

152 FERC ¶ 61,086  
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. ER15-817-000

ORDER GRANTING TARIFF WAIVER

(Issued July 29, 2015)

1. In this order, we grant the California Independent System Operator Corporation's (CAISO) December 31, 2014 petition for limited waiver of the pricing parameters in sections 27.4.3.2 and 27.4.3.4 of its tariff for the period from November 1, 2014 through November 13, 2014.

**I. Background**

2. On November 13, 2014, CAISO filed in Docket No. ER15-402-000 a petition (Initial Waiver Petition) seeking limited waiver of the pricing parameters in sections 27.4.3.2 and 27.4.3.4 of its tariff for the 90-day period from November 14, 2014 to February 12, 2015. In the Initial Waiver Petition, CAISO explained that transitional conditions in the Energy Imbalance Market (EIM)<sup>1</sup> caused the transmission and system energy-balance constraints described in these tariff sections to bind more frequently than expected since the EIM began operation on November 1, 2014, resulting in high prices that were not always indicative of actual physical conditions on the system.<sup>2</sup> CAISO

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<sup>1</sup> The EIM enables entities with balancing authority areas (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).

<sup>2</sup> Initial Waiver Petition at 3, 11.

asserted that these high prices instead reflected challenges in providing timely and complete data to ensure system visibility under the new procedures, exacerbated by limitations on the resources available to PacifiCorp for use in the EIM and several forced outages of large EIM participating resources.<sup>3</sup>

3. On December 1, 2014, the Commission issued an order<sup>4</sup> granting the limited waiver. The December 1 Order also directed CAISO to file detailed informational reports on the performance of the EIM at 30-day intervals during the 90-day waiver period.<sup>5</sup> While PacifiCorp, Utah Associated Municipal Power Systems (UAMPS), and Deseret Generation & Transmission Co-operative, Inc. d/b/a Deseret Power (Deseret) filed comments arguing that the requested waiver should be made effective as of the commencement of the EIM, November 1, 2014,<sup>6</sup> and CAISO filed a subsequent answer stating that it did not object to this request,<sup>7</sup> the Commission determined to make the waiver effective as of November 14, 2014, the date requested in the Initial Waiver Petition.<sup>8</sup> The Commission stated that CAISO, as the applicant, was charged with proposing the effective date, and that the effective date requested in the Initial Waiver Petition ensured that all customers had sufficient notice of the proposed effective date. Based on representations in CAISO's pleadings, the Commission further noted that "some of the pricing anomalies will be subject to correction under CAISO's existing

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<sup>3</sup> *Id.* at 8-11.

<sup>4</sup> *Cal. Indep. Sys. Operator Corp.*, 149 FERC ¶ 61,194 (2014) (December 1 Order).

<sup>5</sup> *Id.* PP 25-26.

<sup>6</sup> Motion to Intervene and Comments in Support of PacifiCorp, Docket No. ER15-402-000 at 7-11 (Nov. 17, 2014); Motion to Intervene and Comments of UAMPS, Docket No ER15-402-000 at 5-6 (Nov. 17, 2014); Motion to Intervene and Answer of Deseret to Petition for Limited Waiver and Request for Expedited Consideration, Docket No. ER15-402-000 at 13-14 (Nov. 17, 2014).

<sup>7</sup> Answer to Comments of CAISO, Docket No. ER15-402-000 at 3-4 (Nov. 19, 2014).

<sup>8</sup> December 1 Order, 149 FERC ¶ 61,194 at P 24.

price correction procedures, which may mitigate the impacts of pricing anomalies experienced during the first two weeks of EIM operations.”<sup>9</sup>

4. Subsequently, on January 15, 2015, CAISO filed in Docket No. ER15-861-000 a proposed tariff amendment (Transition Pricing Filing)<sup>10</sup> 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. CAISO proposed in the Transition Pricing Filing that the new provisions would also apply to the PacifiCorp BAAs for the remainder of their first 12 months of participation in the EIM. On February 12, 2015, the Commission issued an order in Docket No. ER15-861-000 extending the waiver granted in the December 1 Order, subject to further order in that proceeding.<sup>11</sup> On March 16, 2015, the Commission issued an order rejecting the Transition Pricing Filing, further extending the waiver granted in the December 1 Order, and instituting an investigation pursuant to section 206 of the Federal Power Act (FPA) into the justness and reasonableness of the EIM pricing provisions of CAISO’s tariff.<sup>12</sup>

## II. Waiver Request

5. In the current waiver petition (Second Waiver Petition), CAISO seeks to apply the same relief granted in the December 1 Order to the period from November 1, 2014 through November 13, 2014. Specifically, CAISO seeks waiver of section 27.4.3.2 and the second sentence of section 27.4.3.4 of its tariff, which establish the price for energy at an energy bid cap of \$1,000/MWh in circumstances where CAISO’s market clearing software must relieve transmission constraints or system energy-balance shortages to

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<sup>9</sup> *Id.* UAMPS and Deseret filed requests for rehearing of the December 1 Order, asserting that the Commission erred in making the waiver effective as of November 14, 2014, instead of the November 1, 2014 effective date advocated by intervenors.

<sup>10</sup> 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).

<sup>11</sup> *Cal. Indep. Sys. Operator Corp.*, 150 FERC ¶ 61,086 (2015).

<sup>12</sup> *Cal. Indep. Sys. Operator Corp.*, 150 FERC ¶ 61,191 (2015). On June 19, 2015, the Commission issued an order granting CAISO’s subsequent request to further extend the waiver of the EIM pricing parameters until the date of implementation of the directives in a Commission order addressing the technical conference. *Cal. Indep. Sys. Operator Corp.*, 151 FERC ¶ 61,247 (2015).

clear the market.<sup>13</sup> According to CAISO, waiving these tariff provisions will allow it to price energy in PacifiCorp's BAAs using the economic pricing that usually governs under CAISO's tariff when effective economic bids are sufficient to allow a feasible market solution.

6. CAISO states that it has now completed correcting prices for the period from November 1, 2014 through November 13, 2014, and that prices for this period continue to remain high and not reflective of actual market and operational conditions because a large portion of the pricing anomalies were not subject to price mitigation through its price correction procedures.<sup>14</sup> CAISO provides figures comparing the prices posted on its Open Access Same-Time Information System website for this period against what the prices would be if adjusted consistent with its requested waiver.<sup>15</sup> CAISO asserts that third-party transmission customers taking service under Schedules 4 and 9 of PacifiCorp's Open Access Transmission Tariff cannot decline imbalance service under these schedules and thus cannot mitigate the impacts of the locational marginal prices produced during the first weeks of EIM operation.<sup>16</sup> For example, CAISO estimates that one such customer, Deseret, incurred an extra \$610,000 in imbalance energy charges due to the abnormal prices experienced during November 1, 2014 to November 13, 2014.<sup>17</sup>

7. CAISO submits that it did not know the full impact of the pricing anomalies on all parties at the time that it submitted the Initial Waiver Petition and asserts that, in light of the remaining impact after completion of the price correction process, extending the previously granted waiver to also cover the period from November 1, 2014 to November 13, 2014 is necessary to prevent undue harm to affected entities.<sup>18</sup> CAISO contends that its request complies with the Commission's criteria for granting waiver of

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<sup>13</sup> Second Waiver Petition at 2, 8-9.

<sup>14</sup> *Id.* at 2, 9-10.

<sup>15</sup> *Id.* at 10-11.

<sup>16</sup> *Id.* at 11.

<sup>17</sup> *Id.* at 11-13. Based on preliminary calculations from PacifiCorp, CAISO believes that Deseret's imbalance energy charges for November 1, 2014 through November 13, 2014 will total approximately \$770,000, whereas the prices resulting from the requested waiver would be roughly \$160,000.

<sup>18</sup> *Id.* at 13.

tariff provisions.<sup>19</sup> First, CAISO states that the waiver will be of limited scope, because it will affect only the pricing of energy during intervals when CAISO relaxed a transmission or system energy-balance constraint in or between EIM BAAs, and will only apply for a 13-day period.<sup>20</sup> Second, CAISO asserts that the waiver will address a concrete problem by permitting CAISO to price energy in the PacifiCorp BAAs in a manner that better reflects actual system and operational conditions.<sup>21</sup> According to CAISO, the requested waiver is the only mechanism that can address the impact of abnormally high prices on PacifiCorp's customers. In addition, CAISO reports that it is currently exploring with its stakeholders the possibility of applying a similar transitional approach to all entities joining the EIM during their respective first year of operations under the EIM. Finally, CAISO maintains that the waiver will have no undesirable consequences, such as harming third parties, because it will only affect prices in the EIM BAAs.<sup>22</sup> To the extent that some parties may receive lower payments for their imbalance energy as a result of the waiver, CAISO asserts that the current payments do not reflect system conditions and that it is not just and reasonable to require entities such as Deseret to bear the brunt of these anomalous prices.

8. CAISO further argues that making the waiver effective from November 1, 2014 to November 13, 2014 is necessary to correct the unjust and unreasonable prices resulting from the transition to the EIM, and is consistent with Commission precedent.<sup>23</sup> CAISO also states that because it did not previously request a waiver for the period from November 1, 2014 through November 13, 2014, the Second Waiver Petition therefore “does not challenge” the Commission’s previous denial of Deseret’s, UAMPS’s, and PacifiCorp’s requests for an earlier effective date for the waiver granted in the

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<sup>19</sup> *Id.* at 14 (citing *N.Y. Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,061, at P 19 (2014); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,041, at P 5 (2014); *PJM Interconnection, L.L.C.*, 141 FERC ¶ 61,103, at P 8 (2012); *N.Y. Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010)).

<sup>20</sup> *Id.* at 14.

<sup>21</sup> *Id.* at 14-16.

<sup>22</sup> *Id.* at 16.

<sup>23</sup> *Id.* at 16-17 (citing *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,132 (2014); *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,011 (2007)).

December 1 Order.<sup>24</sup> CAISO requests that, “[i]n the event that the Commission nonetheless concludes otherwise,” the Commission deem this filing a request for rehearing of the December 1 Order, asserting that the Second Waiver Petition sufficiently demonstrates that the Commission erred when it failed to grant intervenors’ requests to make the waiver granted in the December 1 Order effective as of November 1, 2014.

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

9. Notice of CAISO’s filing was published in the *Federal Register*, 80 Fed. Reg. 1,500 (2015), with interventions and protests due on or before January 21, 2015. Timely motions to intervene were filed by NextEra Energy Resources, LLC; Modesto Irrigation District; the Cities of Santa Clara and Redding, California, and the M-S-R Public Power Agency; and Pacific Gas and Electric Company. PacifiCorp, Deseret, UAMPS, and Utah Municipal Power Agency (collectively, Joint Commenters) filed a timely joint motion to intervene and comments. Western Power Trading Forum (WPTF) and Powerex Corporation (Powerex) each filed a timely motion to intervene and protests. On February 5, 2015, CAISO and PacifiCorp filed motions for leave to answer and answers. Powerex filed a motion for leave to answer and answer to PacifiCorp’s answer on February 11, 2015.

10. Joint Commenters support CAISO’s request to apply the waiver granted in the December 1 Order to the first two weeks of EIM operation, and contend that the requested waiver meets the Commission’s criteria for granting waiver of a tariff provision. First, Joint Commenters assert that the requested waiver is both limited in duration and narrowly targeted to the specific CAISO tariff provisions that will address the price excursions experienced during the initial operation of the EIM.<sup>25</sup> Joint Commenters argue that applying the waiver to the initial weeks of EIM operation will result in prices during that period better reflecting actual system conditions, and will avoid triggering inappropriate administrative price signals.

11. Second, Joint Commenters contend that the waiver will address a concrete problem—the problem of the pricing provisions not operating as intended and inaccurately triggering a scarcity price signal that did not properly reflect the level of imbalance service needed and available supply.<sup>26</sup> Joint Commenters also state that the informational reports filed by CAISO and the Department of Market Monitoring in

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<sup>24</sup> *Id.* at 9 n.12.

<sup>25</sup> Joint Comments at 11-13.

<sup>26</sup> *Id.* at 13-20.

Docket No. ER15-402-000 demonstrate that CAISO's price correction procedures were not able to mitigate this problem, as the Commission had hoped in the December 1 Order. Joint Commenters maintain that the information in these reports shows that the need for the waiver is even greater during the first two weeks of EIM operation than during the waiver period, as EIM performance improved significantly during the subsequent weeks of operation.

12. Third, Joint Commenters assert that the requested waiver will have no undesirable consequences, because it will neither change market participant bids, nor affect the application of market power mitigation protocols or the approved CAISO tariff methodology for determining locational marginal prices.<sup>27</sup> This is because, they contend, the current prices are not reflective of bidding abnormalities or of the actual supply situation. Joint Commenters state that providing retroactive relief would not raise concerns about market participants being unable to change their actions under the specific circumstances of this case, because the waiver affects only PacifiCorp's BAAs and ensures that all EIM imbalances from the commencement of the EIM were served at no more than actual marginal price.<sup>28</sup> Joint Commenters point out that no party objected to PacifiCorp's, UAMPS's, and Deseret's requests in Docket No. ER15-402-000 to make the waiver effective November 1, 2014, and contend that all market participants had sufficient notice of the price spikes well before the Initial Waiver Petition and Second Waiver Petition were filed.<sup>29</sup> Joint Commenters also assert that the requested waiver is consistent with Commission precedent where, according to Joint Commenters, the Commission implemented retroactive waivers to protect market participants from harm, particularly during transition periods when parties were adjusting to new rules.<sup>30</sup> Joint Commenters caution that adopting the 12-month transition pricing period proposed in the Transition Pricing Filing for subsequent entities joining the EIM without applying these provisions to PacifiCorp "would discourage other entities from undertaking initiatives to join and expand the EIM or other market opportunities."<sup>31</sup>

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<sup>27</sup> *Id.* at 20-24.

<sup>28</sup> *Id.* at 24.

<sup>29</sup> *Id.* at 21.

<sup>30</sup> *Id.* at 21-23 (citing *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,111, at P 14 (2014); *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,132; *Cal. Indep. Sys. Operator Corp.*, 139 FERC ¶ 61,207 (2012); *Cal. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,127 (2009); *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,011).

<sup>31</sup> *Id.* at 24.

13. Fourth, Joint Commenters argue that the waiver request was submitted in good faith, as the Commission has recognized that the initial months of a new market may warrant a more cautious approach to mitigation.<sup>32</sup>

14. WPTF and Powerex each oppose the requested waiver as contrary to the filed rate doctrine and its corollary, the rule against retroactive ratemaking. WPTF notes that it supported the request in CAISO's Initial Waiver Petition for prospective waiver of the EIM pricing parameters.<sup>33</sup> WPTF believes, however, that applying the waiver after-the-fact to resettle prices validly determined under CAISO's tariff and affecting a broad range of market participants, when CAISO has not identified any errors in the application of the pricing parameters, constitutes retroactive ratemaking.<sup>34</sup> WPTF avers that granting CAISO's requested waiver could "undermine the sanctity of the CAISO tariff" and open the door for further requests to resettle prices validly determined according to Commission-approved tariffs retroactively.<sup>35</sup> In addition, WPTF asserts that the Second Waiver Petition does not meet the Commission's criteria for granting waiver of tariff provisions because the requested resettlement is not of limited scope and could have substantive consequences for third parties.<sup>36</sup>

15. WPTF argues that the cases cited in the Second Waiver Petition, which involve waiving the imposition of penalties and recertification requirements, do not support CAISO's request to retroactively reprice past period transactions.<sup>37</sup> Rather, WPTF suggests that the Commission draw guidance from the series of orders addressing CAISO's authority to recalculate bid cost recovery payments made during the first two years of CAISO's Market Redesign and Technology Upgrade (MRTU), which held that CAISO was permitted to unilaterally resettle transactions from past periods only to correct computational errors, and expressly prohibited CAISO from unilaterally resettling payments when it reinterprets its tariff in a manner that differs from the way the

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<sup>32</sup> *Id.* at 24-25 (citing *Southwest Power Pool, Inc.*, 144 FERC ¶ 61,224, at P 357 (2013)).

<sup>33</sup> WPTF Protest at 3.

<sup>34</sup> *Id.* at 3-5.

<sup>35</sup> *Id.* at 3-4.

<sup>36</sup> *Id.* at 7-8.

<sup>37</sup> *Id.* at 5-6 (citing *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,132; *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,011).

calculations were previously performed.<sup>38</sup> Although the Commission ultimately granted CAISO the authority to resettle bid cost recovery payments going back to the start of MRTU, WPTF explains that it did so “not on the grounds of waiver, but because the Commission found that the resettlement was ‘necessary to give effect to CAISO’s filed rate,’”<sup>39</sup> and conversely found that permitting CAISO to refrain from resettling these payments could have undesirable effects, such as harm to third parties.<sup>40</sup> WPTF asserts that granting CAISO’s request for retroactive resettlement in this proceeding could have negative consequences for parties affected by the EIM clearing prices.

16. While noting that it is sympathetic to the claims of PacifiCorp transmission customers forced to bear high charges under Schedules 4 and 9 during the initial weeks of EIM operation and may itself be harmed by the high prices, Powerex asserts that the Second Waiver Petition is the wrong procedural vehicle to provide relief to these customers.<sup>41</sup> Powerex argues that, by seeking authorization to recalculate prices after-the-fact, CAISO is effectively asking the Commission’s permission “to selectively ignore the terms of its filed rate” contrary to Commission precedent.<sup>42</sup> Powerex argues that the Commission has denied similar requests for retroactive resettlement because customers cannot revisit their economic decisions retroactively.<sup>43</sup> Powerex contends that CAISO’s reliance on the cases cited in the Second Waiver Petition is misplaced, as neither of the cited orders involved a request to retroactively change prices, nor addressed the application of the filed rate doctrine or the prohibition against retroactive ratemaking in

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<sup>38</sup> *Id.* at 6-7 (citing *Cal. Indep. Sys. Operator Corp.*, 135 FERC ¶ 61,110, at P 27, *order on clarification, reh’g, and waiver request*, 137 FERC ¶ 61,180, at P 21 (2011)).

<sup>39</sup> *Id.* at 7 n.16 (quoting *Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,211, at P 16 (2013)).

<sup>40</sup> *Id.* (citing *Cal. Indep. Sys. Operator Corp.*, 137 FERC ¶ 61,180 at PP 40-41).

<sup>41</sup> Powerex Protest at 8-9.

<sup>42</sup> *Id.* at 10-12.

<sup>43</sup> *Id.* at 11 (citing *N.Y. Indep. Sys. Operator, Inc.*, 91 FERC ¶ 61,218 (2000), *order on reh’g*, 97 FERC ¶ 61,155 (2001), *order on reh’g*, 99 FERC ¶ 61,125 (2002), *aff’d in relevant part, Consol. Edison Co. of N.Y. v. FERC*, 347 F.3d 964, 966 (D.C. Cir. 2003)).

granting the requested waiver.<sup>44</sup> Powerex further contends that CAISO's request for retroactive waiver of the EIM pricing parameters does not fall within recognized exceptions to the prohibition on retroactive ratemaking, including, according to Powerex, where parties have adequate notice or there was a violation of the filed rate. Powerex asserts that here: (1) CAISO's filing of its Initial Waiver Petition on November 13, 2014 did not provide the requisite notice to customers that prices during the preceding weeks were subject to change; and (2) CAISO has not demonstrated that the prices experienced in the market deviate from, or violate, the filed rate.<sup>45</sup>

17. Neither does section 35 of CAISO's tariff support the requested waiver, Powerex argues, because tariff section 35.4 expressly limits CAISO's authority to modify prices to certain circumstances which Powerex claims are not applicable to this situation, such as data input errors, hardware or software failures, or results that are inconsistent with the CAISO tariff.<sup>46</sup> According to Powerex, section 35.1 of the CAISO tariff does not authorize the Commission to expand the circumstances under which CAISO may correct its prices, but merely permits an extension of time for such price corrections beyond the periods specified in tariff section 35.2.<sup>47</sup> Powerex adds that the Commission generally declines to extend time limitations for correcting prices or invoices absent "extraordinary circumstances" to ensure that market participants can rely on invoice charges.<sup>48</sup> Powerex does not believe that such extraordinary circumstances apply to the Second Waiver Petition. By contrast, Powerex alleges that CAISO itself admits that the high prices experienced during the initial weeks of EIM operation were due, at least in part, to the limited number of PacifiCorp resources available for participation in the EIM and supply deficiencies caused by outages of large EIM participating resources, and that the informational reports submitted by CAISO in Docket No. ER15-402-000 illustrate that these conditions and PacifiCorp's and CAISO's operational decisions are resulting in insufficient flexible capacity reserves to meet normal intra-hour capacity and ramping needs.<sup>49</sup> Powerex therefore concludes that the prices CAISO seeks to correct result from actual market conditions and the operation of the CAISO tariff's rules and procedures,

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<sup>44</sup> *Id.* at 12-13 (citing *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,132; *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,011).

<sup>45</sup> *Id.* at 13-14.

<sup>46</sup> *Id.* at 14-16.

<sup>47</sup> *Id.* at 16.

<sup>48</sup> *Id.* at 16-18.

<sup>49</sup> *Id.* at 18-20.

and that permitting CAISO to modify these prices would thus be inconsistent with precedent and the filed rate doctrine.<sup>50</sup>

18. Finally, Powerex notes that customers have the right to bring a complaint against PacifiCorp or CAISO to the extent that they believe that they are being subjected to unjust and unreasonable prices in the EIM “either due to a continued decision by PacifiCorp to ‘go short’ the necessary capacity and/or flexibility reserves to meet imbalance under all expected operating conditions, or due to fundamental market design flaws.”<sup>51</sup> Powerex also suggests that PacifiCorp could seek relief for its Schedule 4 and 9 customers by making a filing limiting its pass-through of EIM costs incurred during the November 1, 2014 through November 13, 2014 period, such as by capping the price of its imbalance energy sales at 150 percent of the prices that would have prevailed based on the tariff rates in place prior to commencement of the EIM.<sup>52</sup> Powerex submits that these alternative remedies are appropriate, as PacifiCorp is both the primary beneficiary of the higher EIM prices and the entity with the best ability to take corrective actions.<sup>53</sup>

19. In its answer, PacifiCorp asserts that Powerex’s proposed alternative remedies are without merit because PacifiCorp did not violate its tariff or its responsibilities as a balancing authority, thus providing no grounds for a complaint.<sup>54</sup> PacifiCorp further asserts that Powerex’s suggestion that PacifiCorp make a filing requesting to hold its customers harmless would provide essentially the same relief as CAISO’s Second Waiver Petition.<sup>55</sup> PacifiCorp contests Powerex’s implication that the parameter prices reflected an actual shortage of flexible ramping capacity, arguing that it maintained adequate flexible reserve levels, but that CAISO’s model did not recognize the full level of these reserves.<sup>56</sup> PacifiCorp further argues that the rule against retroactive ratemaking does not apply where a “public utility voluntarily seeks to lower charges it might otherwise

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<sup>50</sup> *Id.* (citing *Allete Inc. (d/b/a Minnesota Power) v. Midwest Independent Transmission System Operator, Inc.*, 119 FERC ¶ 61,142 (2007)).

<sup>51</sup> *Id.* at 20-21.

<sup>52</sup> *Id.* at 21.

<sup>53</sup> *Id.* at 21-22.

<sup>54</sup> PacifiCorp Answer at 3-6.

<sup>55</sup> *Id.* at 7-9.

<sup>56</sup> *Id.* at 6.

collect,” as CAISO seeks to do in the Second Waiver Petition.<sup>57</sup> PacifiCorp asserts that the retroactive waiver cases cited by CAISO and Joint Commenters support the waiver requested in CAISO’s Second Waiver Petition, even if those cases did not involve resettling the market for a prior period.<sup>58</sup>

20. CAISO adopts the evidence provided by Joint Commenters regarding the impacts of the pricing anomalies as additional support for the Second Waiver Petition.<sup>59</sup> In particular, CAISO notes that Deseret will owe a total of nearly \$259,000 in imbalance energy costs during a 70-minute period if the Commission does not grant the waiver. CAISO contends that granting the waiver here would not contravene the December 1 Order’s rationale for using the November 14, 2014 effective date.<sup>60</sup> Finally, CAISO argues that the alternative remedies proposed by Powerex will not provide adequate and prompt relief to customers.<sup>61</sup>

21. Powerex clarifies in its answer to PacifiCorp that it does not contend that PacifiCorp has failed to acquire sufficient resources to maintain reliability in the PacifiCorp BAAs, but rather that insufficient resources have been made available in the PacifiCorp BAAs for dispatch *in the EIM*.<sup>62</sup> Powerex asserts that the resulting shortfalls therefore cannot be dismissed as modeling or data errors that deviate from the filed rate.<sup>63</sup> According to Powerex, PacifiCorp errs in suggesting that the availability of resources outside of the EIM should be reflected in the price for energy procured in the EIM.<sup>64</sup> Powerex claims that it is not “anti-EIM,” as PacifiCorp accuses, but that it believes that

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<sup>57</sup> *Id.* at 7-8.

<sup>58</sup> *Id.* at 8 n.20 (asserting that the filed rate doctrine applies to all jurisdictional tariff provisions, not just money paid for service).

<sup>59</sup> CAISO Answer at 4.

<sup>60</sup> *Id.* at 5-6.

<sup>61</sup> *Id.* at 6-7.

<sup>62</sup> Powerex Answer-to-Answer at 1-2.

<sup>63</sup> *Id.* at 5.

<sup>64</sup> *Id.* at 5-7.

fundamental problems in the EIM need to be recognized and addressed before the EIM can deliver promised net benefits.<sup>65</sup>

#### **IV. Discussion**

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

22. Pursuant to Rule 2014 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 entities that filed them parties to this proceeding.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers filed by CAISO, PacifiCorp, and Powerex because they have provided information that assisted us in our decision-making process.

##### **B. Commission Determination**

24. The Commission grants CAISO's request to waive the applicability of section 27.4.3.2 and the second sentence of section 27.4.3.4 of its tariff for constraints that are within PacifiCorp's BAAs or affect EIM transfers between PacifiCorp's BAAs for the period from November 1, 2014 through November 13, 2014. 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; and (3) the waiver did not have undesirable consequences, such as harming third parties.<sup>66</sup>

25. We find that CAISO's requested waiver satisfies the foregoing criteria. The reasons supporting the Commission's determination to grant waiver of these same CAISO tariff provisions in the December 1 Order further apply to the waiver requested in CAISO's Second Waiver Petition, which is limited to the less than two-week period during which the harm to customers from the imbalance energy price spikes has been

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<sup>65</sup> *Id.* at 7-8.

<sup>66</sup> *See, e.g.*, December 1 Order, 149 FERC ¶ 61,194 at P 22; *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).

demonstrated to have been the greatest.<sup>67</sup> First, CAISO's request for waiver is limited both in scope and application. The requested waiver will apply only for a 13-day period, and is restricted to constraints within, and affecting transfers between, the PacifiCorp BAAs. Second, the waiver will remedy the concrete problem of the pricing anomalies by allowing CAISO to price energy in the PacifiCorp BAAs in a manner that better reflects actual physical conditions. As Joint Commenters assert and the informational reports in Docket No. ER15-402-000 demonstrate, prices were highest during the 13-day period for which CAISO now seeks waiver. Moreover, we note that at the time it filed the Initial Waiver Petition, CAISO had not completed adjusting prices for November 1, 2014 through November 13, 2014 under the price correction procedures in section 35 of its tariff.<sup>68</sup> CAISO therefore was not aware of the full impact of the pricing anomalies for the initial weeks of EIM operation at the time that it submitted the Initial Waiver Petition requesting prospective waiver of the EIM pricing parameters. Likewise, in the December 1 Order, the Commission had reason to anticipate that some of the impacts of the pricing anomalies experienced during the first two weeks of EIM operations would be mitigated by application of the price correction procedures. Given that CAISO has now completed the price corrections for November 1, 2014 through November 13, 2014 and concluded that a substantial portion of the imbalance energy price spikes could not be mitigated through the price correction procedures, CAISO's requested waiver constitutes the sole vehicle for remedying the concrete problem of the pricing anomalies experienced during this period.

26. We also conclude that the waiver will not lead to undesirable consequences. While WPTF asserts that "granting the waiver will have substantial consequences for those affected by EIM clearing prices,"<sup>69</sup> WPTF has not demonstrated that any third parties will be harmed by the waiver. We note that the only resources participating in the EIM, and thus receiving the high imbalance energy prices, during this period were PacifiCorp resources; however, PacifiCorp, which would be the only party responsible for refunds, supports the requested waiver. No intervenors have asserted that they will suffer harm from the waiver. By contrast, customers such as Deseret will suffer concrete and significant financial harm if the waiver is not granted.

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<sup>67</sup> December 1 Order, 149 FERC ¶ 61,194 at P 23 (finding that CAISO's request for waiver of the applicability of section 27.4.3.2 and the second sentence of section 27.4.3.4 of its tariff was of limited scope, remedied a concrete problem, and would not have undesirable consequences, such as harm to third parties).

<sup>68</sup> See Initial Waiver Petition at 7-8.

<sup>69</sup> WPTF Protest at 7.

27. For these reasons, we grant the requested waiver of these tariff provisions. Contrary to Powerex and WPTF's arguments that the requested relief is barred, we find it appropriate to grant this waiver effective November 1, 2014. As noted above, the party that will be responsible for refunds resulting from the waiver—PacifiCorp—supports granting the waiver. Furthermore, given that this waiver will result in a rate decrease for transmission customers, we find it appropriate to waive the prior notice requirement to make the waiver of the requested tariff provisions effective November 1, 2014.<sup>70</sup>

28. Finally, because we are granting CAISO's request for waiver, we find that CAISO's alternative request for rehearing is moot and therefore dismiss it.

The Commission orders:

CAISO's request for limited waiver of sections 27.4.3.2 and 27.4.3.4 of its tariff from November 1, 2014 to November 13, 2014 is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>70</sup> *Central Hudson Gas and Elec. Corp.*, 60 FERC ¶ 61,106, at 61,338 (1992), *order on reh'g*, 61 FERC ¶ 61,089 (1992).