

129 FERC ¶ 61,292
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer and Philip D. Moeller.

California Independent System Operator Corporation Docket No. ER10-188-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING PROPOSED TARIFF
CHANGES AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued December 30, 2009)

1. This order addresses the California Independent System Operator Corporation's (CAISO's) proposed tariff revisions relating to the CAISO's Grid Management Charge. The CAISO proposes to amend its tariff to extend the current Grid Management Charge until December 31, 2010. In addition, it proposes to modify the Market Usage-Forward Energy Charge component of the Grid Management Charge.
2. Pursuant to the Commission's authority under section 205 of the Federal Power Act (FPA), we accept the CAISO's proposed tariff amendment to extend the current Grid Management Charge until December 31, 2010, but conditionally accept its proposal to modify the Market Usage-Forward Energy Charge, suspend the proposed rate change for five months to become effective on June 1, 2010, subject to refund, and establish hearing and settlement judge procedures.

I. Background

3. The Grid Management Charge recovers the CAISO's administrative and operating costs through eight categories of services that the CAISO provides.¹ The Grid Management Charge was developed through a settlement that established the Grid Management Charge rate design for January 1, 2004 through December 31, 2006.² This

¹ *Cal. Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,338, at P 2-3 (2008) (December 2008 Order).

² *Cal. Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,329 (2005).

Grid Management Charge rate design reflected the costs incurred in operating the CAISO's markets as they existed prior to the implementation of the CAISO's Market Redesign and Technology Upgrade (MRTU). The use of the Grid Management Charge as established by the settlement was extended a number of times. The final extension was to terminate on December 31, 2010, or upon implementation of MRTU, whichever was earlier.³

4. On February 20, 2008, the CAISO filed revisions to its Grid Management Charge rate design to accommodate changes in the CAISO's market operations under MRTU, to become effective upon implementation of the new market design. The Commission accepted the CAISO's proposed Grid Management Charge tariff revisions, with the exception of two modifications that had been protested.⁴ The CAISO was directed to submit a compliance filing to include previously accepted language regarding load-following metered sub-systems that the CAISO had proposed to delete from its tariff⁵ and to propose tariff language addressing how Inter-Scheduling Coordinator Trades⁶ would be treated in calculating Market Usage-Forward Energy Charges.⁷

³ See *Cal. Indep. Sys. Operator Corp*, Docket No. ER06-1281, Letter Order dated September 6, 2006; *Cal. Indep. Sys. Operator Corp*, Docket No. ER08-135, Letter Order dated December 19, 2007; *Cal. Indep. Sys. Operator Corp*, ER09-235, dated December 2, 2008.

⁴ December 2008 Order, 125 FERC ¶ 61,338.

⁵ *Id.* P 40.

⁶ An Inter-Scheduling Coordinator Trade is a "trade between Scheduling Coordinators of Energy, Ancillary Services, or [Integrated Forward Market] Load Uplift Obligation in accordance with the CAISO Tariff." CAISO Tariff, Appendix A, Master Definitions Supplement.

⁷ December 2008 Order, 125 FERC ¶ 61,338 at P 46. The Market Usage Charge, which is split into the Market Usage-Forward Energy and Market Usage-Ancillary Services and Real Time Energy charges, is defined as the "component of the Grid Management Charge that provides for the recovery of the CAISO's costs, including, but not limited to the costs for processing Day-Ahead, Hour-Ahead Scheduling Process and Real-Time Bids, maintaining the Open Access Same-Time Information System, monitoring market performance, ensuring generator compliance with market rules as defined in the CAISO Tariff and the Business Practice Manuals, and determining [Locational Marginal Prices]." CAISO Tariff, Appendix A, Master Definitions Supplement. Specifically, the Market Usage-Forward Energy Charge is designed to recover the portion of the CAISO's costs of administering its markets that is associated

(continued...)

5. On January 21, 2009, the CAISO submitted a compliance filing with revised tariff sheets addressing the two December 2008 Order directives. The CAISO proposed to clarify that the Market Usage-Forward Energy Charge will apply to energy in the day-ahead market as offset by physical (but not financial) Inter-Scheduling Coordinator Trades. After consideration of a protest filed by the Northern California Power Agency (NCPA), the CAISO agreed that it was not appropriate to treat “financial” and “physical” trades differently and agreed that both types of trades should be included in the Market Usage-Forward Energy Charge allocation formula. The CAISO committed to file tariff revisions with this clarification. Finally, the CAISO represented that it would hold a future stakeholder process to re-evaluate the Market Usage-Forward Energy Charge and address the appropriate Grid Management Charge rate structure for recovery of the administrative costs associated with Inter-Scheduling Coordinator Trades.⁸

6. In a March 2009 Order, the Commission accepted the CAISO’s Grid Management Charge compliance filing, subject to a further compliance filing by the CAISO stating that physical and financial Inter-Scheduling Coordinator Trades would be treated in the same manner with regard to the Market Usage-Forward Energy Charge.⁹ The CAISO’s subsequent filing in compliance with the March 2009 Order was accepted by the Commission on July 14, 2009.¹⁰

7. Consistent with its previous commitments, the CAISO initiated a stakeholder process regarding the Market Usage Forward-Energy Charge on August 3, 2009 and held a stakeholder meeting on August 18, 2009. The CAISO posted a straw proposal on August 28, 2009 and a second stakeholder meeting was held on September 15, 2009. After a subsequent stakeholder conference call on September 30, 2009, the CAISO posted its final proposal on October 2, 2009. A final stakeholder conference call was held on October 21, 2009.

8. On October 30, 2009, the CAISO filed its proposed tariff revisions with the Commission in the instant docket. As discussed more fully below, the proposed tariff revises the calculation of the Market Usage-Forward Energy Charge and extends the Grid

with forward energy purchases and sales. CAISO, October 30, 2009 Amendment to Extend and Modify Grid Management Charge (CAISO Tariff Proposal) at 2.

⁸ *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,021 (2009), citing CAISO Answer, Docket No. ER08-585-001, filed February 26, 2009 at 3.

⁹ *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,289, at P 7 (2009).

¹⁰ *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,021 (2009), *reh’g pending*.

Management Charge until December 31, 2010. The CAISO requests that these tariff changes become effective January 1, 2010.

II. Description of Filing

9. In its filing, the CAISO proposes to modify the Market Usage-Forward Energy Charge, which is a component of the Grid Management Charge. Currently, with regard to the Market-Usage Forward Energy Charge, the CAISO tariff provides that “the rate for the Day-Ahead Market for Energy will be based on MWh of net Energy purchases or sales in the [Day-ahead Market], offset by MWh of net Energy associated with Inter-[Scheduling Coordinator] Trades of Energy in the [Day-Ahead Market].”¹¹ The CAISO proposes to revise this provision to: 1) exclude Inter-Scheduling Coordinator Trades from the calculation; 2) refer to day-ahead energy schedules rather than purchases and sales;¹² 3) eliminate netting of purchases and sales, or of supply and demand; and 4) calculate the charge based on the greater of total supply schedules or total demand schedules (the modified gross approach). According to the CAISO, the Market Usage-Forward Energy Charge would thus be based on the greater of the amount of MWh associated with each scheduling coordinator’s day-ahead schedule of supply or the amount associated with its day-ahead schedule of demand for each hour (or settlement period).

10. The CAISO contends that applying the Market Usage-Forward Energy Charge to “gross” energy schedules,¹³ rather than a “net” energy schedules,¹⁴ is most consistent with cost causation.¹⁵ According to the CAISO, all energy scheduled by participants uses

¹¹ CAISO Tariff, Appendix F, Schedule 1, section A.7.

¹² The CAISO has concluded that the use of the term “energy purchases and sales” may be confusing because it could be interpreted to include only forward energy that was scheduled based on submitted economic bids and not submitted self-schedules. To avoid any potential confusion, the CAISO proposes to revise the tariff language to refer to “day-ahead schedules” rather than “energy purchases and sales.” CAISO Tariff Proposal at 2 n.5.

¹³ Gross energy schedules represent the total MWh of both energy supply schedules and energy demand schedules in the Day-Ahead Market. *Id.* at 4.

¹⁴ A net energy schedule is the absolute value of the net of energy demand schedules (load and exports) against energy supply schedules (generation and imports). *Id.*

¹⁵ *Id.*

the CAISO grid and market systems and therefore contributes to the administrative costs of the CAISO systems, regardless of whether the energy is bought and sold in the spot markets, or self-scheduled from a load-serving entity's own generation or a bilateral contract. The CAISO asserts that the functions of energy trading, energy self-scheduling, congestion management and the scheduling of transmission usage are all performed in an integrated fashion by a single set of market processes and systems. Thus, the CAISO contends that all bids submitted to the CAISO's markets, self-schedules as well as economic bids, must be included in the processes performed by the CAISO's optimization software.¹⁶ Therefore, the CAISO states that it incurs administrative costs for all supply and demand. The CAISO contends that netting supply schedules and demand schedules would ignore this cost causation and distort the allocation.¹⁷ Moreover, the CAISO concludes that the most appropriate cost causation basis for the Market Usage-Forward Energy Charge would be the full amount of energy scheduled in the day-ahead market, irrespective of whether that energy was scheduled based on submitted economic bids or submitted self-schedules.¹⁸

11. Despite its conclusion that the gross option best reflects cost causation principles, the CAISO does not propose such a cost causation approach. Because of its concern that replacing the current netting approach with a gross approach could result in substantial rate impacts for some scheduling coordinators, the CAISO proposes a modified gross approach. The modified gross approach would provide that the Market Usage-Forward Energy Charge be applied only to the greater of supply or demand MWhs in day-ahead schedules.¹⁹

III. Notice of Filing and Responsive Pleadings

12. Notice of the CAISO's filing was published in the *Federal Register* with motions to intervene and comments due on or before November 20, 2009.²⁰ Timely motions to intervene were filed by Alliance for Retail Energy Markets (AREM), the California Department of Water Resources State Water Project (SWP), Calpine Corporation (Calpine), the City of Santa Clara California (Santa Clara), the Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside California (Six Cities), Dynegy Corporation

¹⁶ *Id.* at 6-7.

¹⁷ *Id.* at 7.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 74 Fed. Reg. 59154 (2009).

(Dynergy),²¹ the Energy Producers and Users Coalition (EPUC), Modesto Irrigation District, M-S-R Public Power Agency, Pacific Gas and Electric Company, NCPA, Powerex Corporation (Powerex), Southern California Edison Company, San Diego Gas & Electric Company and Transmission Agency of Northern California. Comments were filed by AREM, Calpine, Dynergy, EPUC, NCPA, Powerex, Santa Clara, Six Cities and SWP. On December 7, 2009, the CAISO filed an answer.

IV. Comments and Protests²²

13. Six Cities state that while they do not object to the CAISO's instant proposal, they disagree with the CAISO's statements that applying the Market Usage-Forward Energy Charge based on the gross values of both supply and demand schedules would be appropriate based on cost causation. Six Cities contend that the CAISO's analysis of cost causation is fundamentally flawed and would unreasonably allow software design to dictate cost responsibility. Six Cities explain that load serving entities do not "use" the grid twice in order to deliver energy from their resources to their loads; it is merely the market design that requires the submission of two schedules, one for the sale and one for the purchase. Six Cities note that while the modified gross approach currently proposed by the CAISO captures the maximum use of the grid by a scheduling coordinator, they are concerned that the CAISO's comments regarding cost causation could be deemed to support a gross approach in some future proposal.

14. NCPA and Santa Clara state that they support the current approach, which includes inter-scheduling coordinator trades and allocates charges based on netting of supply and demand. They contend that this approach properly reflects a market participant's usage of the Integrated Forward Market systems and other functions that generate costs that are collected in the Market Usage-Forward Energy Charge. NCPA and Santa Clara disagree with the CAISO that its instant proposal is an improvement on the existing tariff structure. Further, they state that the Market Usage-Forward Energy formula should recognize the nature of a market participant's usage of the market rather than just reflecting all energy schedules submitted in the market. NCPA and Santa Clara contend that load serving entities that schedule balanced supply and demand portfolios to satisfy their load serving obligations should not be subject to a Market Usage-Forward Energy Charge, because they are not receiving the same market benefits as those without balanced schedules. Rather, they argue that a market participant that sells surplus energy to the market or procures energy from the market to meet demand obligations not

²¹ Dynergy Morro Bay, LLC, Dynergy Moss Landing, LLC Dynergy Oakland, LLC and Dynergy South Bay, LLC filed jointly.

²² While no party filed a protest, many of the comments appear to raise objections to the CAISO proposal.

provided by its own supply should incur Market Usage-Forward Energy Charges based on its net usage.

15. Moreover, NCPA and Santa Clara contend that throughout the CAISO's Market Usage-Forward Energy stakeholder process, the CAISO was unable to clarify exactly what costs are collected through the Market Usage-Forward Energy Charge and what impact the Integrated Forward Market had on that charge. They assert that the CAISO explained that it would be very difficult to identify what costs are collected through the Market Usage-Forward Energy Charge code, and that the CAISO stated that such analysis would not be performed until the next full Grid Management Charge cost-of-service study. Thus, they state that the CAISO's claim that the current netting approach violates cost causation principles has not yet been supported by any cost-of-service study. NCPA and Santa Clara conclude that the current methodology, based on netting, is just and reasonable and should be retained pending future review that will take place during the next full Grid Management Charge cost-of-service study performed by the CAISO.

16. SWP requests that the Market Usage-Forward Energy Charge be revised to exempt existing transmission contracts from the charge and that the charge be based on netting rather than the modified gross approach. SWP contends that the CAISO's proposal will mistakenly result in Market Usage-Forward Energy Charges to self-schedules such as existing transmission contracts and thereby depart from cost causation principles. SWP argues that the CAISO's statement that all energy that participants schedule uses the grid and contributes to the CAISO's administrative costs, fails to recognize the distinction between market services and transmission services, which are already recovered through the Grid Management Charge Energy Transmission Services charge.

17. SWP contends that the currently effective Market Usage-Forward Energy netting approach is reasonable, and the instant proposal is not just and reasonable, because the CAISO incurs costs only when it is required to buy resources to match an imbalanced demand or to sell an imbalanced supply to the market. SWP asserts that the CAISO does not provide any market services to the balanced portion of scheduled energy, nor does it incur costs in that instance. Thus, SWP states, a gross methodology does not reflect cost causation and would likely result in overcollections by the CAISO. However, SWP does not object to the exemption of Inter-Scheduling Coordinator Trades from the Market Usage-Forward Energy Charge in the interest of resolving that matter. Further, SWP states that the proposed modified gross approach is the least desirable approach, because there is no logical or analytical basis for this approach and it would provide a disincentive for participants to manage their generation and loads to optimize the market and enhance grid reliability.

18. Calpine, Dynegy, Powerex and AREM support the CAISO's proposed modified gross approach as an interim measure and agree with the CAISO that the most appropriate cost causation basis would be to apply the Market Usage-Forward Energy

Charge to gross energy schedules. However, Calpine notes that the CAISO fails to explain why a modified gross allocation approach that limits cost impacts on certain market participants justifies departing from a gross approach that CAISO claims is the correct approach based on cost causation principles. Similarly, Powerex contends that allocating the Market Usage-Forward Energy Charge using a gross approach would more accurately attribute costs to those entities that cause them and this should be the basis for changes to the Market Usage-Forward Energy Charge to be effective for 2011 and beyond. Calpine contends that the aggregate increases in cost impacts to load serving entities under the full gross approach would simply mirror the cost impacts already borne by other market participants under the current net approach, which is not consistent with cost causation principles.

19. AREM supports the CAISO proposal as an interim solution until the CAISO implements rates that more closely follow cost causation principles. Furthermore, AREM states that it strongly supports the removal of the Inter-Scheduling Coordinator Trades from the billing determinants in the calculation of the Market Usage-Forward Energy Charge.

V. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), timely motions to intervene make the entities that filed 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) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the CAISO's answer and will, therefore, reject it.

B. Commission Determination

21. The Commission accepts the CAISO's proposed tariff revision, which extends the current Grid Management Charge, with the \$197 million revenue requirement cap, until December 31, 2010. We note that no party objected to the extension request. Thus, the CAISO's currently effective Grid Management Charge structure and allocations will continue in effect for the year 2010, with the exception of the Market Usage-Forward Energy Charge, which may be subject to change pending the outcome of the hearing ordered below, following the 5-month suspension.

22. The CAISO's filing raises issues of material fact regarding whether the proposed Market Usage-Forward Energy Charge and its formula for determining rates and allocation is actually based on cost causation by the individual market participants subject to the charge. As noted by some commenters, the CAISO has not provided a cost-of-service study demonstrating that its modified gross approach to determine the Market

Usage-Forward Energy Charge is based on cost causation principles. Further, the CAISO has failed to provide any evidence regarding cost impacts even though it contends that those impacts are taken into account in the proposed calculation.²³ Moreover, the CAISO claims that allocating the Market Usage-Forward Energy Charge using a gross approach more appropriately reflects cost causation. Despite this conclusion, the CAISO proposes using a modified gross approach because such an approach would limit the cost impacts to certain market participants. However, such a basis may not be appropriate for any component of the Grid Management Charge, as all components are to be based on costs incurred by the CAISO for providing certain services to market participants. For these reasons, we have determined that the CAISO has failed to justify its proposed modified gross approach for determining the Market Usage-Forward Energy Charge as just and reasonable, and it may be unjust and unreasonable. Accordingly, we will set the tariff proposal for hearing. All issues raised by the filing, if not summarily disposed of in this order, shall be addressed at the hearing.

C. Hearing and Settlement Judge Procedures

23. As noted above, we grant the one-year extension of the current Grid Management Charge to December 31, 2010. However, the CAISO's proposed tariff revisions to the Market Usage-Forward Energy Charge component of the Grid Management Charge raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing procedures ordered below.

24. Based upon a review of the filing, we find that the proposed tariff sheets have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, we shall accept such tariff sheets for filing and suspend their effectiveness for a period of five months,²⁴ subject to refund and the conditions set forth in this order.

²³ We note that, under the CAISO's proposal, cost allocation seems to be based on the impact of the charge on specific market participants rather than cost causation principles.

²⁴ The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by the 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. *See, e.g., Boston Edison Company*, 12 FERC ¶ 61,211 (1980). Shorter suspensions may be warranted only in circumstances where suspensions for the maximum period may lead to harsh and inequitable results. *See, e.g., West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982). In this instance, the CAISO will continue to collect the Market Usage –

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25. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before the hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²⁵ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding, otherwise the Chief Judge will select a judge for this purpose.²⁶ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge. Should the settlement judge ultimately determine that a hearing is warranted, the CAISO shall file a full case in chief pursuant to the Commission's regulations to support its proposed tariff revisions at hearing.

The Commission orders:

(A) The CAISO's proposed revision to the CAISO Tariff, Appendix F, Schedule 1, Part D is accepted for filing.

(B) The CAISO's proposed revisions to the CAISO Tariff, Appendix F, Schedule 1, Section A.7 and Section E are hereby conditionally accepted for filing and suspended for the maximum five-month period, to become effective June 1, 2010, subject to refund, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the CAISO's tariff revisions, as discussed in the body of this order. However, the hearing shall be held

Forward Energy Charge as currently provided for in its approved tariff. Thus, no harsh or inequitable results will occur.

²⁵ 18 C.F.R. § 385.603 (2009).

²⁶ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2009), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.