

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 No. EL00-95-092

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 System Operator and the
California Power Exchange

Docket No. EL00-98-079

ORDER ON REHEARING AND CLARIFICATION

(Issued October 27, 2004)

1. On November 14, 2003, the Commission issued an order accepting in part and rejecting in part an April 14, 2003 compliance filing (Compliance Filing) submitted by the California Independent System Operator Corporation (ISO) relating to implementation of the temporary Must-Offer Obligation.¹ The ISO filed a request for clarification and rehearing of the November 2003 Order. This order grants the request for clarification and the request for rehearing.

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.²

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

² *See, e.g., id.*; *San Diego Gas & Electric Company, et al.*, 102 FERC ¶ 61,285 (2003); *San Diego Gas & Electric Company, et al.*, 101 FERC ¶ 61,112 (2002).

3. Mirant argued in its July 15, 2002 protest of an ISO compliance filing in Docket No. EL00-95-064 that generation units under the Must-Offer Obligation that are running at minimum load should forward schedule energy because the ISO has repeatedly told market participants that all energy and ancillary services must be scheduled if the ISO is to properly manage system reliability. It claimed that requiring minimum load units to be forward scheduled is similar to the ISO's pre-dispatch of units with Reliability Must-Run (RMR) agreements and, therefore, there is no reason why energy generated from Must-Offer units should be treated any differently than energy from a pre-dispatched RMR unit.

4. In an October 31, 2002 Order, the Commission agreed with Mirant and found that "scheduling coordinators should forward schedule energy from those units under the Must-Offer Obligation that are running at minimum load."³ The October 2002 Order did not specifically direct the ISO to submit revised tariff sheets to reflect the Commission's finding. Consequently, the ISO's December 2, 2002 compliance filing, submitted in response to the October 2002 Order, did not address the forward scheduling of energy from units operating under the Must-Offer obligation. Nor did the ISO seek rehearing of the Commission finding on this issue.

5. In the ISO's April 14, 2003 compliance filing proceeding, Mirant protested the ISO's position that the ISO would not compensate sellers that forward schedule their minimum load energy under the Must-Offer Obligation.⁴ Mirant argued that the ISO's position was inconsistent with the Commission's directive in the October 2002 Order and requested that the Commission direct the ISO to modify its tariff to specify that the ISO would compensate generators for Minimum Load Costs when generators forward schedule minimum load energy under the Must-Offer Obligation.

6. In the November 2003 Order, the Commission determined that:

With respect to Mirant's concern regarding compensation for Minimum Load Costs when Scheduling Coordinators forward schedule their minimum energy from units that are under the Must-Offer Obligation, we reiterate that the ISO must compensate a generator for its Minimum Load Costs for all hours that it is under the Must-Offer Obligation, including when the generator forward schedules the minimum load energy.

³ *San Diego Gas & Electric Co., et al.*, 101 FERC ¶ 61,112 at P 13 (2002) (October 2002 Order).

⁴ *See* November 2003 Order, 105 FERC ¶ 61,196 at P 15.

Accordingly, the ISO must submit in its compliance filing a modification to its tariff to show that minimum load energy that is forward scheduled will still be compensated for its Minimum Load Costs.^{5]}

7. On December 15, 2003, the ISO filed its motion for clarification and rehearing of the November 2003 Order regarding the forward scheduling of minimum load energy pursuant to the Must-Offer Obligation. Dynegy Power Marketing, Inc., El Segundo LLC, Long Beach Generation LLC, Cabrillo Power I LLC and Cabrillo II LLC (collectively, Dynegy) and Williams Power Company, Inc. (Williams, and collectively with Dynegy, Dynegy/Williams) filed an answer to the ISO's motion for clarification.

Discussion

I. Procedural Matters

8. Rule 213 (a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R § 385.213 (2004), prohibits answers to requests for rehearing unless otherwise permitted by the decisional authority. We find that good cause exists to allow Dynegy/Williams' answer because it has assisted us in our decision-making process.

II. Request for Clarification and Rehearing

A. Request for Clarification

9. The ISO requests that the Commission clarify that the ISO is only required to pay Minimum Load Costs for a generation unit when the unit is supplying minimum load energy in accordance with the Must-Offer Obligation and has not already sold and forward scheduled its output in a bilateral transaction. It notes that the Commission has previously stated that the Must Offer Obligation does not apply to power scheduled under bilateral agreements.⁶ The ISO states that it is concerned that the language quoted above (P 17 of the November 2003 Order) could be misinterpreted, contrary to the Commission's earlier directive, as requiring the ISO to pay Minimum Load Costs for a unit even when the unit's minimum load energy has already been sold and forward scheduled in a bilateral transaction.

10. Dynegy/Williams state they are concerned that the same language could lead to confusion regarding Minimum Load Cost recovery in instances when generators are operating at minimum load and are dispatched for instructed energy by the ISO. Dynegy/Williams argue that instructed energy dispatches do not involve bilateral

⁵ *Id.* at P 17.

⁶ Citing *San Diego Gas & Electric Co., et al.*, 95 FERC ¶ 61,418 at 62,554 (2001).

transactions and, thus, should not affect a generator's eligibility to receive minimum load compensation. Therefore, Dynegy/Williams argue that to the extent that the ISO's requested clarification could be read to deny generators Minimum Load Cost recovery when they are dispatched for instructed energy while running at minimum load, the Commission should reject the ISO's request for clarification.

Commission Determination

11. The Commission clarifies that the ISO is not required to compensate a unit for Minimum Load Costs when it has forward scheduled power under a bilateral contract. The Commission has repeatedly directed the ISO to compensate a generator for its actual costs during each hour when that generator is: "(1) not scheduled to run under a bilateral agreement; (2) not on a planned or forced outage; and (3) running in compliance with the must-offer obligation but not dispatched by the ISO."⁷ Consistent with these criteria, the ISO is not required to compensate a generator for Minimum Load Costs when it is scheduled to run in a bilateral agreement. Additionally, consistent with our prior orders addressing Must-Offer issues, the Commission clarifies that generators operating at minimum load and dispatched for instructed energy will continue to be compensated for their Minimum Load Costs for that energy injected into the grid under minimum load conditions and will be compensated at the instructed energy price for energy dispatched above minimum load amounts.⁸

B. Request for Rehearing

12. The ISO seeks rehearing of the November 2003 Order's directive that the ISO file a modification to its tariff to indicate that minimum load energy that is forward scheduled under the Must-Offer Obligation will still be compensated for its Minimum Load Costs.⁹ The ISO offers three arguments why the Commission erred in its determination. First, the ISO claims that implementation would be time consuming and costly. In support of this claim, it provides an affidavit from the ISO's Director of Billing and Settlements, who explains that the implementation of forward scheduling would require substantial modification to the ISO's existing software and cost at least one-half million dollars. Second, the ISO argues that, even if it spent the time and resources to implement forward scheduling of minimum load energy under the Must-Offer Obligation, the feature would be superseded by the ISO's Market Redesign and Technology Upgrade (MRTU) project. Third, the ISO argues that there is no current benefit to requiring forward scheduling of

⁷ *San Diego Gas & Electric Co., et al.*, 97 FERC ¶ 61,293 at 62,363 (2001).

⁸ *San Diego Gas & Electric Co., et al.*, 102 FERC ¶ 61,285 at P 7 (2003).

⁹ November 2003 Order, 105 FERC ¶ 61,196 at P 17.

Must Offer energy. The ISO claims that forward scheduling would not provide any reliability benefit because it would not match minimum load energy with real demand. It explains that, in contrast, the ISO had proposed to implement forward scheduling to match unsold RMR Contract Energy with actual demand. It states that the forward scheduling does not alleviate the effects of minimum load energy on the imbalance market unless minimum load is matched with real demand.

Commission Determination

13. The Commission grants rehearing and therefore will not require the ISO to forward schedule minimum load energy pursuant to the Must-Offer Obligation. The Commission previously required that minimum load energy be forward scheduled in order to not influence real-time energy prices. However, the effect on real-time prices can only be mitigated if minimum load energy is scheduled against actual demand. The ISO does not currently have forward auction markets that match supply and actual demand. Therefore, we agree with the ISO's argument that the forward scheduling of minimum load energy pursuant to the Must-Offer Obligation provides no benefit from the perspective of settlements, system reliability, or ensuring the accuracy of real time prices.

14. Further, the ISO's argument concerning the time and cost of software needed to implement the forward scheduling requirement is compelling. The time and cost of creating new Demand ID points for Must-Offer generators will greatly exceed that already completed for the RMR units and the forward scheduling requirement will eventually be superseded by the market design charges of the ISO's MRTU project..

15. We note that the ISO has a compliance filing pending with the Commission in Docket Nos. EL00-95-091 and EL00-98-078, which the ISO filed in response to the November 2003 Order. This pending compliance filing includes revised tariff language to comply with the directive that the ISO allow the forward scheduling of minimum load energy, the matter on which we now grant rehearing. Thus, we direct the ISO to amend its compliance filing, within thirty days, consistent with the Commission's findings in this order.

The Commission Orders:

(A) The ISO's request for clarification and rehearing are hereby granted, as discussed in the body of this order.

(B) The ISO is hereby directed to submit a compliance filing, within thirty days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.