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

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

California Independent System Operator Corporation Docket No. ER11-3856-000

ORDER ACCEPTING TARIFF REVISIONS AND ORDER OF NON-PUBLIC, FORMAL INVESTIGATION

(Issued August 19, 2011)

1. On June 22, 2011, the California Independent System Operator Corporation (CAISO) filed, pursuant to section 205 of the Federal Power Act (FPA)[1] and section 35 of the Commission's regulations,[2] proposed revisions to its tariff to modify its bid cost recovery settlement rule. CAISO also proposed revisions to its tariff to allow mitigation of exceptional dispatches in specific circumstances when there is the potential to exercise market power.[3] In this order, we accept CAISO's proposed tariff revisions to become effective June 23, 2011, as requested, grant waiver of the 60-day prior notice requirement, and authorize the Office of Enforcement to conduct a non-public, formal investigation of the subject bidding practices and related conduct.

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

[1] 16 U.S.C. § 824d (2006).

[2] 18 C.F.R. § 35 (2011).

[3] CAISO June 22, 2011 Bid Cost Recovery Filing (June 2011 BCR Filing).

energy and ancillary services bid costs.[4] 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.[5]

3. On March 21, 2011, as amended on March 25, 2011, CAISO filed tariff revisions to prevent the over-collection of bid cost recovery payments due to the bid cost recovery mechanism's failure to fully account for energy revenue associated with the day-ahead market,[6] and on May 4, 2011, the Commission accepted the modifications.[7] On June 22, 2011, CAISO proposed additional revisions to its bid cost recovery mechanism to address modified bidding practices that resulted in overpayments of bid cost recovery.[8] CAISO's proposal also extends the exceptional dispatch mitigation rules in certain situations.

II. Notice and Responsive Pleadings

4. Notice of the June 2011 BCR Filing was published in the *Federal Register*, 76 Fed. Reg. 39,089 (2011), with interventions and comments due on or before July 13, 2011. Timely Motions to Intervene were filed by 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); J.P. Morgan Ventures Energy Corporation and BE CA LLC; Modesto Irrigation District; Powerex Corp.; MSR Public Power Agency; the City of Santa Clara, California; and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California. Timely Notice of Intervention and Comments was filed by the Public Utilities Commission of the State of California (CPUC). Timely Motions to Intervene and Comments were filed by the Northern California Power Agency (NCPA), Southern California Edison Company (SoCal Edison), California Department of Water Resources State Water Project (SWP) and

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[4] *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).

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

[6] CAISO, Bid Cost Recovery Filing, Docket Nos. ER11-3149-000 and ER11-3149-001 (March 2011 BCR Filing).

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

[8] June 2011 BCR Filing.

Pacific Gas and Electric Company (PG&E). NRG also timely filed protests, and CAISO filed an answer.

III. Discussion

A. Procedural Matters

5. 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.

6. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept CAISO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

The Bid Cost Recovery Mechanism

7. Through its bid cost recovery mechanism, CAISO guarantees the recovery of a resource's costs bid into the CAISO markets, to the extent such costs are not covered by the resource's market revenues.[9] If resources are scheduled, dispatched or awarded in any of CAISO's markets, they are paid the market clearing locational marginal price (LMP) for energy. If the market clearing LMP does not cover a resource's submitted costs, the bid cost recovery mechanism ensures recovery of those costs. The bid cost recovery mechanism also employs, in some instances, a metered energy adjustment factor, which is intended to adjust the amount a resource can recover depending on how much of the scheduled energy the resource delivers. In the May 2011 BCR Order, the Commission accepted proposed revisions to the bid cost recovery provisions in the CAISO tariff to recognize the full value of market revenues by applying the metered energy adjustment factor only in certain circumstances.[10] CAISO's proposal did not change the calculation of energy costs in the bid cost recovery calculation.

1. CAISO's Instant Filing

8. CAISO proposes to refine the bid cost recovery mechanism so it is not susceptible to further variations of the same bidding practices that can artificially increase bid cost

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[9] June 2011 BCR Filing at 1; CAISO Tariff section 11.8.

[10] May 2011 BCR Order.

recovery. CAISO also proposes to mitigate certain exceptional dispatches when there is the potential to exercise market power. CAISO states that the tariff modifications accepted in the May 2011 BCR Order limited the profitability of an observed bidding strategy by better accounting for market revenues. However, CAISO claims that shortly after its March 2011 BCR Filing, certain of the same resources employed a similar bid strategy to artificially increase bid cost recovery payments or position their resources to benefit from secondary bidding strategies, and benefit from payments for exceptional dispatches.[11]

9. CAISO contends that it observed certain resources submit, in the day-ahead market, a schedule including negative energy bids (base negative bid) near or at the bid floor in certain hours. Then in subsequent hours, the resources submit day-ahead energy bids at or near the bid cap of $1000/MW. By bidding in this way, the resources appear to the system to be economical, even when they have very high registered minimum load costs and their schedule includes several intervals in which the resource bid all their energy at or near the $1000/MW bid cap (far above other resources being committed in that hour).[12] In the real-time market, CAISO states that the resources will increase day-ahead negative energy bids to values near, but above, the expected LMP resulting in a so called “buy-back” of its energy.[13] This “buy-back” ensures dispatch at or near minimum load in the real-time market. Once the resource is committed by the CAISO market, it is guaranteed recovery of its high registered minimum load costs.

10. CAISO argues that under the existing tariff, when real-time dispatch is below the day-ahead schedule, the application of the metered energy adjustment factor to negative energy bid costs inflates bid cost recovery payments. When a resource submits positive energy bid costs, if a resource delivers less energy in real-time than it was scheduled to deliver in the day-ahead market, the metered energy adjustment factor would reduce the amount of energy bid costs eligible for bid cost recovery because less energy was delivered than scheduled. However, CAISO explains that when the metered energy adjustment factor is applied to negative bid costs, negative costs are discounted. CAISO notes that a negative bid cost is essentially an indication of a willingness to pay the market to produce energy.[14] Thus, CAISO claims the exclusion of negative bid costs in the bid cost recovery settlement calculation makes the resource’s costs appear greater and

[11] June 2011 BCR Filing at 6.

[12] Ex. No. ISO-1 at 15 (Hildebrandt Testimony).

[13] *Id*. at 11, 17-18.

[14] June 2011 BCR Filing at 8.

results in the inflation of bid cost recovery payments overall.[15] This base negative bidding strategy, according to CAISO, supports the additional bidding strategies described below.[16]

Inter-Day Bidding

11. According to CAISO, when the base negative bidding strategy is used over two consecutive trade days it results in increased bid cost recovery payments. CAISO claims that this use of the base negative bidding strategy over two consecutive days causes it to schedule the resource at maximum capacity in the last hours of trade-day-one because of the low energy bids in the day-ahead market. But in the first hours of trade-day-two, the resources are scheduled at minimum load because of the high energy bids. CAISO explains that, because it does not optimize between two 24-hour periods, it does not consider the high energy bid prices in the first hours of trade-day-two when scheduling the resource in trade-day-one.[17]

12. CAISO is not able to dispatch resources from maximum capacity to minimum load for the hour where the resources have ramping limitations. As a result, CAISO contends that it is required to gradually ramp-down the resource over the early hours of trade-day-two in order to operate at its minimum load level. Under the existing rules, the resource is able to collect bid cost recovery for its energy bid prices submitted for the early hours of trade-day-two while the resources are ramping down. CAISO contends that this bidding behavior resulted in additional bid cost recovery payments of over $100,000 a day for several individual units.[18]

Intra-Day Bidding

13. CAISO claims resources may increase bid cost recovery payments when they self-schedule at different levels during a single 24-hour period. Similar to the inter-day bidding behavior, CAISO states that due to a resource's ramping limitations it may not be possible to dispatch the resource up to its self-schedule within one hour.[19] If the resource must be ramped-up in the prior hour to make the self-schedule accessible, CAISO claims

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[15] *Id*. at 9.

[16] *Id*. at 6-9.

[17] *Id*. at 10.

[18] Hildebrandt Testimony at 29.

[19] June 2011 Bid Cost Recovery Filing at 12.

that the ramping energy would be compensated at the resource's energy bid price for those hours, even if that bid is well above the market clearing LMP.[20]

Exceptional Dispatches

14. Under its tariff, CAISO can dispatch resources out of sequence for specified purposes. This is called exceptional dispatch.[21] Resources that bid consistent with the base negative bidding strategy may also have day-ahead ancillary services awards and residual unit commitment capacity. CAISO observed resources with ancillary services awards and residual unit commitment capacity obligations submitting real-time energy bids to buy-back their energy schedule down to minimum load. This bidding behavior positions the resources in real-time such that the ancillary services awards or residual unit commitment capacity is no longer accessible in the real-time market without the issuance of exceptional dispatch.[22] CAISO notes that when exceptionally dispatching a resource it must pay the resource's energy bid price even if that price is near the $1,000/MW bid cap.[23]

15. CAISO adds that it does not account for the dynamic ramp rates at which a resource is able to provide different ancillary services or residual unit commitment capacity when dispatching the resource in real-time. Thus, a resource may be scheduled to provide ancillary services or residual unit commitment capacity, but because of its dynamic ramp rates, an exceptional dispatch may be required for the resource to meet its commitment. CAISO claims that due to strategic bidding, including base negative bidding, for the periods in which CAISO is most likely to need to be prepared for contingencies, the unit's capacity is only available at or near the $1,000/MW bid cap.[24] CAISO claims that in just five days, during a total of 24 hours, $3.6 million of exceptional dispatch costs were incurred involving inaccessible ancillary services awards and residual unit commitment capacity.[25]

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[20] *Id*.

[21] CAISO Tariff section 34.9.

[22] June 2011 BCR Filing at 13.

[23] Ex. No. ISO-2 at 10-11 (Le Vine Testimony).

[24] Hildebrandt Testimony at 45.

[25] June 2011 BCR Filing at 17.

16. CAISO states that, to avoid issuing exceptional dispatches, it has procured additional operating reserves in the hour-ahead scheduling process. CAISO argues those resources are "contingency only," so they are only available in the event of a "contingency."[26] Therefore, CAISO contends that the steps it has taken to avoid the excessive exceptional dispatch payments have come at the cost of reliability.

Tariff Revisions

17. CAISO proposes several tariff modifications and additions to refine the bid cost recovery mechanism to ensure that resources recover their costs as originally intended. To limit the profitability of the base negative bidding strategy, CAISO proposes that the metered energy adjustment factor not apply to negatively-priced bids when calculating bid costs for energy scheduled in the day-ahead market. With this change, the bid cost recovery calculation will account for the full value of negative bid costs even if the resource delivers less energy in real-time than it was scheduled to deliver in the day-ahead market.

18. CAISO argues that this rule change will limit the profitability of the base negative bidding behaviors. CAISO argues the proposed modification would have no significant financial impact on resources submitting negative bids that were not engaged in the base negative bidding strategy and deliver day-ahead scheduled energy in the real-time.

19. To address the profitability of bidding inter-day and intra-day as described, CAISO proposes to identify any net bid cost shortfalls that result from a ramping period that starts at the beginning of the day's market or is associated with a self-schedule at any time. If there is a net bid cost shortfall associated with this ramping, CAISO proposes to exclude it from the bid cost recovery calculation.[27] In other words, if the bid cost for this ramping event exceeds the market revenues then CAISO will exclude the energy costs and revenues from bid cost recovery. CAISO notes that in its review of 2010, when the inter-day bidding strategy was not employed, only nine units would have had bid cost recovery payments reduced as a result of this change, totaling $88,000. CAISO proposes to continue to monitor the bid cost recovery mechanism and the market for any irregularities and propose any further necessary rule changes.[28]

[26] *Id*. at 15.

[27] *Id*. at 20.

[28] *Id*.

20. Also, CAISO proposes to permit bid mitigation when CAISO exceptionally dispatches a resource to make ancillary services awards or residual unit commitment capacity obligations accessible.[29] CAISO argues that such mitigation is required when bidding behavior constitutes an exercise of market power.[30] CAISO contends resources employing the discussed bidding strategy have been paid for their energy near the price ceiling because of the lack of supply alternatives or demand elasticity. CAISO argues that the ability to bid in this way is an exercise of market power.[31] CAISO also states that such inaccessible ancillary services awards were not an issue until the described bidding strategies were employed.

21. CAISO also recognizes its software limitations regarding dynamic ramping levels and is implementing a software enhancement, referred to as dynamic ancillary services procurement that will incorporate the unit's dynamic operating ramp rate into the day-ahead software optimization. CAISO states that the software modification will ensure that a unit is not awarded more ancillary service capacity than it could provide based on its operational ramp rate at its day-ahead energy schedule.[32] CAISO notes that although the software modification would reduce the incidence of day-ahead inaccessible ancillary services awards, it would not reduce the incidence of inaccessible residual unit commitment capacity. CAISO adds that absent the mitigation proposal, fully eliminating the possibility of this scenario would require a substantial redesign of its residual unit commitment process.[33] CAISO adds that this software modification would also not prevent day-ahead ancillary services and residual unit commitment capacity from becoming inaccessible due to the bidding strategy of buying back day-ahead energy schedules to minimum load in the real-time.[34]

Comments

22. CPUC, PG&E, SWP, SoCal Edison, and NCPA support CAISO's proposed tariff changes. Parties support CAISO's efforts to narrowly tailor the proposed revisions to

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[29] If an exceptional dispatch resource is mitigated, the resource will be paid the higher of the market clearing price or its default energy bid.

[30] June 2011 BCR Filing at 22.

[31] *Id*.

[32] *Id*. at 21.

[33] Hildebrandt Testimony at 50.

[34] June 2011 BCR Filing at 22.

address the instant issues. PG&E notes the minimal impact that CAISO's proposed tariff provisions regarding ramping periods could have on generators who are scheduled for energy based on reasonable bidding behavior unrelated to the exploitative behavior the changes are intended to address.[35]

23. Parties also request that CAISO commence a stakeholder process to address bid cost recovery issues.[36] PG&E encourages CAISO to commence the stakeholder process with the goal of identifying and implementing a holistic solution to design issues that appear to be associated with the current bid cost recovery mechanism.[37] NRG requests that the Commission direct CAISO to initiate a stakeholder process and to file the results within 120 days. Further, NRG requests that the Commission make the outcome of this proceeding subject to the results of this stakeholder process.[38]

24. Although NRG supports the proposed tariff changes, NRG also requests that the proposal be accepted subject to CAISO proposing, on compliance, a mitigation proposal targeting only the manipulative behavior identified by CAISO in its filing.[39] NRG argues that the Commission should direct CAISO to limit the mitigation of exceptional dispatch.[40] NRG agues that CAISO's proposal assumes market power where its exercise has not been demonstrated, and has the potential to over-mitigate market participants' bids.[41]

25. NRG maintains that the Commission has previously limited CAISO's mitigation authority.[42] NRG contends that while some market participants are bidding in a way to force CAISO to accept very high-priced bids to access "stranded" ancillary services, it is also possible that some day-ahead ancillary service awards could become stranded

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[35] PG&E July 13, 2011 Comments at 5-6.

[36] *Id*. at 5.

[37] *Id*.

[38] NRG July 13, 2011 Comments at 3.

[39] *Id*.

[40] *Id*. at 7.

[41] *Id*.

[42] *Id*. at 8 (citing *Cal. Indep. Sys. Operator Corp*., 134 FERC ¶ 61,211, at P 72, 74 (2009)).

without the unit's scheduling coordinator strategically bidding in such a way to guarantee that outcome.

CAISO Answer

26. CAISO reiterates its commitment, which the Commission accepted in the May 2011 BCR Order, to begin a stakeholder process within 90-120 days following the Commission order in this proceeding.[43] CAISO notes that, due to the observed bidding behavior in the June 2011 Bid Cost Recovery Filing, it was unable to conduct a stakeholder process prior to making the filing.[44] Thus, CAISO contends it is unnecessary to condition any acceptance of CAISO's revision on the outcome of the stakeholder process. Further, CAISO contends any such condition would delay implementation of the needed changes to the bid cost recovery system and allow for additional abuse of the system. CAISO commits to considering any necessary changes to its tariff provisions in its subsequent stakeholder process, and commits to adjusting the rules where needed to ensure that they do not penalize proper and non-exploitative bidding behavior.[45]

27. CAISO states that the bid cost recovery process is an appropriate mechanism for attributing costs to specific market activities and allocating costs in a just and reasonable manner, and there is no evidence of a fundamental flaw in the design. Therefore, CAISO disagrees with the contention that the whole mechanism should be evaluated in the upcoming stakeholder process. CAISO notes that it is currently engaged in two stakeholder processes regarding the integration of variable resources. In these processes, CAISO states that it is evaluating aspects of its market design, including the bid cost recovery mechanism. CAISO encourages parties to participate in the ongoing stakeholder processes to ensure that the general bid cost recovery enhancements it perceives as necessary are adopted.[46]

28. CAISO argues that NRG's objections to the proposal to extend the exceptional dispatch mitigation are misplaced. CAISO notes that the Commission's prior exceptional dispatch mitigation limitations are not at issue here. CAISO also rejects NRG's contention that the proposed mitigation could impact resources that are not bidding strategically. CAISO notes that its new dynamic ancillary services procurement software

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[43] CAISO July 28, 2011 Answer at 2, 7.

[44] *Id*. at 9.

[45] *Id*. at 10-11.

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

ensures that an ancillary services award in the day-ahead market reflects the resource's operational ramp rate at the level of their day-ahead award.[47] So CAISO claims its proposed tariff provisions focus on strategic bidders and ensure that any necessary exceptional dispatches are sufficiently compensated.

29. CAISO further notes that, when a resource is scheduled to operate at a level below what is necessary for it to provide awarded ancillary services or residual unit commitment capacity upon which CAISO depends, it has market power. CAISO argues that the intention to exercise market power is immaterial for the purposes of mitigation. CAISO notes that it has no means of knowing whether the submittal of a real-time bid higher than the LMP was an intentional exercise of market power.[48]

Commission Determination

30. We find that CAISO's proposed tariff revisions are narrowly designed to ensure the original purpose of the bid cost recovery mechanism, which guarantees that resources recover their costs. CAISO's proposed tariff revisions are just, reasonable and not unduly discriminatory. We find that discounting the negative bid costs included in the base negative bidding strategy when the resource does not deliver in real-time has the potential to inflate bid cost recovery payments. Thus, CAISO's proposal to not apply the metered energy adjustment factor to such negative costs will more accurately reflect negative bid costs in the bid cost recovery settlement calculation and appropriately limit the potential recovery of inflated bid cost recovery payments under the base negative bidding strategy.

31. The Commission finds the recovery of ramping costs resulting from the discussed inter-day and intra-day bidding leads to the improper collection of bid cost recovery payments because the system limitation leads to the payment of bid cost recovery for ramping periods that CAISO was unable to consider in its dispatch. CAISO's proposal to exclude cost shortfalls resulting for such ramping periods when calculating bid cost recovery payments will address this problem with minimal effect on schedules.

32. The parties, including NRG, acknowledge that changes to the tariff are necessary to address the observed bidding behavior that requires CAISO to exceptionally dispatch resources. The Commission finds that mitigation in this limited circumstance is necessary to address the identified exercise of market power. Consistent with the Commission's finding that mitigation may be necessary to address a well defined

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[47] *Id*. at 13-14.

[48] *Id*. at 14.

problem where resources have the potential to exercise market power,[49] we find that CAISO's proposal to mitigate exceptional dispatches issued to make stranded ancillary services awards or residual unit commitment capacity obligations accessible is just and reasonable.

33. We find that resources that are awarded ancillary services or residual unit commitment capacity prior to the real-time market have the potential to exercise market power by bidding in such a way as to ensure they receive very high prices for exceptional dispatch awards. CAISO has also shown that resources can predict with a high degree of certainty that if they employ certain bidding strategies, they will be exceptionally dispatched. These examples of market power are appropriately mitigated by CAISO's proposal. Moreover, we find the proposal is just and reasonable because the exceptionally dispatched unit will be paid the higher of the market clearing price or default energy bid. We also find that the mitigation measures are narrowly defined, and we reject NRG's contention that CAISO should submit a compliance filing further limiting when mitigation can occur.

34. We further note that with the introduction of the dynamic ancillary services procurement software, we expect the mitigation to be necessary in very limited circumstances. We also note that inaccessible ancillary services awards and residual unit commitment capacity were not an issue until the described bidding strategies were employed and that without the mitigation, CAISO may not be able to eliminate the scenario without a substantial redesign of the residual unit commitment process.[50]

35. Further, as stated in our prior bid cost recovery order, we recognize CAISO's commitment to hold a stakeholder process to provide stakeholders an opportunity to address these issues and we encourage CAISO to initiate such process as soon as feasible. As committed by CAISO, the stakeholder process may include an examination of and subsequent modification to the tariff section addressing the recovery of costs associated with ramping energy.[51] Additionally, in light of CAISO's ongoing stakeholder processes and the need to promptly address the observed bidding behavior, we find it unnecessary, at this time, to condition the acceptance of CAISO's proposal on the outcome of the stakeholder process.

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[49] *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,150, at P 72-73 (2009).

[50] Hildebrandt Testimony at 50.

[51] CAISO Answer at 2, 6-11.

2. Expedited Treatment and Waiver of Prior Notice

36. CAISO requests waiver of the 60-day prior notice requirements under section 35.11 of the Commission's Regulations. CAISO requests that the Commission accept its proposed revisions to become effective the day after they were filed, June 23, 2011.[52] Parties support CAISO's request for waiver of the 60-day notice requirement.

Commission Determination

37. As we stated in *Central Hudson Gas & Electric Corp.*,[53] the Commission will not grant a waiver of the 60-day prior notice requirement absent a showing of good cause. Here, CAISO has demonstrated that the current method of bid cost recovery calculation and exceptional dispatch could lead to inflated payments. Also, in light of the suggestion that certain bidding action may exacerbate such inflated payments, the sooner the new method of calculation goes into effect, the sooner participants can be confident in CAISO's market. Therefore, we accept CAISO's proposed revisions to become effective on June 23, 2011.

3. Investigation

38. The CPUC also urges the Commission to exercise its investigative and enforcement authority against sellers engaged in the practices at issue here.[54] SWP also requests an investigation and an appropriate return of monies derived from market abuse, with reimbursement to market participants who bore the costs of market manipulation.[55]

39. SoCal Edison requests that the Commission formally investigate the issues surrounding the events described in this matter to determine whether market manipulation occurred. SoCal Edison notes that the magnitude of the costs, the repeat nature of the behavior, and the conclusion of the Director of Market Monitoring that "market power has been exercised" compels it to request a formal investigation.[56]

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[52] June 2011 BCR Filing 23.

[53] 60 FERC ¶ 61,106, at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992); *see also ISO New England Inc.*, 134 FERC ¶ 61,128, at P 44 (2011).

[54] CPUC July 13, 2011 Comments at 3.

[55] SWP July 13, 2011 Comments at 2.

[56] SoCal Edison July 13, 2011 Comments at 4.

40. SoCal Edison adds that a strong response from the Commission in response to the behavior described in this matter will put potential abusers on notice that such behavior will not be tolerated and that they will pay a steep price if they manipulate energy markets.[57] SoCal Edison urges the Commission to issue a Staff's Notice of Preliminary Violation to provide transparency to the regulated community and other market participants of the Commission's action to investigate the matter.[58] Further, SoCal Edison asks the Commission to consider stiff penalties, if there is found to be market manipulation.[59]

41. NCPA states that the Commission must make it clear that exploitative behavior will have consequences. NCPA notes that the Commission's May 2011 BCR Order referred the matter to the Office of Enforcement for examination of whether further investigation was warranted.[60] NCPA argues that such referral did not deter similar bidding activity. NCPA urges the Commission to take strong action and explain the steps it intends to take to investigate and prevent these types of abuses in the future.[61]

Commission Determination

42. Whether market resources' past bidding practices warrant an investigation does not relate to whether the proposed tariff revisions are just, reasonable and not unduly discriminatory. Nonetheless, pursuant to Federal Power Act sections 201, 307, and 309 (as amended by the Energy Policy Act of 2005)[62] and Part 1b of the Commission's regulations,[63] the Commission authorizes the Office of Enforcement to conduct a non-public, formal investigation, with subpoena authority, regarding violations of the Commission's regulations, including section 1c.2, prohibition of electric energy market

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[57] *Id*. at 5.

[58] *Id*. (citing *Enforcement of Statutes, Regulations, and Orders*, 129 FERC ¶ 61,247 (2009), *order on reh'g* 135 FERC ¶ 61,054 (2011)).

[59] *Id*. at 5.

[60] NCPA July 13, 2011 Comments at 5 (citing May 2011 BCR Order, 135 FERC ¶ 61,110 at P 29).

[61] *Id*. at 5.

[62] 16 U.S.C. §§ 824, 825f, 825h (2000 & Supp. V (2005)).

[63] 18 C.F.R. Part 1b (2011).

manipulation,[64] that may have occurred in connection with, or related to, the subject bidding practices and related conduct.

43. In conducting such investigations, the Director of the Office of Enforcement, and employees designated by the Director, shall have authority to administer oaths and affirmations, subpoena witnesses, compel their attendance and testimony, take evidence, compel the filing of special reports and responses to interrogatories, gather information, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records.

The Commission orders:

(A) Waiver of the 60-day prior notice requirement is hereby granted.

(B) CAISO's proposed tariff revisions are hereby accepted, to become effective June 23, 2011, as discussed in the body of this order.

(C) The non-public, formal investigation described above is authorized, pursuant to which the Director of the Office of Enforcement, and officers designated by the Director shall have the powers and authorities listed above, and shall report the results of the investigation to the Commission.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[64] 18 C.F.R. § 1c.2 (2011).