136 FERC ¶ 61,198
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.

California Independent System Operator Corporation	Docket Nos.	ER04-835-007 ER04-835-009
Pacific Gas and Electric Company		EL04-103-002 EL04-103-004
v.		(consolidated)
California Independent System Operator Corporation		

ORDER ON COMPLIANCE FILINGS

(Issued September 16, 2011)

1. In this order, the Commission accepts two compliance filings submitted by the California Independent System Operator Corporation (CAISO) in the above-captioned proceedings. The Commission also directs CAISO to submit an informational filing, as discussed herein.

Background

2. On July 20, 2001, CAISO implemented a temporary must-offer requirement as an element of the mitigation and monitoring plan in response to the California energy crisis.[1] Pursuant to the must-offer obligation, most generators serving California markets were required to offer all of their capacity in real time during all hours if it is available

[1] *See San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Serv.*, 95 FERC ¶ 61,115, at 61,355-57 (2001), *order on reh'g*, 95 FERC ¶ 61,418 (2001), *order on reh'g*, 97 FERC ¶ 61,275 (2001), *order on reh'g*, 99 FERC ¶ 61,160 (2002), *pet. granted in part and denied in part sub nom. Public Utils. Comm'n of the State of Cal. v. FERC*, 462 F.3d 1027 (9th Cir. 2006).

and not already scheduled to run through bilateral agreements.[2] The must-offer obligation was "designed to prevent withholding and thereby to ensure that CAISO will be able to call upon available resources in the real-time market to the extent that energy is needed."[3] If must-offer generators were required to operate at minimum load to ensure that they were and would be available for CAISO to dispatch in real time, then they received minimum load cost compensation costs. A generating unit could have requested a waiver of its must-offer obligation. If CAISO denied a waiver request, then the generator was required to remain in operation and was compensated for the costs of running at its minimum operating level, including when CAISO actually dispatched energy from the unit or the generator provided ancillary services. CAISO had allocated minimum load cost compensation costs to market participants on a system-wide basis.[4]

3. On May 11, 2004, in Docket No. ER04-835-000, CAISO filed Amendment No. 60 proposing among other things to modify certain payment terms and the allocation of must-offer costs in a manner more consistent with cost causation principles. Based upon its determination that must-offer generation has been committed primarily to satisfy local, zonal, or system reliability requirements, CAISO proposed to allocate minimum load cost compensation costs according to a three-category (or "bucket") rate design. CAISO included Attachment E to the Amendment No. 60 filing, which was effectively a white paper that proposed a mechanism for allocating costs associated with the commitment or operation of must-offer units for local, zonal, or system reliability purposes. CAISO did not propose Attachment E be included in its proposed tariff language. Subsequently, on May 18, 2004, in Docket No. EL04-103-000, Pacific Gas and Electric Company (PG&E) filed a complaint against CAISO, alleging that the methodology for allocating must-offer obligation costs to PG&E was unjust, unreasonable, and unduly discriminatory. PG&E also alleged that Amendment No. 60 indefinitely prolonged CAISO's allocation method, even though CAISO had the ability to apportion must-offer obligation costs more equitably in a timelier manner.

4. On July 8, 2004, the Commission issued two orders addressing Amendment No. 60. First, the Commission set PG&E's complaint for hearing, established a refund effective date of July 17, 2004, and consolidated Docket Nos. EL04-103-000 and ER04-

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[2] *See San Diego Gas & Elec. Co.*, 95 FERC at 61,355-57.

[3] *San Diego Gas & Elec. Co.*, 95 FERC at 62,551.

[4] The must-offer regime described herein has been superseded by subsequent Commission-approved must-offer and similar mechanisms.

835-000.[5] Second, the Commission accepted Amendment No. 60, subject to modification, and set for hearing the allocation of must-offer obligation costs.[6] On October 31, 2005, the presiding judge issued an Initial Decision following a hearing on the consolidated proceedings.[7] The Initial Decision generally upheld as just and reasonable the proposed method for allocating must-offer obligation costs.

5. On December 27, 2006, the Commission issued Opinion No. 492,[8] which summarily affirmed and adopted the findings by the presiding judge on a number of issues. Among other things, Opinion No. 492 agreed with the presiding judge that CAISO's proposal to allocate minimum load cost compensation costs to three buckets based on cost causation principles was generally just, reasonable, and not unduly discriminatory. The Commission found that the allocation criteria described in Attachment E to the Amendment No. 60 filing should be incorporated into the CAISO Tariff. Opinion No. 492 also agreed with the presiding judge that the Miguel Transformer Bank (Miguel) constraint should be classified as a zonal constraint, and that CAISO should accordingly modify its proposal to reflect this classification. However, Opinion No. 492 disagreed with the presiding judge's finding that minimum load cost compensation costs should not be allocated in the same manner as start-up and emissions costs. Accordingly, Opinion No. 492 directed CAISO to submit a compliance filing to: (1) incorporate the Attachment E allocation criteria, as modified, into the CAISO Tariff; (2) modify the tariff definition of inter-zonal interface in order to more accurately describe the function of the Miguel constraint; and (3) allocate start-up and emissions costs in the same manner in which minimum load cost compensation costs are allocated. The Commission also directed CAISO to post on its website adequate information to provide market participants with the ability to confirm the appropriateness or accuracy of CAISO's incremental cost of local allocations.[9]

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[5] *Pacific Gas and Elec. Co. v. Cal. Indep. Sys. Operator Corp.*, 108 FERC ¶ 61,017 (2004).

[6] *Cal. Indep. Sys. Operator Corp.*, 108 FERC ¶ 61,022 (2004).

[7] *Cal. Indep. Sys. Operator Corp.*, 113 FERC ¶ 63,017 (2005) (Initial Decision).

[8] *Cal. Indep. Sys. Operator Corp.*, 117 FERC ¶ 61,348 (2006) (Opinion No. 492).

[9] We note that the Commission subsequently issued an order on rehearing of Opinion No. 492. *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,193 (2007) (November 2007 Order). The November 2007 Order directed CAISO to make a further compliance filing. This order also addresses that further compliance filing.

February 2007 Compliance Filing

6. On February 26, 2007, CAISO submitted a compliance filing in response to the directives in Opinion No. 492. Specifically, CAISO: (1) revised its Tariff to incorporate the allocation criteria the CAISO had included in Attachment E to the May 11, 2004 filing of Amendment No. 60, as modified; (2) included a modified definition of Inter-Zonal Interface in the Master Definitions Supplement of the CAISO Tariff to more accurately describe the function of the Miguel constraint; and (3) revised its Tariff to allocate Start-Up and Emissions Costs associated with the must-offer obligation in the same manner in which minimum load cost compensation costs are allocated. CAISO states that the effective date for these changes was July 17, 2004.[10]

7. In addition, CAISO revised its Tariff to note that its Reliability Capacity Services Tariff in Docket No. EL05-146-000 and the Interim Reliability Requirements Program in Docket No. ER06-723-000, both of which have since been superseded, followed this cost allocation methodology. CAISO also added language to its Tariff to clarify that it is not just and reasonable to allocate minimum load cost compensation costs to wheel-through transactions to control areas within California.

8. Finally, in response to the Commission's directive that CAISO post on its website adequate information to confirm the appropriateness or accuracy of its incremental cost of local allocations, CAISO states that it has been posting the required data since October 1, 2004 and, thus, no further compliance was necessary.

Notice of Filing and Responsive Pleadings

9. Notice of the CAISO's compliance filing was published in the *Federal Register*, 72 Fed. Reg. 10,510 (2007), with comments, protests, and interventions due on or before March 19, 2007. Timely motions to intervene and protest were filed by the State Water Project of the California Department of Water Resources (SWP), Southern California

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[10] CAISO notes that many relevant sections of the CAISO Tariff had been substantially overhauled during the effective period of these revisions. Consequently, CAISO filed three sets of tariff sheets corresponding to the three iterations of the CAISO Tariff during that time: (1) from July 17, 2004 through February 28, 2006 for the pre-Simplified and Reorganized Tariff; (2) from March 1, 2006 through May 30, 2006 for the original Simplified and Reorganized Tariff; and (3) beginning May 31, 2006 for the revised Simplified and Reorganized Tariff. Although CAISO filed three sets of tariff sheets, we note that the substance of each of the three sets of proposed compliance revisions is the same.

Edison Company (SoCal Edison), and the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (Southern Cities). CAISO filed an answer to the protests.

Protests

10. SWP argues that CAISO made a number of tariff revisions that were not expressly mandated in Opinion No 492. Specifically, SWP states that CAISO proposed to rewrite the section entitled "Allocation of Minimum Load Costs" in which it deletes the phrase "due to Inter-Zonal Congestion" and replaces it with the phrase "to meet zonal reliability requirements." SWP contends that this unauthorized tariff revision should be rejected as a violation of the filed rate doctrine, and that Commission precedent requires rejection of extraneous modifications made in the guise of a compliance filing. SWP also argues that the Commission should order CAISO to correct or clarify the tariff language in proposed section 40.6B.5, which states that "the MSS [Metered Subsystem] Operator" will contract for Resource Adequacy Capacity paid for by CAISO's transmission customers. SWP explains that CAISO has not explained how or why an individual Metered Subsystem Operator would be empowered to procure capacity whose costs the CAISO will allocate to CAISO customers.[11] SWP speculates that this language "presumably … is in error."[12]

11. SoCal Edison argues that CAISO's revised definition of Inter-Zonal Interface does not distinguish between the South of Lugo constraint and the Miguel constraint. Southern Cities argues that the proposed definition of Inter-Zonal Interface does not allow for a distinction between transmission paths that in fact flow between zones and paths that are intra-zonal. Therefore, Southern Cities urges the Commission to require CAISO to modify its compliance filing to provide greater clarity in the definition of Inter-Zonal Interface.

12. Finally, SoCal Edison argues that the information on CAISO's website is not sufficient to allow participants to calculate the net incremental cost of local allocations. Thus, SoCal Edison argues that CAISO's proposal is not responsive to the Commission's compliance directive.

CAISO's Answer

13. In response to SWP, CAISO states that it has not exceeded the directives of Opinion No. 492. CAISO explains that the deletion of the phrase "operating due to Inter-Zonal Congestion" was merely designed to apply the language of Attachment E to the

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[11] SWP Protest at 13–14.

[12] *Id.* at 14.

CAISO Tariff, as directed by the Commission. Regarding SWP's protest that CAISO should correct or clarify the tariff language in proposed section 40.6B.5 concerning "the MSS Operator," CAISO states that this language was not changed in this compliance filing. Rather, CAISO points out that this language was inserted in the CAISO Tariff in the Resource Adequacy Proceeding in Docket No. ER06-723-000, and that because SWP did not protest the language in that proceeding, it has no grounds to "correct" the language now.[13]

14. In response to arguments from SoCal Edison and Southern Cities that the definition of Inter-Zonal Interface is too vague and potentially overly-inclusive, CAISO proposes the following revisions to the definition, which it is prepared to make in a further compliance filing if so ordered by the Commission:

> The (i) group of transmission paths between two adjacent Zones of the ISO Controlled Grid, for which a physical, non-simultaneous transmission capacity rating (the rating of the interface) has been established or will be established prior to the use of the interface for Congestion Management; (ii) the group of transmission paths between an ISO Zone and an adjacent Scheduling Point, for which a physical, non-simultaneous transmission capacity rating (the rating of the interface) has been established or will be established prior to the use of the interface for Congestion Management; (iii) the group of transmission paths between two adjacent Scheduling Points, where the group of paths has an established transfer capability and established transmission rights; or (iv) ~~a transmission path, for which a physical, non-simultaneous transmission capacity rating (the rating of the interface) has been established that may require~~ the Miguel Constraint, whenever Congestion Management is necessary to mitigate Miguel Congestion due to flow ~~scheduled~~ from one or more Scheduling Points from adjacent Zones and/or due to generation within that Zone.[14]

15. In response to SoCal Edison's argument that the data posted on CAISO's website are insufficient to allow a participant to calculate the incremental cost of local allocations, CAISO explains that it is investigating this issue in light of the difficulties raised by SoCal Edison. CAISO states that it will work with interested parties to identify additional information needed to permit market participants to confirm the accuracy of

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[13] CAISO Answer at 7.

[14] *Id.* at 8.

the incremental cost of local allocations without disclosing confidential or market sensitive information.

Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make those submitting them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept CAISO's answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

17. With respect to SWP's argument that CAISO made revisions that were not expressly mandated in Opinion No. 492, we disagree. SWP's argument is that by deleting the phrase "due to Inter-Zonal Congestion" and replacing it with the phrase "to meet zonal reliability requirements," CAISO has made an unauthorized tariff revision that should be rejected as a violation of the filed rate doctrine. SWP also contends that Commission precedent requires rejection of extraneous modifications made in the guise of a compliance filing. We find that CAISO was not making an extraneous modification but rather was complying with Opinion No. 492's direction that CAISO incorporate Attachment E from its Amendment No. 60 filing into the CAISO Tariff. While SWP is correct that we do not permit parties to submit compliance filings that are beyond the scope of the Commission's compliance directive, we find that CAISO's corresponding change to its Tariff was necessary to effectuate our direction that Attachment E be incorporated into the CAISO Tariff. Because this is simply a corresponding edit, it is not a violation of the filed rate doctrine for CAISO to make that change. Therefore, we reject SWP's argument on this issue.

18. Concerning SWP's argument that CAISO should correct or clarify the tariff language in proposed section 40.6B.5 pertaining to "the MSS Operator," we agree with CAISO that this language was not changed in this compliance filing. Rather, this tariff language was accepted by the Commission in the Resource Adequacy proceeding. As CAISO notes, SWP did not protest the language at that time. SWP's objection to that language in this proceeding therefore amounts to a collateral attack on the Resource

Adequacy proceeding.[15] Therefore, we reject SWP's argument regarding the tariff language in section 40.6B.5.

19. In addition, the Commission finds that CAISO's proposed alternative revisions to the definition of Inter-Zonal Interface included in its answer address SoCal Edison's and Southern Cities' arguments that the definition may be too vague and over-inclusive, and that this alternative language is otherwise acceptable.[16] SoCal Edison's concern that the definition does not distinguish between the Miguel constraint and the South of Lugo constraint is also rendered moot by the Commission's subsequent determination in the November 2007 Order that South of Lugo is properly classified as a zonal constraint rather than a local constraint.[17] To effectuate that finding, CAISO's December 2007 Compliance Filing further revised the alternative language so that it specifically lists both "the Miguel or South of Lugo constraints." Because it included the alternative language in this later compliance filing, which we accept below, CAISO is not required to submit an additional compliance filing with that alternative language.

20. Although we are accepting the compliance filing effective as of July 17, 2004, the must-offer regime at issue here has been superseded by different Commission-approved tariff language. Thus, we recognize that the tariff revisions that we are accepting herein were only in effect for a discrete period of time.

21. With respect to the concern that data posted on CAISO's website were insufficient to allow participants to calculate the incremental cost of local allocations, we note that CAISO stated that it was investigating this issue in light of the difficulties raised by SoCal Edison and would work with interested parties to identify additional information needed to permit market participants to confirm the accuracy of the incremental cost of local allocations. Our expectation is that, given the passage of time, CAISO has been able to provide on its website sufficient information necessary for market participants to calculate the incremental cost of local allocations. Therefore, we direct CAISO to submit an informational filing explaining how it resolved this concern working with stakeholders in exploring the website posting issues raised by SoCal Edison.[18] CAISO should explain

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[15] *See, e.g., Cal. Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,015, at P 17 (2008) (rejecting collateral attack on prior Commission order).

[16] *See supra* P 14.

[17] *See* November 2007 Order, 121 FERC ¶ 61,193 at P 25-26.

[18] This filing will be for informational purposes only. Therefore, the filing will not be publicly noticed in the *Federal Register* and the Commission will not act on it.

how its website included adequate information to provide market participants with the ability to confirm the accuracy of the incremental cost of local allocations.

December 2007 Compliance Filing

22. On November 20, 2007, the Commission issued an order granting rehearing in part, denying rehearing in part, and granting clarification of Opinion No. 492.[19] Specifically, the Commission granted rehearing and found that the South of Lugo constraint should be categorized as a zonal constraint. Additionally, the Commission clarified that CAISO's proposed tariff language, which states that CAISO can use the must-offer obligation for an anticipated shortage of operating reserves, is consistent with the objective set by the Commission when the obligation was established. As a result, the Commission directed CAISO to submit a compliance filing to: (1) modify the Attachment E zonal criteria to accommodate South of Lugo; and (2) modify its tariff to state that CAISO can use the must-offer obligation for an anticipated shortage of operating reserves, because this approach is consistent with the objective set by the Commission when the obligation was established.

23. On December 20, 2007, CAISO submitted a compliance filing in response to the November 2007 Order. To comply with the Commission's directives, CAISO proposes: (1) to further modify the revised definition of Inter-Zonal Interface proposed in its answer above, so that the definition refers specifically to both Miguel and South of Lugo; (2) to revise its Tariff to state that CAISO will classify a must-offer unit as committed or operated for zonal reliability requirements when it is committed or operating to ensure there is sufficient capacity available to meet operating reserve requirements within a particular zone, if CAISO is procuring operating reserves on a zonal basis; and (3) to modify its Tariff to state that CAISO will classify a must-offer unit as committed or operated for control area-wide reliability requirements when it is committed to ensure sufficient capacity is available to meet operating reserve requirements, when CAISO is not procuring operating reserves on a zonal basis.

Notice of Filing and Responsive Pleadings

24. Notice of CAISO's compliance filing was published in the *Federal Register*, 73 Fed. Reg. 2234 (2008), with comments, protests, and interventions due on or before January 10, 2008. A timely motion to intervene was filed by Constellation Energy

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[19] November 2007 Order, 121 FERC ¶ 61,193. The Commission recently issued an order denying rehearing of the November 2007 Order. *Cal. Indep. Sys. Operator Corp.*, 136 FERC ¶ 61,197 (2011).

Commodities Group, Inc. and Constellation NewEnergy, Inc. raising no substantive issues.

Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make those submitting them parties to this proceeding.

B. Commission Determination

26. Our review of the uncontested December 2007 Compliance Filing finds that CAISO has sufficiently complied with the directives set forth by the Commission in the November 2007 Order. We therefore accept CAISO's December 2007 Compliance Filing, effective July 17, 2004, as requested.[20] Although we are accepting the compliance filing effective as of July 17, 2004, the must-offer regime at issue here has been superseded by different Commission-approved tariff language. Thus, we recognize that the tariff revisions that we are accepting herein were only in effect for a discrete period of time.

The Commission orders:

(A) CAISO's February 2007 Compliance Filing is hereby accepted, effective as requested, as discussed in the body of this order.

(B) CAISO's December 2007 Compliance Filing is hereby accepted, effective as requested, as discussed in the body of this order.

[20] As noted above, CAISO filed three sets of tariff sheets in the December 2007 Compliance Filing, which corresponded to the three iterations of the CAISO Tariff that were in effect during the relevant time period. Again, although CAISO filed three sets of tariff sheets, we note that the substance of each of the three sets of proposed compliance revisions is identical to one another.

(C) CAISO is hereby directed to submit an informational filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.