

123 FERC ¶ 61,202
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

California Independent System Operator Corporation Docket Nos. ER02-1656-008,
ER02-1656-034,
EL01-68-024, and
EL01-68-031

ORDER ACCEPTING FOR FILING PROPOSED TARIFF REVISIONS
AND ACTING ON FILING REPORTING
DECREMENTAL ENERGY BIDS EXCEEDING THE BID CAP

(Issued May 23, 2008)

1. In this order, we accept for filing the California Independent System Operator Corporation's (CAISO) proposed tariff changes pertaining to the treatment of decremental bids in excess of the negative \$30/MWh bid cap, effective October 1, 2002.¹ The tariff changes at issue were submitted by the CAISO pursuant to a July 17, 2002 order² addressing the CAISO's comprehensive market redesign proposal. In this order, we also address a filing submitted by Sempra Energy Trading LLC (Sempra) pursuant to the July 2002 Order, regarding six decremental bids Sempra made in October 2007.

Background

2. In the July 2002 Order, the Commission approved, subject to conditions, to become effective October 1, 2002, the CAISO's proposal for a negative \$30/MWh cap on decremental energy bids.³ The July 2002 Order also directed the CAISO to include in its tariff a provision to allow suppliers the opportunity to justify costs in excess of the cap.

¹ *Electrical District No. 1 v. FERC*, 774 F.2d 490 (D.C. Cir. 1985) (holding that compliance filings can apply retroactively when the Commission clearly dictated the changes needed on compliance).

² *Cal. Indep. Sys. Operator Corp.*, 100 FERC ¶ 61,060 (2002) (July 2002 Order).

³ *Id.* at P 132.

Specifically, the Commission required that to the extent a generator can justify costs in excess of its revenues to support a bid below negative \$30/MWh, the CAISO shall compensate that generator for amounts beyond the cap.⁴

3. On August 16, 2002, the CAISO submitted, as directed, a compliance filing. In its compliance filing, among other things, the CAISO proposes to modify section 28.1.3 of its tariff⁵ to provide that if the CAISO dispatches a bid below negative \$30/MWh, the supplier must submit a detailed breakdown of the component costs justifying the bid to the CAISO and the Commission.⁶ The CAISO also commits to pay suppliers for amounts in excess of negative \$30/MWh if those amounts have been justified.

4. On November 7, 2007, in Docket Nos. ER02-1656-034 and EL01-68-031, Sempra submitted a filing addressing six negative decremental energy bids submitted by Sempra in excess of negative \$30/MWh.⁷ Sempra explains that it does not seek any payment in excess of the negative \$30/MWh cap and requests that the CAISO adjust the price of Sempra's negative decremental energy bids dispatched on October 21, 2007 to the price of negative \$30/MWh.

Notice of Sempra's Filing and Responsive Pleadings

5. Notice of Sempra's filing in Docket Nos. ER02-1656-034 and EL01-68-031 was published in the *Federal Register*, 72 Fed. Reg. 68,576 (2007), with interventions and protests due on or before November 28, 2007. Powerex Corp. (Powerex) filed comments to Sempra's filing. Sempra and the CAISO filed answers to Powerex's comments. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a), prohibits answers to protests unless otherwise permitted by the decisional authority. We

⁴ *Id.* at P 134.

⁵ Section 28.1.3 is now section 39.3. *See Cal. Indep. Sys. Operator Corp.*, Delegated Letter Order, Docket Nos. ER05-1501-001 and ER05-1501-002 (July 10, 2006).

⁶ The August 16, 2002 compliance filing was originally submitted in Docket Nos. ER02-1656-005 and EL01-68-020. The tariff revisions proposed in the August 16, 2002 filing were subsequently subsumed in the CAISO's October 29, 2002 filing submitted in Docket Nos. ER02-1656-008 and EL01-68-024 pursuant to the Commission directive in *Cal. Indep. Sys. Operator Corp.*, 101 FERC ¶ 61,061, P 88 (2002) (October 2002 Order). Proposed section 28.1.3 was included in Attachment I Volume 1 of the CAISO's October 29, 2002 compliance filing.

⁷ Sempra describes the six bids in Exhibit 1 to its filing.

allow Sempra's and the CAISO's answers to Powerex's comments because they assisted us in our decision-making.

6. In its comments, Powerex argues that Sempra's filing requires closer scrutiny because it is unclear what led to Sempra's filing; specifically, whether Sempra and the CAISO had discussions about these bids and whether they agreed on a specific course of action. Powerex also states that the Commission addressed the justification of decremental bids in excess of the negative \$30/MWh cap in an October 11, 2002 order.⁸ According to Powerex, in the October 2002 Order, the Commission responded to arguments that asked for a greater level of specificity in the CAISO's tariff regarding how the cost justification should be made. Powerex concludes that the Commission did not reject the CAISO's proposed tariff changes pertaining to the justification of decremental bids, as proposed in the CAISO's August 16, 2002 compliance filing. In connection with this, Powerex seeks the reasons for the CAISO's failure to request Commission action on the pending compliance filing and how the CAISO treated decremental bids in excess of the bid cap during the past five years. In addition, Powerex is concerned with the lack of explanation for Sempra's request to adjust the bids in question to the negative \$30/MWh bid cap. Specifically, Powerex notes that Sempra does not cite any authority for allowing ISOs or RTOs to retroactively adjust a bid at a market participant's request.

7. In its answer to Powerex's comments, the CAISO states that it has followed the tariff and paid the bid cap price to all accepted decremental energy bids. According to the CAISO, it is prepared to adjust the bid cap price to pay the supplier as bid in the event that the supplier submits an appropriate justification, but no supplier has ever attempted to do that.

8. In the CAISO's opinion, the approach taken in Sempra's November 7, 2007 filing is reasonable. The CAISO explains that Sempra appears to prefer not to submit a justification that might be either inadequate or not worth the costs of filing but instead confirms that it is content to be paid at the bid cap. The CAISO notes that Powerex's pleading claims that this is inappropriate and inadequate, but fails to explain why. The CAISO further argues that Powerex will not be harmed by Sempra's failure to submit a justification, given that Sempra's bids could not set the market clearing price and that the financial information would have to be treated as confidential, under the terms of tariff section 39.3.

⁸ October 2002 Order, 101 FERC ¶ 61,061 at P 69.

9. In its answer to Powerex's comments, Sempra states that Powerex's comments raise issues and concerns that are beyond the scope and purpose of Sempra's compliance filing. Sempra notes that the decremental energy bids at issue in its report are not eligible to set the market clearing price and, therefore, have no significant impact on the market. Moreover, Sempra notes that its filing presumes CAISO authority under its tariff, and Sempra requests that the Commission accept its filing in this docket for the sole and limited purpose of allowing Sempra to forego payment from the CAISO of any amount in excess of the relevant cap.

Commission Determination

10. We find that the CAISO complied with our directive in the July 2002 Order regarding the treatment of bids in excess of the negative \$30/MWh decremental bid cap. We agree with Powerex that in the October 2002 Order, the Commission did not reject the CAISO's proposed changes on the cost justification requirements for decremental bids in excess of the negative \$30/MWh cap. In that order, the Commission responded to the proposal to require more specific rules for generators to follow in attempting to justify before the Commission any decremental bids in excess of the bid cap.⁹ The Commission found that no such rules were necessary.¹⁰ We, therefore, accept for filing, effective October 1, 2002, the CAISO's proposed tariff changes pertaining to decremental bids.

11. We accept Sempra's filing as timely and in compliance with the requirements of the tariff.¹¹ We direct the CAISO to adjust the bids at issue to the level of the cap. In light of Sempra's request to the CAISO to adjust the bids at issue, and the fact that the filed tariff language, accepted herein, has not been violated, Powerex's concerns are inapposite.

The Commission Orders:

(A) The CAISO's proposed tariff changes regarding the treatment of decremental energy bids exceeding the negative \$30/MWh bid cap are hereby accepted for filing, effective October 1, 2002, as discussed in the body of this order.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Because Sempra has requested the CAISO to adjust its bids, there are no billings outside of the cap and no justification is required.

(B) Sempra's filing is hereby accepted for filing, as discussed in the body of this order.

(C) The CAISO is hereby directed to adjust the bids in question to the level of the negative \$30/MWh decremental energy bid cap.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.