlement. IEP adds that the CPUC, which is charged with protecting the interests of California’s retail customers, is a signatory to the Offer of Settlement. IEP argues that the current market prices lead to levels of revenue which are insufficient to maintain existing or induce new investment and that the Offer of Settlement properly begins to move to a market-based approach to meet reliability needs that comports with the Commission’s RCI policy and the Commission’s recent actions in both the New England and PJM markets.

34. The CEOB argues that certain components of the Offer of Settlement, namely, the system automatic mitigation procedures and the frequently mitigated bid adder, are outside the scope of the Complaint. In reply, the CAISO and IEP state that these components are included in the Offer of Settlement to address concerns about the limits placed on generator compensation as raised in the Complaint.

Commission Determination

35. Although we continue to believe that the must-offer obligation should be temporary,²⁰ we are not in this order, based on the record in this proceeding, requiring termination of the must-offer obligation at this time. However, we agree that under the current market design, the must-offer obligation does not adequately compensate generators for the reliability services they provide.

36. The must-offer obligation requires generators to make their capacity available to the CAISO without explicitly providing a mechanism to ensure sufficient fixed costs recovery to keep generation needed for reliability purposes available to the CAISO. In comparison, generators under reliability must-run contracts, which are contracted for similar reliability services, receive compensation for fixed cost recovery. Additionally, under the CPUC’s resource adequacy program, LSEs are required to contract for sufficient capacity to meet pre-defined resource adequacy requirements. However, if system conditions arise that require additional supply from non-resource adequacy units, we find it discriminatory that these units are required to operate for similar reliability needs but do not receive a similar capacity payment.

²⁰ See *California Independent System Operator Corp.*, 108 FERC ¶ 61,022 at P 114 (2004).

37. Moreover, given the current compensation structure, we find that generators under the must-offer obligation may not have sufficient opportunity to recover their fixed costs in the energy market. According to IEP, the CAISO's historical data shows that in recent years generators that have been frequently dispatched under the must-offer obligation have not received sufficient fixed costs contributions to remain in operation.²¹

Additionally, as IEP points out, generators dispatched by the CAISO under the must-offer obligation are often dispatched out of economic merit order for reliability purposes and are ineligible to set the energy market clearing price. In practice, this outcome can further limit energy market revenue, and thereby, limit the opportunity for generators under the must-offer obligation to recover sufficient fixed costs through the energy market.

38. Therefore, we find that the compensation to generators under the must-offer obligation is no longer just and reasonable. However, based on the issues raised by non-settling parties with respect to the Offer of Settlement, we are unable to find that the rates and cost allocation mechanism under the Offer of Settlement are just and reasonable. Therefore, we will establish paper hearing procedures to review evidence on whether the Offer of Settlement rates and cost allocation or some other rates and cost allocation are just and reasonable with respect to the must-offer obligation.

39. The Commission requires the Settling Parties to file a response to the issues set forth on the Appendix to this order within 30 days of the date of this order. Parties who wish to file comments must do so within 20 days thereafter. Parties who wish to file reply comments must do so within 15 days of date of filing of initial comments. Upon completion of these submissions, the Commission expects to issue a final order as soon as possible thereafter.

40. We will permit each seller of Eligible Capacity as defined under the terms of the Offer of Settlement, at its election, to collect the Offer of Settlement rates from the date of this order, so long as such seller agrees that all of these revenues will be subject to refund, even if they are collected after the statutory refund period ends. Each seller making this election must inform the Commission in writing of its intention to do so within 15 days of the date of this order.

41. Where, as here, the Commission institutes a section 206 investigation on complaint, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date of the filing of such complaint nor later than 5 months after the filing of such complaint. We will establish the statutorily-directed refund effective date at the earliest date allowed, the date of the filing of the Complaint, August 26, 2005.

²¹ Complaint, Cavicchi Test. at P 25-26.

42. Section 206(b) also requires that if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Ordinarily, to implement this requirement, we would direct the presiding judge to provide a report to the Commission in advance of that date. Here, the Commission granted the parties' request to defer action on the Complaint pending settlement negotiations and the filing of the Offer of Settlement on March 31, 2006. Since that time, the Commission has reviewed the Offer of Settlement and the pleadings submitted in response thereto. Based on our review of the record and in consideration of the nature of the issues set for hearing, we expect to issue a decision within 3 months of the reply comments, or by November, 2006.

The Commission orders:

(A) The Commission finds pursuant to section 206 of the FPA that compensation to generators under the must-offer obligation is no longer just and reasonable.

(B) The Commission hereby institutes paper hearing procedures in Docket No. EL05-146-000 under section 206 of the FPA to review evidence on whether the rates and cost allocation mechanism under the Offer of Settlement or some other rates and cost allocation are just and reasonable with respect to the must-offer obligation.

(C) The Commission directs the Settling Parties to file a response to the issues set forth on the Appendix to this order within 30 days of the date of this order. Parties who wish to file comments must do so within 20 days thereafter. Parties who wish to file reply comments must do so within 15 days of date of filing of initial comments.

(D) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of this proceeding under section 206 of the FPA in Docket No. EL05-146-000.

(E) The refund effective date established pursuant to section 206(b) of the FPA is August 26, 2005, the date of filing of the Complaint.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

With respect to the Offer of Settlement, the Settling Parties should respond to the following:

1. Fully support the cost basis, relevance and appropriateness of each assumed component used to determine the proxy capacity price, and the RCST capacity payment (*e.g.*, the target capacity price of \$73/kW-year, the target availability factor of 95 percent, the assumed heat rate of 10,500 BTU/kWh).
2. Fully explain and document how the following provisions of the Offer of Settlement are necessary to ensure just and reasonable compensation to generators under the must-offer obligation: (1) automatic mitigation procedures, (2) frequently mitigated bid adders and (3) evaluation of ancillary service bids.
3. Fully explain and document the reasonableness of the proposed cost allocation mechanisms.