106 FERC ¶ 61,099
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Docket No. ER03-746-003

ORDER GRANTING CLARIFICATION AND GRANTING AND DENYING REHEARING

(Issued February 3, 2004)

1. In this order the Commission grants clarification and grants and denies rehearing of the Commission's November 14, 2003 Order issued in this proceeding. California Independent System Operator Corporation, 105 FERC ¶ 61,203 (2003) (November 14 Order). In the November 14 Order the Commission addressed a compliance filing made in response to a June 13, 2003 Order[1] addressing the California Independent System Operator Corporation's (CAISO) Tariff Amendment No. 51 to its Open Access Transmission Tariff (OATT). In Amendment No. 51, the CAISO explained that it would need to complete preparatory re-runs before the rerun of its settlement system as ordered in the California refund proceeding.[2] The CAISO states that these preparatory re-runs would enable it to establish accurate baseline data. Today's order benefits market participants by clarifying the Amendment No. 51 preparatory re-run procedures.

Background

2. In the June 13 Order, the Commission conditionally accepted and suspended Amendment No. 51, subject to refund, to become effective the earlier of November 14, 2003, or a date specified in a further Commission order in the proceeding. The Commission also directed the CAISO to provide additional information in a compliance filing. Specifically, the Commission directed the CAISO to (1) explain and justify each proposed adjustment for the 18 major revisions; (2) provide an explanation for the proposed change to Section 11.6.3.2 of the Tariff concerning the criteria the Governing

[1] California Independent System Operator Corporation, 103 FERC ¶ 61,331 (2003) (June 13 Order).

[2] San Diego Gas & Electric Company, 102 FERC ¶ 61,317 (2003) (California Refund Order), clarified, 103 FERC ¶ 61,078 (2003).

Board would use to assess payment of the costs of a Settlement Statement re-run; (3) provide a detailed explanation of how it intends to allocate any amounts it cannot recover from one customer to other customers; (4) detail the separation process that it plans to implement regarding the walling-off of invoices; and (5) provide a detailed explanation of how Market Participants can dispute the re-run assessments, including when the dispute period begins.

3. In a July 3, 2003 compliance filing and in a July 9 addendum to the compliance filing, the CAISO provided details concerning 17 proposed revisions. The CAISO dropped one of its proposed revisions because it estimated that the effect of this revision would be de minimis. For each of the 17 revisions, the CAISO provided information concerning the relevant issue, the date range, the estimated impact in megawatts or in dollars (where available), the Charge Types potentially affected, the allocation methodology it would employ, and the reason for the revision. The CAISO stated that the list of preparatory adjustments and re-runs includes all of the adjustments and re-runs that the CAISO believes need to be conducted for the time period from April 1998 to the end of the refund period, June 20, 2001. The CAISO stated that preparatory re-runs do not include issues that arose subsequent to June 20, 2001 because such issues post-date the refund period and are not applicable to the determination of the re-baselined database needed to conduct the Refund Proceeding re-run.

November 14 Order

4. The Commission addressed the compliance filing in its November 14 Order. The Commission deferred addressing some of the protests to the adjustments proposed in the compliance filing and addendums until after the preparatory re-runs are conducted and the financial impact on the market participants is known. The Commission also directed the parties to raise objections to the preparatory re-runs first through the use of the CAISO's Alternative Dispute Resolution (ADR) procedures with appeal to the Commission as necessary. The Commission accepted some of the adjustments, rejected some of the adjustments and deferred action on others. The Commission directed the CAISO to commence the preparatory re-runs for the issues it was accepting as discussed in the order. The Commission directed the CAISO to submit a compliance filing as soon as possible, but no later than January 30, 2004, containing the results, explanations and details of the CAISO's adjustments and re-runs in this proceeding.

Requests for Rehearing or Clarification

5. Pacific Gas and Electric Company (PG&E) filed a timely request for rehearing. PG&E objects to the Commission's acceptance of CAISO's proposed reallocation of

costs associated with energy exchanges, which PG&E claims amounts to $80-100 million.[3]

6. The City of Santa Clara, California, and the City of Redding, California (Cities) jointly filed a timely request for rehearing. The Cities believe that the Commission erred in stating:

> We direct the parties to raise objections to the preparatory re-runs through the use of the CAISO's Alternative Dispute Resolution procedures.

The Cities assert that to the extent that the Commission means to preclude the filing of comments to the compliance filing required by the November 14 Order, the Commission has erred. The Cities believe that the use of the CAISO's ADR procedures is contrary to the Commission's goal of minimizing delay associated with completing the refund process.

7. Williams Energy Marketing and Trading Company (Williams) filed a timely motion for clarification, or in the alternative rehearing. Williams points out that the Commission, in its November 14 Order, deferred action on what is referred to as Issue No. 9. Williams claims that the November 14 Order mistakenly assumed that the Settlement Agreement is related to the proposed Issue No. 9 adjustment in this proceeding, and thus inappropriately deferred action on the issue. The CAISO supports the Williams request for clarification. CAISO states that there is no relationship between the Issue No. 9 adjustment proposed in Amendment 51 and the Williams Settlement Agreement. The CAISO points out that the Amendment 51 adjustments are corrections made to historical Williams transactions involving the allocation of energy transactions between instructed and uninstructed and the different settlement prices for instructed energy higher Out of Sequence (OOS) prices as opposed to lower OOM prices. On the other hand the Williams Settlement Agreement involves the settling of claims made by various parties in California against Williams.

8. The CAISO filed a timely request for rehearing. In addition to the Williams issue, the CAISO argues that: (1) the Commission erred in rejecting the CAISO's proposed adjustment regarding the rescission of unavailable ancillary services; and (2) the Commission erred in directing the ISO to submit a compliance filing concerning the preparatory re-runs by January 30, 2004.

Discussion

9. As discussed below, we will clarify that the Amendment No. 51 adjustments relating to Issue No. 9 need not be deferred. We will grant rehearing and not require the January 31 filing. However, because we believe that there needs to be transparency in

[3] PG&E rehearing at 3-4.

the process so that the CAISO can reach a final baseline expeditiously and without subsequent objections by market participants to the preparatory adjustments and reruns, we will require the CAISO to report to the Commission on a monthly basis beginning on February 10 the status of the preparatory adjustment re-runs. We will also require that the CAISO report to the Commission on a monthly basis the dates that it expects to complete both the preparatory re-runs and settlements and billing process for calculating refunds. We note that on January 16, CAISO posted on its website a description of the re-run mechanics and adjustments. Participants should review these descriptions and alert the CAISO to any problems or discrepancies. We will in all other respects deny the requests for rehearing.

Williams Issue No. 9

10. In its motion for clarification Williams explains that the Good Faith Negotiations (GFN) that gave rise to Issue No. 9 arose from disputes that Williams submitted to the CAISO following Williams receipt from the CAISO of certain settlement statements in 2001. When reviewing these settlement statements, Williams states that it noticed that although Williams had bids in the market with respect to certain transactions, the CAISO was paying Williams the ex post price for these transactions. Williams promptly disputed these settlement statements with regard to these specific transactions. Williams initiated GFN and following 18 months of negotiations, Williams and CAISO settled the issue resulting in the adjustment in Issue No. 9. Finally, Williams explains, and the CAISO confirms, there is no relationship between Issue No. 9 and the settlement agreement between Williams and the California State Releasing Parties. We therefore clarify that there is no need to defer a decision on the proposed revision known as Issue No. 9, and we will accordingly accept that proposed adjustment and direct the CAISO to incorporate that adjustment in its preparatory re-runs.

Proposed Adjustments Relating to Energy Exchanges

11. In our November 14 Order[4], we found that the CAISO's proposed adjustment concerning the allocation of energy exchange costs to participants was appropriate. We continue to find such adjustments are appropriate. CAISO proposed in its filing to account for the cost of its energy exchanges among market participants based upon the date in which the incoming energy exchange took place, as opposed to periods when the exchanges were returned. The costs and proposed adjustments arise from the period of November 14, 2000 through June 20, 2001. The CAISO states that to maintain grid reliability during the end of 2000 and the beginning of 2001 it had to arrange for power exchanges to acquire needed energy. This arrangement is called the Energy Exchange Program (EEP). Under the EEP, the CAISO receives energy in real time in order to meet

[4] 105 FERC ¶ 61,203 at P25.

the immediate system load requirements and later returns the energy to the provider plus an additional agreed to amount of energy, generally at a ratio of 2MW returned for each MW received. The actual cost of the EEP is determined at the time the energy is returned. Historically, the CAISO used market participant's energy usage during the return period to account for the cost for the EEP. The CAISO recognized that the EEP costs need to be accounted for when the exchange took place rather than when the exchange is paid back. This treatment is consistent with the CAISO's accounting of costs for out-of-market energy that is simply purchased. CAISO states the impact of the proposed adjustment will be to reallocate the costs to the market participants in the market during the time of the exchange receipt.

12. PG&E argues that CAISO's proposed accounting adjustment is retroactive ratemaking and inconsistent with Commission precedent.[5] PG&E contends that because the CAISO EEP with Bonneville Power Administration (BPA) Agreement was not filed until August 20, 2001 and was made effective by the Commission on January 17, 2001, the CAISO may not change the method of allocating exchange amounts prior to that date.

13. We continue to find these adjustments are appropriate and consistent with how other out-of-market costs are accounted for. PG&E has raised arguments of retroactive billing and rates. To the extent PG&E objects to how the CAISO collects EEP costs as opposed to the timing for determining cost responsibility, PG&E's arguments are beyond the scope of this proceeding. The methodology for billing costs to Scheduling Coordinators through CAISO's rates was the basis of several Commission orders in various dockets: Docket Nos. ER00-555 (Amendment No. 23, effective January 1, 2000), ER01-607 (Amendment No. 33, effective December 12, 2000) and EL00-111, et al. (complaint proceeding). In those orders the Commission determined through its acceptance of tariff revisions and decisions on complaints the proper methodology CAISO is to utilize for collecting out-of-market costs from the market participants. PG&E's arguments constitute an impermissible collateral attack on those orders and the Commission will not revisit the appropriate billing methodology of out-of-market costs here. The billing to Scheduling Coordinators for all out-of-market costs is a separate issue from the assignment of exchange costs to the hour in which the exchange was received.

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[5] PG&E cites Cities of Anaheim, Azusa, Banning, Colton and Riverside, California v. California Independent System Operator, 102 FERC ¶ 61,274 (2003), reh'g denied, 105 FERC ¶ 61,021 (2003). In that proceeding, the Commission found that the offer of settlement on out-of-market costs in that case constituted retroactive ratemaking. The Commission stated that although the settling parties could agree to a different cost allocation for the period prior to December 12, they could not impose the higher allocation on a party opposed to the terms. 102 FERC 61,274 at P 40-41.

14. Here, we agree with the CAISO that it is appropriate to account for exchange cost responsibility at the date and hour of the receipt of the energy as opposed to the return of the energy. This is consistent with how the CAISO accounts for other out-of-market dispatch costs and the concept of matching costs with the time of cost incurrence. The methodology of settling exchanges on the hour of receipt was set forth in the BPA agreement filed in Docket No. ER01-2886-000.[6] That filing was unopposed and was accepted by the Commission to be effective January 17, 2001 as requested.[7] The CAISO indicated in the filing that "[f]or previous trade dates (November 14, 2000 through May 31, 2001), Settlement reruns will be conducted using the new Settlement methodology." Thus the Commission approved the settlement procedures back to November 14, 2000 and PG&E's reliance on the January 17 date is misplaced and is an impermissible collateral attack on the Commission's order in Docket No. ER01-2886-000.

15. Further, we note the Presiding Judge in the Refund Proceeding also concluded that the proposed methodology of the receipt date as opposed to the return date is the appropriate methodology to account for all energy exchanges, and the Commission in its March 26, 2003 Order on the Refund Proceeding summarily adopted the Presiding Judge's findings.[8] Since we find that the CAISO's proposed adjustments for reallocating energy exchanges are appropriate, we will deny rehearing on this issue.

Proposed Adjustment Relating to Unavailable Ancillary Services

16. In the Commission's November 14, 2003 Order in this docket,[9] we rejected the CAISO's proposed adjustment regarding the rescission of unavailable ancillary services. In rejecting the adjustment, the Commission stated that this proposed adjustment

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[6] On August 20, 2001, CAISO filed an energy exchange agreement between BPA and itself establishing a ratio for pay back and described the methodology the CAISO would use to allocate among market participants the costs related to energy exchanges that occurred during the period of November 14, 2000 through May 2001.

[7] Unpublished Delegated Director Letter Order of October 17, 2001.

[8] See San Diego Gas & Electric et al., 102 FERC ¶ 61,317 (2003), order on reh'g, 105 FERC ¶ 61,066 (2003) at n.17 (the Commission clarified that its prior approval of the CAISO's accounting methodology for energy exchange transactions in Docket No. ER01-2886-000 was to be applied to all transactions), errata notice and granting motion for modification, 105 FERC ¶ 61,252 (2003).

[9] 105 FERC ¶ 61,203 at P31.

concerns the "double billing" issue set for hearing in the Enron strategy show cause proceedings (Show Cause Proceedings). [10]

17. In this adjustment, the CAISO proposed to rescind ancillary service capacity payments to Scheduling Coordinators that scheduled ancillary services capacity into the CAISO's markets, but did not actually make the ancillary services available. The CAISO proposed that these adjustments be made from the date the CAISO commenced operations on April 1, 1998 through September 9, 2000. The CAISO implemented "No Pay" software to automatically eliminate energy and capacity payments on September 10, 2000. The CAISO states that during the period in question, the CAISO did not have mechanisms in place to detect unauthorized deviations automatically. The CAISO submits that it has completed a review of data regarding ancillary services purchases from the commencement of CAISO operations through September 9, 2000. In this adjustment, the CAISO states it will address more transactions, more parties, and a longer time period than specified in the Commission's Show Cause Proceedings.

18. In the Show Cause Proceedings, the Commission identified four parties that may have engaged in double selling of ancillary services.[11] The time period covered in the Show Cause Proceedings was January 1, 2000 through June 20, 2001. In the CAISO's adjustment for rescission of ancillary services in this proceeding, the CAISO proposes to address the time period of April 1, 1998 to September 9, 2000 and encompass ten other entities that were not covered in the Show Cause Proceeding. In the Show Cause Proceedings the Commission determined that the relevant time period was January 1, 2000 to June 20, 2001 to explore certain gaming issues, including double selling. Also, in the Show Cause Proceedings the Commission investigated and determined there was only enough evidence to proceed with four parties on the double selling issue. We reject the CAISO's attempt to use the re-run adjustment in this docket to expand the transactions covered under the Show Cause Proceedings. We find that the Show Cause Proceedings are the proper forum to resolve disputed legal and factual issues related to alleged double selling. Therefore, we will reject the CAISO's adjustment to rescind payments for ancillary services and we will deny the CAISO's request for rehearing on this issue.

ADR

19. The Cities seek rehearing of the Commission's direction that the parties raise objections to the preparation of re-runs through the use of the CAISO's ADR procedures. The Cities state that they interpret this to mean that the Commission will not accept

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[10] See e.g., Enron Power Marketing, Inc. et al., 102 FERC ¶ 61,316 (2003).

[11] 103 FERC ¶61,345 at P 53.

comments or protests to the compliance filing containing the results, explanations, and details of the CAISO's adjustments and re-run in this proceeding. The Cities have misinterpreted the November 14 Order. Upon the filing of the compliance filing containing the results, explanations, and details of the CAISO's adjustments and re-run in this proceeding, anyone wishing to protest any portion of the compliance filing, will have the right to do so. We expect, however, that through our direction to CAISO earlier in this order most, if not all, of the concerns related to the preparatory adjustments and reruns will be addressed by the CAISO either as it proceeds with the process or in a forum to be established by the CAISO. For these reasons, we will deny the Cities' request for rehearing concerning the use of the CAISO's ADR procedures.

Timing of Compliance Filing

20. The CAISO states that the Commission's requirement that it file a compliance filing containing the results, explanations, and details of the CAISO's adjustments and re-run in this proceeding by January 30, 2004 will not be possible. Among other reasons, the CAISO states that uncertainty caused by the Commission's treatment of Issue No. 9 in the November 14 Order has delayed completion of the preparatory re-runs. The CAISO asks that the deadline for submission of the compliance filing be changed to "as soon as practicable."

21. We will grant rehearing on this issue and not require the January 30 filing. However, because we believe that there needs to be transparency in the process so that the CAISO can reach a final baseline expeditiously and without subsequent objections by market participants to the preparatory adjustments and reruns, we will require the CAISO to report to the Commission on a monthly basis beginning on February 10 the status of the preparatory adjustment re-runs. We will also require that the CAISO report to the Commission on a monthly basis the dates that it expects to complete both the preparatory re-runs and settlements and billing process for calculating refunds. We note that on January 16, CAISO posted on its website a description of the re-run mechanics and adjustments. Participants should review these descriptions and alert the CAISO to any problems or discrepancies.[12]

The Commission orders:

(A) Williams's request for clarification is hereby granted, as discussed in the body of this order.

(B) The requests for rehearing are hereby granted in part, and denied in part, as discussed in the body of this order.

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[12] The CAISO should establish a process so that it can address problems or discrepancies in an orderly and transparent fashion.

(C) The CAISO is hereby directed to submit to the Commission on a monthly basis, beginning on February 10, 2004, a report detailing the status of the preparatory adjustment re-runs and the dates that it expects to complete both the preparatory re-runs and the settlements and billing process for calculating refunds, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.