

109 FERC ¶ 61, 182
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

California Electricity Oversight Board

v.

Docket No. EL04-139-000

California Independent System
Operator Corporation

ORDER DENYING COMPLAINT

(Issued November 19, 2004)

1. On September 29, 2004, the California Electricity Oversight Board (CEOB) filed a complaint against the California Independent System Operator (CAISO) pursuant to section 206 of the Federal Power Act. The CEOB requests revision of the CAISO Tariff and Operating Procedures to mandate the use of Automatic Mitigation Procedures (AMP) in every hour in which the ex post market clearing price exceeds \$91.87/MWh. In addition, the CEOB asks the Commission to direct the CAISO, Department of Market Analysis (DMA) to investigate and report to the Commission whether the AMP price screen threshold should be set at a financial breakpoint other than \$91.87/MWh. As discussed below, the Commission denies the complaint. This order benefits customers by sustaining mitigation procedures that limit the exercise of market power and provide regulatory certainty to market participants.

Background

The CAISO's AMP

2. On May 1, 2002, the CAISO, as part of its Comprehensive Market Redesign Proposal (MD02), proposed AMP to guard against the exercise of market power and its impact on electric prices.¹ The CAISO stated that its AMP proposal was modeled after

¹ See *California Independent System Operator Corp.*, 100 FERC ¶ 61,060 at P 3, *order on reh'g*, 101 FERC ¶ 61,061 (2002), *order on reh'g*, 102 FERC ¶ 61,050, *order on reh'g*, 105 FERC ¶ 61,316 (2003) (July 17 Order).

the automatic mitigation procedures used by the New York Independent System Operator (NYISO), with modifications tailored to the California market. Similar to the NYISO, the CAISO's AMP design relied on two screens to decide whether to apply AMP: (1) a conduct screen; and (2) a market impact screen.² The thresholds for the screens proposed by the CAISO, however, were lower than those used by the NYISO, reflecting the CAISO's view that the California electricity market was not as workably competitive as the markets administered by the NYISO.³ Significantly, the AMP proposed by the CAISO did not include an additional screen, a price screen, which the NYISO employs to determine whether to apply AMP to bids. Under the NYISO price screen, AMP is not used when unmitigated prices are less than \$150/MWh throughout NYISO. NYISO implemented the price screen after its market data indicated that it was unlikely that market power would be exerted if prices were below \$150/MWh.⁴

3. The Commission approved the CAISO's AMP proposal, subject to certain modifications, in our July 17 Order.⁵ Notably, the Commission required the CAISO to include a price screen, in addition to the conduct test and the impact test, to determine whether a bid will be mitigated under AMP.⁶ We required the price screen to provide certainty to potential suppliers as to the level below which bids would not be subject to mitigation.⁷

4. In our July 17 Order, we directed the CAISO to set the level of the price screen at \$91.87/MWh.⁸ Under the price screen, if the markets are expected to clear below this \$91.87/MWh threshold in all three zones in California, no AMP would be applied. We

² The conduct screen compares a bid to a bidder's established reference price to identify inconsistent bidding behavior. The impact screen evaluates a bid that has failed the conduct screen to determine whether the unmitigated bid would have a substantial impact on market prices. If a bid fails to pass both of these screens, prospective mitigation to a unit reference price is imposed automatically.

³ *Id.* at P 54.

⁴ *Id.* at n.43; *New York Indep. Sys. Operator, Inc.*, 99 FERC ¶ 61,246 at 62,037 n.92002), *order on reh'g*, 103 FERC ¶ 61,291 (2003).

⁵ July 17 Order at P 64-76.

⁶ *Id.* at P 67.

⁷ *Id.* at P 72.

⁸ *Id.*

upheld the establishment of the price screen and its \$91.87/MWh threshold in our Order on Rehearing and Compliance Filing, issued October 11, 2002.⁹

The CEOB's Complaint

5. In this complaint, the CEOB protests: (1) the timing of the CAISO's application of AMP; and (2) the financial breakpoint used for the AMP price screen. Specifically, the CEOB seeks to revise the CAISO Tariff and Operating Procedures to compel the use of AMP in all hours in which the actual ex post market clearing price exceeds the price screen threshold of \$91.87/MWh, rather than the current practice of running AMP only in the hours the price is predicted to be greater than \$91.87/MWh.

6. The CEOB explains that AMP evaluates potential changes to the projected real-time post final dispatch market clearing price based on the amount of imbalance energy the CAISO expects to dispatch. The CAISO applies AMP before directing dispatch of imbalance energy. The CEOB acknowledges that the CAISO uses hourly ex post prices to predict the real-time market clearing price because the CAISO's current software does not permit the CAISO to mitigate a bid in one Balancing Energy Ex Post (BEEP) Interval¹⁰ at less than hourly intervals. Bids are subject to the AMP conduct and impact tests only when the CAISO expects the real-time market clearing price to exceed \$91.87/MWh in any zone in any interval during the hour of operation.

7. The CEOB further states that, "due to operational limitations," the CAISO applies the price screen around 53 minutes prior to the hour of operation, based on the projected imbalance energy dispatch for that hour. The effect of this operational limitation is that if, at 53 minutes prior to the next hour of operation, a bid is not expected to be greater than \$91.87/MWh before the hour, AMP will not be triggered for the next hour, even if a contingency occurs within 53 minutes before the next hour of operation and such contingency causes the actual price to be greater than \$91.87/MWh.¹¹

⁹ *California Independent System Operator Corp.*, 101 FERC ¶ 61,061 at P 30 (2002), *order on reh'g*, 102 FERC ¶ 61,050, *order on reh'g*, 105 FERC ¶ 61,316 (2003) (October 11 Rehearing Order).

¹⁰ The "BEEP" Interval was used to set the market clearing price and dispatch energy during the previous phase of California's market redesign. This interval was phased out as of October 1, 2004. While the CAISO currently uses another dispatch interval and method to prioritize bids in the real-time market, this does not materially affect the CEOB's contention that AMP is run before the final dispatch for the hour of operation.

¹¹ CEOB Complaint at 3.

8. In support of its complaint, the CEOB describes a single incident on June 21, 2004, when a northern California thermal unit tripped off line at 6:21 a.m. and, at 6:33 a.m. on the same day, another unit tripped off line within the same zone. The CAISO responded by dispatching all available resources in northern California to compensate because Path 15 was congested in the hour-ahead forward market in the South to North direction. As a result, between 6:30 and 7:00 a.m., the real-time incremental price increased to \$210/MWh. The CEOB states that this price was set by a hydro resource that had a reference level of approximately \$17/MWh. The CEOB complains that the predictive price screen precluded implementation of AMP since the price rise could not have been predicted at 53 minutes prior to the beginning of the relevant hour of operation.¹²

9. The CEOB states that it cites the June 21st incident less for the magnitude of cost than for the inherent flaw with the system of AMP, namely, that it should not be based on predictive price.¹³ The CEOB contends that, during times when unusual or unexpected market conditions provide the opportunity to exercise market power, the CAISO should run AMP to discern whether market power is being exercised. The CEOB also states that it would be nondiscriminatory to run AMP in all hours in which the after-the-fact market clearing price exceeds \$91.87/MWh.¹⁴

10. In addition to the timing of the use of AMP, the CEOB also complains that the AMP triggering threshold of \$91.87/MWh “is a relic from the energy crisis and a poor indicator of a fair energy price in each and every hour in a dynamic market.”¹⁵ The CEOB characterizes the price screen threshold as a damage control mechanism from the time of the energy crisis.¹⁶ The CEOB states that, even if \$91.87/MWh is an appropriate threshold for evaluating competitive bids in some hours, it is “clearly a multiple of competitive prices in other hours.”¹⁷ Consequently, the CEOB asks the Commission to direct the CAISO, Department of Market Analysis (DMA) to investigate and report to the Commission whether it should establish a price threshold more “rationally related to the time period” in which the threshold applies.

¹² *Id.* at 3-4.

¹³ *Id.* at 4.

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 4-5.

¹⁷ *Id.* at 5.

Notice, Interventions And Responsive Pleadings

11. Notice of the CEOB's complaint was published in the *Federal Register* on September 30, 2004, 69 Fed. Reg. 60,385 (2004), with interventions, comments and/or protests due October 19, 2004. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 214 (2004), the timely, unopposed motions to intervene filed by the Public Utilities Commission of the State of California; Duke Energy North America, LLC and Duke Energy Marketing America, LLC; Mirant Corporation; Cities of Redding and Santa Clara California; Modesto Irrigation District; the Independent Energy Producers Association; Pacific Gas & Electric (PG&E); the Western Power Trading Forum (WPTF); the Independent Energy Producers Association (IEP); West Coast Power LLC (West Coast) and Williams Energy Company (Williams) serve to make them parties to this proceeding. Given the parties' interest, and the lack of undue prejudice in this early stage of the proceeding, we also find good cause to grant, pursuant to Rule 214(d), 18 C.F.R. § 214(d), the untimely, unopposed motions to intervene of Calpine Corporation and Pinnacle West that were filed one day out-of-time. On October 19, 2004, the CAISO timely filed its answer in response to the CEOB's complaint.

The CAISO's Answer

12. In its Answer, the CAISO urges the Commission to deny the CEOB's request to run AMP on an ex post market clearing price basis. The CAISO explains that bid mitigation on such an ex post basis would undermine AMP's purpose, which is to predict whether an anticipated violation of the AMP price screen will occur, so the CAISO can establish a properly mitigated real-time merit order bid stack prior to the actual hour of operation. According to the CAISO, it would be impossible to implement AMP on an ex post basis because system AMP must, by definition, run in a predictive mode to mitigate market impacts.¹⁸

13. The CAISO points out that the CEOB's complaint appears to confuse local and system market power mitigation, and the AMP provisions that the CEOB appears to object to are system and not local market power mitigation procedures.¹⁹ California's local market power mitigation methodology already mitigates bids on an ex post market clearing price basis. Bids that are dispatched out-of-sequence to relieve local constraints are settled on an "as bid basis" and do not affect market clearing prices. By contrast, however, the CAISO explains that system mitigation in the CAISO real-time market must occur prior to dispatch and price determination. The basis of bid mitigation under system AMP is whether bids that violate the conduct threshold have a material impact on market

¹⁸ CAISO Answer at 3, 5.

¹⁹ *Id.* at 3.

clearing prices (as defined by the market impact thresholds) and whether such bids can set the market clearing price. According to the CAISO, basing bid mitigation on an after-the-fact procedure would be too late because system AMP must predict whether an anticipated violation of the AMP price screen will occur so that it can set a properly mitigated real-time merit-order bid stack prior to the actual operating hour.²⁰

14. The CAISO states that under the CAISO's Phase 1B market model, AMP software can look at the next two operating hours, rather than the current single hour in advance, to evaluate the demand forecast for imbalance energy and determine the reference price. The CAISO contends that this enhanced capability of AMP to evaluate bids further in advance of operation makes the problem the CEOB has identified less likely to occur.²¹

15. With respect to the price screen threshold, the CAISO states that it agrees with the CEOB's assertion that "the specific price screen threshold of \$91.87/MWh is not an appropriate indicator of whether market power is being exerted."²² The CAISO goes beyond the CEOB's requested remedy and argues that the price screen should be eliminated. The CAISO states that it has previously argued this position before the Commission in its request for rehearing of the July 17 Order, and reiterates the reasons why it believes the price screen should be eliminated.²³ First, the CAISO contends that the basic concept of a price screen conflicts with the Commission's main rationale for approving AMP, which was to protect against the exercise of market power on a temporary basis. Second, the CAISO argues that the Commission's decision to implement a fixed price screen in California was based in part on "the erroneous conclusion" that the NYISO has a fixed price screen in effect. The CAISO insists that the Commission cannot justify adopting a fixed price screen for the CAISO because the Commission did not require NYISO to implement such fixed price screen.²⁴ Third, the CAISO argues that the \$91.87/MWh price screen has never been supported by substantial evidence in any proceeding and that there is no rational basis to rely upon this fixed threshold. The CAISO protests that this threshold was approved by the Commission in its July 17 Order, based on a particular set of spot prices at a certain point in time, but that there is no reason that this specific threshold should continue to apply. The CAISO states that the appropriateness of a given financial breakpoint should be reviewed on at least an annual basis.²⁵

²⁰ *Id.* at 5-6.

²¹ *Id.* at 6.

²² *Id.*

²³ *Id.* at 6 & n.7 (citing Request for rehearing of the California Independent System Operator, Docket No. ER02-1656-000, August 16, 2002).

²⁴ *Id.* at 7-8.

²⁵ *Id.* at 6-9.

Comments and Protests

16. PG&E comments that it would be appropriate for the CAISO's DMA to investigate the timing of AMP application as well as the price screen's threshold. According to PG&E, such investigation is warranted because the CAISO's Market Redesign and Technology Upgrade (MRTU) will not be available in the near term, and the existing financial break point and timing of AMP application may not reflect recent market conditions.²⁶

17. The WPTF asks the Commission to dismiss the complaint.²⁷ The WPTF protests that the CEOB's complaint is procedurally defective in that it does not comply with most of the procedural requirements of Rule 206 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.206 (2004).²⁸ The WPTF complains that the CEOB fails to identify the tariff provision that is unjust and unreasonable and requires modification, or to propose new language to correct the allegedly flawed tariff provision; offers no showing of financial or non-financial impacts; fails to state whether issues presented are pending in another hearing; fails to make any allegation or provide any information or documents to support the facts in the complaint concerning any CAISO violation of Statutes, FERC orders or the CAISO's tariff; and fails to indicate whether the hotline was contacted before the complaint was filed.²⁹

18. The WPTF also argues that the CEOB has failed to demonstrate that it is entitled to the relief it seeks because the CEOB has not shown that existing tariff provisions concerning AMP are not just and reasonable, nor has the CEOB demonstrated that its suggested remedy is just and reasonable.³⁰ The WPTF states that the CEOB's complaint identified only one instance where system contingencies allegedly resulted in a price increase to \$210/MWh for 30 minutes. The WPTF also argues that there is no evidence that the opportunity costs of the hydro unit that set the clearing price in that hour were less than \$210/MWh price, nor what the price would have been if the CEOB's approach had been adopted. Pointing out that AMP has greatly reduced price volatility, the WPTF speculates that the CEOB may not have included other evidentiary examples because there may be none.³¹ The WPTF states that during summer 2004, the CAISO experienced seven days of peak loads that represented all-time record peak demand

²⁶ See Motion to Intervene filed by PG&E at 3-4.

²⁷ See Motion to Intervene and Protest of the WPTF at 1.

²⁸ *Id.* at 4-6.

²⁹ *Id.* at 5-6.

³⁰ *Id.*

³¹ *Id.* at 7.

levels. Nevertheless, the average peak-period prices on those record-breaking days were below the price screen threshold, indicating that peak prices on those days did not appear to flow from exercises of market power.³²

19. Further, the WPTF emphasizes that the Commission was aware of the predictive nature of the screen when it approved the pertinent CAISO tariff provision, and also through CAISO's quarterly reports concerning this aspect of AMP. WPTF states that the Commission should not be overly concerned with the predictive nature of AMP because the CAISO market has a whole panoply of mitigation tools besides AMP, including an offer cap that is one-fourth the level of offer caps in markets in other regional transmission organizations; a must offer requirement; outage and maintenance standards; market behavior rules and local market power mitigation.³³ The WPTF also states that high prices during periods of unexpected outages or high demand produce economically efficient outcomes because supply is given incentive to enter the market and demand is given incentive to curtail usage. According to the WPTF, the CEOB can only begin to make its case that AMP should be revised if the CEOB can claim that many hours are going unmitigated and that those higher prices are associated with the exercise of market power. The WPTF also states that it is appropriate for the Commission to consider the CAISO's entire mitigation package as a whole in determining whether that mitigation package is reasonable.

20. In addition, the WPTF objects that the CEOB has failed to provide any specific proposal concerning how to apply AMP in all hours in which the ex post market clearing price exceeds \$91.87/MWh. WPTF states that it knows no way to do this without "severely disrupting the market."³⁴ Real-time prices need to be timely posted so that market participants can take appropriate responses in the marketplace. WPTF points out that the Commission has already recognized the importance of applying AMP on a predictive basis in advance of real-time so that prices are transparent, facilitating an efficient market. From the inception of AMP's implementation, the CAISO has relied on projected real-time prices to determine when to apply AMP. Running the price screen in real-time will necessarily result in either a reporting of prices after the hour when mitigation is triggered, or a general delay in the posting of prices, so there is time to reset the reference levels of all offers in all intervals where conduct and impact tests have been triggered. According to the WPTF, with supply and demand changing instantaneously, this is not practical.³⁵

³² *Id.*

³³ *Id.* at 8.

³⁴ *Id.* at 11.

³⁵ *Id.* at 12.

21. The WPTF also protests that the Commission should not direct the DMA to investigate whether the existing price screen of \$91.87/MWh should be modified. The WPTF points out that the CEOB provides no analysis why the \$91.87/MWh threshold is inappropriate besides asserting that it is a relic of the energy crisis and is “clearly a multiple of competitive prices in other hours.” The WPTF states that, while the \$91.87/MWh financial breakpoint is the level of the soft cap first adopted late in the 2000-2001 energy crisis, its use as a price screen for AMP was reargued in 2002, well after the crises ended. Moreover, since the adoption of the price screen, the supply-demand balance has become tighter and fuel prices have nearly doubled. Consequently, if anything, the financial breakpoint should be increased, not lowered. In addition, the WPTF states that CAISO resources should not be diverted from the goal of redesigning the market; the marketplace would be better served if the CAISO and stakeholders moved expeditiously to finalize its MRTU and implement resource adequacy.³⁶

22. The IEP urges the Commission to dismiss the complaint because the CEOB has not alleged a viable complaint, such as that the CAISO is violating its tariff provisions or the law.³⁷ The IEP argues that the complaint is procedurally defective and that the predictive price issue is not a new issue.³⁸ IEP contends that the remedy sought by the CEOB, presumably lowering the AMP threshold and ex post application of AMP, may precipitate greater reliability problems in California. For example, it could lead to early retirement of existing resources, impose a new wave of regulatory uncertainty and needlessly divert resources from the MRTU process.³⁹

23. West Coast and Williams filed protests, West Coast adopting the WPTF’s arguments, and Williams adopting the WPTF’s and the IEP’s arguments.

Discussion

24. To prevail on its complaint, the CEOB has the burden under section 206 of the Federal Power Act to demonstrate that the existing AMP provision in the CAISO tariff is unjust and unreasonable, and that the replacement measures the CEOB advocates are just and reasonable.⁴⁰ As explained below, we conclude that the CEOB has failed to show that it is unjust and unreasonable for the CAISO to run AMP based on a predictive price, rather than an ex post market clearing price; nor has the CEOB demonstrated that it would be just and reasonable to require the CAISO to adjust its software algorithm to run

³⁶ *Id.* at 13.

³⁷ IEP Protest at 3.

³⁸ *Id.* at 4 and 6.

³⁹ *Id.* at 3.

⁴⁰ 16 U.S.C. § 824e (2000).

AMP in every hour the ex post market clearing price exceeds the price screen threshold, or even at intervals closer to the point in time when the market clears. In addition, the CEOB has also failed to show that the existing financial breakpoint for the price screen is no longer just and reasonable and requires investigation. Accordingly the Commission denies the CEOB's complaint.⁴¹

Running AMP on an ex post market clearing price basis

25. With respect to the issue whether AMP should be run on an ex post market clearing price basis, we agree with the CAISO and protestors that to do so would be contrary to the purpose of AMP.⁴² The CAISO must run system AMP before final dispatch and before the market clears to fulfill the purpose of AMP, which is to establish a properly-mitigated real-time merit-order bid stack. As we have explained in prior orders, AMP must be based on a predictive price to facilitate transparent and reliable mitigation pricing, and enhance market efficiency.⁴³ Real-time prices need to be timely posted so that market participants can take appropriate responses in the marketplace.

26. The CEOB fails to demonstrate why such ex ante application of AMP is unjust and reasonable. The CEOB cites to a single, isolated incident where, due to unforeseen circumstances, a hydroelectric facility set the clearing price at \$210/MWh for half an hour on June 21, 2004. However, it is generally known that hydroelectric facilities' bids must reflect the opportunity costs of using water now rather than later. Peak electricity usage in California occurs in August and September. Accordingly, a June 21st bid of \$210/MWh between 6:30 and 7:00 A.M. from a hydroelectric facility, which is plausibly trying to conserve resources for the upcoming months of peak usage, is not clearly unreasonable or an obvious exercise of market power.

27. Moreover, the CEOB also fails to justify its proposed remedy. Applying AMP to all hours in which prices rise above the price screen threshold on an ex post market clearing price basis, as the CEOB requests, would result in an inefficient determination of

⁴¹ We agree with protestors that the form of the CEOB's complaint does not perfectly adhere to the requirements of our rules. Nevertheless, the gist of the CEOB's complaint is sufficiently clear to give notice to potential parties concerning the substance of the complaint, and to enable us to evaluate the merits of the complaint. Accordingly, we will rule on the merits of the complaint in the interest of administrative economy.

⁴² As a preliminary matter, we note our agreement with the CAISO that the CEOB appears to confuse local AMP with system AMP. Accordingly, we construe the CEOB's complaint to be with respect to system AMP, rather than local AMP.

⁴³ See October 11 Rehearing Order at P 21, 22.

prices after the hour when mitigation is triggered and a cumbersome delay in settling the markets. With supply and demand constantly in flux in a fast-paced market, this is not a practical mitigation method.

28. Moreover, in our orders approving the CAISO's AMP methodology, it was clear that AMP would be based on a predictive price.⁴⁴ The CEOB, like all other interested parties, had the opportunity to object to the CAISO's AMP procedures, both in comments preceding our July 17 Order approving the CAISO's AMP, as well as in its request for rehearing of that July 17 Order. The CEOB, however, did not object to the timing of AMP's operation in either its comments or its rehearing request. In its current complaint, the CEOB fails to raise any change in circumstances that could indicate that AMP is not functioning as it was expected to operate when the Commission approved the CAISO's AMP in its July 17 Order, and upheld in it in the October 11 Rehearing Order; nor does the CEOB present sufficient evidence to demonstrate that, even though AMP is operating the way it was expected to operate when approved, it is producing unjust and unreasonable prices. In the context of a market with relatively low, stable prices, the CEOB's single reference to an isolated incident where a hydroelectric facility's bid set a clearing price below the \$250/MWh bid cap for thirty minutes, falls short of proving that AMP is producing unjust and unreasonable rates. Accordingly, the CEOB's argument that AMP should not be based on a predictive price -- raised years after the CAISO implemented AMP -- is an impermissible collateral attack on our prior orders adopting the CAISO's AMP. Consequently, such collateral attack warrants dismissal of this issue in the complaint.

29. In addition, the CEOB argues that applying AMP on an ex post market clearing basis would be nondiscriminatory, implying that it is discriminatory to allow prices occasionally to clear above the price screen threshold. The fundamental purpose of AMP, however, is to prohibit exercises of market power, not to preclude occasional price increases that flow from genuine scarcity of electricity. Since the implementation of AMP, prices in California have been less volatile and relatively low, indicating that the mitigation procedures as a whole, including AMP, are effective.⁴⁵ The complaint fails to offer any evidence that each bid that clears above the price screen threshold *per se* reflects an exercise of market power.⁴⁶

⁴⁴ See July 17 Order at P 53, 54, and 57; October 11 Rehearing Order at P 22.

⁴⁵ See, e.g., 2003 Annual Report on Market Issues and Performance, California Independent System Operator Corp., April 2004, at 2-20 – 2-23.

⁴⁶ See *id.*

The Price Screen Threshold

30. We also deny the CEOB's request to direct an investigation into the financial breakpoint for the price screen; nor will we permit the CAISO to drop the price screen altogether. The price screen is designed to eliminate unnecessary evaluation of bids for potential mitigation. If projected market clearing prices are below a threshold price that indicates, to a degree of certainty, that market power is not being exercised, applying mitigation procedures would constitute needless and wasteful deployment of resources..

31. As we said in our rehearing order upholding the establishment of the CAISO's price screen at \$91.87/MWh, setting a price screen threshold "is not an exact science."⁴⁷ If the threshold is set too low, the price screen no longer serves its purpose of conserving the CAISO's resources by filtering out from potential review those bids that are not likely to reflect the exercise of market power. If, on the other hand, the threshold is set too high, this increases the likelihood that some bids that are the product of market power could set the clearing price. When we initially set the price screen at \$91.87/MWh, that financial breakpoint was based on the historic applicable cap for mitigation in all non-reserve deficiency (normal operating) hours in California's summer peaking energy market. The \$91.87/MWh threshold reflected our judgment that, prospectively, price levels in the California market below this level would not be the result of market power. In our October 11 Rehearing Order, we revisited the issue of the financial breakpoint for the price screen threshold and upheld it at \$91.87/MWh. In upholding the \$91.87/MWh threshold, we observed that prices in the California market had stabilized during the eighteen months since market clearing prices had been subject to this limitation pursuant to mitigation measures imposed in our June 19, 2001 order.⁴⁸ We further determined that the \$91.87/MWh threshold "strikes an appropriate balance between adequate protection to the market place and unnecessary deployment of resources to verify that bids do not represent an exercise of market power."⁴⁹ Since issuance of the July 17 Order and the October 11 Rehearing Order, prices in California have remained stable and relatively low. The CEOB has not alleged any relevant change since that order was issued to indicate that the \$91.87/MWh threshold is too low and/or enabling the exercise of market power.

32. Neither the CEOB, nor any other party in this proceeding, offers a scintilla of credible evidence to indicate that this \$91.87/MWh threshold is no longer just and reasonable, particularly given the increase in gas prices since that threshold was adopted. The CAISO merely speculates that, if one generator knows other generators in its zone

⁴⁷ *Id.* at P 30.

⁴⁸ *Id.* (citing *San Diego Gas & Electric Company, et al.*, 95 FERC ¶ 61,418 (2001)).

⁴⁹ *Id.*

will be off line within 53 minutes prior to the next operating hour, that first generator could game the system by increasing its bid above its reference price to just below the \$91.87/MWh price screen threshold. We find the hypothetical harm of which the CAISO complains to be entirely too speculative to call into question the justness and reasonableness of the current price screen threshold.

33. In addition, we reject again the CAISO's suggestion that we drop the price screen from AMP entirely because: (1) the CAISO has failed to show that the price screen is not just and reasonable; (2) the CAISO has failed to show that AMP without a price screen would be just and reasonable; (3) the CAISO's suggestion is an impermissible collateral attack on our prior orders. The CAISO fails to raise any new argument or cite to any change in circumstances from its prior pleading on this subject that could justify elimination of the price screen in the context of a market where the total package of AMP appears to be effectively keeping prices stable and relatively low.

The Commission orders:

The CEOB's complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.