135 FERC ¶ 61,110
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

California Independent System Operator Corporation | Docket Nos. ER11-3149-000
ER11-3149-001

ORDER ACCEPTING TARIFF REVISIONS

(Issued May 4, 2011)

1. On March 21, 2011, the California Independent System Operator Corporation (CAISO) filed, pursuant to section 205 of the Federal Power Act (FPA)[1] and section 35 of the Commission's regulations,[2] proposed revisions to its tariff to modify its bid cost recovery settlement rule (Bid Cost Recovery Filing).[3] In this order, we accept CAISO's proposed tariff revisions, to become effective March 26, 2011, as requested, and grant waiver of the 60-day prior notice requirement.

I. Background

2. In the Commission's September 21, 2006 order on CAISO's Market Redesign and Technology Upgrade (MRTU), the Commission conditionally accepted CAISO's proposal to include a bid cost recovery mechanism to ensure that certain resources committed by CAISO were able to recover their start-up, minimum load, and energy and ancillary services bid costs.[4] On May 27, 2009, the Commission accepted, by delegated

[1] 16 U.S.C. § 824d (2006).

[2] 18 C.F.R. § 35 (2010).

[3] CAISO Tariff section 11.8 and Appendix A. On March 25, 2011, in Docket No. ER11-3149-001, CAISO submitted an errata to the Bid Cost Recovery Filing (Bid Cost Recovery Errata Filing).

[4] *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 491 (2006) (September 2006 Order), *order on reh'g*, 119 FERC ¶ 61,076 (2007), *aff'd*, *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520 (D.C. Cir. 2010).

order, CAISO's proposal to calculate certain market revenues to be included in the bid cost recovery determination based on actual delivered amounts of energy.[5]

3. On March 21, 2011, as amended on March 25, 2011, CAISO filed proposed revisions to its bid cost recovery mechanism.

II. Notice and Responsive Pleadings

4. Notice of the Bid Cost Recovery Filing was published in the *Federal Register*, 76 Fed. Reg. 17407 and 18542 (2011), with interventions and comments due on or before April 4, 2011. Motions to intervene were submitted by Alliance for Retail Energy Markets; California Department of Water Resources State Water Project; the City of Santa Clara, California and M-S-R Public Power Agency; Dynegy Power Marketing, Inc.; GenOn Energy Management, LLC, GenOnDelta, LLC, GenOn West, LP; J.P. Morgan Ventures Energy Corporation, BE CA, LLP; and Modesto Irrigation District. Motions to intervene and comments were submitted by the Cities of Anaheim, Azuza, Banning, Colton, Pasadena, and Riverside, CA (Six Cities); Northern California Power Agency (NCPA); Pacific Gas and Electric Company (PG&E); Powerex Corporation (Powerex); Public Utilities Commission of the State of California (CPUC); San Diego Gas and Electric Company (SDG&E); and Southern California Edison Company (SoCal Edison). Calpine Corporation (Calpine) filed a motion to intervene, comments and request for clarification. CAISO filed an answer to the comments.

III. Discussion

A. Procedural Matters

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

6. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept CAISO's answer and will, therefore, reject it.

B. Substantive Matters

The Bid Cost Recovery Mechanism

7. In the CAISO market, scheduling coordinators submit, on behalf of resources, energy bids representing the price at which the resource is willing to provide the relevant

[5] *Cal. Indep. Sys. Operator Corp.*, Docket No. ER09-918-000 (May 27, 2009) (unpublished letter order).

service and the megawatt hour amounts offered at that price. CAISO determines the least-cost commitment of resources by considering resources' submitted energy bids, start-up costs and minimum load costs. However, only the energy bid is reflected in the calculation of locational marginal prices (LMP). If resources are scheduled, dispatched or awarded in any of CAISO's markets, they are paid the market clearing LMP for energy.[6]

8. Under the CAISO tariff, all internal generators, participating loads, proxy demand resources, and resource-specific system resources that are committed by CAISO are eligible for recovery of their start-up and minimum load costs through the bid cost recovery process when the LMP does not cover such costs.[7] Resources can choose to recover start-up and minimum load costs through either the proxy cost option (a cost-based recovery option) or the registered cost option (a market-based option).[8]

9. Under the CAISO tariff, the amount of bid cost recovery a resource is eligible to recover is the difference between a resource's start-up, minimum load, and ancillary and energy bid costs and its associated market revenue.[9] In order to prevent the recovery of costs for energy not provided, the tariff limits bid cost recovery to energy actually delivered.[10] In order to apply its tariff and ensure that bid cost recovery only considers market revenues associated with energy that is actually delivered, CAISO developed and implemented, through its business practice manuals, a metered energy adjustment factor for the day-ahead and real-time market.[11] The metered energy adjustment factor measures the portions of the resource's scheduled or instructed energy that were actually

---

[6] Bid Cost Recovery Filing at 3.

[7] *Id*. at 4 ("All generating units and participating loads are eligible for recovery of their energy and ancillary services bids, and [Residual Unit Commitment] bids, if any, as well as the minimum load and start-up costs. System resources are also eligible for bid cost recovery for their energy bids, to the extent their market revenues over the trading day are insufficient to recover such costs.").

[8] CAISO Tariff section 30.4; *see also* CAISO Tariff section 39.6.1.6 (limiting the maximum registered cost to 200 percent of the projected proxy cost).

[9] CAISO Tariff section 11.8.

[10] *See* CAISO March 30, 2009 Filing, Docket No. ER09-918-000, at 4.

[11] The business practice manual is a collection of documents available by the CAISO on the CAISO website that contain the details of the rules, policies, procedures and guidelines established by CAISO for operational, planning, accounting and settlement requirements of CAISO market activities, consistent with the CAISO tariff. CAISO Tariff, Appendix A.

delivered in real-time, taking into consideration the resource's metered energy.[12] The metered energy adjustment factor results in a ratio that is applied to CAISO's calculations so that it only considers costs and revenues associated with delivered energy.[13]

CAISO Claims

10. CAISO claims that it recently determined that its application of the business practice manual's metered energy adjustment factor caused an overpayment of bid cost recovery in certain situations. According to CAISO, under certain conditions, limiting market revenue calculations to only market revenue from delivered energy does not fully account for a resource's earned market revenue. Also, CAISO asserts that applying the metered energy adjustment factor to market revenue for energy delivered below a resource's minimum load cannot fully account for market revenue from delivered energy. CAISO maintains that both of these deficiencies result in not fully accounting for energy revenues when such revenues and bid costs are netted, which results in bid cost recovery overpayments.[14]

11. CAISO claims that it has recently observed the use of a specific bidding practice by certain market resources that exaggerates this overpayment in the bid cost recovery process. CAISO asserts that under this bidding practice a resource ensures commitment at its maximum output in the day-ahead market by submitting a very low energy bid amount. Then, in the real-time market, the resource submits a higher-priced bid to ensure that it is only dispatched at or near its minimum load. By creating a large difference between the scheduled and delivered energy, this bidding practice optimizes the effect that CAISO's application of the metered energy adjustment factor has on its bid cost recovery calculation.[15] CAISO notes that this bidding practice was exacerbated by the registration of high minimum load costs, which further increased the resource's bid cost recovery.[16] CAISO estimates that the identified bidding practice accounts for

---

[12] Bid Cost Recovery Filing at 7.

[13] *Id*. at 7.

[14] *Id*. at 11.

[15] *Id*., Ex. ISO-1 at 13 (providing the example that, if a resource is scheduled at maximum capacity in the day-ahead market (400 MW) and bids in order to be dispatched at minimum load (100 MW) in the real-time market, the metered energy adjustment factor is calculated as the ratio of 100 MW (metered energy) minus 100 MW (minimum load) *and* 400 MW (day-ahead schedule) minus 100 MW (minimum load). The calculated metered energy adjustment factor is then *zero*, which is multiplied by the LMP and capacity offering to calculate market revenues. As a result, the bid cost recovery calculation accounts for *zero* revenues received in the day-ahead and real-time market).

[16] *Id*. at 10.

approximately $57 million in bid cost recovery overpayments from August 2010 through February 2011.[17]

12. CAISO argues that the application of the metered energy adjustment factor to minimum load revenues improperly reduces the revenue that the resources received due to reaching minimum load. CAISO applies a tolerance band to determine whether a resource is operating at minimum load.[18] CAISO asserts that the application of the metered energy adjustment factor results in the exclusion of market revenues even when the resource is operating at minimum load. According to CAISO, not fully accounting for energy revenues associated with minimum load contributes to the overpayment of bid cost recovery.[19]

13. CAISO specifies that this market outcome is unintended and not sustainable. It claims that, if it continues, it would erode the function of the day-ahead market, distorting market clearing prices. Further, CAISO states that the continued existence of the opportunity for overpayment of bid cost recovery will incentivize the identified bidding practice and continue to increase bid cost recovery payments, which are paid for by CAISO's load and exports.[20]

14. CAISO has announced its intention, as noticed through an April 6, 2011 technical bulletin,[21] to recalculate portions of resources' previously-settled bid cost recovery payments to account for these minimum load overpayments. CAISO states in its technical bulletin that its planned resettlements will "account for energy market revenue associated with all delivered energy associated with the day-ahead schedule as required by the tariff."[22] CAISO indicates that it seeks to fix deficiencies that were contained in its business practice manuals retroactively to eliminate the unintended consequences

[17] *Id*. at 2, 11.

[18] CAISO Tariff section 11.8.2.1.2.

[19] Bid Cost Recovery Filing at 11.

[20] *Id*. at 12.

[21] CAISO Bid Cost Recovery and Accounting Technical Bulletin, April 6, 2011, http://www.caiso.com/2b57/2b57e702530f0.pdf. (CAISO April 6, 2011 Bid Cost Recovery and Accounting Technical Bulletin). The Commission is taking official notice of the technical bulletin pursuant to Rule 508(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.508(d) (2010).

[22] CAISO April 6, 2011 Bid Cost Recovery and Accounting Technical Bulletin at 2.

associated with its application of the metered energy adjustment factor for the period of August 2010 through the present.

1. Tariff Revisions

15. To rectify this problem, CAISO proposes to expand tariff section 11.8.2.2, which requires CAISO to calculate market revenues based on the delivered portion of the day-ahead schedule.[23] CAISO states that it intends the proposed tariff changes to ensure that, in the future, the tariff accurately calculates the integrated forward market revenues in all dispatch situations. Specifically, first, CAISO proposes tariff section 11.8.2.2.2 to ensure that, when a resource is dispatched in real-time below the day-ahead schedule, CAISO calculates the market revenue based on day-ahead *scheduled* energy rather than *delivered* energy for the portion of the day-ahead schedule above minimum load.[24] Second, CAISO proposes section 11.8.2.2.1 to address when a resource is dispatched at the same level as the day-ahead schedule or is incremented above its day-ahead schedule. When this occurs, CAISO proposes to continue to calculate the integrated forward market revenues based on the delivered portions because in such cases market revenue would be fully accounted for.[25] Third, CAISO proposes to add language to tariff sections 11.8.2.2.2 and 11.8.2.2.1 to make clear that revenues associated with minimum load energy will be based on delivered energy.[26]

16. CAISO also proposes to clarify in the tariff that it will use the tolerance band to determine whether or not the resource delivered minimum load energy and is entitled to minimum load bid cost recovery.[27] CAISO proposes to include the metered energy adjustment factor in the tariff rather than in its business practice manual.[28] Also, CAISO's March 25, 2011 errata filing includes changes to its tariff describing the application of the metered energy adjustment factor during self-commitment periods and changes to the real-time market revenue calculation.[29]

---

[23] Bid Cost Recovery Filing at 12.

[24] *Id*. at 2 and 12-13.

[25] *Id*. at 13.

[26] CAISO proposes a similar change for the calculation of revenue from the real-time market. *See* proposed tariff sections 11.8.4.1.5 and 11.8.4.2.1.

[27] Bid Cost Recovery Filing at 15-16.

[28] *Id*. at 14.

[29] Bid Cost Recovery Errata Filing.

17. CAISO adds that it intends to conduct a stakeholder process to give stakeholders an opportunity to comment and raise any further changes or refinements to CAISO's proposed amendments. CAISO seeks to complete the stakeholder process within 90 to 120 days after the Commission's Order in this proceeding. CAISO requests the tariff revision become effective on March 22, 2011.[30]

Comments

18. CPUC, Six Cities, SoCal Edison, SDG&E, NCPA, Calpine, and Powerex support the proposed tariff revisions. CPUC, PG&E and SDG&E support the proposal to initiate a stakeholder process to further refine the bid cost recovery rule revisions and review the bid cost recovery mechanism.

19. Calpine and Powerex argue that the stakeholder process should also address a solution to gaps that may arise due to the complexity of the bid cost recovery settlement rules. Calpine urges the Commission to require CAISO to submit a compliance filing, within six months of a Commission order in this proceeding, which includes a proposal for separate day-ahead and real-time bid cost recovery settlement mechanisms with hourly netting of revenues and costs for the real-time market.[31] Calpine highlights CAISO's statement that the bidding practice was exacerbated by the registration of high minimum load costs.[32] Calpine requests the Commission clarify that a resource's mere election of the registered cost option rather than the proxy cost option will not serve as an indicator of improper bidding practice.[33]

20. Powerex urges the Commission to convene a technical conference to evaluate all bid cost recovery related issues.[34] Powerex argues that certain features of the bid cost recovery mechanism create significant financial uncertainty for importers and exporters and exacerbate the potential exposure created by other CAISO tariff mechanisms.[35] Powerex argues that netting across all markets and products for the trading day will limit the protection available to participants in one market. Specifically, Powerex notes that the potential financial exposure can significantly undermine importers' incentives to bid

[30] Bid Cost Recovery Filing at 19.

[31] Calpine April 4, 2011 Comments at 2-3.

[32] *Id*. at 3-4 (citing Bid Cost Recovery Filing at 10).

[33] *Id*. at 3-4.

[34] Powerex April 4, 2011 Comments at 10-13.

[35] *Id*. at 5-7.

in the hour-ahead scheduling process, despite CAISO's reliance on imports procured through the hour-ahead scheduling process.[36]

21. Powerex also argues that CAISO should examine its decision not to provide bid cost recovery protection to exports. Powerex argues that ineligibility for bid cost recovery exposes exporting resources to extremely uneconomic LMPs. Powerex notes that the incidence of uneconomic LMPs has increased since the implementation of convergence bidding.[37] Powerex contends that, because costs of bid cost recovery payments are allocated to load and exports through uplift, market participants cannot monitor exposure from various CAISO uplifts on a real-time basis. Powerex claims that, instead, market participants must wait until they receive invoices from CAISO, which hampers transparency.

Commission Determination

22. We find that CAISO's proposed tariff revisions are just, reasonable and not unduly discriminatory. The proposed revisions to the bid cost recovery mechanism are designed to appropriately account for market revenues earned when a resource is dispatched in the real-time market below its day-ahead schedule. The revisions also make clear that minimum load revenue is included in bid cost recovery calculations when a resource meets its minimum load requirement. We find the prospective application of these proposed revisions will ensure proper incentives to resources and maintain the integrity of the scheduling and settlement process in the day-ahead market and the real-time markets. We also agree with the CAISO that the prospective application of the proposed tariff revisions will benefit market participants because it will prevent potential unintended consequences. Lastly, we find that the tariff is the proper place to set forth these rates and market formulas. Therefore, we accept CAISO's proposed revisions. Further, we accept CAISO's commitment to hold a stakeholder process to provide stakeholders an opportunity to comment and raise any further changes or refinements to the proposed revisions. Given CAISO's commitment to hold a stakeholder process, we find it unnecessary at this time to establish further proceedings, such as a technical conference.

23. Calpine requests assurance that the registration of high minimum load and start-up costs will not be used as an indicator of improper bidding practice. The instant filing does not propose to modify the tariff provisions regarding that election, and, accordingly, issues related to those provisions are beyond the scope of the instant proceeding. Parties should raise any additional concerns regarding the bid cost recovery mechanism in the stakeholder process.

---

[36] *Id.* at 6-9.

[37] *Id.* at 9-10.

2. Expedited Treatment and Waiver of Prior Notice

24. CAISO requests expedited consideration of its proposal[38] and waiver of the 60-day prior notice requirements under section 35.11 of the Commission's Regulations. CAISO requests that the Commission accept its proposed revisions to become effective the day after they were filed, March 22, 2011. CAISO claims that good cause exists to grant its request because the proposed revisions provide a just and reasonable settlement rule that immediately eliminates the profitability of the identified bidding practice. CAISO states that without expedited consideration to change the settlement rule, the identified bidding practice would exaggerate bid cost recovery and create unexpected outcomes in the CAISO's day-ahead and real-time markets.[39]

Comments

25. Parties support the expedited consideration of CAISO's revisions and CAISO's request for waiver of the 60-day notice requirement.

Commission Determination

26. As we stated in *Central Hudson Gas & Electric Corp.*,[40] the Commission will not grant a waiver of the 60-day prior notice requirement absent a showing of good cause. Here, CAISO has demonstrated that the current method of bid cost recovery calculation could lead to the overpayment of bid cost recovery. Also, in light of the suggestion that certain bidding action may exacerbate such overpayments, the sooner the new method of calculation goes into effect, the sooner the market can be confident that bid cost recovery is properly awarded. Therefore, we grant CAISO's waiver request. However, we note that CAISO's errata filing made on March 25, 2011 amended the Bid Cost Recovery Filing. Therefore, while we grant CAISO requests that the Commission accept its proposed revisions to become effective the day after they were filed, we note that, due to the errata, that date is now March 26, 2011. Therefore, we accept CAISO's proposed revisions to become effective on March 26, 2011.

---

[38] Bid Cost Recovery Filing at 2 (citing *Expedited Tariff Revisions for Regional Transmission Organizations and Independent System Operators, Guidance Order on Expedited Tariff Revisions for Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,009 (2005)).

[39] Bid Cost Recovery Filing at 2, 18-19.

[40] 60 FERC ¶ 61,106, at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992); *see also ISO New England Inc.*, 134 FERC ¶ 61,128, at P 44 (2011).

3. Proposed CAISO Resettlement

27. As noted above, the CAISO has issued a technical bulletin regarding its intent to resettle certain past payments for bid cost recovery.[41] The Commission makes no finding with regard to any such resettlements. Under FPA section 205,[42] all public utilities are required to file rates, charges and give timely prior notice before any proposed rates and charges can become effective. To the extent that CAISO did not follow its tariff and CAISO determines that any surcharges or resettlements are necessary, CAISO must file with the Commission prior to any action to request authority and explain its proposal with amounts and details.[43]

4. Investigation

28. CPUC, NCPA, and Six Cities suggest that the Commission perform an investigation of the past bidding practices described by CAISO. CPUC and Six Cities argue that the Commission must carefully consider whether the market participants have committed “fraud or deceit” as prohibited by the Commission’s regulations and the CAISO Rules of Conduct or whether they have violated any other applicable tariff provision.[44] NCPA notes that it is not sure that the bidding practice rises to the level of market manipulation entitling ratepayers to refunds of improper bid cost recovery payments. However, NCPA asks that the Commission make clear that exploiting flaws in the tariff at the expense of ratepayers warrants consequences and that the Commission explain how it intends to address these issues.[45]

Commission Determination

29. Whether market resources’ past bidding practices warrant an investigation does not relate to whether the proposed tariff revisions are just, reasonable and not unduly discriminatory. Nonetheless, with respect to the issues raised regarding market resources’ bidding practices, we have asked the Office of Enforcement to examine the matter and determine whether further inquiry is appropriate. We also note that, under the Commission’s regulations, the CAISO market monitor must refer suspected violations of the Commission’s regulations or of the CAISO tariff to the Office of Enforcement.

---

[41] CAISO April 6, 2011 Bid Cost Recovery and Accounting Technical Bulletin.

[42] 16 U.S.C. §§ 824d (c), (d).

[43] *See e.g.*, *Cal. Indep. Sys. Operator Corp.*, 103 FERC ¶ 61,331 (2003) (CAISO has filed with the Commission in the past regarding settlement adjustments).

[44] CPUC Comments at 4 (citing CAISO Tariff section 37.1); (Six Cities Comments at 4 (citing 18 C.F.R. § 1c.2 (2010) and CAISO Tariff section 37.7).

[45] NCPA April 4, 2011 Comments at 6.

18 C.F.R. § 35.28(g)(3)(iv) (2010). The Office of Enforcement will give any referral full consideration.

The Commission orders:

(A) Waiver of the 60-day prior notice requirement is hereby granted.

(B) CAISO's proposed tariff revisions are hereby accepted, to become effective March 26, 2011, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.