

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

California Power Exchange Corporation

Docket No. ER03-830-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING TARIFF
AMENDMENTS PENDING FURTHER COMMISSION ACTION

(Issued July 1, 2003)

1. In this order, the Commission conditionally accepts and suspends, pending a further Commission order, the California Power Exchange Corporation's (CalPX) proposed Amendment No. 23 to its Open Access Transmission Tariff (OATT). This order benefits market participants by clarifying the procedures needed to address the requirements resulting from the recent California refund proceeding.¹

BACKGROUND

2. On May 6, 2003, the CalPX filed its proposed Amendment No. 23, which is designed to align its OATT procedures with those proposed by the California Independent System Operator (CAISO) in its April 15, 2003 filing of Amendment No. 51 to the CAISO OATT in Docket No. ER03-746-000. In the Amendment No. 51 filing, the CAISO proposed a series of changes to its OATT that it stated were needed to conduct preparatory adjustments and settlement reruns in conjunction with the California refund proceeding.² In that proceeding, the CAISO has also requested waiver of its tariff to extend the time period for reviewing and disputing a settlement statement from the

¹See *San Diego Gas & Electric Company, et al.*, 102 FERC ¶ 61,317 (2003) (California Refund Order), *clarified*, 103 FERC ¶ 61,078 (2003). These orders clarified the method for calculating refunds for purchases made in the organized spot markets in California during the period October 2, 2000 through June 20, 2001.

²See *California Independent System Operator Corporation*, 103 FERC ¶ 61,331 (2003) (*CAISO*).

preparatory settlement rerun. The CAISO proposed to extend the dispute period to fifteen days from the standard eight business days. The Commission deferred action on the CAISO's request for waiver of this tariff provision and directed the CAISO to provide additional information regarding the dispute process and timing.³

3. The CalPX states that it has filed Amendment No. 23 to align the time period for disputes in its OATT with CAISO's proposal in the Amendment No. 51 proceeding.

4. The CalPX further asks that Amendment No. 23 be made effective concurrently with the effective date of the CAISO's Amendment No. 51, and that the two proceedings be consolidated.

NOTICE OF FILINGS AND RESPONSIVE PLEADINGS

5. Notice of the CalPX's filing was published in the Federal Register⁴ with comments, interventions and protests due on or before May 27, 2003.

6. Timely motions to intervene with no substantive comments were filed by Sempra Energy Trading Corp., Powerex Corp., and the Sacramento Municipal Utility District.

7. Timely motions to intervene and comments were filed by San Diego Gas & Electric Company (SDG&E), Pacific Gas and Electric Company (PG&E), the California Independent System Operator Corporation (CAISO) and Southern California Edison Company (SCE). The California Electricity Oversight Board and the California Public Utilities Commission (CEOB/CPUC) timely filed a joint notice of intervention and comments.

³Id. at P 19.

⁴68 Fed. Reg. 27,037 (2003).

8. Automated Power Exchange, Inc. (APX), Modesto Irrigation District (MID), California Generators,⁵ and the City of Santa Clara, California (Santa Clara) filed timely motions to intervene and protest.

9. SCE supports CalPX's proposal to extend dispute deadlines and to consolidate the CAISO Amendment No. 51 proceedings with the CalPX's Amendment No. 23 proceedings. SDG&E also supports the CalPX's proposed amendment.

10. The CEOB/CPUC and the CAISO do not oppose extending the time period for filing disputes of CAISO settlements resulting from reruns of the CAISO's market for the refund period from eight days, as specified in the current CAISO OATT, to 15 business days, provided that the 15-day period begins to run after the end of each trade month rather than from the date the CalPX provides its participants with its monthly settlement statements, as requested by the CalPX in its filing.

11. PG&E supports the proposed amendment (and necessary concomitant changes to the CAISO OATT) related to the time period for reviewing settlement statements. However, PG&E's support is predicated on the assumption that it will receive statements daily and not in one package at the end of the month. PG&E states that if it's the latter, then 30 days would be a more appropriate review period. PG&E adds that it would support an even longer period.

12. However, PG&E is concerned that the proposed Section 3.21 could be construed as limiting CalPX participants to raising disputes related to "errors of price and/or quantity of Energy or Ancillary Services received or sold during the pertinent Trading Day." PG&E seeks confirmation or, in the alternative, a clarification of the tariff, that this language was not intended to preclude CalPX participants, such as itself, from raising disputes on any other relevant issues. In addition, PG&E seeks clarification that nothing in the CalPX filing or the revised tariff provisions would eliminate or limit in any way disputes that are currently outstanding, and that such existing disputes shall not be superceded or nullified by the subject rerun statements, except to the extent that such disputes have been mutually resolved by the parties. Finally, PG&E notes that Section

⁵The California Generators are Reliant Energy Power Generation, Inc.; Reliant Energy Services, Inc.; Mirant Americas Energy Marketing, LP; Mirant California, LLC, Mirant Delta, LLC; Mirant Potrero, LLC; Duke Energy North America, LLC; Duke Energy Trading and Marketing, LLC; Williams Energy Marketing & Trading Company; Dynegy Power Marketing, Inc.; El Segundo Power LLC; Long Beach Generation, LLC; Cabrillo Power I LLC; and Cabrillo Power II LLC.

4.1 of the CalPX OATT puts the burden on CalPX participants to notify the CalPX of missing settlement statements, with statements deemed to have been received unless the participant notifies the CalPX otherwise. PG&E states that since the basis for placing this burden on CalPX participants is the CalPX Payment Calendar, which is no longer published by the CalPX, the Commission should confirm that CalPX participants are no longer bound by Section 4.1 of the CalPX OATT, unless or until the CalPX resumes publication of the CalPX Payment Calendar.

13. MID and Santa Clara argue that the CalPX's proposed amendment should be rejected out of hand. MID and Santa Clara state that while they appreciate the extension of time to notify the CalPX of errors in the preliminary settlement statements, the CalPX's position is still preposterous. They state that while they cannot currently project how much time will be needed to review the settlement statements, it is painfully clear that sellers and other market participants will need a substantial amount of time to review the rerun filings and the other data to confirm its accuracy or to identify inaccuracies.

14. APX states that while it agrees that recipients of data from the CAISO should have adequate time to review and validate the CAISO's data, the CalPX's filing shows that certain market participants, such as those that traded through the CalPX, will have less time than the CAISO otherwise would allow to review and validate the data. APX states that, at a minimum, the Commission should condition the CalPX's filing to make clear that all participants have adequate time to review the data. APX contends that the amount of time participants are given to review and validate the CAISO data must be harmonized with, and extended by, the amount of time that the CalPX participants are given to review and validate the CalPX data.⁶

15. The California Generators state that the revision of the settlement statements for pre-mitigation transactions springs from, and is integral to, the California refund proceeding and that the Commission plainly intended that final reruns relating to the refund period be undertaken in that proceeding. Accordingly, the California Generators contend, disputes and comments relating to settlement statements reviewed by and billed through the CalPX should be heard on the record in Docket No. EL00-95-045 (the California refund proceeding), together with the adjustments and settlement reruns to be

⁶APX states that if the Commission gives Scheduling Coordinators 15 days to review the CAISO data, the Commission should also require that the CAISO give Scheduling Coordinators additional time for review in recognition of the fact that some Scheduling Coordinators need to take the additional step of providing the data to their participants for review.

conducted by the CAISO, instead of separately through piecemeal tariff amendment filings.

DISCUSSION

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁷ the notice of intervention filed by the CEOB/CPUC and the timely, unopposed motions to intervene serve to make those who filed parties to this proceeding.

B. Instant Filing

17. The CalPX has filed Tariff Amendment No. 23 to align CalPX's Tariff procedures with those proposed by the CAISO in its Amendment No. 51 filing. Specifically, the CalPX proposes a new Section 3.21 to be added to Schedule 6, "PX Market Settlements" of the CalPX tariff. This new Section 3.21 will extend the period for CalPX Participants to dispute the preparatory adjustments and reruns from three to ten business days. The tariff language also provides for the dispute window to run from the time that the CalPX Participant has received an entire calendar month's worth of Settlement statements.

18. Our preliminary review of the instant filing finds the CalPX's Amendment No. 23 is related to the CAISO Amendment No. 51. In the CAISO Amendment No. 51 proceeding the Commission deferred its final decision pending additional information, including its decision on extending the CAISO's current review and dispute period.⁸ The supplemental information required by the Commission therein is also necessary to fully evaluate the CalPX's Amendment No. 23. The Commission desires a consistent approach for customers affected by the CalPX Amendment No. 23 and the CAISO Amendment No. 51. Accordingly, we will defer final action on CalPX's Amendment No. 23 pending the further review and action in the Docket No. ER03-746-000 proceeding. We find this will allow the preparatory adjustments and reruns and any disputes to be processed in a coordinated manner through both entities.

19. As a result we find the filing, as presented, may not be just and reasonable and may in fact be unjust and unreasonable. Therefore, we will conditionally accept and suspend

⁷18 C.F.R. § 385.214 (2003).

⁸See CAISO, 103 FERC ¶ 61,331 at P 19.

the tariff revisions, subject to refund, to be effective until the earlier of five months (i.e., December 5, 2003) or the date specified in a further order by the Commission.

20. Although the CalPX and the CAISO filings are interrelated, the Commission believes that formal consolidation is unnecessary. Therefore, the Commission will deny the request for consolidation at this time.

The Commission orders:

(A) The Amendment No. 23 filing is hereby conditionally accepted and suspended, subject to refund, to become effective the earlier of December 5, 2003 or a date specified in a further Commission order in this proceeding, as discussed in the body of this order.

(B) The CalPX's request for consolidation with the CAISO filing in ER03-746-000 is denied.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.