

125 FERC ¶ 61,153
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 No. ER08-1508-000

ORDER ACCEPTING TARIFF MODIFICATIONS

(Issued November 7, 2008)

1. On September 8, 2008, the California Independent System Operator Corporation (CAISO) filed proposed revisions to the Congestion Revenue Rights provisions in its currently-effective CAISO Tariff in advance of the implementation date of its Market Redesign and Technology Upgrade (MRTU) Tariff, as well as revisions to the CAISO Tariff to address timing issues associated with its load migration calculation tool (CAISO Filing). The CAISO's request for waiver of the Commission's prior notice requirements is granted. As discussed below, the Commission accepts the proposed CAISO Tariff revisions effective September 10, 2008. Finally, the Commission rejects the request to consolidate this proceeding with Docket No. ER08-1113-000.

I. Background

2. On September 21, 2006, the Commission conditionally accepted the MRTU Tariff that the CAISO filed to implement its proposed market design.¹ Under MRTU, the CAISO proposed to replace the existing system of contract path-specific Firm Transmission Rights with Congestion Revenue Rights.² The CAISO uses nomination tiers to allocate Congestion Revenue Rights. In each tier, a Load Serving Entity will be allowed to nominate a percentage of the total amount of Congestion Revenue Rights it is eligible to request. The CAISO then will run a simultaneous feasibility test on all nominated Congestion Revenue Rights to determine the feasible Congestion Revenue Rights that it can award. Upon making this determination, the CAISO will notify Load Serving Entities whether or not their Congestion Revenue Rights nominations are

¹ *California Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006) (MRTU Order).

² Instead of specific paths, the CAISO's Congestion Revenue Rights design recognizes a set of network nodes in which power is injected and withdrawn from the transmission grid.

feasible. Running separate, simultaneous feasibility tests for each tier allows Load Serving Entities to maximize their chances of receiving the Congestion Revenue Rights they value most.

3. Short-term Congestion Revenue Rights are allocated using a three tier process (called Tier 1, Tier 2, and Tier 3). In each tier, a Load Serving Entity may nominate only Congestion Revenue Rights that it is eligible to request. Annual eligibility for short-term Congestion Revenue Rights is based on each Load Serving Entity's historical demand.

4. In MRTU Year 1, a Load Serving Entity may nominate source verified short-term Congestion Revenue Rights in Tiers 1 and 2. The source verification process requires a Load Serving Entity to demonstrate that, during the historical reference period, it was entitled to receive energy from the nominated sources to serve its demand. After MRTU Year 1, the CAISO proposes to replace the source verification process used in Tiers 1 and 2 with a Priority Nomination Process used in Tier 1. Under the Priority Nomination Process, Load Serving Entities are limited to nominating Congestion Revenue Rights received in the prior year's allocation. Tier 3 in the MRTU Year 1, and Tiers 2 and 3 in subsequent years, are referred to as the "free-choice" tiers because Congestion Revenue Rights nominations are limited only by each Load Serving Entity's eligibility, which is based on its demand.

5. Long-term Congestion Revenue Rights are allocated in a separate tier (Tier LT), which follows the source verified tiers (i.e., Tiers 1 and 2) in MRTU Year 1 and Tier 1 in subsequent years.

6. By order dated July 6, 2007,³ the Commission conditionally accepted proposed revisions to the CAISO Tariff to implement long-term Congestion Revenue Rights in accordance with the Order No. 681,⁴ as well as the CAISO's proposed revisions related to short-term Congestion Revenue Rights. Among other things, the Commission conditionally accepted the CAISO's proposal to establish a method to track and reallocate long-term Congestion Revenue Rights.⁵

7. In response to the July 6 Order, the CAISO proposed to track the transfer of load from one Load Serving Entity to another due to load migration on a monthly basis, and

³ *California Indep. Sys. Operator Corp.*, 120 FERC ¶ 61,023 (2007) (July 6 Order).

⁴ *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats & Regs. ¶ 31,226 (2006), *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201 (2006).

⁵ July 6 Order at P 204.

noted that it coordinated with state authorities to receive information regarding migrating load. The CAISO's proposal also explained the steps the CAISO would take in ensuring that any such load migration was accounted for in Congestion Revenue Rights allocations. The Commission subsequently accepted the CAISO's proposal.⁶

8. The CAISO states in its filing that it has announced that it is currently planning for a February 1, 2009 start date for MRTU.⁷

II. Filing

9. The CAISO proposes to modify the Congestion Revenue Rights allocation process for calendar year 2009. The proposed CAISO Tariff revisions modify the allocation process by: (1) incorporating the application of Year One rules for the first quarter of 2009, and Year Two rules for the last three quarters of 2009;⁸ (2) changing the sequence of the allocation tiers under Year Two rules; and (3) postponing adjustments to Congestion Revenue Rights holdings due to load migration until after the 2009 release process is completed. The CAISO states that these proposed modifications will enable it to implement the Congestion Revenue Rights allocation process prior to the start of MRTU. The CAISO requests that the Commission grant waiver of the 60-day notice period and accept the proposed CAISO Tariff revisions effective September 10, 2008.

III. Notice, Intervention, and Responsive Pleadings

10. Notice of the proposed CAISO Tariff revisions was published in the *Federal Register*, 73 Fed. Reg. 53860 (2008) with motions to intervene, comments, and protests due on or before September 29, 2008. Timely motions to intervene, comments, and/or protests were filed by the following: (1) Sacramento Municipal Utility District (SMUD); (2) California Department of Water Resources State Water Project (SWP); (3) Southern California Edison Company (SoCal Edison); (4) Alliance of Retail Energy Markets; (5) City of Santa Clara, California; (6) Modesto Irrigation District; (7) Pacific Gas & Electric Company; and (8) Powerex Corp. The California Public Utilities Commission (CPUC) filed an untimely motion to intervene on October 2, 2008.

⁶ *California Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,095, at P 87 (2008).

⁷ See CAISO Filing at 3.

⁸ See *California Indep. Sys. Operator Corp.*, 124 ¶ 61,107 (2008) (describing Year One and Year Two allocation rules).

11. On October 16, 2008, the CAISO filed an answer to comments and protests submitted in this proceeding. SMUD filed a response to the CAISO's answer on October 31, 2008.

IV. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214(d) (2008), the Commission will grant the late filed motion to intervene of the CPUC, given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the CAISO's answer because it has assisted us in the decision-making process. However, we are not persuaded to accept SMUD's response to the CAISO's answer and we therefore reject it.

B. Substantive Matters

14. The Commission accepts the CAISO's proposed modifications to the CAISO Tariff, as discussed below.

1. Sequence of Tiers

15. Prior to MRTU startup, the CAISO will allocate Congestion Revenue Rights for the 2009 calendar year. As previously approved by the Commission, the 2009 Congestion Revenue Rights allocation process incorporates Year One rules for the first quarter of 2009 and Year Two rules for the last three quarters of 2009.⁹ In Year One, the allocation rules allow for Congestion Revenue Rights allocated in Tiers 1 and 2 to be converted into long-term Congestion Revenue Rights in Tier LT. In contrast, Year Two rules only allow Congestion Revenue Rights released in Tier 1 to be converted to long-term Congestion Revenue Rights. Therefore, as originally proposed by the CAISO and

⁹ See *California Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,107 (2008). Year Two rules apply in all subsequent years.

accepted by the Commission, Year One rules provide that Tier LT will follow Tier 2, and Year Two rules provide that Tier LT will follow Tier 1.¹⁰

16. Because the 2009 allocation process incorporates both Year One and Year Two rules, the CAISO proposes to change the sequence of the allocation tiers for Year Two. Under the CAISO's proposal, Tier 2 would occur before Tier LT. The CAISO explains that the reason for the change to the specific tier allocations was the ability to perform Tier LT immediately after running the tier(s) that determine which Congestion Revenue Rights are eligible for nomination in Tier LT.¹¹ Under the existing tier sequence, the CAISO would be required to have five discrete simultaneous feasibility tests. By having Tier 2 before Tier LT, the CAISO explains that it would only have to run four simultaneous feasibility tests and save about two calendar weeks by doing so.

Comments and Protests

17. SWP argues that the CAISO bears the burden of justifying its departure from currently effective CAISO Tariff language, and does not provide a compelling explanation for the changes. SWP claims that the CAISO's recent delays in MRTU implementation have caused it to apply both Year One and Year Two rules to the release of Congestion Revenue Rights in 2009, and that this in turn prompted the CAISO to propose to change the sequence of the allocation tiers for the 2009 allocation process that will occur prior to the start of MRTU. SWP asserts that the CAISO does not explain why this change is necessary or just and reasonable, nor does the CAISO explain why the saving of two weeks in the overall calendar for the annual Congestion Revenue Rights process is a substantial benefit that justifies the CAISO's proposal.¹²

18. SWP disagrees with the CAISO's claim that the proposed CAISO Tariff change will not cause any negative impacts on market participants.¹³ Instead, SWP claims that key information and opportunities available to market participants are reduced by re-sequencing and skipping some of the allocation process. SWP further argues that the sequence in which the tiers are run is very important, and was developed through considerable stakeholder input over several years and included in the CAISO Tariff.

19. SWP claims that the reason for running the Tier LT allocation immediately following Tier 1 in Year Two is so market participants will know what Congestion

¹⁰ See July 6 Order at P 164; CAISO Tariff at § 36.8.3.

¹¹ In subsequent years, the annual allocation process will consist of the originally approved Year 2 rules and, accordingly, Tier 2 will follow Tier LT.

¹² SWP Protest at 2.

¹³ *Id.* at 3.

Revenue Rights were received in Tier LT before formulating and submitting nominations for Tier 2 and later Tier 3 of the annual process. SWP argues that the Load Serving Entities currently have two opportunities to secure Congestion Revenue Rights, i.e., the choices made in Tiers 2 and 3. In contrast, SWP asserts that under the CAISO's proposal the market participants will be limited to just one opportunity to secure Congestion Revenue Rights after the Tier LT allocation.

20. SWP argues that the balance between alleged benefits of saving a couple of weeks on the MRTU calendar and providing the most rational, transparent, and consistent Congestion Revenue Rights allocation method at the outset weighs strongly against the change the CAISO has proposed to reduce the allocation rounds and alter the long-settled Congestion Revenue Rights allocation sequence.

CAISO Answer

21. The CAISO argues that the change in the sequence of tiers is necessary so that the entire allocation process can be conducted in four discrete allocation rounds, rather than five. Under the circumstances, the CAISO claims that proposed tier sequencing is the most logical and least time consuming option. Further, the CAISO states that the change does not alter the important aspects of the allocation rules, namely which Congestion Revenue Rights are eligible for nomination as long-term rights.

22. The CAISO argues that SWP fails to show any such adverse impacts and mischaracterizes both the factual elements of the proposed changes in the tier sequencing and the impact of such changes. Contrary to SWP's statements, the CAISO states that the proposal does not skip any steps. Additionally, the CAISO states the logic behind the original sequence of tiers was to perform the Tier LT allocation immediately after running the tier(s) that determine which Congestion Revenue Rights are eligible for nomination as long-term rights. The CAISO asserts that it was never expected that market participants would know what long-term rights can be received before submitting nominations for Tier 2 and Tier 3 of the annual process.

23. The CAISO states that while SWP is correct under the proposal that the Tier 2 allocation will be run before the Tier LT allocation, the CAISO states that it is also true that participants already know that Tier LT nominations can only come from those Congestion Revenue Rights allocated in Tier 1. In other words, the CAISO explains that once the first tier is allocated, Load Serving Entities will know what can be nominated into the Tier LT, even though the Tier LT allocation does not come until after Tier 2 is conducted.

24. The CAISO claims that SWP has simply failed to demonstrate that it has been substantially harmed by the proposed change and, more importantly, has failed to show that completely halting the Congestion Revenue Rights allocation and MRTU implementation schedule is a more reasonable approach. The CAISO argues that the

Commission should accept the change in sequencing as filed and allow CAISO and its market participants to proceed with more certainty toward an MRTU go-live date.

Determination

25. We find the CAISO's proposal to be reasonable. We disagree with SWP that the CAISO's proposal to modify the sequence of tiers in the Congestion Revenue Rights allocation process will disadvantage market participants. Instead, we find that the proposal helps to minimize the administrative burden. As explained by the CAISO, the proposed modifications do not substantively alter the allocation rules previously approved by the Commission in any way.¹⁴ Under the rules applicable in Year 2 and beyond, Load Serving Entities are permitted to convert only the short-term rights received in Tier 1 into long-term rights. Because the CAISO's proposal to modify the sequence of tiers does not change this design feature, we find it unlikely that SWP or other market participants would significantly alter Congestion Revenue Rights that would be requested in Tier 2 of the allocation process since these rights cannot be converted into long-term rights.

26. Further, the goal of every Load Serving Entity in the allocation process should be to obtain Congestion Revenue Rights that will serve as a hedge against the congestion costs that are actually incurred while serving their load. Consistent with this goal, the Commission is unconvinced that the release of long-term rights, which are simply converted from allocated short-term rights, will significantly impact the short-term Congestion Revenue Rights nominations that Load Serving Entities will choose to make in subsequent tiers. Therefore, we disagree with SWP that the proposed placement of Tier LT is a critical element of the allocation process so long as it is after Tier 1. We also note that the proposed CAISO Tariff modifications do not impact whether requested Congestion Revenue Rights are feasible and ultimately released to Load Serving Entities.

27. For the reasons explained above, the Commission is not persuaded by SWP's arguments that changing the sequence of tiers in the CAISO's proposed 2009 CRR allocation process reduces the availability of key information and opportunities to market participants. Instead, we agree with the CAISO that the proposed modifications to the CAISO Tariff will benefit the CAISO and market participants alike by reducing the complexities associated with running a fifth allocation round. Accordingly, we accept proposed CAISO Tariff section 36.8.3.5.6.

¹⁴ See, e.g., July 6 Order at P 164.

2. Load Migration

Proposal

28. In the instant filing, the CAISO proposes to adjust the amount of Congestion Revenue Rights that a Load Serving Entity is eligible to hold in proportion to the net load lost or gained through load migration.¹⁵ Because of the issues relating to tracking load migration, the CAISO proposes to postpone the load migration adjustment until after the 2009 allocation process and base the quantity of Congestion Revenue Rights that a Load Serving Entity can request on load quantities used in the 2008 allocation process. The CAISO recognizes that the delay of the load migration calculation adversely alters the currently effective methodology. However, the CAISO argues that the benefits of commencing MRTU outweigh the implication of the delayed load migration calculations and adjustment. The CAISO expects to fully resolve the pending issue in the upcoming months, citing that the delay in the calculation will ensure the best estimate of the actual load migration possible.

29. The methodology to account for load migration provisions relies on data covering a historical reference period, which covers April 2006 through August 2008. The CAISO explains that the model calculates load migration using a single period of twenty-eight months.¹⁶ Given the current data available to the CAISO, the load migration tool is unable to accurately track load migration between multiple Load Serving Entities.¹⁷ As a result, the CAISO will use data based on monthly snapshots of the retail level data. The CAISO explains there is a need to verify and correct the data when working with retail

¹⁵ The Commission previously accepted the CAISO's proposal to accomplish the adjustment of Congestion Revenue Rights released in the annual allocation process by adjusting eligible quantities in proportion to the anticipated migrated load in the next annual allocation process, and adjusting the current holdings to reflect the amount of load that migrated prior to the next annual allocation process taking place. *See California Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,107 (2008).

¹⁶ *See* CAISO Filing at Attachment C, P 7.

¹⁷ For example, assume that a Load Serving Entity has 10 MW of load at the beginning of the reference period. During the reference period, the Load Serving Entity loses 8 MW, gains 13 MW, and subsequently loses an additional 10 MW. Because the current load migration calculation is performed using only the amount of load at the beginning or end of the reference period, the total amount of load migration (8 plus 10 equals 18) is assumed to be in excess of the total amount of load served (10, or 10 minus 8 plus 13 minus 10 equals 5). Therefore, the current load migration tool calculates the percent of load that migrated as being in excess of 100 percent, i.e., 18 divided by 10, or 18 divided by 5.

level load data, noting significant uncertainty as to the quality and timing of the additional data needed.

Comments

30. Due to time constraints related to starting the 2009 annual Congestion Revenue Rights allocation process, SoCal Edison supports the CAISO's proposal to account for all load migration after the 2009 annual Congestion Revenue Rights allocation is completed. However, SoCal Edison requests that the CAISO include a dispute resolution process in its Business Practice Manual in case market participants do not agree with the CAISO's determination of load migration accounts.

CAISO Answer

31. The CAISO argues that the existing dispute resolution mechanism process as reflected in section 13 of the CAISO Tariff appropriately applies to all disputes. However, the CAISO states that it has discussed with stakeholders the possibility of adopting more defined timing and procedural requirements to assist the parties in raising any such load migration disputes and ensuring resolution of such issues in a timely manner. The CAISO states that it intends to develop such dispute procedures for load migration with its stakeholders and will include such procedures in its Business Practice Manual for Congestion Revenue Rights.

Determination

32. We accept the CAISO's unopposed proposal to postpone the adjustment of Congestion Revenue Rights eligibility due to load migration until after the 2009 allocation process is completed. The CAISO has adequately demonstrated the need for this postponement in adjustments to Congestion Revenue Rights. Accordingly, we accept the proposed revisions to CAISO Tariff section 36.8.5.

33. Finally, while we agree with the CAISO that its existing dispute resolution mechanism process could be used to address disagreement regarding load migration accounts, we support the CAISO's commitment to initiate a stakeholder process to develop more defined procedures that specifically relate to load migration disputes.

3. Firm Transmission Rights Auction

Comments

34. While the CAISO did not propose to revise its Firm Transmission Rights auction schedule, SoCal Edison comments that current Firm Transmission Rights will not expire until March 31, 2009, and that given the scheduled MRTU start-date of January 31, 2009, there should be no need to have another Firm Transmission Rights auction. However, SoCal Edison argues that it may be necessary to reassess the need for the CAISO to

conduct another Firm Transmission Rights auction to cover the time period between April 1, 2009 and March 31, 2010, if the expected MRTU start-date slips beyond the first quarter of 2009. Therefore, SoCal Edison requests that the Commission direct the CAISO to hold a stakeholder process to determine the need for an additional Firm Transmission Rights auction if the CAISO has not filed its 60-day MRTU readiness certification by December 1, 2008. Furthermore, SoCal Edison asserts that the CAISO should consider the possibility of having to hold a Firm Transmission Rights auction as part of a “contingency plan” in the event that the CAISO reverts back to the current market design.

CAISO Answer

35. The CAISO responds that, in the unlikely event that an MRTU readiness certification is not filed by December 1, 2008, it will consider the need for a new Firm Transmission Rights auction and will coordinate with stakeholders to finalize its conclusions. Additionally, in response to SoCal Edison’s request to consider a contingency plan, the CAISO notes that pursuant to MRTU policy, within the first month after MRTU go-live date, the CAISO has the ability to revert to operations under the existing CAISO Tariff if necessary. Therefore, the CAISO states that it is appropriate to assume that Firm Transmission Rights can continue to be in effect for up to one month after the expected MRTU go-live date.

Determination

36. We find that the CAISO’s commitment to coordinate with stakeholders if MRTU readiness certification is not filed by December 1, 2008, and to consider whether a new Firm Transmission Rights auction is necessary sufficiently addresses SoCal Edison’s concerns regarding the potential need for an additional Firm Transmission Rights auction. Further, we note that the CAISO has dealt with delays in the past and has appropriately addressed the need to extend expiring Firm Transmission Rights.¹⁸ Accordingly, we find that the CAISO has adequately addressed the concerns raised by SoCal Edison, and therefore, no action is required by the Commission.

4. Miscellaneous

Proposal

37. The CAISO proposes to add language to section 36.13.1 of the CAISO Tariff regarding the scope of the Congestion Revenue Rights Auctions that provides that “if the MRTU Tariff is not expected to be in effect during certain months of the next annual

¹⁸ See, e.g., *California Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,296 (2008).

period, the CAISO may adjust the term of the season in which the months fall accordingly.”

Determination

38. This proposed revision to section 36.13.1 was not protested, and it is consistent with the other proposed tariff language we accept herein. The revision to section 36.13.1 is accepted for filing.

5. Request To Consolidate

39. In the September 19 Order, the Commission conditionally accepted the CAISO’s proposal to establish an Integrated Balancing Authority Area (IBAA).¹⁹ The IBAA is a pricing model used for the settlement of export and import transactions with the SMUD balancing authority area, effective with the implementation of MRTU. In order to address the potential impacts of the IBAA pricing methodology on previously-released Congestion Revenue Rights, the IBAA proposal provided holders of rights impacted by the IBAA with two options. First, right holders could make a one-time election to modify the settlement of the Congestion Revenue Rights to be congruent with the revised pricing points associated with the IBAA change. Second, right holders could retain the original source or sink specification of the Congestion Revenue Rights. SMUD requests that the Commission consolidate the instant filing with the IBAA proceeding.

SMUD’s Request

40. SMUD argues that the effects of the CAISO’s instant filing on Congestion Revenue Rights nominations are of the same nature as the effects of the CAISO’s Congestion Revenue Rights re-nomination provisions filed in the IBAA proposal. In that proceeding, SMUD claims that the proposed provisions, which were not in effect at the time SMUD had made its Congestion Revenue Rights nominations, had moved from nominations based on specific sinks to nominations tied to a hub. SMUD states that it should be allowed the opportunity to re-nominate its first year Congestion Revenue Rights priority nominations in light of whatever action the Commission might take on the IBAA filing. Because the distribution factors applied to the new SMUD hub will change after Congestion Revenue Rights allocations are awarded, SMUD claims that it would have nominated different Congestion Revenue Rights had it known it might be subject to the IBAA hub proposal.

41. SMUD states that the fate of the CAISO’s IBAA Tariff proposal concerning Congestion Revenue Rights re-nominations and this filing “should logically be

¹⁹ *California Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,271 (2008) (September 19 Order).

intertwined.”²⁰ Therefore, SMUD requests that the Commission consolidate the two proceedings to ensure a common and evenhanded approach to the treatment of those eligible to receive Congestion Revenue Rights allocations. Further, SMUD urges that the Commission adopt a single policy requiring the CAISO to give primary consideration to stabilizing its market model before it requires parties to make initial Congestion Revenue Rights nominations that will affect their priority with respect to future allocations.

CAISO Answer

42. The CAISO claims that SMUD’s arguments regarding the load migration tool are speculative. Because it is outside the balancing authority area, SMUD is not subject to or affected by the application of the load migration adjustments, regardless of when such adjustments are made.

43. The CAISO argues that there is no need to consolidate the process in the IBAA and instant proceedings because it did not propose any changes to the CAISO Tariff in this proceeding that impacts IBAA provisions. Additionally, the CAISO asserts that the Commission’s September 19 Order in the IBAA proceeding, already addressed the issue of reconfiguring Congestion Revenue Rights in the event that an IBAA definition changes after the Congestion Revenue Rights are allocated.

44. The CAISO argues that, in essence, SMUD’s protest in the instant proceeding is a collateral attack on the September 19 Order. The CAISO states that there is no basis at this time to require that the CAISO halt its Congestion Revenue Rights release process in its efforts to launch the Commission-approved MRTU. Rather, the CAISO asserts that SMUD and any other party not satisfied can seek rehearing of the Commission’s September 19 Order.

Determination

45. We deny SMUD’s request to consolidate this proceeding with the IBAA proceeding. The Commission typically consolidates proceedings if there are common issues of fact or law.²¹ This standard for consolidation has not been satisfied here. While both the IBAA filing and the instant filing contain provisions involving the allocation of Congestion Revenue Rights, the provisions themselves are unrelated. As noted by the

²⁰ *Id.*

²¹ *See, e.g., Southwest Power Pool, Inc.*, 125 FERC ¶ 61,001, at P 25 (2008) (consolidating proceedings because of common issues of fact and law). Moreover, we normally only consolidate for purposes of hearing and decision. *See, e.g., Tenaska Power Servs. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,230, at P 46 (2004). This is not the case here as we are accepting the proposed Tariff revisions.

CAISO, since SMUD is outside of the balancing authority area, the proposed CAISO Tariff revisions relating to load migration do not impact the allocation of Congestion Revenue Rights to SMUD. In contrast, the IBAA establishes a pricing model used for import and export transactions at the SMUD interface. We disagree with SMUD that the proposed CAISO Tariff provisions are relevant to the IBAA proceeding.

46. Additionally, the Commission has already approved provisions addressing load migration.²² In the instant filing, the Commission is merely permitting the CAISO and its stakeholders to postpone load migration adjustments until after the 2009 allocation process due to the complexities in making the appropriate calculations. The Commission will not postpone the load migration provisions of the CAISO Tariff for the IBAA proceeding. Accordingly, we deny SMUD's request to consolidate the two proceedings.

6. Timing of Filing and Waiver Request

Proposal

47. The CAISO requests waiver of the prior notice requirements of the Commission's regulations (18 C.F.R. § 35.3) so that the instant filing will be made effective as of September 10, 2008, two days after the date of filing. According to the CAISO, the process must be conducted ahead of the planned February 1, 2009 start date for the Day-Ahead and Real-Time Markets under MRTU.

Comments and Protests

48. SWP states that it appears the CAISO may be proceeding with its proposal prior to receiving Commission acceptance. SWP explains that while the CAISO waits for a Commission order on its proposed change to the CAISO Tariff, the CAISO's schedule indicates that it will be opening the submission window for Tier 2 nominations for Year Two on October 2, 2008 rather than opening the window for long-term Congestion Revenue Rights nominations, and will be running the allocation process and posting results on October 13, 2008. SWP claims that this approach is not consistent with existing CAISO Tariff language.

49. SWP points out that the CAISO requests a September 10, 2008 effective date but argues that the Commission and market participants should not be tied by premature, extra-Tariff schedules. SWP argues that the Commission may well determine that the CAISO proposal in fact does have adverse impacts. In that case, SWP states that the CAISO has proposed to re-run the allocation process in compliance with the CAISO

²² For example, see *California Indep. Sys. Operator Corp.*, 120 FERC ¶ 61,023, at P 212 (2007).

Tariff.²³ SWP argues that this approach is not in compliance with the CAISO Tariff, and is a reckless approach that could cause very significant harm.

50. SMUD asserts that the CAISO's sole justification for its waiver request is that it is working towards an MRTU go-live date of early 2009 and that, in order for Congestion Revenue Rights to be allocated in time, the CAISO must commence its allocation process in September 2008.²⁴ SMUD claims the problem with the CAISO's rationale is that it presupposes that the CAISO's allocation process is reasonable, and that a waiver is needed in order to meet a February 1, 2009 implementation date for MRTU. Moreover, even assuming that the CAISO's requested effective date coincides with the start up of MRTU, SMUD states that the CAISO still has offered no reason why it waited so long to make the instant filing.²⁵ SMUD argues that the CAISO should not be rewarded with a waiver in such circumstances.

51. SMUD claims that the CAISO has failed to explain its requested September 10, 2008 effective date. SMUD asserts that the CAISO stated in Docket No. ER08-1113-000 that it needed "about six weeks to implement changes to the [network model] and successfully launch the [network model] into the market environment," a timeline that translated into a needed effective date of September 26, 2008, more than two weeks later than the date the CAISO requested in its filing.²⁶

CAISO Answer

52. The CAISO argues that good cause exists to grant the waiver because the proposed CAISO Tariff changes will enable it to implement the Congestion Revenue Rights release process in a timely manner to meet its stated goal of a MRTU go-live date of February 1, 2009, thereby avoiding the increased costs to CAISO and its market participants associated with any unnecessary further delay of MRTU. Moreover, the CAISO asserts that the proposed CAISO Tariff changes do not adversely impact market participants.

²³ SWP cites to a September 24, 2008 conference call concerning Congestion Revenue Rights.

²⁴ SMUD Protest at 4.

²⁵ *Id.* (citing *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, at 61,339 (1992) (*Central Hudson*)).

²⁶ *Id.* at 5. In Docket No. ER08-1113-000, the Commission conditionally accepted the CAISO's proposal to establish the Integrated Balancing Authority Area. *See* September 19 Order.

Determination

53. We will grant the CAISO's request for waiver of the sixty-day prior notice requirement, finding that it has demonstrated good cause for us to do so.²⁷ In this case, we find that the CAISO's customers will benefit from the certainty of any Congestion Revenue Rights positions they may have taken in response to the CAISO's filing. Moreover, we find that granting the waiver in this case may help avoid further delay in the implementation date for MRTU, including the benefits that MRTU is expected to provide.²⁸ For these reasons, we conclude that there is good cause to grant the CAISO's request for waiver of the sixty-day notice period.

54. Although we are granting the requested waiver in this instance, we acknowledge concerns raised by protestors about the need to avoid fire drills and that the CAISO may not have been in compliance with its filed Tariff. We remind the CAISO that, in the absence of a waiver, it cannot take action under proposed CAISO Tariff revisions when those revisions have not been accepted by the Commission. Under section 205 of the FPA, the Commission must approve tariff revisions submitted by the CAISO before the CAISO can act in accordance with them. The prior notice requirement is important because it provides interested parties the opportunity to review and comment on section 205 filings, and the Commission's policy is to deny waiver unless the filing party demonstrates good cause. In light of this policy, our expectation is that the CAISO will seek waiver of the prior notice requirement only when it can demonstrate good cause to do so.

55. Accordingly, for good cause shown, we grant the requested waiver. The proposed CAISO Tariff revisions are accepted for filing effective September 10, 2008, as requested.

The Commission orders:

(A) The proposed revisions to the CAISO Tariff are hereby accepted, to become effective September 10, 2008, as discussed in the body of this order.

²⁷ *Central Hudson* at 61,339.

²⁸ The Commission described these benefits in the MRTU Order and in subsequent orders in that proceeding. In general, we stated that elements of MRTU will "fix market design flaws, enhance reliability, better protect wholesale customers from price volatility and gaming, incorporates price-responsive demand in the markets, and encourage construction of new resources." MRTU Order at P 10.

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(B) The request to consolidate the instant proceeding with the Docket No. ER03-1113-000 proceeding is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)

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