

184 FERC ¶ 61,118  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;  
James P. Danly, Allison Clements,  
and Mark C. Christie.

California Independent System Operator Corporation      Docket No. ER23-2062-000

ORDER GRANTING WAIVER REQUEST

(Issued August 24, 2023)

1. On June 2, 2023, pursuant to Rule 207 of the Commission’s Rules of Practice and Procedure,<sup>1</sup> the California Independent System Operator Corporation (CAISO) submitted a request for waiver of section 39.7.1.1.1.4 of its Open Access Transmission Tariff (Tariff) to excuse CAISO from using the average of two vendor indices to reflect the greenhouse gas (GHG) allowance price in reference levels for resources in Washington State. As discussed below, we grant CAISO’s waiver request.

**I. Background**

2. On February 10, 2023, the Commission issued an order accepting CAISO’s proposed Tariff amendment to allow resources within Washington State to reflect their cost of GHG compliance associated with Washington State’s new cap-and-invest program in their reference levels for default energy bids and commitment costs.<sup>2</sup> CAISO explains that default energy bids are used in the local market power mitigation process, and commitment costs are similarly used to determine whether to commit the resource as part of a security constrained unit commitment. CAISO states that, with the rollout of Washington’s cap-and-invest program, CAISO proposed a phased approach to use the best available proxy for the GHG allowance price. CAISO currently uses the most recent allowance auction price in calculating this price. However, Tariff section 39.7.1.1.1.4 requires CAISO to begin using the average of two prices from Intercontinental Exchange

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<sup>1</sup> 18 C.F.R. § 385.207 (2022).

<sup>2</sup> *Cal. Indep. Sys. Operator Corp.*, 182 FERC ¶ 61,067, at P 26 (2023). These Tariff provisions became effective on May 1, 2023.

(ICE) and ARGUS when these indices are both available.<sup>3</sup> CAISO states that ARGUS has been publishing an index for the Washington GHG price for most of 2023, and CAISO expects that ICE will begin publishing its index in early June 2023.<sup>4</sup>

3. CAISO states that it will likely launch the software it is developing to support the daily consumption and processing of these two indices in October 2023. To allow resources in Washington State to reflect the cost of GHG emissions compliance in their default energy bids and commitment costs in advance of the software changes, CAISO implemented the Tariff amendments using a manual process. CAISO states that this manual process is fully consistent with the Tariff because it uses the most recent auction price.<sup>5</sup> CAISO notes that Washington's Department of Ecology has published a schedule of expected auction dates, including May 31, 2023, and August 30, 2023. CAISO states that it will update the calculation of the GHG allowance price to reflect the price from these auctions, ensuring that the calculation is as current as possible before the software changes are implemented.<sup>6</sup>

## **II. Waiver Request**

4. CAISO requests waiver of the requirement in Tariff section 39.7.1.1.1.4 to use the two vendor price indices to calculate the GHG allowance price to enable continued usage of the current manual process until both index prices are available and CAISO is able to implement the necessary software changes. CAISO requests that the waiver be effective until no later than December 15, 2023.

5. CAISO contends that its waiver request satisfies the Commission's criteria for granting waiver. First, CAISO argues that it has acted in good faith because it implemented a manual system to ensure resources in Washington State could reflect the cost of GHG compliance in their reference levels as soon as possible, rather than awaiting

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<sup>3</sup> CAISO, CAISO eTariff, § 39.7.1.1.1.4 (Calculation of Greenhouse Gas Allowance Price) (45.0.0).

<sup>4</sup> Waiver Request at 2-3.

<sup>5</sup> Tariff section 39.7.1.1.1.4 states, in relevant part, that if the Washington State GHG prices from ICE and ARGUS “have not yet been calculated for a jurisdiction, the CAISO will use the best available proxy, as follows: for Washington State, the CAISO will utilize \$41/MT CO<sub>2</sub>e until an allowance auction is held by the State of Washington, at which point the CAISO will use, as soon as is practicable, the most recent allowance auction clearing price.” CAISO, CAISO eTariff, § 39.7.1.1.1.4 (Calculation of Greenhouse Gas Allowance Price) (45.0.0).

<sup>6</sup> Waiver Request at 3-5.

a software solution. CAISO explains that this manual solution is consistent with the Tariff until the two vendor indices are published. Further, CAISO states that it promptly filed its waiver request after confirming that the second vendor index would be available prior to the implementation of software changes needed to reflect daily vendor index prices.<sup>7</sup> Second, CAISO asserts that the waiver is limited in scope because it will apply for approximately seven months, with the systems expected to be available even sooner, and the GHG allowance price will be updated within that time at least twice to reflect the most current cost data from the Washington auctions.<sup>8</sup> Third, CAISO argues that the waiver addresses a concrete problem, which is that CAISO cannot implement the Tariff requirement to use the average of two vendor indices without the necessary software upgrades.<sup>9</sup> Fourth, CAISO asserts that the waiver will not lead to undesirable consequences because CAISO can continue to calculate the GHG allowance price for resources in Washington State using the most recent auction price.<sup>10</sup>

### **III. Notice and Responsive Pleadings**

6. Notice of CAISO's waiver request was published in the *Federal Register*, 88 Fed. Reg. 37,527 (June 8, 2023), with interventions or protests due on or before June 23, 2023. Timely motions to intervene were filed by Pacific Gas and Electric Company and Southern California Edison Company.

### **IV. Discussion**

#### **A. Procedural Matters**

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2022), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

#### **B. Substantive Matters**

8. We grant CAISO's request for waiver of Tariff section 39.7.1.1.4 to excuse CAISO from using the average of two vendor indices to reflect the GHG allowance price in reference levels for resources in Washington State. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is

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<sup>7</sup> *Id.* at 6.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.<sup>11</sup> As discussed below, we find that the circumstances of CAISO's waiver request satisfy the foregoing criteria.

9. First, we find that CAISO has acted in good faith. As CAISO explains, it has been using a manual process to allow resources in Washington State to reflect the cost of GHG compliance in their reference levels until CAISO is able to implement the software changes necessary to use the average of the two vendor indices to calculate the GHG allowance price. CAISO submitted this waiver request in a timely manner when it learned that the second index would become available in early June 2023. Second, we find that the waiver request is limited in scope because it applies to only the single, noted Tariff provision and will be effective only until December 15, 2023, at the latest. Third, we find that the requested waiver addresses the concrete problem that CAISO cannot implement the Tariff requirement to use the average of two vendor indices until it implements the necessary software upgrades, which CAISO does not expect to be able to do until October 2023. Finally, we find that the requested waiver will not have undesirable consequences, such as harming third parties, because CAISO will continue to use its current manual process that calculates the GHG allowance price for resources in Washington State using the most recent auction price, which will be updated at least twice during the waiver period.

The Commission orders:

CAISO's waiver request is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>11</sup> See, e.g., *Citizens Sunrise Transmission LLC*, 171 FERC ¶ 61,106, at P 10 (2020); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).