

148 FERC ¶ 61,173  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
and Norman C. Bay.

California Independent System Operator Corporation	Docket Nos. ER06-615-000
	ER02-1656-027
	ER02-1656-029
	ER02-1656-030
	ER02-1656-031

ORDER ON MOTION FOR WAIVER OR, IN THE ALTERNATIVE,  
EXTENSION OF TIME

(Issued September 5, 2014)

1. On March 24, 2014, the California Independent System Operator Corporation (CAISO) filed a motion for permanent waiver of certain compliance directives set forth in certain Commission orders or, in the alternative, an extension of time (March 24 Filing) to implement four market design enhancements associated with CAISO's Market Redesign and Technology Upgrade (MRTU) proposal.<sup>1</sup> In this order, we reject CAISO's motion for permanent waiver and grant CAISO's request for an extension of time.

**I. Background**

2. In the September 2006 Order, the Commission conditionally accepted CAISO's proposal to implement its MRTU tariff, which, among other things, established the day-ahead market for ancillary services, bid cost recovery mechanism, and residual unit commitment process. CAISO implemented the basic MRTU design as "Release 1" on April 1, 2009; however, the Commission directed CAISO to implement certain additional market enhancements within three years (i.e., by April 1, 2012) as "Release 2."<sup>2</sup> These market enhancements included a two-tier allocation of real-time bid cost recovery uplift, bid cost recovery over multiple operating days, implementation of multi-hour constraints

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<sup>1</sup> See *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006) (September 2006 Order), *order on reh'g*, 119 FERC ¶ 61,076 (2007) (April 2007 Rehearing Order); *Cal. Indep. Sys. Operator Corp.*, 139 FERC ¶ 61,206 (2012) (June 2012 Motion Order).

<sup>2</sup> See September 2006 Order, 116 FERC ¶ 61,274 at P 33.

in the residual unit commitment process, and flexibility for ancillary services substitution.<sup>3</sup> The Commission subsequently extended the deadline for CAISO to implement these market enhancements to April 30, 2014, as discussed below.<sup>4</sup>

**A. Two-tier Allocation of Real-time Bid Cost Recovery Uplift**

3. As part of its MRTU market design, CAISO allocates bid cost recovery amounts incurred in the real-time market to all load serving entities in a single-tier allocation according to demand.<sup>5</sup> In response to a protest from the California Department of Water Resources State Water Project (State Water Project), the Commission directed CAISO to modify the proposed MRTU tariff<sup>6</sup> to allocate real-time bid cost recovery uplift in a two-tier method similar to how CAISO proposed to allocate its day-ahead bid cost recovery costs.<sup>7</sup> CAISO requested rehearing of this issue, arguing that cost causation principles are difficult to follow when procurements are made to assure grid reliability. The Commission directed CAISO to work with stakeholders to develop a proposal for a two-tier allocation for real-time bid cost recovery uplift for Release 2.<sup>8</sup>

4. Subsequently, in a motion filed in this proceeding on March 28, 2012 (March 2012 Motion), CAISO requested an additional two years to implement a two-tier allocation of real-time bid cost recovery uplift.<sup>9</sup> In that proceeding, CAISO asserted that

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<sup>3</sup> *Id.* PP 143, 301, 303, 533, 539.

<sup>4</sup> June 2012 Motion Order, 139 FERC ¶ 61,206 at P 26. The June 2012 Motion Order also granted an extension of time with respect to the directives in the September 2006 Order regarding exports of ancillary services and over-collection of transmission losses. The March 24 Filing does not seek waiver or a further extension of time with respect to these market elements.

<sup>5</sup> *See* March 24 Filing at 16.

<sup>6</sup> September 2006 Order, 116 FERC ¶ 61,274 at P 539.

<sup>7</sup> CAISO explains that it allocates day-ahead bid cost recovery uplift first to virtual demand positions that result from the integrated forward market clearing more supply than necessary to serve actual real-time demand and then allocates the remainder to metered demand and exports. CAISO states that a similar allocation scheme for real-time bid cost recovery uplift would presumably allocate the first tier to demand not scheduled in the day-ahead market. *See* March 24 Filing at 17.

<sup>8</sup> April 2007 Rehearing Order, 119 FERC ¶ 61,076 at P 307.

<sup>9</sup> March 2012 Motion at 7-12.

it would include the discussion of this issue in an upcoming stakeholder initiative designed to review cost allocation principles. CAISO further explained that this approach would not adversely impact market participants and, instead, would allow for CAISO to work with stakeholders to devise a solution that could be applied across the market consistently.

### **B. Bid Cost Recovery Over Multiple Operating Days**

5. As part of the day-ahead market commitment process proposed in the original MRTU market design, resources are committed during a 24-hour period based on the resource's start-up costs having to be recovered within the hours of the calendar day being optimized.<sup>10</sup> Thus, CAISO calculates a resource's bid cost recovery payment by spreading the resource's start-up costs over the 24-hour period in which the resource was committed. CAISO's tariff does not account for multiple days or revenues outside of the 24-hour period in which the unit was committed in determining a resource's bid cost recovery payment. In response to protests, the Commission directed CAISO to file a plan to address bid cost recovery for units facing these types of constraints for implementation in Release 2.<sup>11</sup>

6. In the March 2012 Motion, CAISO explained that only three percent of all day-ahead commitments had multi-day operational constraints for the period from 2009 to 2011.<sup>12</sup> Based on this data, CAISO explained that its stakeholders had reprioritized the issue of spreading a resource's start-up costs over multiple operating days in favor of other significant market initiatives, such as other market enhancements to address grid variability in the day-ahead market. CAISO stated that it would begin a new stakeholder process in 2013 to address this issue and requested an extension of time until April 2014.<sup>13</sup>

### **C. Multi-hour Constraints in the Residual Unit Commitment Process**

7. As part of its MRTU proposal, CAISO proposed to implement the residual unit commitment process to ensure that sufficient resources were available to satisfy its demand forecast while optimizing individual hourly constraints. Southern California Edison Company (SoCal Edison) protested these MRTU tariff provisions, arguing that

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<sup>10</sup> March 24 Filing at 22.

<sup>11</sup> September 2006 Order, 116 FERC ¶ 61,274 at P 533.

<sup>12</sup> March 2012 Motion at 14.

<sup>13</sup> *Id.* at 15.

the residual unit commitment process did not consider all bid parameters of System Resources,<sup>14</sup> such as multi-hour block intertie constraints submitted in conjunction with energy bids to the day-ahead market. The Commission directed CAISO to report, in a compliance filing, whether it would be able to revise its software to honor multi-hour block intertie constraints as a bidding parameter of System Resources in the residual unit commitment process in Release 1.<sup>15</sup> CAISO sought rehearing of this directive, arguing that the costs of implementing this software change outweighed its benefits. The Commission granted CAISO's request for rehearing and directed CAISO to implement bidding parameters for System Resources with multi-hour constraints in a subsequent market release.<sup>16</sup>

8. CAISO subsequently requested an extension of time to implement this functionality until it settled on a new market design for the integrated forward market and residual unit commitment process. In the March 2012 Motion, CAISO stated that the lack of this functionality in its current MRTU market design had not resulted in any market efficiency or performance issue.<sup>17</sup>

#### **D. Flexibility for Ancillary Services Substitution**

9. The MRTU tariff does not allow scheduling coordinators to substitute ancillary services for reasons other than an outage (i.e., for a greater amount of a lower quality ancillary service). Some CAISO market participants argued that allowing scheduling coordinators to buy back and/or trade ancillary services for other reasons could increase the efficiency of the ancillary services procurement process. In response, CAISO stated that its Release 1 software would not have the capability to provide for ancillary service substitution, but that it would explore implementing this software for inclusion in Release 2. The Commission accepted CAISO's commitment and directed CAISO to address ancillary services flexibility in future MRTU releases.<sup>18</sup>

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<sup>14</sup> A System Resource is all or part of a single resource or group of resources located outside of CAISO's balancing authority area. *See* CAISO Tariff, Appendix A (Master Definition Supplement); September 2006 Order, 116 FERC ¶ 61,274 at P 138 n.109.

<sup>15</sup> *Id.* P 143.

<sup>16</sup> April 2007 Rehearing Order, 119 FERC ¶ 61,076 at P 56.

<sup>17</sup> March 2012 Motion at 15-18.

<sup>18</sup> September 2006 Order, 116 FERC ¶ 61,274 at P 303.

10. In the March 2012 Motion, CAISO stated that it had not developed a proposal to allow for ancillary services substitution due to its attention to other ancillary service procurement enhancements. CAISO stated that it would explore ancillary services substitution over the next two years in its upcoming stakeholder processes associated with its renewable integration market and product review.<sup>19</sup>

**E. June 2012 Motion Order**

11. In the June 2012 Motion Order, the Commission granted CAISO's March 2012 Motion, finding that CAISO had shown good cause for an extension of time to implement the market enhancements through April 2014.<sup>20</sup> The Commission noted that CAISO's current and imminent stakeholder processes may result in market changes that overlap with the market enhancements for which CAISO had requested an extension of time. In granting the extension, the Commission also noted, in responding to concerns regarding the allocation of real-time bid cost recovery, its policy of allowing CAISO and stakeholders to prioritize certain market enhancements and further recognized CAISO's then-ongoing stakeholder process to develop guiding cost allocation principles. Thus, the Commission accepted CAISO's commitment to evaluate the two-tier allocation of bid cost recovery and file tariff revisions by April 30, 2014.<sup>21</sup>

**II. Motion for Waiver or, in the Alternative, Extension of Time**

12. CAISO seeks permanent waiver of the Commission's directives to implement a two-tier allocation of real-time bid cost recovery uplift, bid cost recovery over multiple operating days, multi-hour constraints in the residual unit commitment process, and flexibility for ancillary services substitution. In support of its request, CAISO states that the Commission issued the orders containing the compliance obligations more than six years ago, before CAISO and stakeholders gained experience with the nodal pricing design and, since that time, CAISO has implemented market enhancements that have decreased the relevance of these market design elements. CAISO argues that good cause exists to grant its motion for permanent waiver because its stakeholders have chosen to prioritize other market design enhancements over those identified in the motion.<sup>22</sup> CAISO explains that, over the past two years, initiatives, such as the implementation of renewable portfolio standards and the Commission's policy initiatives on integration of

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<sup>19</sup> March 2012 Motion at 18-20.

<sup>20</sup> June 2012 Motion Order, 139 FERC ¶ 61,206 at P 26.

<sup>21</sup> *Id.* P 27.

<sup>22</sup> March 24 Filing at 2-3.

variable energy resources, have consumed its market design efforts.<sup>23</sup> CAISO adds that it has also devoted significant resources to the development of a 15-minute real-time market, the reinstatement of convergence bidding on the interties, and an energy imbalance market.<sup>24</sup> Thus, CAISO explains that granting the waiver will allow its stakeholders to evaluate the need for, and priority of, these specific modifications through its ongoing stakeholder initiative cataloging process. CAISO asserts that the Commission has previously granted waiver of compliance requirements.<sup>25</sup>

13. If the Commission does not grant its motion for permanent waiver, CAISO requests an extension of time until April 30, 2017, to submit a filing that either addresses the specific directive(s) that the Commission has not waived or explains why the specified market design modifications are no longer needed under the current market design.<sup>26</sup> CAISO contends that good cause exists to grant the extension of time because the three-year extension will allow its stakeholders to gain experience with CAISO's changing market design and to evaluate whether and how the compliance directives should be addressed given ongoing market changes.

**A. Two-tier Allocation of Real-Time Bid Cost Recovery Uplift**

14. CAISO argues that good cause exists to grant waiver of the Commission's directive to implement a two-tier allocation of real-time bid cost recovery uplift because of significant market enhancements that have occurred since the issuance of the September 2006 Order and April 2007 Rehearing Order.<sup>27</sup> CAISO states that the two-tier allocation directives were based on a bid cost recovery design, in which bid costs and market revenues were netted across the real-time and day-ahead markets. Since then, CAISO explains, the Commission approved its proposal to separate the calculation of bid cost recovery for the two markets.<sup>28</sup> CAISO expects the new bid cost recovery design to increase real-time flexibility and decrease real-time commitment costs. In addition, CAISO anticipates that the clearing of virtual positions in the day-ahead market would

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<sup>23</sup> *Id.* at 5.

<sup>24</sup> *Id.* at 6-7.

<sup>25</sup> *Id.* at 8-9 (citing *ISO New England Inc.*, 143 FERC ¶ 61,198, at PP 29-35 (2013); June 2012 Order, 139 FERC ¶ 61,206 at PP 23, 31).

<sup>26</sup> *Id.* at 28-29.

<sup>27</sup> *Id.* at 19-20.

<sup>28</sup> *Id.* at 20-21 (citing *Cal. Indep. Sys. Operator Corp.* 145 FERC ¶ 61,254 (2013)).

have a limited effect on real-time market uplift.<sup>29</sup> CAISO also notes that, to improve transparency, it has revised its current monthly reports to track the effect of these market changes. CAISO states that it will also include this information as a standing item on the agenda for its Market Performance and Planning Forum stakeholder meetings, during which stakeholders can raise concerns regarding bid cost recovery uplift allocation provisions.<sup>30</sup> In light of these changes, CAISO asserts that it is reasonable for the Commission to eliminate the requirement to respond to this directive so that it can evaluate a tiered allocation of real-time bid cost recovery uplift within the context of its new market rules using the stakeholder process.

**B. Bid Cost Recovery Over Multiple Operating Days**

15. CAISO argues that the implementation of pending market design enhancements will significantly change the day-ahead and real-time markets, including bid cost recovery.<sup>31</sup> CAISO asserts that stakeholders can raise any concerns with its new bid cost recovery tariff provisions during its Market Performance and Planning Forum stakeholder meetings. CAISO contends that, given the few instances in which resource commitment extended beyond a single trading day between 2009 and 2012, the Commission should grant its request for permanent waiver of the directive to account for units running over multiple operating days in its calculation of bid cost recovery and allow stakeholders to consider this issue in due course, if necessary.<sup>32</sup>

**C. Multi-hour Constraints in the Residual Unit Commitment Process**

16. CAISO contends that significant enhancements to the real-time and day-ahead markets will also affect the residual unit commitment process.<sup>33</sup> In addition, CAISO states that it may develop a proposal to integrate its integrated forward market with the residual unit commitment process, which would change the current residual unit commitment process to which one of the Commission's directives applies. Furthermore, CAISO notes that its stakeholders rated the consideration of multi-hour constraints in the

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<sup>29</sup> *Id.* at 21.

<sup>30</sup> *Id.* at 21-22.

<sup>31</sup> *Id.* at 24-25.

<sup>32</sup> CAISO states that resource commitment extending beyond a single trading day for all day-ahead commitments was two percent in 2012 and zero percent in 2013. *Id.* at 24.

<sup>33</sup> *Id.* at 27-28.

residual unit commitment process as a low priority. Thus, CAISO explains that, if the Commission grants a permanent waiver of this compliance directive, stakeholders can consider this issue during its annual stakeholder catalog initiative process, if necessary.

**D. Flexibility for Ancillary Services Substitution**

17. CAISO argues that its current tariff provisions governing the procurement of ancillary services are just and reasonable without revision. CAISO explains that it has implemented enhancements to its ancillary services market that make its procurement process more efficient, such as considering a resource's performance when awarding regulation capacity. CAISO adds that it is pursuing the development of a flexible ramping product and contingency modeling enhancements. CAISO asserts that revising its tariff to allow for the substitution of ancillary services for reasons other than an outage presents an arbitrage opportunity for ancillary service providers without any clear market efficiency or reliability benefit. In addition, CAISO argues that good cause exists for granting a permanent waiver of this Commission directive because the implementation costs associated with allowing for the substitution of ancillary resources could exceed \$2 million.<sup>34</sup>

**III. Responsive Pleadings**

18. Pacific Gas and Electric Company (PG&E), SoCal Edison, and State Water Project filed answers to the March 24 Filing. On April 24, 2014, CAISO filed a motion for leave to answer and answer to the answers filed in this proceeding.

19. PG&E states that it supports CAISO's motion for an extension of time until 2017 to implement these market enhancements, but opposes a permanent waiver.<sup>35</sup> PG&E recommends that the Commission require CAISO to complete a stakeholder process on these issues within the next two years and report the results of the stakeholder process to the Commission.<sup>36</sup>

20. SoCal Edison objects to CAISO's request for permanent waiver of the Commission's directive to implement a two-tier allocation process for real-time bid cost recovery uplift, and recommends that the Commission grant CAISO's request for an extension of time until September 1, 2015 to consider this directive.<sup>37</sup> SoCal Edison

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<sup>34</sup> *Id.* at 16.

<sup>35</sup> PG&E Answer at 1-2.

<sup>36</sup> *Id.* at 2-4.

<sup>37</sup> SoCal Edison Answer at 2.

states that an extension of time until Fall 2015, rather than Spring 2017, as CAISO alternatively requests, is reasonable and will allow stakeholders to gain a year of new market performance data before moving forward with a proposal that addresses the Commission's directive.

21. Likewise, State Water Project opposes CAISO's request for waiver of its obligation to implement two-tier allocation of real-time bid cost recovery uplift and argues that the Commission should require CAISO to implement a two-tier allocation process without delay. State Water Project argues that CAISO's current method of allocating real-time bid cost recovery uplift to all load-serving entities violates the Commission's cost causation principles and CAISO's principles guiding cost allocation.<sup>38</sup> State Water Project also refutes CAISO's claim that its stakeholders have not expressed interest in implementing this market design enhancement.<sup>39</sup> If the Commission believes that another extension of time to implement a two-tier allocation process is warranted, State Water Project requests that the new implementation date be within 18 months of CAISO's implementation of its energy imbalance market.<sup>40</sup>

22. In response, CAISO opposes State Water Project's request that the Commission require CAISO to implement a two-tier allocation of real-time bid cost recovery uplift immediately. Instead, CAISO proposes to begin a stakeholder process by the end of November 2015 to consider a two-tier allocation of bid cost recovery uplift and, therefore, requests an extension of time until April 2017.<sup>41</sup> CAISO states that this timeframe would allow for one year's worth of settlement data under its new market design and rule changes, which it will study for about six months before starting a stakeholder process to design a new allocation scheme. CAISO reiterates its request for the Commission to grant a permanent waiver of the directives concerning bid cost recovery over multiple days, multi-hour constraints in the residual unit commitment process, and ancillary services substitution.<sup>42</sup>

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<sup>38</sup> State Water Project Answer at 1-2.

<sup>39</sup> *Id.* at 3-4.

<sup>40</sup> *Id.* at 4.

<sup>41</sup> CAISO Answer at 4.

<sup>42</sup> *Id.* at 5.

#### IV. Discussion

##### A. Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept CAISO's answer because it provided information that assisted us in our decision-making process.

##### B. Commission Determination

25. As an initial matter, we find that a motion for "permanent waiver" is not the appropriate vehicle to seek relief from directives in a Commission order.<sup>43</sup> CAISO's request for permanent waiver of the Commission's directives to implement four market design enhancements associated with its MRTU proposal is tantamount to an out-of-time request for rehearing of these aspects of the September 2006 Order, which is not permitted under the Federal Power Act (FPA).<sup>44</sup> In the future, any request to deviate or abstain from a directive in a Commission order after the expiration of the rehearing period must be made, as appropriate, in a filing pursuant to section 205 or section 206 of the FPA.

26. We also find that CAISO has not sufficiently demonstrated that these market enhancements are no longer needed. In support of its request, CAISO notes that the

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<sup>43</sup> The Commission has previously granted one-time waivers of tariff provisions in situations where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties. *See, e.g., Aragonne Wind, LLC*, 145 FERC ¶ 61,106, at P 18 (2013); *Southeastern Power Admin.*, 143 FERC ¶ 61,210, at P 7 (2013); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069, at P 8 (2011). Here, however, CAISO is not seeking a one-time waiver of a filed tariff provision.

<sup>44</sup> 16 U.S.C. § 825l(a) (requests for rehearing must be filed within 30 days after the issuance of the underlying order); 18 C.F.R. § 385.713(b) (2014) ("A request for rehearing by a party must be filed not later than 30 days after the issuance of any final decision or other final order in a proceeding."). The Commission has no discretion to waive this statutory deadline. *See, e.g., City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985); *Boston Gas Co. v. FERC*, 575 F.2d 975, 977-79 (1st Cir. 1978).

Commission issued the orders containing the compliance obligations more than six years ago and, since that time, numerous improvements have been made to the nodal market design. Moreover, CAISO states that it has recently implemented further market design modifications, including 15-minute scheduling and the expansion of its existing real-time energy imbalance market to neighboring balancing authority areas. CAISO states that the implementation of these changes, which its stakeholders prioritized, involved substantial time and resource investment. CAISO asserts that these changes, in addition to other market changes that have been implemented since MRTU “Release 1” and “Release 2,” may have reduced the need for the market enhancements directed in the September 2006 Order.<sup>45</sup>

27. We find that CAISO has not sufficiently explained whether or how subsequent market design changes have rendered the prior Commission directives obsolete or unnecessary. For example, CAISO does not explain how its current market structure obviates the need for the Commission-ordered directives or how implementing these directives would be duplicative or unnecessary in light of the current market structure or based upon future market initiatives. CAISO also provides little analysis or data on which to compare the costs and benefits of implementing the various directives. Without this information, we are not persuaded at this time that CAISO cannot, or should not, implement the Commission’s directives. We would expect CAISO to include such information in any subsequent section 205 or section 206 filing to request to deviate or abstain from any of the directives in question. Should CAISO make such a section 205 or section 206 filing, the Commission will review and consider it at that time.

28. Therefore, we consider CAISO’s alternative request for an extension of time until April 30, 2017 to comply with the Commission’s prior directives. We note that no party has protested CAISO’s request for an extension of time to address the Commission’s directives related to bid cost recovery for units running over multiple operating days, multi-hour constraints in the residual unit commitment process, and flexibility in ancillary services substitution. We also acknowledge the various other market changes that have recently become effective and other planned initiatives, and find that it is appropriate for CAISO to further evaluate these Commission directives in the context of its newly changed market. Therefore, we grant CAISO’s request for an extension until April 30, 2017 to comply with these directives.

29. Likewise, we also grant a three-year extension of time for CAISO to address the Commission’s directive to implement a two-tier allocation of real-time bid cost recovery uplift. We find that a three-year extension is appropriate for CAISO to gain experience

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<sup>45</sup> *Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,204 (2014); *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,231 (2014).

with the new changes to its bid cost recovery tariff revisions, particularly the elimination of previously effective netting procedures for calculating real-time and day-ahead bid cost recovery, before implementing the Commission's directive to develop a two-tier allocation process for real-time bid cost recovery. In addition, we find that a three-year extension, in contrast to no delay or the shorter extension advocated by State Water Project and SoCal Edison, will provide CAISO with adequate time to gain experience with, and data from, its new market design and develop a proposal with stakeholders. Therefore, we accept CAISO's commitment to begin a stakeholder process by the end of November 2015 to consider a two-tier allocation of bid cost recovery uplift and file tariff modifications addressing this issue no later than April 30, 2017.

The Commission orders:

(A) CAISO's motion for waiver is hereby rejected, as discussed in the body of this order.

(B) CAISO's motion for extension of time to implement the directives of the September 2006 Order until April 30, 2017, is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.