

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

San Diego Gas & Electric Company
v.

Docket Nos. EL00-95-091 &
EL00-95-119

Sellers of Energy and Ancillary
Services Into Markets Operated by
the California Independent System
Operator Corporation and the
California Power Exchange

Investigation of Practices of the
California Independent System
Operator Corporation and the
California Power Exchange

Docket Nos. EL00-98-078 &
EL00-98-106

ORDER ON COMPLIANCE FILING

(Issued February 14, 2005)

1. On November 14, 2003, the Commission issued an order accepting in part and rejecting in part an April 14, 2003 compliance filing submitted by the California Independent System Operator Corporation (ISO) relating to implementation of the Must-Offer Obligation.¹ Subsequently, the ISO submitted a compliance filing with tariff revisions intended to comply with the *November 2003 Order*. The ISO also filed a request for clarification and rehearing of the *November 2003 Order*, and, on October 27, 2004, the Commission issued an order granting the ISO's rehearing request.² On November 24, 2004, the ISO amended its earlier compliance filing in response to the *October 2004 Order*. This order accepts the ISO's compliance filing, as revised. This acceptance of the revised tariff sheets will promote a more efficient operation of the wholesale electricity markets in California to the benefit of all customers.

¹ *San Diego Gas & Electric Company*, 105 FERC ¶ 61,196 (2003) (*November 2003 Order*).

² *San Diego Gas & Electric Company*, 109 FERC ¶ 61,078 (2004) (*October 2004 Order*).

Background

2. In a series of orders, the Commission has directed the ISO to refine its tariff provisions related to the Must-Offer obligation, procedures for generators to obtain an exemption from the Must-Offer obligation, and Minimum Load Cost recovery.³

3. Directly related to the ISO's compliance filings at issue in this proceeding, the *November 2003 Order* directed the ISO to submit a compliance filing modifying its tariff to reflect that the ISO compensates generators for Minimum Load Costs for all hours that the generator is under the Must-Offer Obligation including the minimum load energy that is forward scheduled.⁴ However, the *October 2004 Order* granted rehearing on the issue relating to the requirement that the minimum load energy be forward scheduled and determined that the ISO is not required to forward schedule minimum load energy pursuant to the Must-Offer Obligation.⁵ The Commission directed the ISO to amend its earlier compliance filing (submitted in response to the *November 2003 Order*) consistent with the grant of rehearing.⁶

Proposed Compliance Filings

4. The *November 14 Order* directed the ISO to submit new tariff sheets to: (1) show that minimum load energy that is forward scheduled will be compensated for its Minimum Load Costs; (2) delete language relating to the proposed tolerance band that would apply to a dispatched unit when operating above minimum load; and (3) reinstate the \$6/MWh Operation and Maintenance adder.

5. In response to the *November 2003 Order*, the ISO submitted a compliance filing on December 15, 2003 (December 2003 Compliance Filing). The ISO states that, given the uncertain date associated with the completion of the implementation of the forward scheduling requirement, it proposes an effective date of five days after the notice of the completion date, unless the Commission acts favorably on its rehearing request.⁷ The ISO requests that the remaining changes associated with the compliance filing be made effective on December 15, 2003, the date of filing.

³ See, e.g., *San Diego Gas & Electric Co.*, 102 FERC ¶ 61,285 (2003); *San Diego Gas & Electric Co.*, 101 FERC ¶ 61,112 (2002).

⁴ *November 2003 Order*, 105 FERC ¶ 61,196 at P 17.

⁵ *October 2004 Order*, 109 FERC ¶ 61,078 at P 13.

⁶ *Id.* at P 17.

⁷ Since the Commission granted the ISO's rehearing request, the proposed effective date for the forward scheduling requirement is now moot.

6. As mentioned above, the *October 2004 Order* directed the ISO to amend its December 2003 Compliance Filing consistent with the Commission's finding that the ISO is not required to forward schedule minimum load energy pursuant to the Must-Offer Obligation. In response, the ISO submitted a compliance filing on November 24, 2004 that deleted the forward scheduling provision (November 2004 Compliance Filing).

Notice of Filing and Intervention

7. Notice of the December 2003 Compliance Filing was published in the *Federal Register*, 68 Fed. Reg. 62 (2004), with motions to intervene and protests due on or before January 14, 2004. Timely comments and protests were filed by Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. (collectively Reliant); Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC and Mirant Potrero, LLC (collectively Mirant); and Dynegy Power Marketing, Inc., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, Cabrillo Power II LLC and Williams Power Company, Inc. (collectively Dynegy/Williams).

8. On January 29, 2004, the ISO filed a motion for leave to answer and answer to protests concerning the December 2003 Compliance Filing.

9. Notice of the November 2004 Compliance Filing was published in the *Federal Register*, 69 Fed. Reg. 71,023 (2004), with motions to intervene and protests due on or before December 15, 2004. No responses were received.

Discussion

A. Procedural Matters

10. Rule 213(a)(2) of the Commission's rules of practice and procedure, 18 C.F.R. § 384.213(a)(2) (2004), prohibits answers to answers unless specifically permitted by the decisional authority. We are not persuaded to accept the ISO's answer and will, therefore, reject it.

B. Forward Scheduled Minimum Load Energy

11. The *November 2003 Order* directed the ISO to submit a modification to its tariff to show the minimum load energy that is forward scheduled will still be compensated for its Minimum Load Costs. However, the *October 2004 Order* on rehearing reversed its decision regarding forward scheduling and directed the ISO to amend its December 2003 Compliance Filing consistent with the Commission's finding that the ISO is not required to forward schedule minimum load energy pursuant to the Must-Offer Obligation. In its amended November 2004 Compliance Filing, the ISO states that it has revised section 5.11.6.1.1 of its tariff to remove such language.

12. Intervenor has raised no issues relating to the ISO's revised tariff provision that removes the forward scheduling language.

Commission Determination

13. The Commission finds that ISO's proposed revised tariff revisions, as submitted in the November 2004 Compliance Filing, which removes all references to the forward scheduling issue, is consistent with the *October 2004 Order* and, accordingly, is just and reasonable.⁸ Since the ISO apparently did not implement this requirement, we will assign a December 15, 2003 effective date to this tariff revision.

C. Tolerance Band

14. The *November 2003 Order* directed the ISO to submit revised tariff sheets to remove language relating to a proposed tolerance band that would apply to a dispatched unit when operating above minimum load.⁹ In its December 2003 Compliance Filing, the ISO deleted the tolerance band provision from its tariff consistent with the *November 2003 Order*. However, Dynegy/Williams state that the rejected tolerance band tariff language was included in the ISO's "conformed tariff", as posted on its website, prior to the issuance of the Commission's *November 2003 Order*. Dynegy/Williams argue that this inclusion was in contradiction of Commission precedent and ISO tariff language which provides that revised tariff language is not effective until approved by the Commission. Dynegy/Williams request the Commission to clarify that the rejected tolerance band tariff language was never a part of the ISO tariff and to direct the ISO to adjust minimum load cost compensation payments to the extent that the ISO implemented the tolerance band prior to the issuance of the *November 2003 Order*.

⁸ Reliant and Dynegy/Williams protest that section 5.11.6.1.1 of the ISO's post-Phase 1B tariff sheets (submitted in the ISO's December 2003 Compliance Filing) incorrectly includes language relating to the netting of market revenues against minimum load cost compensation that was at issue in the ISO's Amendment No. 54 proceeding. In an August 5, 2004 order on rehearing in the Amendment No. 54 proceeding, the Commission rejected the provision to net ex-post revenues against minimum load costs. *California Independent System Operator Corp.*, 108 FERC ¶ 61,142 at P 76-78 (2004). Accordingly, this issue has been addressed in the Amendment No. 54 proceeding and will not be addressed here.

⁹ *November 2003 Order*, 105 FERC ¶ 61,196 at P 7.

Commission Determination

15. First, the Commission accepts the ISO's revised tariff language that deletes the tariff language relating to the tolerance band that would apply to a dispatched unit when operating above minimum load, as directed by the *November 2003 Order*. This revised tariff sheet is effective December 15, 2003, as proposed by the ISO.

16. Further, Dynegy/Williams are correct that the ISO must seek and receive approval of tariff revisions by the Commission before effecting proposed changes.¹⁰ Accordingly, to the extent the ISO implemented the tolerance band provision in the period from March 13, 2003¹¹ until the issuance of the *November 2003 Order*, the ISO must adjust any minimum load payments that implemented the rejected tolerance band provision, and file a refund report with the Commission within thirty days of any revised billings related to this issue.

D. Operations & Maintenance Adder

17. The *November 2003 Order* directed the ISO to reinstate the \$6/MWh Operation and Maintenance adder.¹² Our review indicates that the ISO's December 15 Compliance Filing reinstates the \$6/MWh Operation and Maintenance adder as directed. The removal of the \$6/MWh Operation and Maintenance adder from the tariff was not authorized by the Commission and must be reinstated as of the date it was removed to ensure that there is no unauthorized change in the tariff.

The Commission orders:

(A) The ISO's tariff sheets submitted on December 15, 2003 and November 24, 2004 are hereby accepted, as discussed in the body of this order.

¹⁰ See, e.g., *California Independent System Operator Corp.*, 98 FERC ¶ 61,187 at 61,681 (2002); *Dynegy Power Market, Inc. v. California Independent System Operator Corp.*, 98 FERC ¶ 61,074 (2002).

¹¹ The ISO first proposed the tolerance band language, which related to generators operating at minimum load and dispatched for instructed energy, in a compliance filing that was directed by a Commission Order dated March 13, 2003. *San Diego Gas & Electric Co.*, 102 FERC ¶ 61,285 (2003).

¹² *November 2003 Order*, 105 FERC ¶ 61,196 at P 9.

(B) The ISO is directed to file a refund report with the Commission, within thirty days of this order, that reflect any minimum load payments related to the rejected tolerance band provision, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Deputy Secretary.