

128 FERC ¶ 61,248
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 17, 2009

In Reply Refer To:
Termoelectrica U.S., LLC
Docket No. ER08-53-000

Sempra Energy
101 Ash Street HQ12
San Diego, California 92101

Attention: Theodore E. Roberts, Esquire
Senior Regulatory Counsel

Reference: Report on Sales above the \$400/MWh Bid Cap Established
for the California Independent System Operator Corporation Markets

Dear Mr. Roberts:

1. On October 9, 2007, you filed, on behalf of Termoelectrica U.S., LLC (Termoelectrica), a report detailing seventeen transactions that occurred in June 2007 and seven transactions in July 2007, which exceeded the \$400/MWh soft bid cap established for the California Independent System Operator Corporation (CAISO) markets,¹ resulting in approximately \$2,829 in revenues above the capped price for these two months. This report is required to be submitted to the Commission within seven days of the end of the month in which sales above the bid cap are made.² Termoelectrica states

¹ See *Cal. Indep. Sys. Operator Corp.*, 114 FERC ¶ 61,026 (2006) (where the Commission established a \$400/MWh soft cap for real-time energy bids and adjustment bids). See also *Cal. Indep. Sys. Operator Corp.*, 114 FERC ¶ 61,135 (2006) (where the Commission raised the ancillary service capacity bid cap in the CAISO market to a \$400/MWh soft cap).

² See Order Establishing Prospective Mitigation and Monitoring Plan for the Cal. Wholesale Electric Mrkts and Establishing an Investigation of Pub. Util. Rates in Wholesale Western Energy Mrkts, 95 FERC ¶ 61,115 (2001) (where the Commission instituted reporting requirements to allow market participants to justify bids higher than the capped price for CAISO markets).

that it did not submit an actual bid for the aforementioned transactions but, instead, the CAISO calculated the proxy price for the Must-Offer energy pursuant to a Commission-approved formula in the CAISO tariff. Consequently, Termoelectrica asserts that it was unaware that the transactions in question exceeded the \$400/MWh soft bid cap until on or around August 23, 2007, when Termoelectrica received preliminary data from the CAISO for the month of June 2007.³ According to Termoelectrica, these transactions were confirmed when final settlement data were received for the month of June 2007 on or around September 13, 2007. Similarly, Termoelectrica states there was a two to three month time lag, respectively, in receiving preliminary and final settlement data for the July 2007 transactions.

2. After it received its June 2007 final settlement data, Termoelectrica indicates that it acted promptly to confirm the accuracy of the data, determined the cause for the proxy prices, and took follow-up measures. According to Termoelectrica, one such measure was to call the Commission Staff in the Commission's Office of Enforcement regarding the applicability of the reporting requirement to proxy bids submitted by the CAISO. Termoelectrica states that while it was advised by the Commission Staff to make the instant filing, it does not believe that a "proxy bid" is a true bid, but an *ex post* price calculated pursuant to a formula in the CAISO tariff and submitted by the CAISO in real time on behalf of Termoelectrica. Termoelectrica thus argues that such bids should not be subject to the Commission's reporting requirement.

3. Termoelectrica requests that the Commission clarify whether proxy prices above the \$400 MWh bid cap are subject to the Commission's reporting requirement. If the Commission finds that such bids are subject to its reporting requirement, Termoelectrica requests that the Commission clarify the reporting deadline to allow reports resulting from proxy bids to be submitted within seven days of the end of the month in which the CAISO issues its final settlement statement to ensure that the report is based on actual data. With respect to the instant filing, Termoelectrica requests that the Commission accept its report for filing, confirm that the sales in question, which resulted in *de minimis* quantities and revenues in excess of the capped price, are justified by the proxy pricing formula, and grant Termoelectrica a waiver of the filing deadline, which requires that reports be filed within seven days of the end of the month following these types of transactions.

4. Notice of the filing was published in the *Federal Register*, 72 Fed. Reg. 60,338 (2007), with interventions and protests due on or before October 30, 2007. No comments, protests or interventions were filed.

³ Termoelectrica indicates that, after receiving settlement data, it contacted the CAISO in an effort to revise its settlement so that it is not paid any more than \$400/MWh for the transactions.

5. In accordance with Commission reporting requirements, the CAISO market participants are required to justify bids submitted above the \$400/MWh soft bid cap established for the CAISO markets “to ensure that market power is not exercised and to ensure that rates remain just and reasonable.”⁴ Careful review of Termoelectrica’s report indicates that on specific dates during June and July 2007 gas prices materially affected the price of energy, which translated into proxy bid prices in excess of the \$400 MWh cap during the period in question. Even with market reforms in place, volatility in gas prices can translate into higher spot market prices and are not the result of the exercise of market power by sellers of energy. Accordingly, we will continue to require market participants to report sales in excess of the capped price, even those stemming from proxy bids whose resultant price is formula-based. However, we allow the affected sellers to submit their reports seven days after receipt of their final settlement statements from the CAISO to ensure that actual costs are reflected in reports justifying proxy bids in excess of the \$400/MWh bid cap.

6. Accordingly, Termoelectrica’s justification for revenues received from sales above the CAISO bid cap is accepted as timely submitted in accordance with the above clarification of the Commission’s reporting requirements.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁴ See *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 93 FERC ¶ 61,294, at 61,983 (2000).