

111 FERC ¶ 61,074
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator
Corporation

Docket Nos. ER03-683-006
ER03-683-007

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued April 18, 2005)

1. In this order, we address requests for rehearing of the *January 6, 2005 Order*¹ in which we clarified certain issues relating to the implementation of the California Independent System Operator Corporation's (CAISO) proposed tariff revisions, captioned as Amendment No. 50. In the *January 6 Order*, we also directed a compliance filing, which we will address in this order. Specifically, in this order, we accept for filing the CAISO's compliance filing. We also deny in part and grant in part the CAISO's request for rehearing and clarification and we deny the California Electricity Oversight Board's (CEOB) request for rehearing.
2. This order benefits customers by finalizing issues pertaining to the implementation of proposed Amendment No. 50, thereby helping to improve market efficiency.

Background

3. Amendment No. 50² was proposed by the CAISO as an interim solution until locational marginal pricing (LMP) is implemented, or until some other long-term comprehensive congestion management solution is put in place. Amendment No. 50 was

¹ *California Independent System Operator Corporation*, 110 FERC ¶ 61,007 (2005) (*January 6 Order*).

² For a detailed summary of Amendment No. 50 see *California Independent System Operator Corporation*, 103 FERC ¶ 61,265 at P 3–7 (2003) (*May 30 Order*).

intended to provide the CAISO with a revised method for managing intra-zonal congestion and to permit the CAISO to share generator outage information with entities operating transmission and distribution systems affected by the outage. The Commission accepted Amendment No. 50 for filing, subject to modifications, in the *May 30 Order*.

4. Subsequently, the Commission issued two orders addressing Amendment No. 50. One of the orders acted on the CAISO's compliance filing directed by the *May 30 Order*;³ the other addressed rehearing requests and also directed a compliance filing.⁴

5. Certain parties sought rehearing of the Compliance Filing Order. In response, the Commission issued the *January 6 Order*, in which it also addressed the CAISO's compliance filing directed by the Rehearing Order (May 17 Compliance Filing). In the *January 6 Order*, the Commission conditionally accepted for filing the May 17 Compliance Filing, subject to further modifications. The *January 6 Order* also clarified that the tariff revision implemented by the CAISO on January 20, 2004 without prior Commission approval would not become effective until the CAISO submitted a filing pursuant to section 205 of the Federal Power Act (FPA)⁵ and that filing was accepted by the Commission.

6. On February 14, 2005, the CAISO submitted a compliance filing, as directed by the January 6 Order. The CAISO and the CEOB also seek rehearing of the *January 6 Order*.

Notice of Filing and Responsive Pleadings

7. Notice of the CAISO's compliance filing was published in the *Federal Register*, 70 Fed. Reg. 9,942 (2005), with comments, interventions and protests due on or before March 7, 2005.

8. 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) and Termoelectrica Mexicali, S. de R. L. de C.V. (TDM) filed answers to the CAISO's request for rehearing. The CAISO filed an answer to Coral's and TDM's answers. In addition, the CAISO filed an answer

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

⁴ *California Independent System Operator Corporation*, 107 FERC ¶ 61,028 (2004) (*Rehearing Order*).

⁵ 16 U.S.C. § 824d (2004).

to protests. Coral and TDM filed answers to the CAISO's answer to protests. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits answers to requests for rehearing, protests and/or answers unless otherwise permitted by the decisional authority. We are not persuaded to allow Coral's and TDM's answers⁶ to the CAISO's request for rehearing and the CAISO's answer to these answers, as well the CAISO's answer to protests and Coral's and TDM's answers to the CAISO's answer.

Discussion

I. Adjustment Bids

9. In the *January 6 Order*, we found that the elimination of Adjustment Bids by the CAISO from Operating Procedure M-401 prior to October 1, 2004⁷ was premature.⁸ Accordingly, we directed the CAISO to provide refunds to parties affected by the improper elimination of Adjustment Bids under Operating Procedure M-401 from the time the elimination was effectuated through October 1, 2004.⁹

10. The CAISO seeks rehearing of the Commission's finding that the CAISO must provide refunds because it improperly eliminated the use of Adjustment Bids to manage intra-zonal congestion by modifying section 2.1 of CAISO Operating Procedure M-401. The CAISO argues that because decremental reference prices are determined for all generating resources, the requirement to use decremental reference prices to manage intra-zonal congestion effectively eliminated the need for the CAISO to continue to rely on Adjustment Bids for the same purpose. The CAISO states that it appropriately modified Operating Procedure M-401 to reflect the impact of the *May 30 Order* on intra-zonal congestion management with respect to decremental energy, and that the modification did not signify any further change in the CAISO's operations.¹⁰

⁶ In its answer to the CAISO's request for rehearing, TDM states that it responds to the CAISO's motion for clarification. The CAISO's motion for clarification is an integral part of the rehearing request and will be treated as such.

⁷ See *California Independent System Operator Corporation*, 105 FERC ¶ 61,091 (2003), *order on reh'g* 108 FERC ¶ 61,142 (2004) (establishing the October 1, 2004 effective date).

⁸ See *January 6 Order* at P 13-15.

⁹ See *id.* at P 7.

¹⁰ The CAISO further states that since it began using decremental reference prices for intra-zonal congestion management, it has not used Adjustment Bids for that purpose.

Commission Determination

11. Upon further consideration, we find that the CAISO acted appropriately in removing references to Adjustment Bids in section 2.1 of Operating Procedure M-401 in order to reflect the impact of the Commission's directive to utilize reference prices to manage intra-zonal congestion. We also find that the reference level methodology directed to be incorporated into the CAISO tariff effectively supercedes the need to utilize Adjustment Bids in order to manage intra-zonal congestion and, as a result, the CAISO is not required to provide refunds. Accordingly, the CAISO's request for rehearing is hereby granted.

II. Payment of Start-Up Costs

12. In the *January 6 Order*, the Commission clarified, in response to CAISO's request for clarification, that the CAISO must "modify its tariff to provide generators the opportunity to recover start-up costs... [and]... direct[ed] the CAISO to submit ... tariff revisions to allow for the start-up cost recovery."¹¹

13. On rehearing, the CAISO requests clarification that no further modifications are required to comply with the Commission's directive to include a provision in the CAISO Tariff that gives generators the opportunity to recover their start-up costs after their units have been shut down by the CAISO to manage intra-zonal congestion. In its rehearing request and compliance filing, the CAISO states that the May 17 Compliance Filing, which was addressed in the *January 6 Order*, modified section 7.2.6.1 of the CAISO Tariff to provide such an opportunity to generators.

14. In its protest to the CAISO's compliance filing, Coral argues that instead of complying with its obligation to pay the start-up costs, the CAISO proposed in the May 17 Compliance Filing to pay generators the costs set forth in section 2.5.23.3.7.6 of its tariff. According to Coral, those costs include only the fuel costs that a generator incurs when it is required to start-up, and do not include any of the numerous other costs that the generator incurs when it must shut down and then restart. Thus, Coral argues, the May 17 Compliance Filing does not comply with the Commission's instructions in the Rehearing Order that the CAISO should include a provision in its tariff that provides for the payment of the start-up costs.

¹¹ See *January 6 Order* P 20.

15. In its protest,¹² TDM states that as it stands, the CAISO Tariff provisions, including those proposed in the May 17 Compliance Filing, regarding payment of start-up costs fail to cover the verifiable costs associated with the start-up of a unit when it is shut down by the CAISO to manage intra-zonal congestion. Thus, TDM believes that the CAISO's suggestion that no further changes are necessary for the CAISO to comply with the Commission's directive to allow for the recovery of start-up costs is misplaced.

Commission Determination

16. In a previous filing, the CAISO acknowledged that a generator should be allowed to recover its start-up costs when directed to shut down in order to manage intra-zonal congestion and stated its willingness to amend its tariff accordingly.¹³ However, in the May 17 Compliance Filing, the CAISO sought clarification on the Commission's intent regarding inclusion of recovery of start-up costs in the CAISO tariff. The Commission, in the *January 6 Order*, provided clarification that it was indeed the Commission's intent for the CAISO to modify its tariff to provide generators with the opportunity to recover start-up costs.

17. The *January 6 Order*, however, did not mention that the May 17 Compliance Filing contained the language on the recovery of start-up costs. In the instant filing, the CAISO resubmits the same tariff revisions as were submitted as part of the May 17 Compliance Filing.

18. We find that the proposed modifications to section 7.2.6.1 of the CAISO Tariff are in compliance with our directives. The proposed revisions will allow generators the opportunity to receive start-up costs and therefore are consistent with the methods to recover start-up costs for Must-Offer Generators. We see no reason why the CAISO should pay different start-up costs depending on whether the payment was to generating units that had been shut down to manage intra-zonal congestion or to Must-Offer Generators. We do not believe it would make sense to provide payment differently in these two cases, because the steps taken to start-up a unit are the same in both. For these reasons, we accept for filing the tariff revisions to allow recovery of start-up costs. Accordingly, we clarify that the CAISO is in compliance with our directives to include the start-up cost recovery language in its tariff.

¹² In its protest, TDM incorporates by reference its answer to the CAISO's request for rehearing. We do not allow TDM's answer to the CAISO's request for rehearing, as discussed above. However, we will consider the arguments contained in the answer because they are incorporated into TDM's protest.

¹³ See the CAISO's Answer to Protests, Docket No. ER03-683-003 (August 5, 2003).

III. Reference Level Methodology

19. On January 16, 2004, Potomac Economics, the independent entity directed to develop the methodology for determining decremental reference levels, identified a concern with the criteria used to determine decremental reference levels. To address this concern, Potomac Economics implemented a test for calculating decremental reference levels on January 20, 2004. The test described by Potomac Economics would establish an additional criterion that would determine when an offer would be deemed to have been accepted in competitive periods.

20. In the Compliance Filing Order, the Commission found the standard implemented by Potomac Economics on January 20, 2004 to be necessary to correct a fundamental flaw in the proposed decremental reference bid methodology. The Commission added, however, that Potomac Economics' test "should be explicitly" outlined in the CAISO's tariff since it would "...establish an additional criterion, when an offer would be deemed to have been accepted in competitive periods."¹⁴

21. Initially, the tariff language implementing the Potomac Economics change was submitted for Commission review as a compliance filing. However, in the *January 6 Order*, the Commission clarified that the tariff revision implemented by the CAISO on January 20, 2004 without prior Commission approval would not become effective until the CAISO submitted a filing pursuant to section 205 of the FPA and that filing was accepted by the Commission.¹⁵ The Commission also ordered refunds for the period from January 20, 2004 through the effective date of the new section 205 filing.

22. The CAISO seeks rehearing of these two Commission rulings. The CAISO argues that the Commission failed to recognize that, prior to the implementation of the standard, Section 7.2.6.1.1 of the CAISO Tariff already contained a mechanism for the CAISO to calculate decremental bid reference levels, based in part on input from Potomac Economics. The CAISO believes that the standard developed by Potomac Economics and implemented by the CAISO after notice to market participants on January 20, 2004 simply implemented and interpreted that tariff provision, which had been accepted by the Commission. According to the CAISO, no additional tariff filing was required to implement that authority.

23. The CAISO further argues that Potomac Economics' change should be implemented through a compliance filing, not a section 205 filing, because it is simply an addition to a description of the mechanism, which was implemented pursuant to the

¹⁴ See *Compliance Filing Order* at P 62.

¹⁵ See *January 6 Order* at P 2.

Commission directive in the *May 30 Order*, the first order in the series of orders on Amendment No. 50. The CAISO concludes that by submitting the Potomac Economics' change as part of the May 17 Compliance Filing, it appropriately complied with the Commission ruling in the Compliance Filing Order to incorporate Potomac Economics' standard into the CAISO Tariff.

24. In the alternative, the CAISO contends that, regardless of whether the Commission determines that Potomac Economics' change should be implemented through a compliance filing or a separate section 205 filing, the Commission should permit the tariff revision to become effective on January 20, 2004 or, at the latest, April 16, 2004, the date on which the Commission directed the CAISO to incorporate Potomac Economics' change into its tariff.

25. The CEOB also argues that in the Compliance Filing Order, the Commission directed a compliance filing to incorporate the Potomac Economics change into the CAISO tariff and that the *January 6 Order* reversed that decision and ordered refunds, which will negatively affect California consumers. According to the CEOB, refunds will result in a surcharge to the rates currently paid by California consumers. The CEOB further contends that the refunds the Commission ordered in the *January 6 Order* are retroactive and will result in reinstatement of the rates not previously on file with the Commission.

Commission Determination

26. We disagree with the CAISO's assertion that the standard developed by Potomac Economics and implemented by the CAISO after notice to market participants on January 20, 2004 simply implemented and interpreted a previously accepted tariff provision. 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.

27. Accordingly, we find that the *January 6 Order* correctly required the CAISO to provide refunds for charging a reference level rate that was not on file for all periods prior to the effective date of the section 205 filing, as accepted for filing by the Commission.¹⁶ We also remind the CAISO that an assessment of the amount owed to and owing by each market participant and a proposal for the processing of the refunds, including an estimated timeline highlighting the major milestones of such a process as

¹⁶ The CAISO's section 205 filing implementing the Potomac Economics' standard is addressed in an order being issued contemporaneously with this order.

directed in the *January 6 Order*,¹⁷ are due within 30 days of the date of issuance of this order.¹⁸

28. Furthermore, we believe that the CEOB's argument regarding the nature of refunds ordered in the *January 6 Order* is misplaced. Contrary to the CEOB's contentions, we did not order retroactive reinstatement of the rates not previously on file with the Commission. The Potomac Economics change was implemented without prior Commission approval. As a result, starting January 20, 2004, market participants were charged rates that were not on file with the Commission. Therefore, the rates charged were not just and reasonable. Accordingly, we directed the CAISO to restore *status quo ante* and provide refunds to parties affected by the unauthorized implementation of the Potomac Economics change.

IV. Use of a Daily Gas Index in Calculating Decremental Reference Levels

29. In the *January 6 Order*, we directed the CAISO to submit a compliance filing to modify its tariff to incorporate the use of a Commission-approved daily gas index into the calculation of decremental reference levels.¹⁹ In its compliance filing, the CAISO proposes to use the same daily gas price index as is used by Reliability Must-Run (RMR) units to calculate start-up and minimum costs. The CAISO argues that this approach is consistent with the approach the Commission approved for Amendment No. 60.²⁰

30. In its protest, Coral argues that the CAISO's proposal to use the same daily gas price index as is used by RMR units fails to comply with the Commission directive to implement an accurate index that tracks daily gas prices. According to Coral, the CAISO's proposal also fails to provide compensation for pipeline penalties and imbalance charges. For these reasons, Coral urges the Commission to reject the CAISO's instant proposal, and direct the CAISO to comply with the Commission directive, and make that compliance filing effective May 30, 2003.

Commission Determination

31. The CAISO's compliance filing proposes to use the same daily gas price index as is used by RMR units to calculate start-up and minimum costs. This daily gas price index

¹⁷ See *January 6 Order* at Ordering Paragraph (H).

¹⁸ Notice of Extension of Time, Docket No. ER03-683-000 (March 2, 2005).

¹⁹ See *January 6 Order* at Ordering Paragraph (F).

²⁰ The CAISO cites *California Independent System Operator Corporation*, 108 FERC ¶ 61,022 at P 81 (2004).

has been previously approved by the Commission.²¹ For this reason, we find the CAISO's compliance filing to be consistent with our directive in the *January 6 Order* and accept it filing. Given the implementation issues related to the software problems, we grant the CAISO's request for an April 30, 2005 effective date for this tariff revision.

The Commission orders:

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

(B) The CAISO's compliance filing is hereby accepted for filing, effective April 30, 2005, as requested.

(C) The CEOB's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Deputy Secretary.

²¹ *Id.*