

UNITED STATES OF AMERICA 99 FERC ¶ 61,205
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

San Diego Gas & Electric Company,
Complainant,

Docket No. EL00-95-031

v.

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

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

Docket Nos. EL00-98-030
and EL00-98-033

California Independent System Operator
Corporation

Docket Nos. RT01-85-000
and RT01-85-001

Investigation of Wholesale Rates of
Public Utility Sellers of Energy and
Ancillary Services in the
Western Systems Coordinating Council

Docket Nos. EL01-68-000
and EL01-68-001

ORDER CLARIFYING MUST-OFFER REQUIREMENTS

(Issued May 21, 2002)

Mirant Americas Energy Marketing, LP (MAEM) and Mirant Delta, LLC
(collectively, Mirant) seek clarification that certain of their generators are exempt from
the "must-offer" policy in force in California to the extent compliance would cause

Mirant to violate applicable emissions limits. We clarify that if Mirant is unable to simultaneously comply with both the must-offer requirement and its operating permit, it is required only to offer into the California energy markets the maximum amount of power that it can produce without violating its operating permit. Our decision is in the public interest because it helps to ensure that generation continues to be available to electric customers consistent with applicable environmental requirements.

Background

In an order dated April 26, 2001,¹ the Commission required all California generators to offer the California Independent System Operator (ISO) all of their capacity in real time during all hours if it is available and not already scheduled to run through bilateral agreements. This must-offer obligation maximizes the ISO's ability to call upon available resources in the real-time energy market to meet demand. The April 26 Order specified that no generator is required to run in violation of its certificate or applicable law, but expressly declined to exempt gas-fired generation from the must-offer requirement based upon environmental limitations. On rehearing, the Commission clarified that "generators should not be exempt from the must-offer requirement absent a showing that running the unit violates a certificate, would result in criminal violations or penalties, or would result in QF units violating their contracts or losing their QF status."² It denied generators' requests for exemption from the must-offer requirement in instances in which they cannot run without obtaining additional air pollution credits.

Mirant, in its December 11, 2001 Motion for Clarification of Must-Offer Requirements (Motion), asks the Commission to clarify that its June 19 Order and July 25 Order³ concerning the "must-offer" requirement for California-based generating units exempt Mirant from operation of some of its generators. Mirant explains that the Bay Area Air Quality Management District (BAAQMD) requires Mirant to limit the hourly

¹ San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange, 95 FERC ¶ 61,115 (2001) (April 26 Order).

² San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange, 95 FERC ¶ 61,418 at p. 62,553 (2001) (June 19 Order).

³ San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange, 95 FERC ¶ 61,418 (2001) (July 25 Order).

average emission of nitrogen oxide (NO_x) for its two San Francisco Bay-area generating facilities to 47 parts per million (ppm). Mirant refers to this emissions limit as the "bubble" limit. The bubble limit decreased from 86 ppm to 47 ppm on January 1, 2002.

Mirant alleges that if it were required to offer power from four natural-gas fired units at its Pittsburg Power Plant (Pittsburg Units 1-4), it would exceed the BAAQMD's bubble emissions limit and thereby violate its operating permit. It further states that the penalties for violation of the bubble limit include civil or criminal penalties and/or the revocation of Mirant's operating permit. Mirant states that it can either curtail the electric output of Pittsburg Units 1-4 or run them at the same time as lower-emitting units in order to reduce its average output of NO_x. It states, however, its belief that taking steps to comply with the new, lower NO_x limits will conflict with its must-offer obligation to run all of its units at full capacity. Accordingly, Mirant seeks clarification that Pittsburg Units 1-4 are exempt from the must-offer obligation to the extent that compliance would cause Mirant to violate the 47-ppm bubble limit. It states that the situation presented in its Motion constitutes a showing that running the Pittsburg units violates a certificate.

No answers were filed in response to Mirant's motion.

Commission Decision

Mirant states that if, after January 1, 2002, it runs Pittsburg Units 1-4 at operating levels that cause them to produce more emissions than the 47-ppm bubble limit in any clock hour, it will violate its operating permit because BAAQMD Rule 9-11 provides for no delay before the applicable air quality standards take effect. It further states that at this time, it has no option for exceeding the bubble limit because an appropriate mechanism, such as purchase of additional emissions credits, does not exist in BAAQMD Rule 9-11 or in its operating permits.⁴ Mirant states that the consequences of violating the bubble limit may include civil or criminal penalties and/or the revocation of Mirant's operating permit(s), and requests a waiver of the Commission's must-offer requirement for Pittsburg Units 1-4.⁵

⁴ Mirant adds that it is in discussions with the BAAQMD seeking a waiver or variance from the 47-ppm bubble limit, but that it has been unable to secure such an agreement to date. Further, Mirant states that it is working with the ISO to determine how best to manage this situation. See Motion at 5 n.5.

⁵ See Motion at 4.

It is not our policy to "exempt gas-fired resources from the must-offer obligation, simply because they may have environmental limitations. The question of whether such units can run outside of their prescribed limits . . . [is] within the control of the state."⁶ We emphasize once again, however, that we do not require generators to violate the law, or their operating permits, in order to comply with the must-offer requirement.⁷

We strongly urge Mirant to work with California authorities such as the BAAQMD or the ISO to determine how best to comply with its operating permit. We commend Mirant's ongoing efforts to negotiate with the ISO to develop dispatch orders that would comply with the air quality standards and with the must-offer requirement. If Mirant is unable to reach agreement with California authorities, it must comply with the must-offer requirement by offering to sell into the California energy markets the maximum amount of energy that it can produce without violating its operating permit.

The Commission orders:

The must-offer obligation is hereby clarified, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁶ April 26 Order at 61,357. See also June 19 Order at 62,553 ("Many of these issues are within the domain of the State of California, and we strongly urge California to modify current policies to enable generators to run during this period of scarce supply.").

⁷ See April 26 Order at 61,357.