133 FERC ¶ 61,026
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Western Electric Coordinating Council Docket No. EL10-56-000

ORDER ON SECTION 206 INVESTIGATION INTO WEST-WIDE PRICE CAP

(Issued October 8, 2010)

1. On May 20, 2010, the Commission issued an order[1] in which it instituted, under section 206 of the Federal Power Act (FPA),[2] an investigation into the energy price cap in the Western Electricity Coordinating Council (WECC) outside of the California Independent System Operator Corporation (CAISO). In this order, the Commission modifies the energy price cap on spot market sales in the WECC from $400/MWh to $750/MWh, effective upon issuance of this order.[3] This order further modifies the price cap in the WECC outside of the CAISO to $1000/MWh, effective April 1, 2011.

Background

2. In a July 17, 2002 order,[4] the Commission established a bid cap of $250/MWh for the California real-time energy and ancillary services markets, as recommended by the CAISO's Market Surveillance Committee. The July 2002 Order also imposed a price cap

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[1] *Cal. Indep. Sys. Operator Corp.*, 131 FERC ¶ 61,145 (2010) (May 2010 Order).

[2] 16 U.S.C. § 824e (2006).

[3] Spot market sales in the WECC are sales that are 24 hours or less and are entered into the day of or day prior to delivery. *See San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the Cal. Indep. Sys. Operator and the Cal. Power Exchange*, 95 FERC ¶ 61,418, at n.3 (2001).

[4] *Cal. Indep. Sys. Operator Corp.*, 100 FERC ¶ 61,060, *order on reh'g*, 101 FERC ¶ 61,061 (2002) (July 2002 Order).

of $250/MWh for all spot market sales in the WECC.[5] On October 1, 2002, the Commission issued an order on rehearing regarding the CAISO's bid cap.[6] The October 2002 Order clarified that the cap is a "soft" cap and that bids above the cap will be subject to justification and refund, which must be filed within seven days after the end of the month in which the excess sale occurred.[7]

3. On January 13, 2006, the Commission issued an order authorizing an adjustment to the CAISO energy bid cap from $250/MWh to $400/MWh. The Commission also instituted a section 206 investigation into the price cap in the WECC outside of the CAISO to remove any opportunity for market distortions created by the Commission's approval of an increase in the CAISO energy bid cap.[8] On February 13, 2006, the Commission modified the price cap on spot market sales in the WECC outside of the CAISO to a $400/MWh soft cap.[9]

4. In addition, on July 1, 2005, the Commission issued an order finding that the energy bid cap for the CAISO market should be increased to a hard $500/MWh cap upon the implementation CAISO's Market Redesign and Technology Upgrade (MRTU).[10] The bid cap was set for the first 12 months following MRTU implementation. Pursuant to the order, the bid cap would then increase to $750/MWh, unless the CAISO makes a filing with the Commission showing that its markets are non-competitive and the Commission supports this assessment. This process would then be repeated 12 months

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[5] The reference to WECC in the context of price caps in this order and in the Commission's prior orders on West-wide price caps, is to the wholesale electricity market in the United States portion of the Western Interconnection.

[6] *Cal. Indep. Sys. Operator Corp.*, 101 FERC ¶ 61,061 (2002) (October 2002 Order).

[7] *Id.* at P 17, n.7. A soft cap is one where market participants may submit bids above the bid cap with adequate cost justification, but without setting the market clearing price. A "hard" cap is one where market participants' bids are not permitted to exceed the cap, regardless of the seller's costs.

[8] *Cal. Indep. Sys. Operator Corp.*, 114 FERC ¶ 61,026 (2006) (January 2006 Order).

[9] *Cal. Indep. Sys. Operator Corp.*, 114 FERC ¶ 61,135 (2006) (February 2006 Order).

[10] *Cal. Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,013, at P 104 (2005) (July 2005 Order).

later, and the bid cap would increase automatically to $1000/MWh, unless the Commission supports a CAISO analysis that the markets are non-competitive.[11]

5. The May 2010 Order instituted an investigation into the price cap in the WECC outside the CAISO, proposing to change the price cap to a $750/MWh soft cap. The Commission also proposed to increase the cap to $1000/MWh on April 1, 2011 to coincide with the increase in CAISO's energy bid cap to the same level.

Notice of filing and Responsive Pleadings

6. Notice of the Commission's institution of this FPA section 206 investigation was published in the *Federal Register*, 75 Fed. Reg. 30,018 (2010), with interventions and protests due on or before June 21, 2010. Arizona Public Service Company, the Cities of Santa Clara and Redding and the M-S-R Public Power Agency, Modesto Irrigation District, Nevada Power Company and Sierra Pacific Power Company, PacifiCorp, the Public Utilities Commission of the State of California, Salt River Project Agricultural Improvement and Power District, Western Area Power Administration, and Xcel Energy Services, Inc. filed motions to intervene. Public Utility District No. 1 of Snohomish County, Washington (Snohomish), the Public Utilities Commission of Nevada (Nevada PUC), Portland General Electric Company (Portland), Southern California Edison Company (SoCal Edison), Mirant Corporation (Mirant), the Financial Institutions Energy Group (Financial Group), Western Power Trading Forum (WPTF), Pacific Gas and Electric Company (PG&E), and Powerex Corporation (Powerex) filed motions to intervene and comments. Western Electricity Coordinating Council (WECC) filed comments.

Discussion

Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

Comments

8. All commenters agree that it is important to align the energy bid cap in the CAISO and the spot market energy price cap in the WECC outside of CAISO. The Nevada PUC believes that synchronizing price caps prevents potential market distortions during

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[11] *Id.*

periods of tight supply.[12] SoCal Edison agrees that differences in the energy bid cap in the CAISO and the spot market energy cap in the WECC outside of CAISO has the potential to distort markets.[13] PG&E encourages the Commission to rule in favor of balanced caps in the West.[14] Portland concurs that price caps should be consistent across markets that are physically interconnected.[15] WPTF and the Financial Group encourage the Commission to align the level of CAISO and West-wide caps and support the imposition of a soft cap in the WECC outside of the CAISO.[16]

9. Some commenters ask that the Commission expand its proposal further. PG&E asks that the Commission define the justification needed for exceeding the price cap.[17] The Financial Group explains that the CAISO markets now include resource adequacy requirements, and that suppliers in those markets can receive both capacity and energy revenues. According to the Financial Group, this is in contrast to the WECC markets where there are no resource adequacy requirements and where suppliers must depend primarily on the energy market for their revenues. The Financial Group suggests that an alternative to a soft cap in the WECC would be to eliminate the cap altogether.[18]

10. The Financial Group and Powerex express concern about the -$30/MWh energy bid floor in the CAISO market. They argue that the CAISO bid floor may not be low enough to provide incentives for efficient grid balancing, especially in the presence of increasing levels of variable energy resources.[19] For example, Powerex contends that the current CAISO bid floor may not provide fossil fuel generation the right economic signal to shut down in order to allow intermittent generation to continue production.[20] Powerex also

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[12] Nevada PUC Comments at 1.

[13] SoCal Edison Comments at 2.

[14] PG&E Comments at 2.

[15] Portland Comments at 5.

[16] WPTF Comments at 3; Financial Group Comments at 3-4.

[17] PG&E Comments at 3.

[18] Financial Group Comments at 4-5.

[19] *Id.* 5.

[20] Powerex Comments at 6.

requests that if the CAISO energy bid cap is further modified or eliminated in the future, the price cap for the WECC outside of the CAISO would adjust accordingly.[21]

11. Mirant supports the alignment of caps in the CAISO and the WECC outside of CAISO. However, Mirant asserts that the market distortion the Commission is concerned about may happen over the summer.[22] Mirant notes that in 2006, the Commission initiated an investigation and issued an order on investigation in 31 days. Therefore, Mirant asks that the Commission issue an order adjusting the West-wide price cap by July 1, 2010.[23]

12. Snohomish agrees that in extreme circumstances, differences in price cap levels between interconnected markets can lead to market distortions.[24] However, Snohomish believes that rather than raising the price cap in the WECC outside of the CAISO, the CAISO market should conform to the current WECC $400/MWh soft cap.[25] According to Snohomish, suppliers inside the CAISO receiving prices above $400/MWh should be required to provide cost justification to the Commission, just like sellers outside of CAISO.[26] Snohomish argues that by increasing the price cap to $750/MWh now and to $1000/MWh in 2011, the Commission loses an important price monitoring tool.[27] Snohomish further argues that the Commission had conditioned any increases in the CAISO bid caps upon a finding that the CAISO markets are competitive, but the May 2010 Order effectively eliminated this precondition. Finally, Snohomish claims that the Commission's "largely unexplained and unqualified speculation about the market effect of price caps does not constitute a basis for action that would stand scrutiny under the arbitrary and capricious standard."[28]

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[21] *Id.* 6.

[22] Mirant Comments at 4.

[23] *Id.* 5.

[24] Snohomish Comments at 1.

[25] *Id.* 2.

[26] *Id.*

[27] *Id.*

[28] *Id.* 4.

13. WECC requests that the Commission clarify that the reference to WECC in the May 2010 Order was to the Western Interconnection and not to WECC as a legal entity. WECC explains that it is one of the eight Regional Entities in North America established under the authority of section 215 of the FPA and is responsible for promoting electric system reliability. WECC states that it does not undertake any market functions and has no authority to establish spot market price caps throughout the West.[29]

Commission Determination

14. The Commission has determined in prior orders that "California is an integral part of a trade and reliability region in the West. Because of this interdependency of market and infrastructure, conditions in and changes to the California market affect the entire region."[30] The Commission has further found that given this interdependency, it is unjust and unreasonable to have inconsistent bid caps in the CAISO and the rest of the WECC.[31] The commenters in this proceeding all agree that consistency in the level of caps in the CAISO and the WECC outside of CAISO is important in avoiding market distortions. In addition, parties support, or do not object to, a soft cap. Accordingly, pursuant to our authority under section 206 of the FPA, we hereby find that the energy price cap for spot market sales in the WECC outside of the CAISO established by the February 2006 Order is no longer just and reasonable, and we find that the just and reasonable price cap is a $750/MWh soft cap. Therefore, we establish a $750/MWh soft price cap in the WECC outside the CAISO, effective upon issuance of this order.

15. In addition, the energy bid cap in the CAISO will increase to $1000/MWh on April 1, 2011, unless directed otherwise by the Commission. Therefore, to maintain consistency between the CAISO bid cap and the WECC price cap for the reasons stated above, we also establish that with the increase in the CAISO energy bid cap, the soft price cap in the WECC outside of the CAISO will also increase to $1000/MWh effective April 1, 2011.

16. We decline to grant PG&E's request to define the justification required to exceed the soft price cap. As the Commission has stated in the past, we cannot anticipate all of the possible reasons a supplier may exceed the soft cap. Therefore, we decline to pre-determine the specific types of documentation a seller might provide.[32] We also decline

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[29] WECC Comments at 1.

[30] July 2002 Order, 100 FERC ¶ 61,060 at P 2.

[31] January 2006 Order, 114 FERC ¶ 61,026.

[32] February 2006 Order, 114 FERC ¶ 61,135 at P 16.

to consider Financial Group's suggestion to eliminate the West-wide price cap altogether. Eliminating the price cap in the WECC outside of the CAISO while bid caps remain in the CAISO market only exacerbates the asymmetry in the caps that we are addressing in this proceeding.

17. With regard to the concerns expressed by the Financial Group and Powerex regarding the bid floor in the CAISO market, we find that the issue is outside the scope of this proceeding. The investigation in this proceeding addresses the justness and reasonableness of the price cap in the WECC outside the CAISO. In addition, the CAISO energy bid cap and bid floor have been established as part of a comprehensive and lengthy process to redesign the CAISO markets and have been found to be just and reasonable by the Commission. It is inappropriate to single out and address in isolation one element of the CAISO's market power mitigation measures in this proceeding. We also decline Powerex's request to link all future CAISO and West-wide energy caps as part of this investigation. Currently there are no proposals before us to adjust the CAISO energy bid cap beyond April 1, 2011. To the extent we are presented with a proposal to adjust the CAISO energy bid cap in the future, or if the Commission initiates a proceeding to address CAISO's energy bid cap, we will consider the need to adjust the WECC price cap based on the facts before us at the time.

18. Mirant requests that the Commission act expeditiously, as it did in 2006, to address the misalignment of the CAISO and WECC price caps. We did not grant Mirant's request because we were not presented with circumstances similar to those that necessitated urgent action in 2006. On December 21, 2005, the CAISO filed an emergency motion on the recommendation of its Market Surveillance Committee (MSC) to revise the real-time energy bid cap to $400/MWh on an expedited basis due to the likelihood of substantially higher natural gas prices during the winter of 2006 and to avoid the risk of generation unit-level variable costs approaching or raising above the $250/MWh bid cap.[33] The CAISO was concerned that with tight gas supplies and high and volatile natural gas prices, the $250/MWh bid cap could constrain its ability to acquire sufficient power in the real time energy market. Likewise, at that time, the Commission had concerns that with a $250/MWh bid cap generators may not have the opportunity to adequately recover their costs.[34] At the time, the Commission also noted that implementing a $400/MWh bid cap in the CAISO while the remainder of the WECC retains a $250/MWh cap could cause the non-CAISO WECC to have difficulties in attracting imbalance energy if gas prices were to rise substantially prior to Commission action. Therefore, the Commission acted expeditiously to adjust the cap in the WECC outside of the CAISO. Mirant has not presented any evidence to suggest that market

[33] January 2006 Order, 114 FERC ¶ 61,026 at P 2.

[34] *Id.* P 25.

conditions similar to those in 2006 are present today to justify a shortened notice and comment period and urgent Commission action.

19. We also reject Snohomish's proposal to implement a $400/MWh soft cap in the CAISO to address the asymmetry between the caps in the CAISO and the WECC outside of CAISO. The energy bid cap in the CAISO market is one of the many interrelated design features of the CAISO market and has been found to be just and reasonable by the Commission.[35] Snohomish's proposal is not only unsupported, but also contrary to the Commission's previous authorization to allow for such an adjustment.[36] In addition, Snohomish is incorrect that the increase in the CAISO energy bid cap is contingent upon a showing that the CAISO markets are competitive and that the May 2010 Order eliminates this precondition. Snohomish misunderstands our directive. The Commission authorized the automatic increases in the CAISO energy bid cap unless there is a showing that the CAISO market is non-competitive.[37] To the extent that the CAISO makes such a showing and the Commission agrees, the CAISO energy bid cap will not increase and there will not be a corresponding increase in the West-wide price cap. In short, the Commission's action in authorizing a future increase of the WECC price cap when the CAISO bid cap increases to $1000/MWh does not prejudge the state of either market today. As stated above, if a showing is made that the CAISO markets have become non-competitive and the Commission supports this assessment, the CAISO bid cap increase will not occur, nor will the corresponding WECC price cap increase.

20. With regard to Snohomish's claim that the Commission is speculating about the market effects of different price caps and that there is no basis for Commission action, we note that Snohomish acknowledges that "[a]s an abstract matter, Snohomish shares the Commission's concern that differences in price cap levels between interconnected markets in the West could, in extreme circumstances, lead to market distortions."[38] In addition, dating back to 2002, the Commission has found several times that consistency in the price caps in the West is important in preventing undesirable market outcomes.[39] Therefore, there is ample reason for the Commission to act.

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[35] For example, the CAISO bid caps are just one component of market power mitigation that also includes local market power mitigation measures and limited scarcity pricing. *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076, at P 486 (2007).

[36] July 2005 Order, 112 FERC ¶ 61,013 at P 104.

[37] *Id.*

[38] Snohomish Comments at 1.

[39] *E.g.*, July 2002 Order, 100 FERC ¶ 61,060 at P 2.

21. Further, we find Snohomish's claim that an important price monitoring tool in fighting market manipulation or other improper market activity will be lost, is unsupported and speculative. Snohomish anchors its claim on the assumption that prices above $400/MWh "are likely to be the result of anticompetitive conduct rather than legitimate market factors."[40] However, Snohomish provides no support for this contention that prices above $400/MWh necessarily will be a result of anti-competitive conduct. In addition, Snohomish provides no support for its contention that raising the soft cap adversely affects the Commission's ability to survey for and remedy market manipulation or other improper market activity.

22. We clarify, as WECC requests, that in the context of price caps the references to WECC in the May 2010 Order and in this order are to the wholesale electricity market in United States portion of the Western Interconnection and not to WECC as a legal entity and a reliability organization.

The Commission orders:

(A) The Commission hereby establishes a $750/MWh soft price cap in the WECC outside the CAISO, effective upon issuance of this order.

(B) The Commission hereby establishes a $1000/MWh soft price cap in the WECC outside the CAISO, effective April 1, 2011, as discussed in the body of the order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

[40] Snohomish Comments at 3.