

UNITED STATES OF AMERICA 113 FERC ¶ 61,186
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

California Independent System Operator
Corporation

Docket No. ER05-1501-000

ORDER ACCEPTING AND SUSPENDING FILING
AND DIRECTING STAFF TO CONVENE A TECHNICAL CONFERENCE

(Issued November 21, 2005)

1. In this order, the Commission accepts the California Independent System Operator Corporation's (CAISO) Simplified and Reorganized Tariff (S&R Tariff), and suspends it for five months, to be effective April 21, 2006, or an earlier date set by subsequent Commission order, subject to refund. The CAISO states that the S&R Tariff is intended to organize and consolidate the provisions of the CAISO tariff into a more orderly and accessible document, but is not intended to change or amend any of the substantive provisions of the existing tariff. However, given the matters raised in comments to the filing, we direct staff to convene a technical conference to address inconsistencies, errors, or other required administrative revisions to the filing.

Background

2. Pursuant to section 205 of the Federal Power Act (FPA section 205),¹ the CAISO filed the S&R Tariff on September 22, 2005, which is intended to do what its name implies: simplify and reorganize the existing CAISO tariff.² The CAISO states that the S&R Tariff reflects all amendments and corrections to the CAISO tariff accepted by the

¹ 16 U.S.C. ¶ 824d (2005).

² Transmittal letter at p. 3.

Commission and made effective as of August 31, 2005,³ and that no substantive changes to any rate provisions, CAISO operations or practices, or terms or conditions of service have been made. The CAISO states that this tariff merely simplifies and reorganizes the existing CAISO tariff by: (1) including certain provisions of the Ancillary Services, Billing and Settlement, and Enforcement Protocols, among other things, in the appropriate sections of the main body of the CAISO tariff; (2) deleting duplicative provisions; (3) consolidating tariff language addressing similar issues; (4) appending remaining protocols to the main body of the CAISO tariff that are not addressed elsewhere; and (5) reorganizing the S&R Tariff to serve as a better platform for the Market Redesign and Technology Upgrade (MRTU) Tariff the CAISO plans to file with the Commission in the near future (currently projected to be November 30, 2005).

S&R Tariff Proposal

3. The CAISO states that its primary impetus for making this filing at this time is to lay the foundation for the MRTU Tariff. The CAISO states that, in April 2005, it began the process of simplifying and reorganizing its tariff. The CAISO further states that it discussed the tariff revisions with market participants on a monthly basis, posted a preliminary draft of the S&R Tariff on its website on April 29, 2005, and updated that draft on September 6, 2005. The CAISO states that simplifying and reorganizing the tariff now – without any substantive changes – will allow the CAISO to place the MRTU implementing language relating to specific subjects in the appropriate place within the tariff.⁴

4. Another primary motivation for the revisions, according to the CAISO, was to remove unnecessary protocols that were filed and made part of the main body of the CAISO tariff in 1997 and 1998. The CAISO states that these protocols were originally intended to serve as stand-alone supporting documents. However, the Commission found that these protocols appeared to contain rates, terms, and conditions not found elsewhere in the tariff and, therefore, the CAISO was directed to file these protocols in their entirety as part of the CAISO tariff. Nevertheless, the Commission recommended that the CAISO review its tariff to determine which provisions were merely operational

³ The CAISO states that it intends to make a subsequent filing on or shortly after November 21, 2005, to include additional provisions reflecting amendments and corrections accepted by the Commission through November 21, 2005, including provisions pending acceptance by the Commission.

⁴ Transmittal Letter at p. 3.

guidelines so that they could be deleted from the CAISO tariff at some future date.⁵ Accordingly, the CAISO states that it intended to remove certain protocols from its tariff as part of his filing. However, several market participants expressed certain concerns to the CAISO about doing so. As a result, the CAISO says, it has not proposed the removal of protocols here.⁶

5. The S&R Tariff filed by the CAISO has been organized in the following manner: (1) Article I consists of provisions of general applicability; (2) Article II discusses transmission service, including grid expansion, new generator interconnection, and the transmission Access Charge; (3) Article III defines market operations; (4) Article IV provides for market monitoring and market power mitigation; and (5) Article V provides for assurance of resource adequacy. Additionally, several protocols (e.g., Ancillary Services Requirements, Eligible Intermittent Resources, Dynamic Scheduling and Scheduling Protocols) have been retained along with other appendices to the S&R Tariff.

Notice and Interventions

6. Notice of the CAISO's filing was published in the *Federal Register*, 70 Fed. Reg. 58212 (2005), with interventions and protests due on or before October 13, 2005. On October 6, 2005, the Transmission Agency of Northern California; Modesto Irrigation District; the City of Santa Clara, California, doing business as Silicon Valley Power; M-S-R Public Power Agency; and the City of Redding, California (collectively, Movants) filed a joint Motion for Extension of Time, requesting until October 27, 2005, to file motions to intervene, comments, and protests. Movants also requested that the answer period for responding to their Motion for Extension of Time be shortened. On October 7, 2005, the Commission issued a notice shortening the answer period, as requested, providing that answers to Movants' motion were due on or before October 11, 2005.

7. The CAISO filed a timely Answer to Motion for Extension of Time. The CAISO stated that it did not oppose Movants' motion for extension of time, provided the Commission issue its order on or before November 21, 2005, as required by FPA section 205. Alternatively, with its consent to the extension of time, the CAISO stated that it would consent to a deferral of the Commission's action on the CAISO's FPA

⁵ See *Pacific Gas and Electric Company, et al.*, 81 FERC ¶ 61,320 (1997).

⁶ The CAISO states that, eventually, it intends to move the appended protocols into Business Practice Manuals that will not be filed with the Commission, and will continue to collaborate with California market participants to that end.

section 205 filing to December 5, 2005, provided that the Commission also waive Order No. 614 requirements⁷ to permit the CAISO to use the S&R Tariff as the platform for presenting black-line changes required by 18 C.F.R. § 35.10(c) in the anticipated November 30, 2005 filing of the CAISO's Tariff reflecting the CAISO's Market Redesign and Technology Upgrade (MRTU) and without delaying the requested November 21, 2005 effective date. On October 12, 2005, the Commission issued a notice extending the time to file motions to intervene, comments, and protests until October 20, 2005.

8. Timely motions to intervene were filed by the California Energy Resources Scheduling Division of the California Department of Water Resources; the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California, jointly; Citizens Energy Corporation; the City of Burbank, California; the City of Glendale, California; the California Department of Water Resources State Water Project; the California Electricity Oversight Board; Duke Energy North America, LLC and Duke Energy Marketing America, LLC, jointly; Imperial Irrigation District; Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC, jointly; Morgan Stanley Capital Group Inc.; Trans-Elect NTD Path 15, LLC; Turlock Irrigation District; and Williams Power Company, Inc.

9. Timely motions to intervene and comment or protest were filed by the California Department of Water Resources State Water Project (SWP); the Metropolitan Water District of Southern California (Metropolitan); Northern California Power Agency (Northern California); Pacific Gas and Electric Company (PG&E); Powerex Corporation (Powerex); Sacramento Municipal Utility District (SMUD); and Movants.

10. Late motions to intervene were filed by Southern California Edison Company (SoCal Edison) and jointly by the Cogeneration Association of California and the Energy Producers and Users Coalition (the QF Parties). A late motion to intervene and comment or protest was filed by the City and County of San Francisco (San Francisco).

11. On November 4, 2005, the CAISO filed an answer to the protests filed in this proceeding.

⁷ *Order No. 614*, FERC Stats. & Regs. ¶ 31,096 (2000).

Discussion**A. Procedural Matters**

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will allow the late interventions of SoCal Edison, the QF Parties, and San Francisco because they have each demonstrated an interest in this proceeding that cannot be adequately represented by any other party. Given this fact, the early stage of the proceeding, and the lack of undue prejudice or delay, we will grant the late-filed motions to intervene. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the CAISO's answer because it has provided information that assisted us in our decision-making process.

B. Position of the Parties**PG&E**

13. PG&E generally supports importing the language from the protocols into the CAISO tariff; however, PG&E alleges that there are instances where importing protocol provisions into the tariff results in a substantive change from the provisions or practices under the current CAISO Tariff. PG&E argues that section 6.6 of the current CAISO Tariff requires that the CAISO maintain a back-up system to the communications systems between the CAISO and the scheduling coordinators in case of failure and include those procedures in the protocols; however, the proposed provisions do not require the CAISO to provide an external back-up. PG&E further alleges that proposed section 19 on demand forecasts, that was imported from the Demand Forecast Protocol, imposes requirements that are not required by the current CAISO tariff and, thus, needs market participant comment and evaluation before implementation.

14. PG&E also states that a November 21, 2005 effective date for the S&R Tariff will not permit PG&E and other market participants sufficient time to conform their tariffs that refer to and rely upon the current CAISO Tariff. Therefore, PG&E requests that the Commission either grant PG&E (and others) a waiver of the sixty-day notice requirement in which to file its conforming tariffs or suspend the effective date of the S&R Tariff until at least ninety days after the Commission issues its decision. If the Commission suspends the effective date as PG&E requests, in order to avoid complicating or delaying the Commission's consideration of the MRTU Tariff, PG&E suggests that the Commission waive Order No. 614 to permit the CAISO to use the S&R Tariff as the platform for presenting black-line changes.

15. PG&E also states that numerous sections from the S&R Tariff need to be corrected or modified to address the following problems: (1) conflicts between procedures or practices under the Current CAISO Tariff and imported protocol provisions; (2) use of terms or language that are inconsistent with the meaning or application of the Tariff; (3) use of undefined terms and vague and ambiguous language; (4) use of confusing organization or structure in the S&R Tariff; and (5) typographical and other minor errors.

Metropolitan

16. Metropolitan claims that the proposed definition of “New Firm Uses” is a substantive and unjustified change to the current CAISO Tariff. Metropolitan states that S&R Tariff section 23 proposes to define “New Firm Uses” as “any use of the CAISO transmission service, except for uses associated with Existing Rights.” Metropolitan further states that under section 2.4.4.1.1 of the current CAISO tariff, “Existing Rights” are currently defined as: “The transmission service rights and obligations of the Non-Participating transmission owners under the Existing Contracts...” Metropolitan argues that by only excluding “Existing Rights” in determining what transmission capacity is available for the CAISO’s use, the CAISO ignores other transmission capacity that cannot be used for the CAISO “new firm uses” under its current tariff such as transmission facilities that are owned by non-participating transmission owners, like Metropolitan, that are not part of the CAISO controlled grid, but are within the CAISO control area. Metropolitan contends that unless the error is corrected, the S&R Tariff would permit the CAISO to accept schedules over non-participating transmission owner transmission facilities from entities having no ownership or contract rights to such facilities.

17. Metropolitan states that it is concerned that the press of other matters has limited stakeholder opportunity to identify other errors and unintended consequences that may flow from acceptance of the S&R Tariff. Metropolitan suggests that since the S&R Tariff is intended to merely streamline the current Tariff to highlight forthcoming changes in the MRTU Tariff without introducing substantive changes, that the Commission could accept the S&R Tariff as an informational filing.

Movants, Northern California, and San Francisco

18. Movants state that the CAISO’s S&R Tariff has numerous inconsistencies and substantive issues that call to question the just and reasonable nature of the proposed S&R Tariff. Northern California joins in the comments of Movants, and further notes changes and errors in sections regarding the treatment of existing transmission contracts, which they believe are troubling. San Francisco joins in all the comments filed by

Northern California and adds that the changes proposed by the CAISO may impact its existing contract rights and result in cost-shifting to existing contract customers.

19. Movants and Northern California note that the CAISO has replaced “ISO Controlled Grid” with “ISO Balancing Authority Area” in S&R Tariff section 4.5.1.2.2.1, without any explanation for the change or the addition of a definition for “ISO Balancing Authority Area” to the S&R Tariff. Movants contend that they cannot agree to this provision without knowing what the new term means and how the change in language changes the original meaning of the section it is in. Further, if the CAISO is proposing to extend its control and authority beyond the CAISO controlled grid, then Movants assert that the substitution should be rejected.

20. Movants and Northern California state that the CAISO has made a substantive deletion when merging current CAISO Tariff section 2.4.4.4.5 with CAISO Scheduling Protocols 4.3 and 9.9. Movants claim that with this modification the CAISO fails to make participating transmission owners responsible for differences in assignment of transmission loss requirements and only provides such a provision for ancillary services requirements; however, under the current CAISO Tariff, participating transmission owners are responsible for both.

21. Furthermore, Movants are concerned with the way Schedules and Bids Protocol 3.3 has been translated into S&R Tariff section 16.2.4A.1. Movants state that deletions within this section lack explanation and eliminate useful references and that the S&R Tariff section does not disclose the location of a referenced standard template. Moreover, Movants state that there are numerous cross-referencing errors throughout the S&R Tariff, which include references to sections that do not exist and deleted references that have not been replaced with references to the appropriate sections of the S&R Tariff.

22. Movants and Northern California contend that the S&R Tariff should be suspended for five months and that settlement procedures should be ordered to resolve the various errors, inconsistencies, and substantive concerns identified by market participants.

SMUD

23. SMUD believes the S&R Tariff unreasonably adds needless complexity by proposing pervasive interim changes to the CAISO Tariff with no alleged substantive effect. SMUD states that there are numerous errors in the filing that bring into serious doubt that the tariff changes are wholly non-substantive, and that the numerous plain errors in the S&R Tariff will unnecessarily divert market participant energy and attention away from the key MRTU redesign issues.

24. SMUD states that it has not had the time or resources to cross-check each reference within the Tariff and its Appendices to make sure that each reference is accurate or that the wording of each section has not changed. SMUD believes that the errors that SMUD has uncovered indicate that the CAISO has not subjected its revisions to an adequate level of scrutiny and that such closer review will be necessary if the Commission allows the tariff to go into effect. SMUD states that it is concerned that the reordering of the S&R Tariff may have caused unintentional substantive changes to the meaning of the CAISO Tariff.

25. SMUD argues that there is no point to reviewing the reorganization of the CAISO S&R Tariff, since it will decide nothing and serves only to burden the parties and the Commission at a critical juncture in the MRTU review process. SMUD argues that any value of the reorganization of the S&R Tariff, as a means with which market participants can more easily track the substantive MRTU Tariff changes, is significantly offset by the harm of preventing market participants from being able to track directly the substantive changes being made to the existing tariff they are familiar with and under which they have historically taken service.

26. SMUD argues that the unreasonableness of the S&R Tariff filing is magnified by the fact that the S&R Tariff, itself, will only be temporary, yet parties must now devote substantial resources solely to ensure that the language changes will not change any substance for the interim period. SMUD believes that if the Commission does not reject the S&R Tariff outright as unreasonable, the Commission should, at minimum, require a resubmission of the S&R Tariff that not only corrects the errors identified by SMUD, but which follows a rigorous audit for (1) other errors and (2) unintended substantive changes.

SWP

27. SWP points out certain errors and inconsistencies. For example, SWP states that the provisions concerning testing of ancillary services resources include duplication and that § 11.2.11.1 Obligation for FERC Annual Charges appears to be mis-numbered. Also, SWP asserts that the term “new firm use” is defined in section 23, but not in Appendix A to the S&R tariff, which contains definitions. SWP believes this definition may have significant impacts on market participants, and should be developed carefully through a stakeholder process. Further, SWP states that the proposed new definition of Trading Interval either duplicates the preexisting definition of Settlement Period, or represents a different concept. SWP believes that if the meaning of the two terms is identical, then Trading Interval should be replaced with Settlement Period. However, SWP argues that if the two terms have different meanings, a more specific definition for Trading Interval should be used.

Powerex

28. Powerex states that it is generally supportive of the S&R Tariff; however, it is opposed to the S&R Tariff effective date of November 21, 2005 for the entire S&R Tariff. Powerex's concern is drawn from the statements of the CAISO regarding the many current CAISO tariff sheets which state that the provisions are "Effective Upon Notice," and that the CAISO states it believes in many instances notice was given, thus includes November 21, 2005 as the effective date and notes it will "include up-to-date tariff sheets" in a subsequent filing.⁸ Powerex states that it is unclear from this statement whether the CAISO will identify in the subsequent filing that tariff sheets that never became effective because notice was not provided will require notice in order to become effective.

29. Powerex states that, in any event, it is inappropriate to have filed tariff sheets with a November 21, 2005 effective date when in fact certain tariff sheets will not be effective on that date. Doing so is not only confusing, according to Powerex, but also makes errors more likely when trying to determine whether or not a tariff provision is effective. Powerex argues that the CAISO's commitment to make a subsequent filing is not sufficient under these circumstances, and that, consequently, the Commission should not grant the November 21, 2005 effective date for the entire S&R Tariff without the CAISO first delineating and noting on the clean tariff sheets which tariff provisions are not effective due to appropriate notice not having been given.

30. Powerex identifies one tariff provision in particular that falls into this category, but notes that there may be others. S&R Tariff section 11.2.4 (prior section 11.2.4) provides, in part: "[t]he remaining Imbalance Energy constitutes Uninstructed Imbalance Energy, and will be calculated based on the difference between the Metered Quantity and the Generator's Dispatched Operating Point." Powerex points out that the current CAISO Tariff states that this provision will become effective upon notice from the CAISO. However, Powerex states that to its knowledge, no such notice has been given. Powerex states that the CAISO has informed market participants that the implementation of this tariff provision has been suspended indefinitely. In addition, prior to the provision becoming effective, Powerex argues that the CAISO should include a reference to 'System Resources' so that it reads: "For pre-dispatched System Resources, the Uninstructed Imbalance Energy will be calculated based on the pre-dispatched amount of the bid that is declined or not delivered. For Dynamically Scheduled System Resources, Uninstructed Imbalance Energy, will be calculated based on the deviation from the Final Hour-Ahead schedule plus any real-time Dispatch Instructions."

⁸ Transmittal Letter at p.2 n.2.

31. In a similar vein, Powerex asserts that S&R Tariff section 30.3.5 (prior section 2.2.9) should not be made effective November 21, 2005. According to Powerex, the CAISO's current tariff shows that this section was issued on November 29, 2004, but was made effective upon the date that the CAISO implemented changes to its scheduling system to permit it to go into effect. According to Powerex, the CAISO has not yet made the necessary changes to its scheduling system, and so this section has not yet become effective, despite the fact that, according to Powerex, the CAISO treats it as effective. Powerex states that the tariff sheets for S&R Tariff section 30.3.5 should include the reference that it is effective only when the CAISO implements necessary changes to its scheduling system and should not be effective November 21, 2005. Furthermore, Powerex argues that the CAISO should not treat this section as currently effective.

C. Commission's Determination

32. We believe that the CAISO's proposal to simplify and reorganize its tariff should be beneficial to all users of the tariff by streamlining design and access to its various provisions. While the proposed structure of the S&R Tariff appears to be acceptable, we agree with protestors that inadvertent errors may have affected the interpretation of the substance of the S&R Tariff. Accordingly, based on a review of the filing, the Commission finds that the proposed tariff changes have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. In its answer, the CAISO responded to the issues raised, offered resolution of some of the inconsistencies in the S&R Tariff, and amended certain language objected to by protestors. However, these newly proposed changes to the S&R Tariff filing are not necessarily insignificant or minor, and may have more substantive impact than is readily apparent. Therefore, in order to give market participants an opportunity to respond to the proposed changes, we will direct staff to convene a technical conference to address these matters.

33. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.⁹ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances do not exist here.¹⁰ Therefore, the Commission shall exercise its discretion to suspend the tariff

⁹ *Boston Edison Company*, 12 FERC ¶ 61,211 (1980); *see also Great Lakes Gas Transmission Company*, 12 FERC ¶ 61,293 (1980).

¹⁰ *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982).

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sheets for five months, and permit the tariff sheets to take effect the earlier of a date set by subsequent Commission order in this proceeding or April 21, 2006, subject to refund.

34. Further, given the volume of materials to be reviewed by the market participants, and the number of various issues raised in the protests, we agree that sufficient time must be given for market participants to complete that review, and that a November 21, 2005 effective date would not allow the necessary time. While we are mindful of the time constraints under which the CAISO is working to file its MRTU Tariff, we are most concerned that the tariff provisions which are in effect are clear and unambiguous for the market participants who must comply with those provisions. Therefore, we will accept the S&R Tariff for filing, suspend it for five months, or until an earlier date set by subsequent Commission order, subject to refund, and direct the Commission staff to convene a technical conference to address the concerns of the protestors and the CAISO, as discussed above.

The Commission orders:

(A) The S&R Tariff is hereby accepted for filing and suspended for five months, to be effective April 21, 2006, or an earlier date set by subsequent Commission order, subject to refund, as discussed in the body of this order.

(B) Commission Staff is directed to convene a technical conference as discussed in the body of this order and to report the results to the Commission within 120 days of the issuance of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.