

157 FERC ¶ 61,029
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

California Independent System
Operator Corporation

Docket Nos. ER16-1649-004
ER16-1649-005

ORDER GRANTING PETITION FOR EXTENSION OF LIMITED WAIVER
AND DISMISSING MOTION FOR CLARIFICATION

(Issued October 20, 2016)

1. In this order, we find that the natural gas price index tariff provisions accepted in the Commission's June 1, 2016 order¹ conform to the Commission's policy statement on natural gas and electric price indices.² Accordingly, we dismiss as moot CAISO's motion for clarification and alternative petition for limited waiver of the June 1 Order. We also grant CAISO's request for an extension of the waiver of the effective date for the tariff provisions implementing the new natural gas price index from August 5, 2016 until two days after the date of this order and direct a compliance filing.

I. Background

2. In the June 1 Order, the Commission accepted, subject to condition, a proposal by CAISO to implement various tariff measures that would assist CAISO in maintaining electric system reliability due to the limited availability of the Aliso Canyon natural gas storage facility. These tariff measures will expire on November 30, 2016, absent a filing by CAISO to extend them. As relevant here, the Commission accepted CAISO's proposal to implement a new process for obtaining Intercontinental Exchange (ICE)-generated natural gas prices to calculate commitment costs, generate bids, and default energy bids in the day-ahead market, in order to enhance generators' ability to recover

¹ *Cal. Indep. Sys. Operator Corp.*, 155 FERC ¶ 61,224 (2016) (June 1 Order).

² *Price Discovery in Natural Gas and Electric Markets*, 104 FERC ¶ 61,121, *order on clarification*, 105 FERC ¶ 61,282 (2003) (Policy Statement).

natural gas costs.³ Unlike the official ICE-generated index that is published at 11:30 a.m. PT, CAISO would use a volume-weighted average price that ICE would make available between 8:00 a.m. and 9:00 a.m. PT, prior to the running of CAISO's day-ahead market.⁴ Although the Commission accepted CAISO's proposal to use this new index,⁵ it also noted that the index must conform to the Policy Statement.⁶

3. On July 1, 2016, CAISO filed a petition for limited tariff waiver to modify the effective date of the tariff provisions pertaining to the new natural gas price index from July 6, 2016 until no later than August 5, 2016.⁷ In that petition, CAISO stated that it was in the process of seeking to confirm whether the new natural gas price index conforms to the Policy Statement. CAISO stated that by August 5, 2016, it would either (1) confirm that use of this price index conforms to the Policy Statement and endeavor to implement the tariff provisions, or (2) submit a filing seeking alternate relief. The Commission granted the petition for limited waiver to modify the effective date of the tariff provisions.⁸

II. CAISO Filings

4. On August 3, 2016, in Docket No. ER16-1649-004, CAISO filed a motion for clarification of the June 1 Order or, in the alternative, limited waiver of the June 1 Order to permit use of the natural gas price index tariff provisions. CAISO states that it is not in a position to represent that the new price index conforms to the Policy Statement. However, based on discussions with ICE, CAISO states that the volume-weighted average price ICE makes available between 8:00 a.m. and 9:00 a.m. PT is calculated in

³ June 1 Order, 155 FERC ¶ 61,224 at P 12, n.13.

⁴ *See id.* n.14.

⁵ For the sake of consistency, we use the term "index" throughout the order as CAISO has adopted the term in its filings and tariff language. We note, however, that the Commission generally uses the term "index" to refer to prices that are final and published, such as the official ICE index that is published at 11:30 a.m. PT.

⁶ June 1 Order, 155 FERC ¶ 61,224 at P 12, n.14.

⁷ CAISO July 1 Petition.

⁸ *Cal. Indep. Sys. Operator Corp.*, 156 FERC ¶ 61,093 (2016) (August 4 Order).

the same manner as the index that ICE publishes at 11:30 a.m. PT.⁹ CAISO argues that the only difference between the two indices is that the 11:30 a.m. PT index would reflect any trades executed after CAISO pulls the new index from ICE between 8:00 a.m. and 9:00 a.m. PT. Thus, CAISO asserts that the new natural gas price index is sufficiently robust for purposes of calculating commitment costs, default energy bids, and generated bids in its day-ahead market.¹⁰

5. Further, CAISO states that basing its calculations on more relevant, up-to-date information using the new price index will yield significant benefits as compared to CAISO's current procedure using price data from the evening before the day-ahead market run. CAISO states that the more up-to-date information will better reflect resources' fuel cost exposure, enable CAISO to conduct a more efficient and informed dispatch, and compensate resources cleared in the day-ahead market based on fuel prices that better reflect their expectations of actual procurement costs.¹¹

6. CAISO requests that the Commission clarify that CAISO is authorized to implement the tariff provisions accepted in the June 1 Order relating to the new natural gas price index. In the alternative, CAISO requests that the Commission grant limited waiver of the June 1 Order to permit CAISO to implement the tariff provisions on an interim basis until November 30, 2016.¹²

7. On August 5, 2016, in Docket No. ER16-1649-005, CAISO filed a petition requesting an extension of the waiver granted in the August 4 Order until no later than two days after the Commission rules on CAISO's motion for clarification. CAISO states that good cause exists for the Commission to grant extension of the limited waiver so as to continue to suspend the effectiveness of the relevant tariff provisions. CAISO states that the waiver is limited in scope because it will only apply up until two days after the Commission rules on the motion for clarification. CAISO also states that the waiver would remedy the concrete problem associated with CAISO implementing the price index provisions as of August 5, 2016 before the Commission acts on CAISO's motion for clarification. CAISO states that if the Commission finds that CAISO does not have the authority to use the price index it would be extremely difficult for CAISO to rerun its

⁹ CAISO notes that ICE has previously stated that its indices conform to the Policy Statement. CAISO Motion for Clarification at 7 (citing ICE, Comments, Docket No. PL03-3-000, at 2 (filed Jan. 7, 2004)).

¹⁰ *Id.*

¹¹ *Id.* at 7-8.

¹² *Id.* at 3, 9-11.

markets to reflect the use of an alternative gas price calculation methodology. Finally, CAISO states that the waiver would not have undesirable consequences because it would maintain the status quo of the day-ahead gas calculation procedures, as set forth in the currently effective tariff language.¹³

III. Notice of Filings

8. Notice of CAISO's August 3, 2016 motion for clarification and alternative petition for limited waiver was published in the *Federal Register*, 81 Fed. Reg. 53,132 (2016), with comments due on or before August 24, 2016. None were filed.

9. Notice of CAISO's August 5, 2016 petition was published in the *Federal Register*, 81 Fed. Reg. 54,082 (2016), with comments due on or before August 26, 2016. None were filed.

IV. Discussion

10. We find that CAISO's use of the new natural gas price index, as described in the tariff provisions accepted in the June 1 Order, conforms to the Policy Statement and the Commission's Price Index Order.¹⁴ Pursuant to the Policy Statement and the Price Index Order, in order to ensure a robust and transparent tariff, any index used in a tariff must meet specific guidelines. Specifically, the Commission requires two features of an index: (1) the index developer must be approved by the Commission, and (2) the index must meet certain liquidity thresholds.¹⁵ We note that ICE is an approved index developer.¹⁶ Further, based on CAISO's representations that the volume-weighted average price is generated by ICE between 8:00 am and 9:00 a.m. PT, we expect that the new index, which will include trades between 5:00 a.m. and at least 8:00 a.m. PT, will have sufficient activity to conform to the liquidity requirements of the Policy Statement.

¹³ CAISO August 5, 2016 Petition for Extension of Limited Waiver at 3-4.

¹⁴ *Price Discovery in Natural Gas and Elec. Mkts.*, 109 FERC ¶ 61,184 (2004) (Price Index Order).

¹⁵ Policy Statement, 104 FERC ¶ 61,121 at P 41. To meet the liquidity threshold, the index must satisfy at least one of the following over a 90 day review period: 1) an average daily trading volume of 25,000 MMBtu, 2) a daily average of 5 trades, or 3) a daily average of 5 counterparties. Price Index Order, 109 FERC ¶ 61,184 at P 60.

¹⁶ Price Index Order, 109 FERC ¶ 61,184 at P 39 (finding that indices developed by ICE, among other index developers, satisfy the requirements of the Policy Statement and therefore may be used in jurisdictional tariffs).

11. We note that in its August 3 motion for clarification, CAISO states that it cannot confirm that the new index satisfies the requirements of the Policy Statement, but asks that the Commission clarify that CAISO is nevertheless authorized to implement the pertinent tariff provisions. Because we find that use of this natural gas price index conforms to the Policy Statement, there is no need to provide the clarification requested by CAISO. Therefore, we dismiss as moot CAISO's motion for clarification and its alternative petition for limited waiver of the June 1 Order.

12. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹⁷ We find that CAISO's unopposed petition to extend the waiver granted in the August 4 Order satisfies the foregoing criteria. First, based on CAISO's representations, we find that CAISO has acted in good faith to confirm that the new natural gas price index satisfies the requirements of the Policy Statement. Second, we find that CAISO's request is limited in scope, because it will apply only until two days after the date of this order and retains the status quo during this limited period. Third, we find that this waiver addresses the concrete problem that CAISO could not implement the tariff revisions by August 5, 2016 due to the continued need to verify that the new natural gas price index conforms to the Policy Statement. Fourth, we find that CAISO's request for waiver will prevent undesirable consequences by eliminating uncertainty as to how CAISO will obtain natural gas prices from ICE in the day-ahead market during the period of the waiver granted here. For these reasons, we grant CAISO's August 5 request for waiver, as discussed herein. We direct CAISO to reflect the actual effective date of the new natural gas price index provisions in its tariff in a compliance filing within 15 days of the date of this order.¹⁸

The Commission orders:

(A) CAISO's petition for extension of the limited waiver granted in the August 4 Order is hereby granted, as discussed in the body of this order.

(B) CAISO's motion for clarification and alternative petition for limited waiver are hereby dismissed as moot, as discussed in the body of this order.

¹⁷ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Serv., LP*, 154 FERC ¶ 61,082, at P 12 (2016); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

¹⁸ We remind CAISO that its compliance filing should include tariff revisions indicating that sections 39.7.1.1.3(c)-(d) will retain the July 6, 2016 effective date. August 4 Order, 156 FERC ¶ 61,093 at P 4, n.6.

(C) CAISO is hereby directed to submit a compliance filing, within 15 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.