UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Williams Power Company, Inc. Docket No. EL05-57-000

v.

California Independent System Operator
Corporation

ORDER GRANTING COMPLAINT

(Issued March 4, 2005)

1. On January 14, 2005, Williams Power Company, Inc. (Williams) filed a complaint against the California Independent System Operator Corporation (CAISO). It alleges that the CAISO has wrongfully denied minimum load cost compensation to must-offer generators that do not stay within a tolerance band that the CAISO has, without Commission authorization, applied to those generators when they are returning to minimum load status after a CAISO dispatch (ramping down). Williams requests that the Commission reverse the application of the unauthorized procedure and direct the CAISO to pay minimum load cost compensation for each instance in which a must-offer generator was improperly denied compensation. For the reasons discussed below, we grant the complaint and direct the CAISO to compensate generators operating pursuant to the must-offer obligation in conformance with its approved open-access transmission tariff (tariff). Further, the CAISO must make refunds and file a refund report within 30 days of the date of this order.

2. This order benefits customers because it ensures that rates not authorized under the tariff are not charged.

Background

3. In an April 2001 Order, the Commission established a mitigation and monitoring plan for the California wholesale electric markets.[1] One of the elements of the plan was the implementation of a temporary "must-offer" obligation, under 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 Commission explained that:

> this must-offer obligation is designed to ensure that the ISO will be able to call upon available resources in the real-time market to the extent that energy is needed. The basis for the requirement is that, under competitive conditions, a generator that has available energy in real time should be willing to sell energy at a price that covers its marginal costs, since it has no alternative purchaser at that time.[[2]]

In the June 2001 Order on rehearing, the Commission explained that the must-offer obligation is "designed to prevent withholding and thereby to ensure that the ISO will be able to call upon available resources in the real-time market to the extent that energy is needed."[3] The CAISO implemented the must-offer requirement beginning July 20, 2001.

4. In a December 2001 Order addressing a CAISO compliance filing, the Commission clarified that generators subject to the must-offer obligation should be able to recover their costs of complying with the CAISO's instruction to keep their units on-line at minimum load status.[4] The Commission directed the CAISO to compensate a generator for its actual costs "during each hour when that generator is: (1) not scheduled

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[1] *San Diego Gas & Electric Co*., 95 FERC ¶ 61,115 at 61,355-57 (2001) (April 2001 Order), *order on reh'g*, 95 FERC ¶ 61,418 (2001) (June 2001 Order), *order on reh'g*, 97 FERC ¶ 61,275 (2001) (December 2001 Order), *order on reh'g*, 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] April 2001 Order, 95 FERC ¶ 61,115 at 61,356.

[3] June 2001 Order, 95 FERC ¶ 61,418 at 62,551.

[4] *San Diego Gas & Electric Co.*, 97 FERC ¶ 61,293 at 62,363 (2001), *order on reh'g*, 99 FERC ¶ 61,159 (2002).

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."[5]

5. The CAISO then submitted a series of compliance filings, and the Commission issued a series of orders addressing the CAISO's implementation of the must-offer obligation, compensation for generators operating subject to the obligation, and procedures for generators to request, and the CAISO to grant, exemptions from the must-offer obligation.[6] Most relevant to this proceeding, the Commission, in the May 2002 Order, accepted the CAISO's proposed "tolerance band." Under the tolerance band, a must-offer generator is denied minimum load cost compensation during those hours when it operates at minimum load and produces a quantity of energy that varies by more than the greater of 5 MWh or an energy amount equal to 3 percent of the unit's maximum operating output during a particular hour; in other words, it does not stay close to the minimum load level.[7]

6. The Commission later rejected the CAISO's proposal to rescind payment to dispatched must-offer generators that fail to stay within the tolerance band when operating *above* minimum load pursuant to a CAISO dispatch instruction.[8] The Commission determined that the CAISO's proposal was not only outside the scope of the required compliance filing, but that it violated our directive that the CAISO must compensate a generator operating under the must-offer obligation for that generator's minimum load costs for all hours during which the generator is operating at minimum load status.[9]

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[5] *Id.*, 97 FERC ¶ 61,293 at 62,363.

[6] *E.g.*, *San Diego Gas & Electric Co.*, 99 FERC ¶ 61,158 (2002) (May 2002 Order) (addressing the CAISO's January 25, 2002 compliance filing); *San Diego Gas & Electric Co.*, 101 FERC ¶ 61,112 (2002) (addressing the CAISO's June 24, 2002 compliance filing); *San Diego Gas & Electric Co.*, 102 FERC ¶ 61,285 (2003) (addressing December 2, 2002 compliance filing); *San Diego Gas & Electric Co.*, 105 FERC ¶ 61,196 (2003) (November 2003 Order), *reh'g granted*, 109 FERC ¶ 61,078 (2004) (addressing April 14, 2003 compliance filing).

[7] May 2002 Order, 99 FERC ¶ 61,158 at 61,632.

[8] November 2003 Order, 105 FERC ¶ 61,196 at P 7.

[9] *Id*. *See also California Independent System Operator Corp.*, 105 FERC ¶ 61,091 at P 107 (2003) (October 2003 Order) (rejecting similar language proposed by the CAISO in its Amendment No. 54 market redesign proposal).

The Complaint

7. Williams complains that the CAISO has, without tariff authority or Commission order, imposed a tolerance band on must-offer generators while they are *returning* to minimum load status from a CAISO dispatch instruction and denied minimum load cost compensation to such units when they operate outside of that tolerance band during ramp-down. Williams contends that the tolerance band authorized by the Commission only applies when a must-offer units is operating *at* minimum load. According to Williams, a must-offer unit that is returning to minimum load from a CAISO operating dispatch is not operating *at* minimum load and, thus, is not subject to the Commission-authorized tolerance band.

8. Williams contends that the CAISO not only wrongfully extended the Commission-approved tolerance band but, because the tolerance band criteria set forth in the CAISO tariff do not make sense for a must-offer unit that is ramping down, the CAISO has applied a different set of criteria to such units without having first submitted those criteria to the Commission for approval. The Commission-approved tolerance band in tariff section 5.11.6.1.1 allows the CAISO to deny minimum load cost compensation when a must-offer unit operating at minimum load produces a quantity of energy that varies by the greater of 5 MWh or 3 percent of the unit's maximum output. In contrast, for units ramping down from a CAISO dispatch instruction, the CAISO calculates the amount of energy that the unit should be producing if it ramped back to its prior minimum load operating level at the ramp rate level established in the ISO Master File.[10] Williams further contends that the theoretical ramp rates applied by the CAISO are not just and reasonable because they do not allow a reasonable time to ramp down to minimum load status; they do not consider real-world operating parameters such as a generator's actual, operational ramp rate, multiple ramp rates and other physical limitations.

9. Williams states that both the CAISO tariff and Commission orders require the CAISO to pay minimum load costs during each hour that a generator is operating under the must-offer obligation. Thus, according to Williams, the CAISO is violating the tariff

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[10] *See* Williams Complaint at 10. In the CAISO's May 11, 2004 Amendment No. 60 Tariff Filing, Docket No. ER04-835-000, at 30, the CAISO describes the tolerance band criteria as follows:

> [i]f the amount of energy produced by the unit in these subsequent intervals exceeds the sum of (1) the residual energy determined by this calculation, (2) the Tolerance Band and (3) the minimum load level, indicating that the unit is not ramping back to its prior minimum load operating point according to its ramp rate once the instruction ends, the ISO has been rescinding [minimum load cost compensation] payments for those later intervals.

and Commission directives. While recognizing that the CAISO may have a legitimate interest in ensuring that must-offer units ramp down promptly when coming off a CAISO dispatch, Williams contends that the CAISO cannot unilaterally implement a process without the required Commission approval under section 205 of the Federal Power Act (FPA).[11]

10. Williams requests that the Commission determine that the CAISO's unilateral application of the tolerance band is unlawful and direct the CAISO to pay minimum load cost compensation for each instance in which a must-offer generator was improperly denied compensation based on the improper procedure.

Notice of Filing and Responsive Pleadings

11. Notice of Williams' complaint was published in the *Federal Register*, 70 *Fed. Reg*. 3,692 (2005), with answers, interventions and comments due on or before February 7, 2005. The CAISO filed a timely answer to the complaint. Timely motions to intervene were filed by the California Energy Resources Scheduling Division of the California Department of Water Resources, Modesto Irrigation District, Pacific Gas and Electric Company, Calpine Corporation, California Electricity Oversight Board, West Coast Power LLC, Metropolitan Water District of Southern California, Northern California Power Agency, Cities of Santa Clara and Redding, California, and the M-S-R Public Power Agency. Timely motions to intervene and comment were filed by the California State Water Project of the California Department of Water Resources (SWP), Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. (collectively Reliant), and Duke Energy North America LLC, Duke Energy Trading and Marketing L.L.C. and Duke Energy Marketing America, LLC (collectively Duke).

12. On Febuary 22, 2005, Williams filed an answer to the CAISO's answer.

CAISO Answer

13. The CAISO agrees that it applies a tolerance band to generators that are ramping back down to minimum load level following the expiration of a CAISO dispatch instruction. However, the CAISO insists that this is consistent with Commission orders and CAISO tariff provisions that the Commission has approved. The CAISO cites Commission orders approving the tolerance band[12] and conditioning a must-offer generator's eligibility to recover minimum load costs on that unit running at minimum

[11] 16 U.S.C. § 824d (2000).

[12] Citing May 2002 Order, 99 FERC ¶ 61,158.

load and not producing energy outside of the tolerance band.[13] The CAISO further contends that its application of the tolerance band is consistent with the October 2003 and the November 2003 Orders (which directed the CAISO not to condition minimum load cost compensation on performance within the tolerance band during those intervals in which the CAISO dispatched the unit for imbalance energy). It also states that the tolerance band is consistent with the May 2002 Order, which the CAISO says, "authorized the [CAISO] to apply the tolerance band to condition Minimum Load Cost recovery around the minimum load level."[14]

14. The CAISO argues that the tolerance band is a reasonable means to encourage units to ramp down promptly and ensure that market participants are not required to pay minimum load cost compensation for units when they are engaged in bilateral contracts or uninstructed deviations. It contends that the tolerance band allows operational flexibility while protecting market participants from payment for energy and products not delivered. Further, the CAISO claims that Williams' own failure to operate its units in alignment with ramp rates submitted by Williams to the CAISO caused the revocation of minimum load cost compensation.

15. Finally, the CAISO requests that the Commission direct the parties to engage in an alternative dispute resolution process to resolve the matter.

Other Comments

16. Reliant supports Williams' complaint. Duke states that it supports the complaint and adds that the CAISO's actions violated the filed rate doctrine. In contrast, SWP comments that Williams has not cited to any clear tariff authority entitling it to additional compensation and claims that the filed rate doctrine bars the imposition of additional must-offer costs on captive CAISO customers.

Discussion

Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. The Commission's Rules generally prohibit answers to answers, 18 C.F.R. § 385.213(a)(2) (2004). We are not persuaded to allow Williams' answer to the CAISO; accordingly, we reject it.

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[13] Citing *San Diego Gas & Electric Co.*, 101 FERC ¶ 61,112 (2002).

[14] CAISO answer at 10.

The Complaint

18. The Commission grants Williams' complaint. The CAISO must operate in conformance with its approved tariff. If the CAISO believes that additional tariff provisions are necessary to maintain operational control of its system and to minimize operating costs, it must request prior Commission authorization of the proposed tariff changes.

19. The Commission has consistently directed the CAISO to compensate a generator for its minimum load costs in each hour in which it is operating under the must-offer obligation.[15] Likewise, section 5.11.6.1.1 of the CAISO tariff provides that "[e]xcept as set forth below, generating Units shall be eligible to recover Minimum Load Costs during Waiver Denial periods." Thus, generators operating pursuant to the must-offer obligation must receive minimum load cost compensation unless a specific exception to this general principle applies.

20. The CAISO acknowledges that it has rescinded payment of minimum load costs based on the application of the tolerance band to must-offer units that are ramping down after a dispatch instruction.[16] However, the CAISO does not identify any specific tariff language that authorizes it to do so.

21. As discussed above, the CAISO argues that the application of a tolerance band for this purpose is consistent with other provisions in its tariff and Commission precedent. We find the CAISO's argument unpersuasive. The CAISO, however, cannot unilaterally implement a procedure that affects rates or terms and conditions of service under the CAISO tariff.[17] Moreover, contrary to the CAISO's position, the rescission of payment to must-offer units that are ramping down after a dispatch instruction is inconsistent with

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[15] *E.g.*, October 2003 Order, 105 FERC ¶ 61,091 at P 107; *San Diego Gas & Electric Co.*, 99 FERC ¶ 61,158 at 61,632 (2002); *San Diego Gas & Electric Co.*, 97 FERC ¶ 61,293 at 62,363.

[16] CAISO answer at 1-2, 5.

[17] *E.g.*, *Dynegy Power Marketing, Inc. v. California Independent System Operator Corp.*, 98 FERC ¶ 61,074 at 61,211 (2002) (although the CAISO has authority under the section of its tariff regarding "good utility practices" to ensure that it can meet dispatch objectives, such authority "does not extend to making revisions to its tariff when the revisions . . . have an impact on rates"); *California Independent System Operator Corp*., 110 FERC ¶ 61,007 at P 13 (2005) ("any entity making changes to the rates, terms and conditions of service contained in a Commission-approved tariff must do so in accordance with the FPA and the Commission's regulations").

Commission precedent. While the Commission approved a CAISO tolerance band applicable to must-offer generators while operating *at* minimum load,[18] we have rejected attempts to expand the application of the tolerance band. Our November 2003 Order rejected the CAISO's proposed tariff revisions that would have applied a tolerance band to dispatched must-offer generators when operating above minimum load level.[19]

22. The CAISO's claim that the tolerance band at issue here is consistent with Commission precedent hinges on the mistaken notion that the Commission authorized the CAISO to apply the accepted tolerance band to condition minimum load cost recovery "around" the minimum load level, including periods before and after a unit reaches minimum load level, i.e., when a unit is ramping up or down to minimum load level.[20] However, the Commission accepted the tolerance band set forth in section 5.11.6.1.1 of the CAISO tariff because "units operating at minimum load should not have significant changes in output and . . . units partially committed to bilateral contracts that may have variability are not eligible for recovery of Minimum Load Costs."[21] Based on this reasoning, it is clear that the Commission-approved tolerance band was limited to units operating *at* minimum load.

23. Accordingly, for the reasons discussed above, we grant Williams' complaint. The CAISO is directed to conform its operations to the filed tariff. The filed tariff does not allow the CAISO to rescind minimum load cost payments to must-offer units that are ramping down to minimum load status following a CAISO dispatch instruction. This will remain the case unless the CAISO submits and the Commission approves a tariff amendment pursuant to section 205 of the FPA. Further, we direct the CAISO to refund to Williams and all other must-offer generators the minimum load cost compensation that they were denied based on the unauthorized application of the tolerance band. The CAISO must, within 30 days of the date of this order, make refunds and file a refund report identifying each instance in which the CAISO denied minimum load cost compensation to a must-offer generator while it was returning to minimum load status

[18] May 2002 Order, 99 FERC ¶ 61,158 at 61,632.

[19] November 2003 Order, 105 FERC ¶ 61,196 at P 7.

[20] CAISO answer at 10.

[21] May 2002 Order, 99 FERC ¶ 61,158 at 61,632. *See also San Diego Gas & Electric Co.*, 101 FERC ¶ 61,112 at P 12 (2002) (denying a request for clarification with regard to the Commission-approved tolerance band because, "with respect to the 5 MW or 3 percent limitations, the provision is sufficiently clear that it refers to units operating at minimum load").

following a CAISO dispatch instruction based on the un-filed tolerance band.[22] The refund report must identify each generation unit, the date and hours when the CAISO applied the extra-tariff tolerance band, and the amount of minimum load cost compensation that was rejected for each such interval.

The Commission orders:

(A) The complaint is hereby granted, as discussed in the body of this order.

(B) The CAISO is hereby directed to make refunds, within 30 days of the date of this order, to Williams and all other generators operating pursuant to the must-offer obligation that were wrongfully denied minimum load cost compensation, as discussed in the body of this order.

(C) The CAISO is hereby directed to submit, within 30 days of the date of this order, a refund report, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

[22] While section 206 of the FPA generally does not permit the Commission to require refunds of unjust and unreasonable rates prior to a date 60 days after the filing of a complaint or 60 days after the initiation of a Commission investigation on its own motion, the authority can be expanded in limited circumstances; one such circumstance being, as here, where a rate has been charged other than the filed rate. *See, e.g.*, *San Diego Gas & Electric Co.*, 96 FERC ¶ 61,120 at 61,504 (2001).