

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Suedeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

California Independent System  
Operator Corporation

Docket No. ER06-1248-000

ORDER GRANTING PETITION FOR TEMPORARY WAIVER OF CERTAIN  
TARIFF SECTIONS

(Issued September 8, 2006)

1. In this order, the Commission addresses a request by the California Independent System Operator Corporation (CAISO) for a temporary waiver of CAISO Tariff sections 37.4.1.2 and 37.4.3.2, which detail the sanctions to be imposed for violations involving the timely reporting of generator outage information and failure to provide a timely explanation of a Forced Outage, respectively. The CAISO makes this request due to purported ambiguity in the existing CAISO Tariff definition of “outage,” given that there is a reporting obligation and potential sanctions for any generator derate, even for those that arise from normal generator variations due to, among other things, ambient conditions. The CAISO asks the Commission to allow this waiver to be made effective on December 19, 2005, and terminate on the earlier of October 31, 2006 or the effective date of a filing by the CAISO to terminate the waiver. We will grant the CAISO’s petition for temporary waiver, as discussed herein.

## **Background**

2. The Commission previously granted the CAISO's market monitoring unit (MMU) the authority to administer market behavior-related provisions, as found in section 37 (Enforcement Protocol) of the CAISO Tariff, and impose pre-defined sanctions for violations of these behavior-related provisions.<sup>1</sup> In its petition, the CAISO states that its MMU "has been putting the necessary resources in place and undertaking necessary preparatory work to implement sanctions for violations of [CAISO Tariff] section 37.4 (Comply with Availability Reporting Requirements)."<sup>2</sup> As part of this effort, the CAISO market participants engaged in a stakeholder process to address: (1) the existing definition of outage contained in the Enforcement Protocol, which ascribes a reporting obligation and sanctions for even small variations in generator output; (2) alleged operational incapability of the automated system used to report outage information, especially when used to report small variations in generation output; and (3) alleged infeasible reporting criteria for units less than 10 MW, which are not required by the CAISO Tariff to have telemetry.

3. The CAISO's request for temporary waiver will not change generators' reporting obligations. However, "[i]n light of the concerns expressed by Market Participants, the CAISO believes that implementation of Sanctions for a failure to comply with the existing outage reporting requirements would be premature."<sup>3</sup> The CAISO adds that a temporary waiver will not prevent it from adequately monitoring market behavior or preclude the Commission from pursuing appropriate enforcement action under its Market Behavior Rules.

4. By requesting waiver of sections 37.4.1.2 and 37.4.3.2 of the CAISO Tariff, the CAISO seeks "sufficient time to work with stakeholders to develop and propose to the Commission any appropriate revisions to the [o]utage reporting requirements" under

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<sup>1</sup> See *California Independent System Operator Corporation*, 112 FERC ¶ 61,001 (2005).

<sup>2</sup> CAISO Petition at 4.

<sup>3</sup> CAISO Petition at 6.

these sections.<sup>4</sup> The CAISO anticipates making such a filing after its October 18-19, 2006 Board of Governors meeting.

### **Notice of Filing and Responsive Pleadings**

5. Notice of the CAISO's filing was published in the *Federal Register*, 71 Fed. Reg. 43,146 (2006), with interventions and protests due on or before August 2, 2006. Motions to intervene and comments or protests were filed by the Independent Energy Producers Association, LS Power Generation, LLC and Williams Power Company, Inc. (Williams).

### **Discussion**

#### **Procedural Matters**

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

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<sup>4</sup> Section 37.4.1.2 of the CAISO Tariff reads as follows:

The Sanctions for a violation of Section 37.4.1 shall be as follows: for the first violation in a rolling twelve (12) month period, a warning letter; for the second violation in a rolling twelve (12) month period, \$1,000; for the third violation in a rolling twelve (12) month period, \$2,000; for the fourth and subsequent violations in a rolling twelve (12) month period, \$5,000."

Section 37.4.3.2 of the CAISO Tariff reads as follows:

The Sanction for failing to provide a timely explanation of Forced Outage shall be \$500 per day for each day the explanation is late. The Sanction for failing to provide a timely response to information requested shall be as specified in Section 37.6.1.

### **Position of the Parties**

7. Generally, the intervenors to this proceeding support the CAISO's petition for temporary waiver and its commitment to resolve the concerns raised therein through a stakeholder process. However, some intervenors request that the Commission decline to impose a date certain to complete this process. Specifically, Williams objects to the automatic termination on October 31, 2006, without Commission review of the processes adopted by the CAISO to address the issues that precipitated this petition. As such, Williams requests that termination of a Commission-approved waiver be conditioned on the following: (1) a CAISO filing to the Commission demonstrating that the concerns delineated above have been adequately addressed and resolved; and (2) Commission approval of such termination on a prospective basis. Additionally, Williams proffers that, since no change has been proposed to the existing outage reporting requirements, "even if a temporary waiver of sanctions is granted as requested by the CAISO, the Commission and its Enforcement Staff should take the Petition and issues identified therein into consideration should such questions arise before these issues are ultimately resolved."<sup>5</sup>

### **Commission Determination**

8. Pending completion of its stakeholder review process, the CAISO seeks to ensure that market participants are not inappropriately penalized.<sup>6</sup> Accordingly, we find the CAISO has shown good cause, and will grant the requested temporary waiver. While Williams requests that the Commission grant the waiver until such time as issues raised by market participants are adequately resolved, it is not our usual practice to grant indefinite waivers of tariff provisions. To the extent that the stakeholder review process has not concluded its deliberations by the end of the waiver period, the CAISO may seek a further extension.

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<sup>5</sup> Williams Protest at 5.

<sup>6</sup> Section 37.9.1 (Assessment; Waivers and Adjustments) of the Enforcement Protocol to the CAISO Tariff states that "[a]n adjustment [to penalties specified in section 37] generally shall be deemed appropriate . . . if the circumstances suggest that the violation was inadvertent, unintentional, or some other mitigating circumstances exist."

The Commission orders:

CAISO's petition for a temporary waiver is hereby granted to be made effective December 19, 2005 through October 31, 2006, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.