

132 FERC ¶ 61,269
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 No. ER10-1998-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued September 29, 2010)

1. On July 18, 2010, pursuant to section 205 of the Federal Power Act (FPA),¹ the California Independent System Operator Corporation (CAISO) submitted tariff revisions to modify its price correction timing provisions.² As discussed below, we conditionally accept the proposed tariff revisions, to become effective September 30, 2010, as requested.

I. Background

2. CAISO states that under its Market Redesign and Technology Upgrade (MRTU), it performs a price correction process to evaluate, validate, and correct prices to ensure that market settlement is consistent with the CAISO tariff. CAISO states that currently, the price correction time period is specified in the Business Process Manual for Market Operations (BPM) as five days.³ CAISO states that after the time period expires, it has limited authority to adjust, recalculate, or otherwise correct prices. CAISO explains that after several months of experience with MRTU, it engaged in a review and evaluation of its price correction process and overall market performance and published a report of its findings on January 20, 2010. CAISO states that its report showed a decrease in price corrections over time and also a number of price changes that occurred after the price correction time period had elapsed, the bulk of which were due to processing or publication errors. CAISO states that after publication of its report, it initiated a

¹ 16 U.S.C. § 824d (2006).

² CAISO July 28, 2010 Filing in Docket No. ER10-1998-000 (CAISO Proposal).

³ CAISO Proposal at 3 (citing CAISO BPM for Market Operations § 8.1.6.2).

stakeholder process on the price correction time period issue, which resulted in the revisions proposed in the instant filing.⁴

3. In its filing, CAISO proposes tariff revisions to: (1) address the time frame for making price corrections; and (2) remedy prices posted incorrectly due to processing or publication problems.⁵ CAISO explains that price corrections involve the necessary recalculation of a price that CAISO determines to have been calculated incorrectly due to invalid market solutions or other issues that render the prices invalid.⁶ For price corrections, CAISO proposes tariff revisions to reflect in its tariff the five-day price correction time period currently specified in the BPM. In addition, CAISO proposes to set a time limit on its authority to remedy situations where prices were corrected within the five-day price correction time period, but CAISO either failed to: (1) process and publish the corrected prices through its open access same-time information system (OASIS) site or the CAISO market results interface; or (2) push the corrected prices through to the systems used by market participants for settlements. For these types of errors, CAISO proposes to include additional detail in its tariff reflecting CAISO's ability to rectify price processing or publication issues within a limited time as specified in the applicable BPM, after which all posted prices will remain the same unless otherwise ordered by the Commission. CAISO asserts that the proposed revisions will provide market participants with greater price certainty, while providing a reasonable time frame within which CAISO can change posted prices to ensure consistency with its tariff requirements. CAISO requests an effective date of September 30, 2010 for the proposed revisions.⁷

⁴ CAISO Proposal at 2-3.

⁵ We note that the instant filing only revises the price correction process for market solutions and does not revise the process for correcting settlement and billing issues such as meter data. CAISO tariff section 11.29.8.4.6, which limits the period for making adjustments to settlement statements, including those arising from disputes, to 36 months after the relevant trading day, is not affected by the revisions proposed in this filing.

⁶ CAISO states that examples of issues that can render prices invalid include input error, the failure of a market or component of a market to run in any given interval, or the miscalculation of a price in a manner that is inconsistent with CAISO tariff requirements. CAISO Tariff § 35.4.

⁷ CAISO Proposal at 1.

II. Notice and Responsive Pleadings

4. Notice of the proposed tariff revisions was published in the *Federal Register*, 75 Fed. Reg. 45,617 (2010), with comments or protests due on or before August 17, 2010. Timely motions to intervene were filed by: (1) the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California; (2) the California Department of Water Resources State Water Project; (3) Dynegy Morro Bay, LLC, Dynegy Moss Landing, LLC, Dynegy Oakland, LLC, and Dynegy South Bay, LLC (Dynegy); (4) Modesto Irrigation District; (5) Pacific Gas & Electric Company (PG&E); and (6) Powerex Corp. (Powerex). Comments were filed by Dynegy, PG&E, and Powerex. CAISO filed an answer.

III. Discussion

A. Procedural Matters

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

6. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), 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.

7. We note that this order primarily addresses the contested features of CAISO's proposal. With respect to the proposed tariff revisions that are not contested and not specifically discussed herein, the Commission finds that they are just and reasonable and they are hereby accepted.⁸

B. Price Correction Time Period

1. CAISO Proposal

8. CAISO states that it currently performs a price correction process to remedy invalid prices resulting from issues such as input error, the failure of a market or

⁸ The uncontested revisions are the addition of language to CAISO tariff section 6.5 to state that all prices released by CAISO are subject to price corrections and changes pursuant to section 35, and the deletion of CAISO tariff section 27.1.3, which temporarily limited the maximum and minimum CAISO market prices and automatically expired 12 months after its effective date.

component of a market to run in any given interval, or the miscalculation of a price in a manner that is inconsistent with CAISO tariff requirements. CAISO states that its current tariff section 35.2 provides that the price correction process for each trading day ends no later than 1700 hours on the eighth calendar day from the relevant trading day, unless CAISO establishes an earlier end-time in the BPM. CAISO notes that the price correction time period is currently five calendar days in the BPM. CAISO proposes to revise section 35.2 of its tariff to reflect the five-day time frame currently specified in the BPM, but it intends to retain the tariff language permitting it to specify a shorter time frame in the BPM. In addition, CAISO states that under the current tariff, it has limited authority to adjust, recalculate, or otherwise correct prices after the price correction time frame expires. CAISO proposes to modify section 35.2 of its tariff to provide that prices are considered final after the fifth calendar day from the relevant trading day unless otherwise ordered by the Commission. CAISO contends that by eliminating the possibility of a price change outside of the specified time frames unless such a change is ordered by the Commission, this revision addresses stakeholder concerns that the tariff currently lacks sufficient detail regarding price changes after the expiration of the price correction time period.⁹

9. In addition, CAISO states that in order to address stakeholder requests for transparency into market issues that may produce market outcomes and prices that are not consistent with the CAISO tariff, CAISO has committed to memorializing its market issues process in its BPM. CAISO explains that pursuant to its market issues process, if it identifies a probable market issue that may have a material financial impact on market participants, CAISO will communicate the occurrence to market participants and, if appropriate, will issue a technical bulletin to explain the issue and the financial impact. CAISO states that it also intends to inform market participants of any intent to seek authorization from the Commission to make a price correction after the five-day period. CAISO notes that stakeholders will have the opportunity to comment on the proposed process before it is finalized in the BPM. CAISO asserts that the transparency provided through the market issues process will provide market participants with the necessary information to assess whether Commission approval of post-five-day price changes is justified.¹⁰

2. Comments and CAISO Answer

10. Dynegy supports CAISO's proposal to seek Commission approval for any price changes beyond the five-day price correction time period, but contends that CAISO's proposal for making price changes after the five-day correction period is vague. Dynegy

⁹ CAISO Proposal at 3-5.

¹⁰ *Id.* at 4-5.

argues that the proposal is not just and reasonable because it gives CAISO unilateral discretion to determine whether a pricing error exists or whether it had a material financial impact on market participants. Dynegy claims that without objective measures for determining whether a pricing issue exists, or whether it will have a material financial impact on a market participant, market participants and the Commission will be unable to verify that CAISO's policies regarding price corrections are being applied in a non-discriminatory way.¹¹

11. Dynegy argues that price certainty should not be favored to the exclusion of accuracy.¹² In addition, Dynegy contends that CAISO should be required to disclose when it has failed to comply with its own tariff. Dynegy argues that CAISO should not be permitted to side-step its obligation under the filed rate doctrine to correct prices that do not reflect the operation of its market rules by implementing "an open-ended price-correction policy that, in effect, renders that obligation ineffective."¹³ Further, Dynegy points out that the size and financial position of CAISO's market participants vary greatly and, therefore, what is a *de minimus* financial impact to one firm may be a material impact to another.¹⁴

12. Moreover, Dynegy contends that market participants cannot pursue their right to prices calculated in accordance with the CAISO tariff if they do not know that they have been injured. Therefore, Dynegy requests that the Commission require CAISO to publish all instances of pricing errors not corrected within the five-day window. Alternatively, if the Commission declines to impose such a requirement, Dynegy requests that the Commission require CAISO to specify the following in its tariff: (1) what constitutes a "material financial impact" that would warrant disclosure of prices not calculated in accordance with the CAISO tariff beyond the five-day price correction window; and (2) under what conditions CAISO would publish a bulletin explaining, in detail, how prices were affected.¹⁵

13. PG&E agrees with CAISO that the proposed five-calendar-day window strikes the proper balance between price certainty and price accuracy. However, PG&E argues that

¹¹ Dynegy August 17, 2010 Comments in Docket No. ER10-1998-000 at 3, 6 (Dynegy Comments).

¹² *Id.* at 3.

¹³ *Id.* at 4.

¹⁴ *Id.* at 4-5.

¹⁵ *Id.* at 5.

because the number of days allowed for price corrections has a significant effect on rates, terms and conditions, CAISO should not be able to shorten the five-day time frame without a subsequent tariff revision approved by the Commission.¹⁶

14. CAISO rejects Dynegy's statement that its proposal is vague. CAISO reiterates that its proposal states clearly that CAISO will not make any price corrections beyond the price correction time period unless ordered to do so by the Commission. In addition, CAISO asserts that Dynegy has supplied no evidence to support its claims that CAISO will not adhere to its tariff and is unwilling to provide the necessary transparency surrounding market issues that implicate tariff non-compliance. CAISO claims that the past year's experience in its markets contradicts Dynegy's assertions. Further, CAISO claims that Dynegy is inappropriately attempting to expand the scope of this proceeding to tariff compliance matters unrelated to the merits of the instant tariff revisions. CAISO also contends that Dynegy has failed to demonstrate how its proposed requirements would provide greater transparency into the post-five-day correction process. CAISO asserts that these requirements would create a significant administrative burden that may have no market impact. According to CAISO, Dynegy's request would require a continuous and ongoing validation process, which would defeat the objective of attaining greater price certainty.¹⁷

15. CAISO also disagrees with PG&E that further shortening of the price correction window should be submitted to the Commission as a tariff revision under FPA section 205. CAISO states that its proposal retains the same tariff and BPM structure that is in place today (i.e., the tariff sets forth the maximum time frame for price corrections, but allows for a shorter time period if specified in the BPM). CAISO points out that because it must conduct a stakeholder process before revising the BPM, stakeholders would be provided due process to consider the merits of shortening the time frame. Nevertheless, CAISO states that it does not fundamentally oppose PG&E's request, with the understanding that CAISO will retain its commitment to evaluate the price correction time period on a yearly basis as reflected in the BPM.¹⁸

3. Commission Determination

16. We accept CAISO's proposal to shorten the price correction time period specified in its tariff. Given that CAISO already operates under a five-day price correction time

¹⁶ PG&E August 17, 2010 Comments in Docket No. ER10-1998-000.

¹⁷ CAISO September 1, 2010 Answer in Docket No. ER10-1998-000 at 8-14 (CAISO Answer).

¹⁸ *Id.* at 3-5.

period, pursuant to requirements established in the BPM, we find that reflecting this same five-day time frame in the tariff is just and reasonable. We likewise accept CAISO's proposal to make prices final after the fifth calendar day from the relevant trading day unless otherwise ordered by the Commission. We agree with CAISO that this revision will give market participants greater price certainty while providing CAISO the necessary flexibility to correct prices.

17. We reject Dynegy's contention that the proposed revisions give CAISO the discretion to side-step its obligation to adhere to its Commission-approved tariff. The revisions proposed by CAISO modify the time window for correcting prices and restrict CAISO's ability to correct prices once they become final, but the proposed revisions do not alter the existing market validation process, which requires CAISO to monitor and correct prices to ensure accuracy and consistency with tariff requirements. Dynegy has not explained how the proposed revisions implicate CAISO's pre-existing obligation to comply with its tariff. Thus, we do not find that the proposed revisions invite the potential for mischief suggested by Dynegy. Moreover, we find that Dynegy has not presented sufficient evidence to call into question the justness and reasonableness of CAISO's proposal. While the burden of persuasion regarding the justness and reasonableness of a proposed tariff revision remains with the filing party, the Commission requires a protesting party to make an adequate proffer of evidence to call into question the reasonableness of the challenged revision.¹⁹ Mere speculation cannot satisfy a protestor's burden in raising a question about the reasonableness of the challenged provision.²⁰ Dynegy's unsupported contentions regarding CAISO's intent to comply with its tariff and provide transparency into its post-five day price correction process do not amount to a showing that CAISO's proposal is unjust and unreasonable.

18. Furthermore, the language cited by Dynegy as vague does not appear in CAISO's proposed tariff revisions. Rather, CAISO uses the language at issue in its transmittal letter to describe its intentions regarding a future BPM revision.²¹ Thus, we find that the modifications requested by Dynegy regarding CAISO's market issues process are premature and beyond the scope of this proceeding. Dynegy's concerns appear to be

¹⁹ See, e.g., *Cal. Indep. System Operator Corp.*, 131 FERC ¶ 61,149, at P 20 (2010); *New Dominion Energy Coop.*, 122 FERC ¶ 61,174, at P 61-66 (2008).

²⁰ *Cal. Indep. System Operator Corp.*, 131 FERC ¶ 61,149 at P 21.

²¹ CAISO Proposal at 5.

more appropriately addressed in CAISO's stakeholder process regarding the BPM modification to finalize CAISO's market issues process.²²

19. We agree with PG&E that future changes to further shorten the price correction time period should be made as tariff amendments under FPA section 205, rather than through BPM revisions. CAISO acknowledges that, based on its current capabilities and stakeholders' desire for price certainty, the proposed maximum of five days has been shown to strike a proper balance between price accuracy and price certainty.²³ Based on the comments filed on this issue,²⁴ we agree and find that limiting the time for price corrections to a shorter period may reduce the number of price corrections that can be made, thereby potentially jeopardizing price accuracy. Due to the potential impact of further reductions of the price correction time frame on rates, we find that the method for modifying the time frame is integral to the justness and reasonableness of the amount of time CAISO has to make price corrections. Therefore, we find that all further reductions to the price correction time period should be subject to Commission review and acceptance under FPA section 205. In addition, we note that the CAISO does not oppose PG&E's suggested change.²⁵ Pursuant to our authority under section 206 of the FPA,²⁶ we direct CAISO to remove from section 35.2 of its tariff the language that permits CAISO to specify a shorter price correction time frame in the BPM and to submit the revised tariff language in a compliance filing no later than 30 days from the date of this order.

C. Processing and Publication Issues

1. CAISO Proposal

20. CAISO states that upon review of its price correction experience over the past year, it found that there are certain instances in which changes to published prices are necessary because CAISO either: (1) fails to process and publish the corrected prices; or (2) fails to push the corrected prices through to the systems used by market participants for settlements. CAISO asserts that because the prices at issue were actually corrected

²² We do not opine as to the justness and reasonableness of CAISO's proposed BPM modifications or whether the modifications belong in the BPMs.

²³ CAISO Answer at 4.

²⁴ See PG&E Comments at 3.

²⁵ CAISO Answer at 5.

²⁶ 16 U.S.C. § 824e (2006).

during the price correction window, the reposting of prices should not be considered a price correction.²⁷ If CAISO needs to repost prices in such instances, CAISO states that it intends to include an addendum to its weekly price correction reports to explain any processing issues and include details such as the intervals impacted by a processing issue.²⁸

21. CAISO explains that leaving these processing or publication prices uncorrected results in discrepancies between posted prices and prices utilized in settlements. CAISO states that while these processing issues have been largely resolved, it is important for CAISO to have sufficient flexibility to make the necessary changes if processing issues occur in the future. CAISO states that while it requires flexibility to make these changes, it also understands the importance of price certainty. Thus, CAISO proposes revisions to section 35.3 of its tariff to limit the time frame for rectifying prices in cases in which the CAISO experiences a problem with the processing or publication of prices, as specified in the BPM. To provide price certainty, CAISO proposes to make all necessary changes within this time frame, except as otherwise directed by the Commission. CAISO notes that it intends to propose 20 business days as the time frame specified in the BPM for any publication or processing changes.²⁹ In addition, CAISO states that it intends to shorten this time frame in the future and anticipates being capable of doing so, through a revision to the BPM, by the end of 2010.³⁰

2. Comments and CAISO Answer

22. Powerex argues that acceptance of CAISO's proposal to adopt a 20-day time frame for processing or publication changes will unnecessarily perpetuate some of the existing price uncertainty that CAISO seeks to eliminate. Powerex asserts that other regional transmission organizations (RTO) and independent system operators (ISO) typically require the posting of final prices within three to ten days after the operating day. Thus, Powerex requests that the Commission direct CAISO to modify its proposed 20-day time frame for processing and publication changes to a period closer to the five-day time frame it proposes for price corrections. Powerex recognizes that CAISO intends to reduce the 20-day period by the end of 2010. To ensure that CAISO continues these

²⁷ CAISO Proposal at 6; CAISO Proposed Tariff § 35.4.

²⁸ CAISO Proposal at 6. CAISO notes that it is developing more detailed OASIS message logs that, once implemented, will replace the enhanced weekly reports and notify market participants of reposted prices.

²⁹ *Id.* at 6.

³⁰ *Id.* at 6-7.

efforts, Powerex requests that the Commission direct CAISO to report on its progress towards this goal and indicate the time window it expects to adopt for processing and publication issues. Powerex adds that CAISO should state in this report whether it is possible to adopt the same five calendar day price correction time frame to address all types of errors.³¹

23. In addition, Powerex claims that it has experienced times when the prices posted on CAISO's OASIS differ from the prices used by CAISO's settlement system for settlements. Powerex requests confirmation that "the only prices that can be used for settlements are the prices posted on OASIS, subject to price correction timelines proposed in this docket."³²

24. CAISO states that under its current procedures, it is not possible to resolve processing and publication problems within the five-day time period it proposes for price correction. CAISO explains that at this time, processing and publication issues cannot be detected until after the corrected prices have been published, which occurs approximately six days after the trading day. Therefore, CAISO asserts that 20 days is the minimum amount of time needed to ensure that posted prices will reflect corrections and will be consistent with the prices pushed to settlements. CAISO disagrees that its proposal unnecessarily or arbitrarily extends any price uncertainty due to the limited number of publishing or processing errors over time and the limited scope of their impact.³³ Nevertheless, CAISO states that it intends to shorten this time period and does not object to Powerex's request for a progress report. However, CAISO contends that December 1, 2010 is too soon to provide such a report, given the infrequency of these issues. CAISO requests that if the Commission requires such a report, it should be based on at least six full months of experience with the revised procedures.³⁴ Finally, CAISO states that it addressed Powerex's concern regarding the use of OASIS prices for settlements in its proposal when it stated that OASIS prices will be used for settlements if there is still a discrepancy between published prices and settlement prices after 20 business days.³⁵

³¹ Powerex August 17, 2010 Comments in Docket No. ER10-1998-000 at 3-5.

³² *Id.* at 6.

³³ CAISO notes that only 0.4 percent of the hours over the past six months were affected by processing or publication issues. CAISO Answer at 7.

³⁴ *Id.* at 5-8.

³⁵ *Id.* at 8 (quoting CAISO July 28, 2010 Transmittal Letter at 6).

3. Commission Determination

25. We accept CAISO's proposal to remedy all processing or publication problems within a limited time period, to be specified in the BPM, except as otherwise directed by the Commission.³⁶ We find this revision to be just and reasonable because it will give CAISO a reasonable amount of time to rectify the publication of prices that were properly corrected during the five-day time frame, while also providing greater price certainty to market participants by establishing a definitive end-date for the correction process. However, we find that because CAISO proposes to specify the time period for correcting processing and publication issues in the BPM and does not include the 20-day time frame as part of its proposed tariff revisions, the issue of whether 20 days is a reasonable time frame is beyond the scope of this proceeding. The CAISO stakeholder process for considering this BPM revision is the more appropriate forum for Powerex to raise its concerns.³⁷

26. With regard to Powerex's concern about which data will be used for settlements, we note that CAISO states in its filing that if discrepancies remain between published prices and prices used for settlements after the expiration of the period for addressing processing and publication issues, it will use the prices posted on OASIS for settlement purposes. However, tariff language reflecting this policy is not included in the proposed tariff revisions. The Commission's regulations require that "[e]very public utility shall file with the Commission . . . full and complete rate schedules . . . clearly and specifically setting forth all rates and charges . . . [and the] practices, rules and regulations affecting such rates and charges . . ." ³⁸ The Commission has previously explained that utilities must file "those practices that affect rates and service significantly, that are realistically susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous."³⁹ We find that because the price used

³⁶ Specifically, CAISO proposes to "make changes to the affected prices to remedy the processing or publication problems within the time period following the applicable [t]rading [d]ay as specified in the [BPM], except as otherwise directed by the Federal Energy Regulatory Commission." CAISO Proposed Tariff § 35.3.

³⁷ We remind parties, however, that if rates are rendered unjust or unreasonable as a result of action or inaction on the part of the CAISO with respect to changes to the BPMs, parties may avail themselves of their rights under section 206 of the FPA.

³⁸ 18 C.F.R. § 35.1(a) (2010).

³⁹ See, e.g., *KeySpan Ravenswood v. FERC*, 474 F.3d 804, 811 (citing *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985)); see also *Cal. Indep. System Operator Corp.*, 131 FERC ¶ 61,280, at P 60 (2010); *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271 (2008).

for settlements has a direct impact on rates, this provision should be included in the tariff. Accordingly, we direct CAISO to submit a compliance filing within 30 days of this order that includes tariff language to establish that in the case of a price discrepancy after expiration of the period for addressing processing and publication issues, as specified in the BPM, CAISO will use the price posted on OASIS for settlement.

The Commission orders:

(A) CAISO's proposed tariff revisions are hereby conditionally accepted, as discussed in the body of this order.

(B) CAISO is hereby directed to submit a compliance 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.