

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company
Complainant,

Docket No. EL00-95-147

v.

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

Docket No. EL00-98-134

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

ORDER REJECTING COST FILING

(Issued March 27, 2006)

1. In this order, we reject the cost filing of Idaho Power Company (Idaho Power) and its affiliated power marketer, Idacorp Energy L.P. (IE), (collectively, Idacorp) because it is non-compliant and incomplete, as discussed in the body of this order.

I. Background

2. On December 19, 2001,¹ the Commission gave marketers and those reselling purchased power the opportunity to demonstrate that application of the refund methodology resulted in their costs of providing electricity to the California Independent System Operator (ISO)/California Power Exchange (PX) markets exceeding the total revenues they received from those markets during the Refund Period.² On May 15, 2002,

¹ San Diego Gas & Electric v. Sellers of Energy and Ancillary Services, 97 FERC ¶ 61,275 at 62,193-94 (2001) (December 19 Order).

² The Refund Period extends from October 2, 2000 through June 20, 2001.

the Commission extended that opportunity to all sellers.³ Cost filing procedures were raised at the August 25, 2004 Technical Conference held to discuss the status of the refund proceeding,⁴ and again in post-technical conference comments.⁵ On October 21, 2004, Idacorp and the California Parties together filed a joint motion requesting an expedited procedural schedule for submitting comments concerning the scope of transactions eligible for inclusion in the cost filings.⁶ On December 10, 2004, the Commission issued an order setting forth an expedited schedule for comments and reply comments concerning several specific issues related to the cost filings: proper scope of transactions; whether the methodology should be based on average or incremental sales; whether the same methodology should apply to all sellers; whether costs of transmission service and losses should be recoverable; how other offsets should be included in cost filings; support; timing of offsets; and template formats.⁷

3. On August 8, 2005, the Commission established the framework for evidence an individual seller must submit to demonstrate that the refund methodology results in an overall revenue shortfall for its transactions into the ISO and PX markets during the Refund Period.⁸ In addition, the August 8 Order declared that the Commission intended

³ *San Diego Gas & Electric v. Sellers of Energy and Ancillary Services*, 99 FERC ¶ 61,160 at 61,656 (2002) (May 15 Order).

⁴ *See* Notice of Meeting with the ISO and PX, Docket No. EL00-95-000 (July 16, 2004).

⁵ *See, e.g.*, California Parties' Comments in Response to FERC Staff Meeting on Refund Re-run Issues at 5, Docket No. EL00-95-000 (August 2, 2004); Initial Comments of Sacramento Municipal Utility District on Issues Raised During the July 26 Meeting, Docket No. EL00-95-000 (August 2, 2004); Comments of the ISO on "Open Issues" in the FERC Refund Proceeding at 9-10, Docket No. EL00-95-000 (August 2, 2004).

⁶ Joint Motion of Idacorp and California Parties for Issuance of an Expedited Procedural Schedule and Request for Shortened Period for Answering Motion, Docket Nos. EL00-95-000 and EL00-98-000 (December 21, 2004).

⁷ *San Diego Gas & Electric v. Sellers of Energy and Ancillary Services*, 109 FERC ¶ 61,264 at P 7 (December 10 Order).

⁸ *San Diego Gas & Electric v. Sellers of Energy and Ancillary Services*, 112 FERC ¶ 61,176 (2005) (August 8 Order). *See also* *San Diego Gas & Electric v. Sellers of Energy and Ancillary Services*, 112 FERC ¶ 61,249 (2005) (clarifying that marketers are allowed to include in their cost filings the product of ten percent times their investment in plant in-service and/or cash prepayments).

to conclude the refund proceeding “as expeditiously as possible.”⁹ It required sellers’ cost filings “to reflect fully-supported actual costs,”¹⁰ and placed the burden on the filer “to present actual data in a manner that supports its claim.”¹¹ In addition, the August 8 Order clearly set forth the stacking analysis methodology sellers should use to demonstrate revenue shortfalls, and rejected certain other proposed stacking methodologies.¹²

4. On August 25, 2005, Commission staff held a technical conference to finalize the cost filing template and give guidance on how to prepare cost filings, as required by the August 8 Order. At the technical conference, Commission staff emphasized that the August 8 Order indicated that the Commission intended to give parties this one opportunity to make cost demonstrations and that they should present their best case. The day after the technical conference, the cost filing template was posted in the refund proceeding docket. Consisting of a summary cost and revenue form and fifty-four supporting tables (not all of which were applicable to each category of seller), the template demonstrates the degree of detail and evidentiary support the August 8 Order required in order for a seller to substantiate its cost filing. On the same day, August 26, 2005, the Commission extended the deadline for submission of cost filings to September 14, 2005.

5. Idacorp submitted its cost filing on September 14, 2005. Subsequently, on January 20, 2006, California Parties¹³ and Idacorp together sought to defer action on Idacorp’s cost filing in order to facilitate their efforts to memorialize a settlement. On January 26, 2006, the Commission granted the requested deferral for a limited period of time.¹⁴ The January 26 Deferral Order required Idacorp to notify the Commission whether it still sought action on its cost filing, and stated that, if such action were required, the Commission would act on Idacorp’s cost filing shortly after such

⁹ *Id.* at P 1.

¹⁰ *Id.*

¹¹ *Id.* at P 114.

¹² *Id.* at P 67-72.

¹³ For purposes of that joint request for deferral, “California Parties” includes: Southern California Edison Company (SCE), Pacific Gas & Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), the California Attorney General and the California Electricity Oversight Board (CEOB).

¹⁴ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 114 FERC ¶ 61,069 (2006) (January 26 Deferral Order).

notification.¹⁵ The same day, the Commission issued its Order on Cost Filings, which determined which sellers demonstrated the refund methodology causes an overall revenue shortfall for their transaction in the ISO and PX markets during the Refund Period.¹⁶ In addition, the Order on Cost Filings made general findings on a number of issues common to the cost filings, including burden of proof, evidentiary support and treatment of affiliate transactions, opportunity costs, congestion, PX wind-up charges and return on investment.¹⁷

6. The January 26 Cost Filing Order stated that action on Idacorp's cost filing was deferred for a limited period of time, consistent with the January 26 Deferral Order.¹⁸ On February 17, 2006, Idacorp, California Parties¹⁹ and the Commission's Office of Market Oversight and Investigations filed a Joint Offer of Settlement pertaining to the events and transactions in western energy markets, including the California refund proceeding (Idacorp Settlement).²⁰ On the same day Idacorp filed a notice stating that the Commission should: (1) act on Idacorp's cost filing if there are non-settling parties affected by the cost filing; (2) defer action until after the effective opt-in date for Settlement; and (3) clarify at an early date whether it expects parties to bind themselves to the settlement in the time frame provided in the January 26 Deferral Order.²¹

7. On February 23, 2006, the Commission extended the deadline for submitting binding commitments to the Idacorp Settlement until March 9, 2006, the date upon which

¹⁵ *Id.* at P 2, 3 and Ordering Paragraph (C).

¹⁶ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 114 FERC ¶ 61,070 (2006) (January 26 Cost Filing Order). The January 26 Cost Filing Order was amended February 1, 2006, to correct footnote number 94.

¹⁷ *Id.* at P 27-120.

¹⁸ *Id.* at P 130 & n.170.

¹⁹ For purposes of the Idacorp Settlement, "California Parties" refers to: SCE, PG&E, SDG&E, California Attorney General, the California Department of Water Resources acting solely under authority and power created by California Assembly Bill 1 from the First Extraordinary Session of 2000-2001, codified in sections 80000 through 80270 of the California Water Code (CERS), the CEOB, and the California Public Utilities Commission.

²⁰ *See* Joint Offer of Settlement, Docket No. EL00-95-000 (February 17, 2006).

²¹ Notice of IDACORP Energy LP and Idaho Power Company Regarding Cost Filing at 2, Docket Nos. EL00-95-147 and EL00-98-134 (February 17, 2006).

initial comments are due on the settlement.²² The February 23 Order also stated that, in accordance with Idacorp's request, the Commission contemplates issuing a merits determination on Idacorp's cost filing shortly after it determines that there are non-settling parties who may be affected by the cost filing.²³

8. On March 9, 2006, a number of parties opted in to the Idacorp Settlement, and some parties opted out as well.²⁴ On March 20, 2006, Idacorp filed a motion seeking summary disposition of its cost filing.²⁵

II. Idacorp's Cost Filing

9. Idacorp claims total revenues for the refund period of \$72 million and total costs of \$97 million. Therefore, Idacorp claims a cost recovery refund offset of \$25 million. Idacorp explains that during most of the refund period through May 31, 2001, its load-serving entity, Idaho Power, made transactions under its market-based rate tariff, and its marketer, IE, began transacting under its own name on June 1, 2001. However, Idacorp made one cost and revenue filing, as a marketer. Idacorp argues that this is appropriate because starting January 1, 1999, Idaho Power's transactions related to balancing of system load and system resources (the "Operations Book") were formally separated for all accounting purposes from power marketing activities (the "Non-Operations Book"). Idacorp states that because it operated in this manner, it is no different than any other power marketer.

10. Idacorp states that it calculates an average cost of energy purchased for sales into the CAISO and PX based on its portfolio of short-term purchases. Idacorp states affiliate sales from the Operations Book to the Non-Operations Book were set to market indices.

²² San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, 114 FERC ¶ 61,195 at P 5 (2006).

²³ *Id.* at P 6.

²⁴ Opt-outs include: Arizona Electric Power Cooperative, Inc.; Western Area Power Administration; APX, Inc.; Avista Energy, Inc.; Cities of Anaheim, Azusa and Colton, California; Constellation Energy Commodities Group, Inc.; Coral Power, L.L.C.; Enron Power Marketing; Grant County Public Utility District No. 2; Modesto Irrigation District; NEG Trading-Power, L.P.; Nevada Companies (Nevada Power Company and Sierra Pacific Power Company); Portland General Electric Company; Powerex Corp.; Puget Sound Energy, Inc.; Sacramento Municipal Utility District.

²⁵ Motion of Idacorp for Summary Disposition of its Cost Filing, Docket Nos. EL00-95-147 and EL00-98-134 (March 20, 2006) (Motion).

Idacorp also claims congestion costs and revenues, administrative fees, PX wind-up charges, and a return on investment.

11. Idacorp states that, in the event that the Commission does not recognize it as a marketer, it has submitted load-serving entity data for October through December 2000, which Idacorp states is the period in which it was most active in the CAISO and PX markets. Specifically, Idacorp submitted its energy purchase, generator and load data, and states that the appropriate way to calculate its energy costs as a load-serving entity would be to stack all purchases, including short-term purchases, in each hour, and assign the top of the stack to its sales into the CAISO/PX markets. Idacorp states that the sum of purchased energy costs for all hours using this method is \$73 million.

III. Comments and Responses

12. On October 11, 2005, California Parties filed comments and testimony in opposition to Idacorp's cost filing. Salt River Project Agricultural Improvement and Power District (Salt River Project) also timely protested Idacorp's cost filing. On October 17, 2005, Idacorp submitted reply comments. On October 24, 2005, California Parties submitted supplemental comments and testimony in opposition to Idacorp's cost filing. On October 28, 2005, Idacorp submitted supplemental reply comments. Article 7.1.3 of the Idacorp Settlement provides that California Parties will withdraw their comments on Idacorp's cost filing within 10 business days after the Commission issues an order on the settlement, and that Idacorp will withdraw its reply comments five business days later. In accordance with the same provision, Salt River Project is deemed to have withdrawn its protest on March 9, 2006, the date it opted in to the Idacorp Settlement. Consequently, while the Commission has not yet approved the Idacorp Settlement, we do not find it essential to rely on those comments or reply comments in reaching our determination.

IV. Commission Determination

13. We find it necessary to issue a merits decision on Idacorp's cost filing because several parties have filed binding notices of intention not to opt in to the Idacorp Settlement, and, as Idacorp points out in its motion, parties that opted out of the settlement may be affected by Idacorp's potential cost offset.²⁶

14. Initially, we note that, while we deferred action on Idacorp's cost filing, the "general findings" set forth in the January 26 Cost Filing Order nevertheless apply to

²⁶ See Motion at 4.

Idacorp.²⁷ Consequently, among other things, Idacorp bears the burden of demonstrating that the refund methodology results in an overall revenue shortfall for its transactions in the ISO and PX markets during the refund period.²⁸ Moreover, as discussed in the January 26 Order on Cost Filings, the Commission may summarily reject Idacorp's cost filing if the company fails to comply with the Commission's requirements for demonstrating a revenue shortfall.²⁹

15. We reject Idacorp's entire filing as non-compliant and incomplete. Initially, we reject Idacorp's request to be treated as a marketer. Idacorp's sales into the CAISO and PX markets during the majority of the Refund Period were made by Idaho Power under its market-based rate tariff. Idaho Power is clearly a load-serving entity, and the separation of the Operations and Non-Operations Books for accounting purposes does not constitute reason for Idaho Power to be treated as a marketer. A power marketer is an entity that has its own market-based rate tariff and affiliate code of conduct, which IE did not have until the end of the Refund Period.³⁰

16. Upon review of Idacorp's filing as a load-serving entity, we find the company's filing flawed in three main respects: (1) given that Idacorp indicates it cannot match, the stacking methodology Idacorp claims to have utilized was expressly rejected by the August 8 Order; (2) Idacorp failed to include any stacking analysis with its data and conclusions; and (3) the mere provision of this data does not comply with the August 8 Order, which required ordering of resources by cost (*i.e.*, performing a stacking analysis), removing lowest cost resources attributable to native load, and then averaging the cost of the remaining resources in the stack. As a result, we find that Idacorp did not file sufficient information to validate its generation and purchases through the stacking analysis required by the August 8 Order. First, Idacorp states that the utility side of Idaho Power served its native load with its generation and lowest cost purchases, and thus the appropriate way to calculate its purchased energy costs, if treated as a load-serving entity, would be to stack all purchases, long-term and short-term, in each hour, and assign the top of the stack – *i.e.*, its most expensive purchases/generation – to its sales into the ISO/PX markets. The August 8 Order explicitly rejected the top of the stack

²⁷ See January 26 Cost Filing Order, 114 FERC ¶ 61,070 at P 27-120.

²⁸ *Id.* at P 29 & n.68 (citing August 8 Order, 112 FERC ¶ 61,176 at P 116).

²⁹ *Id.* at 42-44 (finding the summary disposition for unsupported filings appropriate because sellers were provided adequate notice and a period prior to filing to comment on both the information required for support and the filing format).

³⁰ The Commission approved IE's market-based rate tariff and associated code of conduct effective April 28, 2001, and IE began making transactions under its own name on June 1, 2001.

methodology Idacorp claims to have utilized in situations like this where sellers did not match specific resources with specific sales transaction-by-transaction.”³¹

17. Second, Idacorp only submitted its short-term and long-term purchases, along with its hourly generator-specific and load data,³² without organizing this voluminous data into any kind of stacking analysis or usable format. Idacorp simply shows the hourly results of this calculation in Table BA, without including the necessary demonstrative support to explain how it arrived at the figures in Table BA. The mere provision of this data does not constitute a stacking analysis and does not provide the transaction-by-transaction matching of resources with sales that the August 8 Order required for the top of the stack methodology.

18. Third, the Commission finds that Idacorp’s proffered data is insufficient to perform the proper analysis required by the August 8 Order. In order to accomplish the required stacking analysis, Idacorp needed to apply its experience and knowledge of its system to its load, generation and purchased power data. Simply providing raw data lacking any functional format does not adequately support its cost filing.

19. The August 8 Order unequivocally places the burden on an individual seller to justify that its costs exceeded its revenues for transactions into the ISO/PX markets during the Refund Period.³³ Idacorp has been on notice of this opportunity since at least May 15, 2002. The Commission’s December 10 Order prompted several rounds of comments that culminated in the August 8 Order establishing the cost filing framework. The August 8 Order expressly rejected the stacking methodology used by Idacorp in its cost filing, as well as the inclusion of opportunity costs.³⁴ Idacorp failed to include the

³¹ See August 8 Order, 112 FERC ¶ 61,176 at P 67-72. Additionally, Idacorp’s cost filing also included opportunity costs, which the August 8 Order expressly prohibited, *see id.* at P 66, and only included data for October through December of 2000, ignoring the remainder of the Refund Period.

³² The purchase data was submitted in Tables AU and AV, the generator cost data in Table AW, scheduled and metered generation data in Table AX, and scheduled and metered load data in Table AY.

³³ See August 8 Order, 112 FERC ¶ 61,176 at P 116: “The burden will be on the filer to present actual data in a manner that supports its claim.” *See also id.* at P 1 (“The Commission will require these cost filings to reflect fully-supported actual costs.”); *id.* at P 103-04 (requiring complete tagging or line-by-line accounting for each matched transactions; submission of “[a]ll calculations and supporting schedules,” and “[r]elevant testimony with explanatory detail.”).

³⁴ *Id.* at P 66, 69.

stacking analysis required by the August 8 Order, and the data the company provided was insufficient to perform the necessary stacking analysis. Summary disposition is appropriate where there are no genuine issues of material fact concerning whether a filing constitutes a clear violation of Commission directives.³⁵ We find there is no dispute over the material facts relevant to Idacorp's cost filing, and Idacorp has failed to comply with our August 8 Order. Consequently, we reject Idacorp's cost filing.

The Commission orders:

(A) Idacorp's cost filing is hereby rejected, consistent with the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

³⁵ See, e.g., *El Pas Natural Gas Co.*, 112 FERC ¶ 61,150 at P 30 (2005) (Commission may summarily reject parts of a proposed filing if it concludes there are no material issues of fact in dispute and the filing is in clear violation of an applicable statute, regulation or Commission policy).