

135 FERC ¶ 61,180
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. OA08-12-005
OA08-113-002

ORDER ON COMPLIANCE FILING

(Issued May 26, 2011)

1. On March 11, 2009 the California Independent System Operator Corporation (CAISO) submitted a compliance filing in response to a Commission Order issued on February 9, 2009.¹ In this order, we conclude that the comparability-of-treatment issue raised by the Commission in the February 2009 Order is no longer present as a result of subsequent tariff revisions accepted by the Commission. Because this sole outstanding issue is now resolved,² and the February 2009 Order held that CAISO's other proposed tariff revisions filed on April 15, 2008 and June 16, 2008, respectively, complied with Order No. 890 and Order No. 890-A, we here find CAISO in full compliance with Order Nos. 890 and 890-A.

Background

2. In Order No. 890, the Commission reformed the *pro forma* open access transmission tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis.

¹ *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,099 (2009) (February 2009 Order).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on reh'g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems, and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights, and reassignments of transmission capacity. Germane to this proceeding is that in Order No. 890, the Commission modified the *pro forma* OATT to indicate that certain ancillary services, including regulation and frequency response may be provided by generating units, as well as other non-generating resources such as demand response, where appropriate.

3. In Order No. 890-A, the Commission granted limited rehearing and clarification of Order No. 890, largely affirming its reforms. Order No. 890-A affirmed the Commission's previous determination that the sale of ancillary services by load resources should be permitted where appropriate on a comparable basis to services provided by generation resources,³ and that a transmission provider may impose appropriate technical criteria comparable to the requirements placed on generation resources. In addition, the Commission found that treating similarly-situated resources on a comparable basis does not necessarily mean that the resources are treated the same.⁴

4. In an order issued on May 16, 2008,⁵ the Commission directed CAISO to address modifications to section 8 of its tariff, necessary to permit participation by non-generators in CAISO's ancillary services market, and to file tariff sheets reflecting such changes. On June 16, 2008, CAISO modified section 8.1 to state that "Bids for Regulation, Spinning Reserve, Non-Spinning Reserve and Voltage Support may be submitted by a Scheduling Coordinator for other non-generation resources that are capable of providing the specific service and that meet applicable Ancillary Service standards and technical requirements" Section 8.1 was further modified to state that the provision of regulation, spinning reserve, non-spinning reserve, and voltage support by other non-generation resources will be subject to the same requirements applicable to other providers of these ancillary services.

5. The Commission, in its February 2009 Order,⁶ concluded that the proposed revisions set forth in CAISO's section 8 were not in full compliance with Order No. 890

³ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 499.

⁴ Order No. 890-A, FERCS Stats. & Regs. ¶ 31,261 at P 216.

⁵ *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,180 (2008) (May 2008 Order).

⁶ The Commission accepted all other revisions proposed by CAISO in compliance with the May 2008 Order and Order No. 890-A. *See* February 2009 Order, 126 FERC ¶ 61,099 at P 14. The Commission also concluded that Beacon Power Corporation's

and the May 2008 Order because the tariff language proposed to subject non-generation resources to “the same” requirements as other providers of regulation, spinning reserve, non-spinning reserve and voltage support services. The Commission explained that pursuant to Order No. 890-A, a transmission provider may impose appropriate technical criteria on non-generating resources comparable to the requirements placed on generation resources, but treating similarly-situated resources on a comparable basis does not necessarily mean that the resources are to be treated identically.⁷ The Commission therefore, directed CAISO to submit a compliance filing to demonstrate how subjecting generation and non-generation resources “to the same requirements applicable to other providers of these Ancillary Services, as set forth in Sections 8.5 through 8.11”⁸ satisfied the comparability requirement.

Compliance Filing

6. On March 11, 2009, CAISO submitted a compliance filing in response to the February 2009 Order asserting that the tariff revisions proposed under section 8.1 of its tariff in its April 15, 2008 and June 16, 2008 compliance filings satisfy the Commission’s comparability requirement set forth in Order No. 890 in connection with the participation of other non-generation resources in the CAISO market.

Notice of Filing and Responsive Pleadings

7. Notice of CAISO’s March 11, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 12,349 (2009), with interventions and protests due on or before April 1, 2009. Beacon filed a protest. CAISO and Beacon also filed respective motions for leave to answer and answers.

Discussion

Procedural Matters

(Beacon) proposed changes to CAISO’s tariff and practices and procedures were beyond the scope of the proceeding. The Commission indicated that the comprehensive stakeholder process undertaken by CAISO was the appropriate vehicle within which to evaluate and develop tariff and business practice modifications to accommodate Beacon’s energy-storage technology. *Id.* P 23.

⁷ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

⁸ Upon implementation of CAISO’s Market Redesign and Tariff Upgrade (MRTU) on April 1, 2009, sections 8.5 through 8.14 referenced in the February 2009 Order were replaced and superseded by sections 8.5 through 8.11. Therefore, the applicable CAISO tariff provisions include sections 8.5 through 8.11.

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), Beacon's timely, unopposed motion to intervene serves to make Beacon a party to this proceeding.

9. 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 therefore reject the answers filed by CAISO and Beacon in this now moot proceeding.

Commission Determination

10. The outstanding issue before the Commission in this proceeding is whether the revisions set forth in section 8.1 of the CAISO tariff submitted in April 15, 2008 and June 16, 2008 are in compliance with Order No. 890 because the tariff language proposed in section 8.1 subjects non-generation resources to "the same" requirements as other providers of regulation, spinning reserve, non-spinning reserve and voltage support services. This concern, raised in our February 2009 Order, has been resolved by the acceptance of further revisions to section 8.1 which became effective on September 10, 2010.⁹ Specifically, on July 12, 2010, CAISO submitted proposed tariff revisions to modify the operating characteristics and technical requirements for existing ancillary services providers to facilitate the participation of non-generator resources in its ancillary services market,¹⁰ and deleted the statement previously proposed in section 8.1 which was the subject of this compliance filing: "[t]he provision of Regulation, Spinning Reserve, Non-Spinning Reserve, and Voltage Support by other non-generator resources is subject to the same requirements applicable to other providers of these Ancillary Service, as set forth in Sections 8.5 through 8.11." We note that as a result of our acceptance of CAISO's July 12, 2010 filing, Beacon's protest in this docket is no longer relevant as the comparability-of-treatment issue that was the subject of this compliance filing has been resolved. Because the revisions set forth in section 8.1 of the tariff have been eliminated, we shall terminate CAISO's compliance filing proceeding, and confirm our finding in the February 2009 Order that the remaining revisions submitted by CAISO in its April 15, 2008 and June 16, 2008 compliance filings are in compliance with Order Nos. 890 and 890-A, as discussed in our February 2009 Order.¹¹ Accordingly, we find CAISO now in full compliance with Order Nos. 890 and 890-A.

The Commission orders:

⁹ See *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,211 (2010).

¹⁰ See CAISO filing July 12, 2010 in Docket No. ER10-1755-000.

¹¹ See February 2009 Order, 126 FERC ¶ 61,099.

CAISO's March 11, 2009 compliance filing is dismissed.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.