137 FERC ¶ 61,180
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

California Independent System Operator Corporation — Docket Nos. ER11-3149-002, ER11-3713-000

ORDER ON MOTION FOR CLARIFICATION OR IN THE ALTERNATIVE REHEARING REQUEST AND WAIVER REQUEST

(Issued December 2, 2011)

1. On June 3, 2011, the California Independent System Operator Corporation (CAISO) filed a motion for clarification or, in the alternative, request for rehearing of the Commission's order on CAISO's revisions to its bid cost recovery tariff provisions.[1] On June 3, 2011, CAISO also filed a petition for limited waiver of its tariff provisions concerning the calculation of bid cost recovery payments from April 2009 to July 2010.[2] As discussed below, we grant CAISO's motion for clarification and deny CAISO's request for rehearing. We also deny CAISO's waiver request.

I. Background

2. In the Commission's September 21, 2006 order on CAISO's Market Redesign and Technology Upgrade (MRTU), the Commission accepted, subject to conditions, CAISO's proposal to include a bid cost recovery mechanism to ensure that certain resources committed by CAISO were able to recover their start-up, minimum load, and energy and ancillary services bid costs when market revenues are not sufficient to cover

[1] *Cal. Indep. Sys. Operator Corp.*, 135 FERC ¶ 61,110 (2011) (May 2011 BCR Order).

[2] CAISO filed its petition pursuant to section 205 of the Federal Power Act (FPA) and Part 35 of the Commission's regulations. The filing was made in e-Filing. However, it did not contain tariff sections and was not filed in e-Tariff. Therefore, the Commission is not required to act upon the filing within 60 days. *See Hudson Transmission Partners, LLC*, 135 FERC ¶ 61,104, at P 1 n.2 (2011).

such costs.[3] On May 27, 2009, the Commission accepted, by delegated order, CAISO's proposal to calculate bid cost recovery amounts based on actual delivered amounts of energy.[4] To calculate actual delivered amounts of energy, CAISO developed and implemented through its business practice manuals a metered energy adjustment factor for the day-ahead and real-time market.[5]

3. On March 21, 2011, as amended on March 25, 2011, CAISO filed tariff revisions to address the potential over-collection of bid cost recovery payments when a generator provides less energy in real-time than it was scheduled to provide in the day-ahead market. CAISO explained that, in this situation, the application of the metered energy adjustment factor caused the bid cost recovery mechanism to under-account for the market revenue associated with delivered energy.[6] CAISO noted that certain bidding practices could further increase the over-collection of bid cost recovery payments.

4. On May 4, 2011, the Commission accepted the tariff modifications to become effective on March 26, 2011.[7] The Commission also took notice of CAISO's April 5, 2011 Technical Bulletin.[8] In the April 5 Technical Bulletin, CAISO stated that it intended to recalculate previously settled bid cost recovery payments to "account for energy market revenue associated with all delivered energy associated with the day-ahead schedule as required by the tariff."[9] The April 5 Technical Bulletin stated that, to avoid the unnecessary burden of resettlement, it would only resettle amounts from August 2010 through March 2011, when the over-collection of bid cost recovery payments was most pronounced, and not resettle amounts before August 2010.

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[3] *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 491-539 (2006) (September 2006 Order), *order on reh'g*, 119 FERC ¶ 61,076 (2007), *aff'd*, *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520 (D.C. Cir. 2010).

[4] *Cal. Indep. Sys. Operator Corp.*, Docket No. ER09-918-000 (May 27, 2009) (unpublished letter order).

[5] The metered energy adjustment factor is a ratio that is applied to certain CAISO bid cost recovery calculations to ensure that CAISO only considers costs and revenues associated with delivered amounts of energy when calculating bid cost recovery payments. May 2011 BCR Order, 135 FERC ¶ 61,110 at P 9.

[6] CAISO, March 25, 2011, Errata Filing, Docket No. ER11-3149-001, at 10-13 (March 2011 BCR Filing).

[7] May 2011 BCR Order, 135 FERC ¶ 61,110.

[8] CAISO, June 3, 2011, Waiver Petition, Docket No. ER11-3713-000 (Waiver Petition) Attachment A (CAISO April 5, 2011 Bid Cost Recovery and Accounting Technical Bulletin (April 5 Technical Bulletin)).

[9] April 5 Technical Bulletin at 2.

5. The Commission made no finding regarding the resettlements noted in the April 5 Technical Bulletin, but the Commission included in its determination a paragraph stating that

> [u]nder FPA section 205, all public utilities are required to file rates, charges and give timely prior notice before any proposed rates and charges can become effective. To the extent that CAISO did not follow its tariff and CAISO determines that any surcharges or resettlements are necessary, CAISO must file with the Commission prior to any action to request authority and explain its proposal with amounts and details.[[10]]

6. On June 3, 2011, CAISO filed a motion for clarification or, in the alternative, request for rehearing of the May 2011 BCR Order. Calpine Corporation (Calpine) filed an answer, and CAISO filed a response to Calpine's answer. On June 3, 2011, CAISO also filed a petition for waiver of certain resettlements.

II. Notice and Responsive Pleadings

7. Notice of the petition for waiver was published in the *Federal Register*, 76 Fed. Reg. 36,529 (2011), with interventions and comments due on or before June 24, 2011. Timely motions to intervene were filed by California Department of Water Resources State Water Project; Calpine; J.P. Morgan Ventures Energy and BE CA LLC; MSR Public Power Agency and the City of Santa Clara, California; Modesto Irrigation District; NRG Power Marketing LLC, Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Power LLC, Long Beach Generation LLC and NRG Solar Blythe LLC (collectively, NRG); Northern California Power Agency; Pacific Gas and Electric Company; and Southern California Edison Company (SoCal Edison).

8. SoCal Edison filed comments, and Calpine filed a protest. CAISO filed an answer to Calpine's protest, and Calpine filed a response.

III. Discussion

A. Procedural Matters

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

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest and/or an answer unless

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[10] May 2011 BCR Order, 135 FERC ¶ 61,110 at P 27 (Paragraph 27) (citations omitted).

otherwise ordered by the decisional authority. We will accept CAISO's answer regarding its waiver petition because it has provided information that assisted us in our decision-making process. However, we are not persuaded to accept Calpine's response to CAISO's answer regarding the waiver petition and will, therefore, reject it.

B. Resettlement Authority[11]

11. CAISO requests clarification or rehearing that Paragraph 27 does not require CAISO to always obtain prior Commission authority to correct computational errors that result in charges contrary to the filed rate. CAISO states that requiring it to seek Commission authority to perform every resettlement would contravene longstanding precedent concerning the authority of Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs) under the filed rate doctrine.[12] CAISO claims that the Commission has held that an ISO or RTO has general authority under the filed rate doctrine to correct prices and charges without filing with the Commission to ensure that the prices and charges are consistent with its tariff.[13]

12. CAISO also contends that resettlements are consistent with specific authority provided by its tariff. CAISO argues that its tariff does not require Commission authorization to correct erroneous settlement statements. CAISO notes that sections 11.29.7.1 and 11.29.7.3 of the tariff authorize CAISO to issue recalculation settlement statements during specified periods of up to 36 months after a trade date.[14] CAISO adds that section 11.1.2 of its tariff states that bid cost recovery charges and payments (as well as all of the other CAISO market charges and payments listed therein) will be settled in accordance with the tariff.

13. CAISO notes that tariff section 11.29.7.3 permits additional recalculation settlement statements outside of the specified time periods if "directed by the CAISO

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[11] CAISO provides arguments regarding resettlement authority in both its motion/rehearing request and waiver petition. We address all of CAISO's arguments regarding its resettlement authority here and thus include information from CAISO's waiver petition and motion/rehearing request and comments filed in response to both filings on this issue.

[12] CAISO, June 6, 2011, Rehearing Request, Docket No. ER11-3149-002, at 8-10 (citing *ISO New England, Inc.*, 90 FERC ¶ 61,141 (2000); *NRG Power Mktg., Inc. v. New York Indep. Sys. Operator, Inc.*, 91 FERC ¶ 61,346, at 62,166 (2000); *ALLETE, Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 119 FERC ¶ 61,142, at P 36 (2007)).

[13] CAISO Rehearing Request at 10 (citing *Black Oak Energy, LLC v. New York Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,261, at P 34 (2008); *see also New York Indep. Sys. Operator, Inc.*, 97 FERC ¶ 61,095, at 61,497 (2001)).

[14] *Id*. at 17.

Governing Board or pursuant to a FERC order."[15] According to CAISO, because Commission approval is not needed for the issuance of a recalculation settlement statement, it cannot be the case that a Commission order is required for CAISO to issue recalculation settlement statements for a specified period.[16]

14. CAISO adds that, pursuant to its tariff, market participants also have full rights to challenge corrected settlement statements after they are issued.[17] CAISO further states that market participants can raise objections to any CAISO corrections through CAISO's alternative dispute resolution procedures and ultimately with the Commission.[18]

15. CAISO adds that the order cited by the Commission in Paragraph 27 does not support the position that CAISO must file with the Commission prior to resettling past charges that are not consistent with the filed tariff.[19] CAISO claims that the cited order found that CAISO had not fully explained proposed tariff changes and preparatory rerun adjustments. CAISO states that the order did not explain why it directed CAISO to provide more information on the preparatory rerun adjustments.[20]

16. CAISO contends that its proposed resettlements apply the terms of its tariff in effect prior to the March 2011 BCR Filing.[21] CAISO argues that the metered energy adjustment factor was included in the business practice manuals, but was not included in its tariff prior to the March 2011 BCR Filing. CAISO acknowledges that the bid cost recovery payment recalculations from August 2010 through March 25, 2011 use a different methodology than was included in the business practice manual.[22] CAISO contends that, in certain instances, the application of the metered energy adjustment factor was contrary to the intent of the tariff on file at the time. However, CAISO claims

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[15] *Id*. at 19.

[16] Similarly, CAISO argues the Commission-approved definition of the term "Recalculation Settlement Statement" in Appendix A to the tariff affirms that CAISO is authorized to correct settlement statements outside of the specified periods subject only to CAISO's governing board approval, not a Commission order.

[17] CAISO Rehearing Request at 19.

[18] *Id*. (citing CAISO Tariff section 13).

[19] *Id*. at 14 (citing *Cal. Indep. Sys. Operator Corp*., 103 FERC ¶ 61,331 (2003)).

[20] *Id*. at 15.

[21] CAISO, June 3, 2011, Waiver Petition, Docket No. ER11-3149-002, at 13-14 (CAISO Waiver Petition).

[22] *Id*. at 16.

the proposed resettlements are merely adjustments consistent with the then-existing tariff.[23]

Calpine Answer

17. Calpine contends that CAISO's motion for clarification does not relate to the Commission's approval of the March 2011 BCR Filing or its requested effective date and that issues regarding resettlement are better addressed in the proceeding on CAISO's petition for waiver.[24]

18. However, in response to CAISO's waiver petition, Calpine argues that CAISO fails to establish that it has unilateral authority to resettle bid cost recovery payments.[25] Calpine argues that the filed rate doctrine does not endow ISOs with the unilateral authority to fix market defects and tariff flaws retroactively. Calpine argues that Commission precedent is clear that ISOs may not "implement revised market rules without making a filing with the Commission."[26] Calpine submits that retroactive resettlement authority is limited to the correction of computational errors and outright conflicts with express provisions of the filed tariff. Calpine argues that neither case has been shown here. Calpine contends that CAISO failed to demonstrate that its proposed resettlement methodology, as described in the April 5 Technical Bulletin, was part of the filed rate.[27]

19. Calpine argues that CAISO made a deliberate and reasonable determination that the metered energy adjustment factor was an appropriate tool to calculate bid cost recovery payments.[28] Calpine states that CAISO applied the metered energy adjustment factor as a rational decision based on perceptions of market incentives.[29] Calpine argues

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[23] *Id*. at 14-15 (citing *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 492, 504 (2006)). CAISO states that the changes to the CAISO tariff proposed in the March 2011 BCR Filing, which included not applying the metered energy adjustment factor in certain instances, were accepted by the Commission and were clearly identified as clarifications which added detail but did not change the intent of the bid cost recovery mechanism and the fundamental terms and conditions. *Id.* at 14-15.

[24] Calpine, June 20, 2011, Rehearing Answer, Docket No. ER11-3149-002, at 2.

[25] Calpine, June 24, 2011, Waiver Protest, Docket No. ER11-3713-000, at 21 (Calpine Waiver Protest).

[26] Calpine Waiver Protest at 17 (citing *New York Indep. Sys. Operator, Inc*., 97 FERC ¶ 61,095, at 61,498 (2001)).

[27] *Id*. at 14, 18.

[28] *Id*. at 6.

[29] *Id*. at 8 (citing Rothleder Test. at 9: 22 - 10: 2).

that CAISO has not demonstrated that the use of the metered energy adjustment factor was a computational error in conflict with the express provisions of the filed tariff.[30] Calpine states that the original settlement calculations were not erroneously computed.[31]

CAISO Response

20. CAISO responds that no party opposes the request that the Commission clarify that it did not intend to contravene precedent concerning the authority of ISOs and RTOs under the filed rate doctrine to correct erroneous prices and charges resulting from computational errors that violate the filed rate. CAISO maintains Calpine's concerns are beyond whether an ISO or RTO can correct prices and charges when computational errors cause such prices or charges to be inconsistent with the filed rate.

Commission Determination

21. CAISO specifically requests clarification that Paragraph 27 does not require CAISO to *always* obtain prior Commission authority to correct computational errors that result in charges contrary to the filed rate.[32] We agree with CAISO that Paragraph 27 does not require CAISO to *always* obtain prior Commission authority to correct administerial computational errors. So, in that limited way, the Commission grants CAISO's motion for clarification. However, the Commission in Paragraph 27 fully intended to require CAISO to seek authority prior to making resettlements related to substantive changes to the manner in which the relevant calculations were previously performed. We find that neither the filed rate doctrine nor the terms of CAISO's tariff permit it to automatically resettle payments when CAISO reinterprets its tariff and the proposed resettlements depart from the way in which calculations were previously performed. To the extent CAISO is seeking rehearing of the Commission's finding in Paragraph 27, for reasons discussed below, we deny rehearing.

22. We find that CAISO mischaracterizes its proposed resettlements here as simply correcting an "error" or an "accounting deficiency." We agree with Calpine that CAISO's bid cost recovery resettlements constitute a departure from the application of the metered energy adjustment factor, as originally outlined in its business practice manual. While the proposed change and resettlement may, in fact, be a reasonable interpretation[33] of the tariff in effect at the time, it is different from the way in which the

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[30] *Id*. at 14.

[31] *Id*.

[32] CAISO Rehearing Request at 2.

[33] Determining whether such an interpretation is reasonable would be the subject matter of the required filing to resettle the past bid cost recovery calculations.

terms of the tariff were previously applied through the business practice manual and well beyond an administrative error.[34]

23. The filed rate doctrine does not allow CAISO to automatically resettle past payments when the resettlement involves a reinterpretation of how to apply its tariff and the reinterpreted methodology is different from the one outlined in CAISO's business practice manual. When a party reinterprets its publicized methodology and certain resettlements or refunds are required, it is required to seek authority from the Commission for such a resettlement of market payments.[35]

24. We do agree with CAISO that not all resettlements require filings with the Commission. Administerial errors can and should be addressed by CAISO automatically through the general authority it possesses under the filed rate doctrine or any specific authority it has through its tariff. The general authority ISOs have under the filed rate doctrine allows automatic resettlements to address data input errors, or software malfunctions, for instance. CAISO cites to a number of cases that support this limited automatic resettlement authority.[36] CAISO does not cite to an order in which an ISO resettled by departing from the manner in which the terms of the tariff were previously interpreted, as outlined in its business practice manual, without making a prior filing with the Commission. Here, CAISO is reinterpreting the application of its tariff, rather than simply fixing a data input or software error. This action is beyond the general automatic resettlement authority under the filed rate doctrine and requires a filing with the Commission before CAISO conducts any resettlements.

25. Similarly, CAISO's argument that its tariff provides it with specific authority to perform the proposed resettlements without filing with the Commission is not persuasive.

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[34] Nothing in this Order should be read to prejudge any issues in the formal investigation into bidding practices, as directed by the Commission in its August 19, 2011 Order Accepting Tariff Revisions and Order of Non-Public, Formal Investigation. *Cal. Indep. Sys. Operator Corp.*, 136 FERC ¶ 61,118 (2011).

[35] *Pacific Gas & Elec. Co.*, 136 FERC ¶ 61,131 (2011) (providing PG&E authority to refund interconnection customers tax security funds that were collected in violation of Commission orders); *Southern Cal. Edison*, 136 FERC ¶ 61,133 (2011) (requiring SoCal Edison to provide the Commission with specific information describing the method for calculating proposed refunds).

[36] *NRG Power Mktg, Inc. v. New York Indep. Sys. Operator, Inc.*, 91 FERC ¶ 61,346 (2000) (filed rate doctrine allowed for correction of price calculations caused by faulty computer software); *Black Oak Energy, LLC v. New York Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,261 (2008) (concerning general authority under the filed rate doctrine to correct erroneous prices caused by data input or software errors); *ISO New England, Inc.*, 90 FERC ¶ 61,141, at 61,423 (2000).

CAISO cites no tariff provisions that provide it specific authority to perform resettlements whenever it reinterprets how to apply the terms of its tariff.

26. Commission precedent demonstrates that ISOs have sought Commission approval for certain resettlements. In fact, the Commission notes that certain orders relied upon by CAISO demonstrate that ISOs have made filings seeking Commission approval prior to resettling.[37] Similarly, the precedent cited by the Commission in Paragraph 27 demonstrates that, when certain resettlements are performed, a filing with the Commission is required.[38]

27. For these reasons, we grant CAISO motion for clarification but deny its request for rehearing.

C. CAISO's Waiver Petition

28. CAISO requests a limited, one-time waiver of section 11.8 of its tariff to refrain from resettling certain bid cost recovery payments during the period from April 2009 through July 2010.[39] Section 11.8.2.2 of the CAISO tariff requires CAISO to take into account "delivered MWh, in the relevant day-ahead schedule." CAISO argues that the calculation methodology in its business practice manual failed to do this in some instances and thus violated the tariff. CAISO argues that a waiver of tariff section 11.8 for the April 2009 through July 2010 period will avoid an unnecessary burden that such resettlements would cause for a period when the financial impact of the inflated bid cost recovery payments was relatively small.[40]

29. CAISO specifies that for the 16-month period from April 1, 2009 through July 31, 2010 the bid cost recovery overpayments totaled approximately $23 million or an average of approximately $1.4 million per month. In contrast, for the seven-month

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[37] *New York Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,026 (2006) (NY ISO requests to correct guarantee calculation errors and seeks waivers); *see also ISO New England, Inc.*, 108 FERC ¶ 61,069 (2004) (filing includes a request that the Commission "take notice" that the public utility intends to resettle past market results).

[38] *Cal. Indep. Sys. Operator Corp.*, 103 FERC ¶ 61,331 (2003).

[39] CAISO Waiver Petition at 1, 13 (CAISO requests additional waiver if the Commission deems section 35.17(e) of its regulations applies to this waiver request).

[40] *Id*. at 2-3. As described above, CAISO states that it is resettling bid cost recovery payments during the period from August 2010 through March 25, 2011, when a certain bidding practice exacerbated the impact of an error in implementing the tariff provisions.

period from August 1, 2010 through February 28, 2011, the overpayments totaled approximately $32 million or an average of $4.6 million per month.[41]

30. CAISO submits that its waiver request satisfies all the requirements under applicable Commission precedent. CAISO states that: (i) the underlying error was made in good faith; (ii) the waiver is of limited scope; (iii) the waiver remedies a concrete problem; and (iv) the waiver does not have undesirable consequences, such as harm to third parties.[42]

31. CAISO argues that the bid cost recovery payment error was made in good faith. CAISO states that, after the discovery of the error, CAISO promptly took steps to correct the error by preparing and submitting the March 2011 Bid Cost Recovery Filing, issuing the April 5 Technical Bulletin, and beginning the process to recalculate settlement statements for the time period beginning August 2010.[43]

32. CAISO argues that the waiver is limited in scope because not recalculating for the period April 2009 through July 2010 will not have any effect on resettlements for the period from August 2010 through March 25, 2011.

33. Furthermore, CAISO maintains that the waiver remedies a concrete problem.[44] CAISO argues that the bid cost recovery resettlements for the period from April 2009 through July 2010 had substantially less of a financial impact than the subsequent time period, and CAISO states that the burden of resettlement would outweigh the benefits. CAISO notes that the Commission has granted a requested tariff waiver where the burden of recalculating amounts pursuant to the tariff would outweigh the benefits of recalculation.[45] Moreover, CAISO contends that, under the FPA, there is no obligation to order refunds for every departure from the filed rate.[46]

34. Finally, CAISO claims that the waiver will have no undesirable consequences. According to CAISO, the waiver will not unfairly disadvantage any market participants, and all market participants will be treated the same for the applicable time period. CAISO asserts that customers will benefit from the increased financial certainty resulting

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[41] *Id*. at 8.

[42] *Id*. at 3, 10 (citing *PJM Interconnection, LLC*, 135 FERC ¶ 61,069, at P 8 (2011); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010); *ISO New England, Inc.*, 117 FERC ¶ 61,171, at P 21 (2006)).

[43] *Id*. at 8-10.

[44] *Id*. at 11-12.

[45] *Id*. at 12 (citing *New York Indep. Sys. Operator Inc.*, 115 FERC ¶ 61,026, at P 55 (2006)).

[46] *Id*. at 12.

from CAISO's determination that bid cost recovery payments should not be resettled for the first 16 months of CAISO's new market.[47]

Comments

35. Although SoCal Edison does not support or oppose CAISO's waiver petition, SoCal Edison argues that CAISO has not made a proper and complete showing on two aspects of the waiver request: that the waiver addresses a concrete problem and the waiver did not have undesirable consequences. SoCal Edison contends that the Commission should require CAISO to supplement its petition.[48]

36. Calpine argues that CAISO's waiver petition fails to address the different calculation rules for determining market revenue offsets for resources with self-schedules included in CAISO tariff section 11.8.2.2.[49] Calpine states that it has previously disputed certain resettlements concerning self-schedules.[50]

CAISO Answer

37. CAISO argues that it has provided sufficient detail to support the requested waiver. CAISO notes that, for the periods immediately following MRTU start-up, it is appropriate for CAISO to weigh the potential benefits of recalculations against the uncertainty created by resettlement. CAISO maintains that, here, the erroneous calculation of bid cost recovery payments for the period from MRTU start-up in April 2009 through July 2010 had substantially less financial impact on market participants than the same errors during the period after August 2010. CAISO states that avoiding the burden of resettlement for that earlier period is the concrete problem it seeks to address in its petition.[51]

38. CAISO claims that the total bid cost recovery overpayments for the period from April 2009 through July 2010 did not include the offset from the allocation of bid cost recovery overpayments to many of the same scheduling coordinators that received overpayments. CAISO thus claims that total overpayments to scheduling coordinators

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[47] *Id*. at 12-13.

[48] SoCal Edison, June 24, 2011, Comments, Docket No. ER11-3713-000, at 2-3.

[49] Calpine Waiver Protest, Docket No. ER11-3713-000, at 10 (Calpine Waiver Protest).

[50] *Id*. at 10 n.28.

[51] CAISO, July 12, 2011, Answer, Docket No. ER11-3713-000, at 5-6 (CAISO July 12 Answer).

are approximately $17.5 million, or an average of approximately $1.1 million per month for the 16-month period.[52]

39. CAISO notes that the resettlements concerning self-schedules that Calpine referenced were unrelated to the use of the metered energy adjustment factor described in CAISO's April 5 Technical Bulletin.[53]

Commission Determination

40. Consistent with its May 2011 BCR Order, the Commission makes no finding regarding whether CAISO's proposed resettlements are consistent with its tariff, as CAISO has not yet made a filing seeking such a determination.[54] Thus, the Commission does not determine whether a tariff waiver is necessary in order for CAISO to avoid resettling for the period from April 2009 through July 2010. Further, CAISO has not shown that the waiver will not have undesirable consequences, such as harm to third parties. Therefore, we deny CAISO's petition for limited waiver of tariff section 11.8 regarding bid cost recovery payments during the period from April 2009 to July 2010, without prejudice to CAISO refiling its request with sufficient justification.

41. CAISO states that the Commission has granted waiver requests when: (i) the applicant did not comply with the provision at issue in good faith; (ii) the waiver is of limited scope; (iii) a concrete problem needed to be remedied; and (iv) the waiver did not have undesirable consequences, such as harming third parties.[55] However, here, CAISO has failed to demonstrate that the waiver would not have undesirable consequences. In particular, CAISO does not explain how electing not to resettle approximately $17 - $23 million in bid cost recovery overpayments could avoid undesirable consequences.

42. The precedent relied upon by CAISO is not applicable here. The Commission excused the New York Independent System Operator, Inc. (NYISO) from recomputing prices in its market because it would have effects with far-ranging, and unintended, consequences that outweigh any putative benefits.[56] The Commission found that, given the logistics of NYISO's market, the recomputation would likely not produce accurate real-world results.[57] Here, CAISO does not provide any support for such a finding.

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[52] *Id*. at 7-8.

[53] *Id*. at 19-20.

[54] May 2011 BCR Order, 135 FERC ¶ 61,110 at P 27.

[55] *Cal. Indep. Sys. Operator Corp*., 132 FERC ¶ 61,004, at P 10 (2010); *ISO New England*, 117 FERC ¶ 61,171, at P 21 (2006).

[56] *New York Indep. Sys. Operator, Inc*., 115 FERC ¶ 61,026, at P 55 (2006).

[57] *Id*.

The Commission orders:

(A) CAISO's request for clarification is hereby granted, and its request for rehearing is hereby denied, as discussed in the body of this order.

(B) CAISO's petition for waiver is hereby denied, without prejudice, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.