

152 FERC ¶ 61,127
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket No. ER15-2039-000

ORDER GRANTING TARIFF WAIVER

(Issued August 14, 2015)

1. In this order, we grant the California Independent System Operator Corporation's (CAISO) petition for limited waiver (Waiver Petition) of the flexible ramping constraint relaxation parameter in section 27.10 of its tariff.

I. Background

2. The Energy Imbalance Market (EIM) commenced financially binding operations on November 1, 2014, with PacifiCorp's two balancing authority areas (BAAs)—PacifiCorp East and PacifiCorp West—as the initial participants.¹ Shortly thereafter, CAISO reported that transitional conditions in the EIM caused the transmission and system-energy balance constraints described in sections 27.4.3.2 and 27.4.3.4 of its tariff to bind more frequently than expected, causing prices in these intervals to be set by the \$1,000/MWh bid cap.²

¹ The EIM enables entities with BAAs outside of CAISO to voluntarily take part in the imbalance energy portion of the CAISO locational marginal price-based real-time market alongside participants from within the CAISO BAA. *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,231, *order on rehearing, clarification, and compliance*, 149 FERC ¶ 61,058 (2014) (conditionally accepting proposed tariff revisions to implement the EIM).

² See CAISO, Petition for Limited Waiver and Request for Expedited Consideration, Docket No. ER15-402-000, at 3, 7-11 (filed Nov. 13, 2014). Sections 27.4.3.2 and 27.4.3.4 of CAISO's tariff provide that, for the purpose of determining how a transmission constraint or system-energy balance constraint will affect the determination of prices in the market, the pricing parameter for the relaxation of the constraint is \$1,000/MWh (the maximum energy bid price specified in tariff section 39.6.1.1).

3. On December 1, 2014, the Commission issued an order in Docket No. ER15-402-000³ granting CAISO's request for limited waiver (Initial Waiver) of the applicability of the pricing parameters in section 27.4.3.2 and the second sentence of 27.4.3.4 of CAISO's tariff for constraints that are within PacifiCorp's BAAs or affect EIM transfers between PacifiCorp's BAAs for the period from November 14, 2014 through February 12, 2015.⁴ Under the Initial Waiver, CAISO retains the ability under its tariff to relax transmission and system-energy balance constraint affecting EIM transfers between or within PacifiCorp's BAAs. Instead of using the \$1,000/MWh pricing parameter specified in tariff sections 27.4.3.2 and 27.4.3.4, however, CAISO uses the same pricing mechanism that applies when there are economic bids—i.e., the last marginal economic bid sets the price.⁵

4. In the December 1 Order, the Commission found that the Initial Waiver satisfied the Commission's criteria for granting waivers of tariff provisions because the requested waiver: (1) was limited in duration and application; (2) would address the concrete problem of the imbalance energy price spikes in PacifiCorp's BAAs; and (3) would not have undesirable consequences, such as harming third parties, because it would benefit customers in PacifiCorp's BAAs currently experiencing the higher prices, and would not be expected to affect prices outside of PacifiCorp's BAAs significantly.⁶

5. On January 15, 2015, CAISO filed in Docket No. ER15-861-000 proposed tariff revisions intended to address the imbalance energy price spikes in EIM BAAs that would apply the waiver of the pricing parameters to all new entities joining the EIM for a 12-month period and would also set the flexible ramping constraint relaxation parameter to a range between \$0 and \$0.01 (instead of \$60) for each new entity's BAA during such period.⁷ CAISO proposed that the new provisions would also apply to the PacifiCorp

³ *Cal. Indep. Sys. Operator Corp.*, 149 FERC ¶ 61,194 (2014) (December 1 Order).

⁴ On December 31, 2014, CAISO filed an additional waiver petition, which seeks to apply the same relief granted in the December 1 Order to the period from November 1, 2014 through November 13, 2014. This petition was granted on July 29, 2015. *Cal. Indep. Sys. Operator Corp.*, 152 FERC ¶ 61,086 (2015).

⁵ December 1 Order 149 FERC ¶ 61,194 at PP 4-5.

⁶ *Id.* P 23.

⁷ CAISO, Tariff Amendment to Implement Transition Period Pricing for Energy Imbalance Market, Request for Expedited Consideration and Waiver of Notice Period, Docket No. ER15-861-000 (filed Jan. 15, 2015).

BAAs for the remainder of their first 12 months of participation in the EIM. On March 16, 2015, the Commission issued an order (March 16 Order) rejecting CAISO's proposed tariff revisions and instituting an investigation pursuant to section 206 of the Federal Power Act (FPA)⁸ into the justness and reasonableness of the EIM pricing provisions of CAISO's tariff.⁹ In addition, the Commission extended the Initial Waiver until the refund effective date of the FPA section 206 proceeding to avoid exposing customers to further price spikes while developing a long-term solution to address the issues underlying the imbalance energy price spikes.¹⁰

6. As directed in the March 16 Order, Commission staff convened a technical conference in Docket Nos. ER15-861-000 and EL15-53-000 on April 9, 2015 to facilitate the development of a just and reasonable solution to the imbalance energy price spikes. On April 23, 2015, CAISO submitted comments on the technical conference, including a description of market enhancements it proposed to implement to address the imbalance energy price spikes. The Commission issued an order on July 20, 2015 directing CAISO to file proposed tariff provisions to establish just and reasonable rates, terms, and conditions of service in compliance with the March 16 Order.¹¹

7. Additionally, on April 15, 2015, CAISO filed a motion seeking to: (1) revise the refund effective date established in the March 16 Order from June 22, 2015 to August 24, 2015, the latest refund effective date permitted under section 206(b) of the FPA; and (2) extend the Initial Waiver until the date of implementation of the directives in a Commission order addressing CAISO's conceptual proposal for addressing the imbalance energy price spikes. Powerex Corporation (Powerex) submitted an answer to CAISO's motion, in which it asserted that CAISO had been violating its tariff by failing to apply the \$60 pricing parameter for relaxation of the flexible ramping constraint in tariff section 27.10 without ever having been granted the authority to waive or adjust this provision.¹² In response, CAISO explained that setting the flexible ramping constraint

⁸ 16 U.S.C. § 824e (2012).

⁹ *Cal. Indep. Sys. Operator Corp.*, 150 FERC ¶ 61,191 (2015).

¹⁰ *Id.* PP 36-37. The Commission issued an earlier order in the proceeding on February 12, 2015, extending the waiver granted in the December 1 Order, effective February 13, 2015 and subject to further order in that proceeding. *Cal. Indep. Sys. Operator Corp.*, 150 FERC ¶ 61,086 (2015).

¹¹ *Cal. Indep. Sys. Operator Corp.*, 152 FERC ¶ 61,060 (2015).

¹² Powerex Corporation, Motion for Leave to Answer and Answer, Docket No. ER15-861-001 *et al.* (filed Apr. 28, 2015).

to \$0, or a value close to zero, for the PacifiCorp BAAs is necessary to implement the Initial Waiver and asserted that it did not believe that seeking an explicit waiver of its tariff was necessary to take this action.¹³

8. The Commission issued an order granting CAISO's requested relief on June 19, 2015.¹⁴ With respect to section 27.10 of CAISO's tariff, the Commission acknowledged CAISO's assertion that reducing the flexible ramping constraint relaxation parameter price appeared to be a necessary action to effectuate the Initial Waiver, but clarified that CAISO had not requested, and the Commission had not granted, a waiver with respect to the parameter in tariff section 27.10.¹⁵ The Commission therefore directed CAISO to file a request for prospective waiver of this tariff provision to the extent that it intended to continue setting the flexible ramping constraint relaxation parameter to \$0, or a value close to zero, in intervals when it applies the Initial Waiver.¹⁶

II. Waiver Petition

9. In the Waiver Petition, CAISO requests limited waiver of section 27.10 of its tariff to permit it to set the flexible ramping constraint relaxation parameter applicable to the BAA of an EIM Entity¹⁷ between \$0 and \$0.01 whenever it implements the Initial Waiver.¹⁸ CAISO asserts that such waiver is necessary to effectuate the Initial Waiver and complies with the Commission's criteria for granting waivers of a tariff provision.¹⁹

¹³ CAISO, Motion for Leave to File Answer and Answer, Docket No. ER15-861-001 *et al.* (filed May 13, 2015).

¹⁴ *Cal. Indep. Sys. Operator Corp.*, 151 FERC ¶ 61,247 (2015) (June 19 Order).

¹⁵ *Id.* P 20.

¹⁶ With respect to the prior period, the June 19 Order noted that the Commission has broad discretion with respect to remedies and has, as a general matter, declined to require resettlement of the market in circumstances like this, when doing so would create uncertainty and undermine confidence in the markets and when customers cannot revisit their past economic decisions. *Id.* P 20 n.46.

¹⁷ An EIM Entity is a balancing authority that opts to participate in the EIM. *See* CAISO Tariff, Appendix A (Master Definition Supplement).

¹⁸ Waiver Petition at 1.

¹⁹ *Id.* at 9.

10. First, CAISO asserts that the waiver will be of limited scope, as it will be in effect only for as long as the Initial Waiver remains in place, and will apply only when CAISO relaxes a transmission or system-energy balance constraint in or between the EIM Entity BAAs pursuant to the Initial Waiver.²⁰

11. Second, CAISO maintains that the requested waiver will solve a concrete problem, because it is necessary to implement the Initial Waiver, which is in turn necessary to permit CAISO to relax transmission and system-energy balance constraints while also using the pricing mechanism that applies when effective economic bids are sufficient to allow a feasible market solution, instead of having to set the price at the \$1,000/MWh parameter price.²¹ According to CAISO, it must set the flexible ramping constraint to \$0, or a value close to zero, to establish pricing based on the last economic bid when the constraints are relaxed in the scheduling run.

12. Third, CAISO contends that the requested waiver will have no undesirable consequences, such as harm to third parties, because the waiver only will affect prices in EIM Entity BAAs and will not apply to prices in CAISO's BAA.²² CAISO states that the price excursions to date have only occurred in PacifiCorp's BAAs, and that it does not expect there to be a material impact on prices outside of EIM Entity BAAs. In addition, CAISO notes that the waiver will benefit customers who would otherwise be subject to unwarranted price excursions not supported by actual system conditions. CAISO requests that the Commission grant limited waiver of tariff section 27.10 for the same reasons that it granted the Initial Waiver.

13. CAISO requests that the waiver become effective as of June 19, 2015, i.e., the date of the June 19 Order.²³ CAISO asserts that such effective date will not conflict with the filed rate doctrine or rule against retroactive ratemaking because, by directing CAISO to file a petition seeking waiver of tariff section 27.10 to continue setting the flexible ramping constraint relaxation parameter between \$0 and \$0.01 when applying the Initial Waiver, the June 19 Order provided notice to customers.²⁴

²⁰ *Id.* at 10.

²¹ *Id.*

²² *Id.* at 11.

²³ *Id.*

²⁴ *Id.* at 11-12.

III. Notice and Responsive Pleadings

14. Notice of CAISO's filing was published in the *Federal Register*, 80 *Fed. Reg.* 38,443 (2015), with interventions and protests due on or before July 17, 2015. Timely motions to intervene were filed by Southern California Edison Company; Puget Sound Energy, Inc.; Powerex; the Transmission Agency of Northern California; Pacific Gas and Electric Company; and the Cities of Santa Clara, California, and Redding, California, and the M-S-R Public Power Agency. Modesto Irrigation District filed a motion for leave to intervene out-of-time on July 20, 2015. No protests or comments were filed.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the movants parties to the proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant Modesto Irrigation District's late-filed motion to intervene, given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Commission Determination

16. We grant CAISO's request for limited waiver of section 27.10 of its tariff, effective June 19, 2015, as requested, until the date on which the Initial Waiver expires.²⁵ Specifically, we grant CAISO's request to set the flexible ramping constraint relaxation parameter applicable to the BAA of an EIM Entity between \$0 and \$0.01 whenever CAISO relaxes transmission and system-energy balance constraints while using the pricing mechanism that applies when effective economic bids are sufficient to allow a feasible market solution, as permitted under the Initial Waiver. The Commission has previously granted one-time waivers of tariff provisions in situations where, as relevant here: (1) the waiver is of limited scope; (2) a concrete problem needed to be remedied;

²⁵ The Initial Waiver is set to expire on the date of implementation of a solution directed in a further Commission order in Docket No. ER15-861-000 *et al.* June 19 Order, 151 FERC ¶ 61,247 at P 18.

and (3) the waiver did not have undesirable consequences, such as harming third parties.²⁶ We find that CAISO's requested waiver meets these criteria.

17. First, the requested waiver is of limited scope, as it pertains only to EIM Entity BAAs and, consistent with the duration of the Initial Waiver, will apply only for the period of time between June 19, 2015 and the implementation of solutions directed by the Commission in a subsequent order in Docket No. ER15-861-000 *et al.*

18. Second, we find that the limited waiver will address a concrete problem by enabling implementation of the Initial Waiver. Specifically, CAISO asserts that, in order to implement the Initial Waiver by establishing pricing based on the last economic bid when constraints are relaxed in the scheduling run, it must set the flexible ramping constraint relaxation parameter to \$0, or a value close to zero, for the individual EIM Entity BAAs in the pricing run. Otherwise, the pricing run will establish prices based on the value of the flexible ramping constraint relaxation parameter. We continue to find that the Initial Waiver is necessary to protect customers pending the implementation of a long-term solution to the imbalance energy price spikes pursuant to the FPA section 206 proceeding established in the March 16 Order.²⁷ Accordingly, we find that CAISO's requested waiver is necessary for this same purpose.

19. Third, we conclude that granting the requested waiver will not lead to undesirable consequences. As CAISO asserts, the waiver should not have a material impact on prices outside of EIM Entity BAAs. Moreover, the waiver will benefit customers within EIM Entity BAAs who might otherwise be subjected to further imbalance energy price spikes. Finally, we note that the Waiver Petition was unopposed.

The Commission orders:

CAISO's request for limited waiver of section 27.10 of its tariff is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁶ See, e.g., December 1 Order, 149 FERC ¶ 61,194 at PP 22-23; *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,078, at P 38 (2014); *Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,218, at P 22 (2014).

²⁷ See June 19 Order, 151 FERC ¶ 61,247 at P 19.