

111 FERC ¶ 61,073
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

California Independent System Operator Corporation Docket No. ER05-595-000

ORDER ON TARIFF AMENDMENT NO. 65

(Issued April 18, 2005)

1. In this order, we address the tariff filing submitted by the California Independent System Operator Corporation (CAISO), captioned as Amendment No. 65. Proposed Amendment No. 65 will revise the CAISO's open access transmission tariff (CAISO Tariff) to establish an additional criterion governing when the offer-based methodology should be used to calculate decremental reference levels. In this order, we accept for filing Amendment No. 65, effective February 18, 2005, as requested. Accordingly, we grant the CAISO's waiver of the 60-day prior notice requirement.

2. This order benefits customers by ensuring just and reasonable rates in export-constrained areas.

I. Background

3. Proposed Amendment No. 65 is intended to supplement the CAISO's Amendment No. 50, which the Commission accepted for filing, subject to modifications, in its May 30, 2003 Order.¹ Amendment No. 50 implemented a revised method for managing intra-zonal congestion, which permits the CAISO to share generator outage information with entities operating transmission and distribution systems affected by the outage. Amendment No. 50 was proposed by the CAISO as an interim solution until locational marginal pricing is implemented, or until some other long-term comprehensive congestion management solution is put in place.

4. On January 16, 2004, Potomac Economics² identified a concern with the methodology used to determine decremental reference prices based on bids during

¹ *California Independent System Operator Corporation*, 103 FERC ¶ 61,265 (2003) (*May 30 Order*).

² Potomac Economics is an independent entity designated to calculate decremental reference prices for the CAISO.

competitive periods. Potomac Economics identified an incentive for some generators to manipulate their reference levels in order to gain market power. In response to this concern, on January 20, 2004, Potomac Economics implemented a competitiveness standard to identify competitive periods for the purpose of calculating decremental reference levels and the CAISO issued a market notice announcing its implementation. Potomac Economics also issued a memorandum detailing the new standard.

5. Subsequently, in an order addressing issues pertaining to Amendment No. 50,³ the Commission found that the competitiveness standard proposed by Potomac Economics was necessary to correct a fundamental flaw in the decremental reference bid methodology and directed the CAISO to incorporate the new standard into its tariff through a compliance filing. In response, the CAISO submitted a compliance filing with the tariff language implementing the new standard.

6. However, the Commission did not act on that compliance filing in the subsequent order on Amendment No. 50.⁴ The *January 6 Order* reversed the Commission's directive in the *April 16 Order* that the CAISO submit this tariff change in a compliance filing, and ruled that the competitiveness standard implemented by Potomac Economics on January 20, 2004 would not become effective until the CAISO made a stand-alone filing pursuant to section 205 of the Federal Power Act (FPA)⁵ and that filing was accepted by the Commission. In response, the CAISO submitted the instant section 205 filing containing the same tariff language as was included in its compliance filing.⁶

II. The CAISO's Filing

7. The CAISO proposes to modify section 7.2.6.1.1(a)(1) of its tariff to add language to specify a standard governing when the offer-based methodology should be used to calculate decremental reference levels. The CAISO notes that the Commission has previously found such tariff language to be necessary to correct a fundamental flaw in the proposed decremental reference level methodology. The CAISO states that the proposed standard is necessary to address the concern that certain generators in narrow export-constrained areas are in a position to exercise market power and exact excess rents by depressing the reference levels that are used for mitigation.

³ *California Independent System Operator Corporation*, 107 FERC ¶ 61,042 (2004) (*April 16 Order*).

⁴ *California Independent System Operator Corporation*, 110 FERC ¶ 61,007 (2005) (*January 6 Order*).

⁵ 16 U.S.C. § 824d (2004).

⁶ The CAISO also seeks rehearing of the January 6 Order. The CAISO's request for rehearing is being addressed in an order issued contemporaneously with this order.

8. The CAISO also requests a waiver of the 60-day prior notice requirement to allow Amendment No. 65 to become effective February 18, 2005. In addition, the CAISO argues that the methodology set forth in Amendment No. 65 should take effect on January 20, 2004, the date it was implemented by Potomac Economics. Accordingly, in the alternative, the CAISO requests a January 20, 2004 effective date for Amendment No. 65. The CAISO argues that good cause exists for granting a waiver of the 60-day prior notice requirement.

9. First, the CAISO states that the tariff language providing that bids during competitive periods would be used to establish reference price levels was first submitted for the Commission review as part of its July 18, 2003 compliance filing pertaining to Amendment No. 50. The CAISO also states that on January 20, 2004, it provided notice to market participants that Potomac Economics had implemented the competitiveness standard, and provided details concerning the standard in a January 16, 2004 memorandum from Potomac Economics.

10. Further, the CAISO asserts that it appropriately submitted the methodology contained in Amendment No. 65 as a compliance filing on Amendment No. 50. The CAISO argues that the competitive period standard constitutes a necessary change, as previously found by the Commission, and thus can be implemented through a compliance filing with the effective date on the date when the underlying rates went into effect.

11. Lastly, the CAISO states that if the waiver is not granted retroactive to January 20, 2004, the CAISO would have to rerun its process for intra-zonal congestion management and have to make refunds based on the flawed methodology.

III. Notice of Filing, Motions to Intervene, and Protests

12. Notice of the CAISO's filing was published in the *Federal Register*, 70 Fed. Reg. 10,389 (2005), with comments, protests, or interventions due on March 10, 2005. The Northern California Power Agency, Williams Power Company, Inc., the Cities of Santa Clara and Redding, California and the M-S-R Public Power Agency, Modesto Irrigation District, Termoelectrica de Mexicali S. de R. L. de C.V., and the California Public Utilities Commission filed timely motions to intervene. The California Electricity Oversight Board (CEOB) and Coral Power, L.L.C., Energia Azteca X, S. de R.L. de C.V., and Energia de Baja California, S. de R.L. de C.V. (collectively, Coral Power) filed motions to intervene and protests.

13. In its protest, the CEOB argues that Amendment No. 65 is unnecessary, because the Commission has already accepted the changes proposed in Amendment No. 65 in the *May 30 Order*⁷ and the *April 16 Order*.⁸

⁷ The CEOB cites *May 30 Order* at P 41, stating: “[w]e therefore require that the

14. Further, the CEOB asserts that the Commission does not have the authority to order a jurisdictional entity to make a section 205 filing. In the alternative, the CEOB states that, if a section 205 filing is required by the Commission, Amendment No. 65 should be effective as of January 20, 2004. In support, the CEOB argues that if the Commission makes Amendment No. 65 effective February 18, 2005, as requested by the CAISO, it would constitute a retroactive change to filed rates for the period from January 20, 2004 through February 18, 2005. According to the CEOB, a February 18, 2005 effective date would cause reruns and reinstatement of uncompetitive rates and leave the cost on the doorstep of California consumers.

15. Coral Power states that Amendment No. 65 is designed to limit the ability of certain generators to qualify for Tier 1 market-based pricing under the reference level decremental pricing system proposed in Amendment No. 65. Under the new competitiveness standard, Coral Power explains, the eligibility for Tier 1 pricing would be limited to generators that satisfy a new screening test under which the Tier 1 prices would not be available unless fifty percent of a generator's megawatt hours decremented in the prior three months were called in merit order; if the test is not satisfied, the reference level price determination would default to the subsequent cost-based tiers. Coral Power further argues that proposed Amendment No. 65 will result in an increase of decremental rates for Coral Power because its units will default into the higher-priced cost-based Tiers 2-5.

16. Coral Power also contends that the CAISO has failed to justify rate increases resulting from proposed Amendment No. 65 with data or any quantitative analysis. Coral Power concludes that the Commission should either reject the proposal or establish hearing procedures to examine the reasonableness of proposed Amendment No. 65.

17. Coral Power also argues that the CAISO's proposal unduly discriminates against border generators because the CAISO provides no credible reason why the border generators should be held solely accountable for resolving a market-wide congestion problem that is caused by fundamental flaws in the CAISO's market design. Coral Power states that at least as initially implemented under Amendment No. 50, there was the potential that the decremental bids of border generators would be market-based if they satisfied the Tier 1 criteria. However, according to Coral Power, proposed Amendment No. 65 effectively removes that possibility.

CAISO use reference prices for decremental bids to be determined by an independent entity, and applied to all generators..."

⁸ The CEOB cites to *April 16 Order* at P 62.

18. Coral Power further contends that the CAISO has submitted no evidence demonstrating its assertion that there is a flaw in the existing reference level system that provides an incentive for the border generators to submit artificially low decremental bids. Even if there were such a flaw, Coral Power argues, a less drastic, non-discriminatory alternative exists to deal with any perceived problem.

19. Furthermore, Coral Power argues that the CAISO has failed to show good cause for waiver of the 60-day prior notice requirement under the Commission's regulations governing rate increases and thus, the Commission should suspend the CAISO's proposed rate increase for the statutory maximum, *i.e.*, five months.

IV. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the filing of a timely motion to intervene that has not been opposed makes the movant a party to the proceeding.

B. Commission Determination

21. In the *April 16 Order*, the Commission found that the proposed competitiveness standard was "necessary to correct a fundamental flaw in the proposed decremental reference bid methodology"⁹ and instructed the CAISO that the new test must be incorporated into the CAISO's tariff. In the *January 6 Order*, the Commission clarified its prior ruling in the *April 16 Order* by explaining that the proposed tariff revision would not become effective until it was filed as a section 205 filing and accepted by the Commission. Subsequently, the CAISO submitted the instant filing. While proposed Amendment No. 65 contains exactly the same tariff language as the compliance filing previously submitted by the CAISO, we believe that the proposed tariff change can be properly implemented only through a section 205 filing. The Potomac Economics additional criterion does not simply revise the definition of what constitutes a competitive period; it fundamentally alters the interpretation of the methodology and therefore impacts the ultimate rate that an entity may face. Therefore, the Potomac Economics change can only be implemented through a separate, stand-alone filing pursuant to section 205 of the FPA.

22. In response to the CEOB's contention that the Commission had no authority to direct a section 205 filing, the Commission's ruling in the *January 6 Order* cannot be reasonably interpreted as a directive; it was a clarification of the applicable procedure for implementing the proposed tariff revision.

⁹ *April 16 Order* at P 62

23. We disagree with Coral Power's assertion that the proposed methodology is unjust and unreasonable because it results in a rate increase for Coral Power. Proposed Amendment No. 65 is not a rate increase *per se*, but rather a generally applied methodology to be incorporated into the CAISO Tariff. The proposed methodology for decremental reference levels will eliminate the potential for exercising market power that existed under the previous methodology. Decremental reference levels were implemented so that all generators would be indifferent between generating and incurring marginal costs, and being decremented and paying a rate which approximates their marginal costs to the CAISO. The methodology proposed in the instant filing simply ensures that the intended result occurs. The merits of this approach also have been considered in our prior order, and we rely as well on the reasoning we stated there.¹⁰

24. We also disagree with Coral Power's contention that the CAISO directly discriminates against the La Rosita Generators by asserting that the La Rosita Generators are frequently decremented and submit artificially low bids. The CAISO has never singled out the La Rosita Generators. Instead, the CAISO identified an area where an incentive to exercise market power exists and proposed a non-discriminatory method to remove that incentive. The proposed methodology will be applied generally and result in a more efficient market.

25. In its protest, Coral Power also requests that the Commission establish a trial-type evidentiary hearing to examine whether proposed Amendment No. 65 is just and reasonable. We do not believe that a trial-type hearing is necessary in this case. We have sufficient record before us to address the CAISO's tariff filing on the merits in this order and therefore deny Coral Power's request.

26. In addition, we grant the CAISO's request for a waiver of the 60-day prior notice requirement. The CAISO asks for an effective date one day after the date the instant filing was submitted. We believe that a waiver of the 60-day prior notice requirement is appropriate in the instant case. The tariff language submitted in the instant filing is identical to the language submitted by the CAISO in a compliance filing on May 17, 2004. Moreover, the market feature that we are accepting for filing in this order has been

operational since January 20, 2004. Therefore, all affected parties have had sufficient notice that this change will be incorporated into the CAISO Tariff. For these reasons, we accept Amendment No. 65 for filing effective February 18, 2005, as requested.¹¹

¹⁰ *See Id.*

¹¹ Moreover, the instant filing represents a situation when expedited consideration of the proposed tariff revisions would be warranted under our recent guidance order setting forth the requirements for expedited tariff revisions. *Guidance Order on*

The Commission orders:

(A) Amendment No. 65 is hereby accepted for filing, effective February 18, 2005, as requested.

(B) Waiver of the 60-day prior notice requirement is hereby granted, as requested.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.