

176 FERC ¶ 61,011
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

Nevada Power Company
Sierra Pacific Power Company

Docket No. EL21-74-000

v.

California Independent System Operator Corporation

ORDER DISMISSING COMPLAINT

(Issued July 15, 2021)

1. On May 17, 2021, Nevada Power Company and Sierra Pacific Power Company (collectively, NV Energy) filed a complaint, pursuant to section 206 of the Federal Power Act (FPA),¹ against the California Independent System Operator Corporation (CAISO), in relation to CAISO's proposal in Docket No. ER21-1790-000 to modify its tariff provisions pertaining to the scheduling priorities for exports, load, and wheeling through transactions (Complaint). In this order, we dismiss the Complaint as moot.

I. Background

2. In August 2020, California and most of the Western United States experienced an extreme heat wave that significantly affected demand for and supply of generation and resulted in CAISO instituting rolling electricity outages on August 14 and 15.² Following these events, CAISO, the California Public Utilities Commission (CPUC), and California Energy Commission (CEC) undertook a root cause analysis to determine the factors contributing to the outages.³ The CAISO Department of Market Monitoring (DMM) also

¹ 16 U.S.C. § 824(e).

² See *Cal. Indep. Sys. Operator Corp.*, 175 FERC ¶ 61,245, at P 7 (2021) (Scheduling Priority Order).

³ CAISO, CPUC, and CEC, *Final Root Cause Analysis Mid-August 2020 Extreme Heat Wave*, January 13, 2021, <http://www.caiso.com/Documents/Final-Root-Cause-Analysis-Mid-August-2020-Extreme-Heat-Wave.pdf>.

issued a report on issues that contributed to the August 14 and 15 load shedding.⁴ Both the Final Root Cause Analysis and the DMM Report recommended that CAISO pursue tariff revisions to ensure that market processes appropriately curtail exports not supported by non-resource adequacy capacity in order to ensure that resource adequacy capacity intended to serve internal CAISO load is available during tight system conditions.⁵

3. In response to these findings, CAISO initiated a stakeholder process to examine its export rules and, in doing so, identified additional issues arising from CAISO's treatment of exports and wheeling through transactions, which could result in exports and wheeling through transactions displacing resource adequacy capacity in the CAISO market optimization process.⁶ Notably, CAISO found that its tariff did not specify the scheduling priorities for wheeling through transactions and, therefore, relied entirely on the market software's penalty prices that are specified in the business practice manual. Because wheeling through transactions consist of both an import leg and an export leg, the penalty prices associated with the import side and the export side were additive, thus creating a higher priority for wheeling through transactions relative to load.⁷ That stakeholder process resulted in CAISO's FPA section 205⁸ tariff amendment filing in Docket No. ER21-1790-000.

4. In that filing, as relevant to this complaint, CAISO proposed to create two categories of wheeling through transactions (1) a priority wheeling through, which would have a scheduling priority equal to load, and (2) a non-priority wheeling through, which would have a lower priority than priority wheeling through transactions and load.⁹ On June 25, 2021, the Commission issued the Scheduling Priorities Order, finding that CAISO's proposed revisions are just, reasonable and not unduly discriminatory.¹⁰ The Scheduling

⁴ DMM, *System and Market Conditions, Issues and Performance: August and September 2020*, <http://www.caiso.com/Documents/ReportonMarketConditionsIssuesandPerformanceAugustandSeptember2020-Nov242020.pdf> (DMM Report).

⁵ Final Root Cause Analysis at 70; DMM Report at 4, 67-68.

⁶ CAISO Transmittal, Docket No. ER21-1790-000, at 29 (May 17, 2021) (CAISO Transmittal).

⁷ Scheduling Priorities Order, 175 FERC ¶ 61,245 at P 48.

⁸ 16 U.S.C. § 824(d).

⁹ CAISO Transmittal at 62-70.

¹⁰ Scheduling Priorities Order, 175 FERC ¶ 61,245 at PP 140-42.

Priorities Order also found that CAISO's revisions to establish protections for native load¹¹ are not inconsistent with the Commission's open access policies.¹² Finally, the Commission found that the penalty pricing parameters, which determine curtailment priorities in CAISO's market optimization software, must be in the CAISO tariff, as opposed to the business practice manual, consistent with the Commission's rule of reason policy. Therefore, the Commission directed CAISO to submit a compliance filing to include the penalty prices in its tariff.¹³

II. NV Energy Complaint

5. NV Energy argues that the Complaint is necessary in case the Commission rejects CAISO's section 205 proposal in Docket No. ER21-1790-000 and CAISO nevertheless seeks to modify the penalty pricing parameters in its business practice manual to accomplish a similar result. NV Energy contends that CAISO should not be permitted to change the scheduling priorities of wheeling through transactions, relative to resource adequacy imports, by means of a business practice manual revision rather than through an FPA section 205 tariff amendment filing. NV Energy asserts that the Commission should make clear that the penalty price parameters must be specified in the CAISO tariff.¹⁴

6. NV Energy also contends that, if the Commission agrees that it is appropriate to specify the penalty price parameters in the business practice manual instead of the tariff, it should find that it is unjust, unreasonable, and unduly discriminatory for CAISO to grant resource adequacy imports on non-firm transmission equal priority to wheeling through transactions on firm transmission.¹⁵

¹¹ CAISO uses the term native load to refer to load served by load serving entities in the CAISO balancing authority area.

¹² Scheduling Priorities Order, 175 FERC ¶ 61,245 at PP 143-47.

¹³ *Id.* PP 166-67.

¹⁴ Complaint at 12.

¹⁵ *Id.* at 16.

7. NV Energy offers several theories as to why CAISO's priority wheeling through proposal would contravene Order Nos. 888¹⁶ and 890.¹⁷ First NV Energy argues that the *pro forma* Open Access Transmission Tariff (OATT) requires that designated network resources¹⁸ located on external transmission systems must have firm transmission to the balancing authority area's border in order to reserve firm transmission on the intertie,¹⁹ but CAISO's proposal does not require resource adequacy imports to be supported by firm transmission to the CAISO border.²⁰ Second, NV Energy argues that CAISO's priority wheeling through proposal is inconsistent with open access principles because the proposal requires monthly firm transmission for priority wheeling through transactions, whereas the *pro forma* OATT provides for monthly, weekly, and daily transmission service.²¹ Finally, NV Energy argues that CAISO's proposal will harm regional transmission planning because it will distort the Western energy and transmission markets and permit CAISO load serving entities to retain priority access to resources, even when using non-firm transmission service to the CAISO border.²²

¹⁶ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹⁷ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

¹⁸ NV Energy analogizes the term "designated network resource," which is *pro forma* OATT terminology for resources specifically designated to serve native load, with the general concept of a resource adequacy resource.

¹⁹ Complaint at 15-25 (citing Order No. 890, 118 FERC ¶ 61,119 at P 1521).

²⁰ *Id.* at 16-25.

²¹ *Id.* at 26-30.

²² *Id.* at 30-33.

III. Notice and Responsive Pleadings

8. Notice of the Complaint was published in the *Federal Register*, 86 Fed. Reg. 28094 (May 25, 2021), with interventions and protests due on or before May 28, 2021. On May 19, 2021, CAISO filed a motion requesting an extension of time through June 4, 2021 to respond to the Complaint. The Commission granted CAISO's motion in a notice issued May 26, 2021.

9. Timely motions to intervene were filed by: Calpine Corporation; Pacific Gas and Electric Company (PG&E); Xcel Energy Service Inc.; Balancing Authority of Northern California; Modesto Irrigation District; Imperial Irrigation District; the Cities of Anaheim, Asuza, Banning, Colton, Pasadena, and Riverside, California (Six Cities); California Community Choice Association; Public Power Council; San Diego Gas & Electric Company (SDG&E); the City of Santa Clara, California; Northern California Power Agency; Southern California Edison Company (SoCal Edison); and the California Department of Water Resources State Water Project. Timely motions to intervene and comments were filed by Arizona Utilities;²³ Idaho Power Company (Idaho Power); Powerex Corp. (Powerex); and Joint LSEs.²⁴ CPUC filed a notice of intervention and comments. On June 4, 2021, CAISO filed an answer.

10. On June 17, 2021, NV Energy filed an answer to the CAISO and Joint LSEs answers.

A. CAISO Answer

11. CAISO asserts that its tariff authorizes it to change the penalty prices at issue through a revision to the business practice manual. CAISO contends that maintaining this approach is consistent with the Commission's rule of reason because sections 31.4 and 34.12 of the CAISO tariff establish the relative scheduling priorities of the various transaction types, and changes to the penalty prices in the business practice manual would merely reflect how CAISO implements those priorities in the market optimization. CAISO argues NV Energy must explain how the penalty prices in the business practice

²³ For purposes of this proceeding, Arizona Utilities are Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Tucson Electric Power Company, UNS Electric, Inc., and Arizona Electric Power Cooperative, Inc.

²⁴ For purposes of this proceeding, Joint LSEs are SoCal Edison, PG&E, SDG&E, and Six Cities.

manual contravene the basic scheduling priorities in the tariff, and that NV Energy has failed to do so.²⁵

12. CAISO argues that the Commission has not previously required CAISO to specify the penalty prices in its tariff²⁶ and, therefore, maintains that the scheduling priority pricing parameters are implementation details that are properly included in the business practice manual.²⁷ In addition, CAISO argues that NV Energy fails to meet its burden to demonstrate that any existing tariff provisions, business practices, or proposed business practice manual changes are unjust, unreasonable, unduly discriminatory or preferential.²⁸ CAISO contends that most of NV Energy's arguments represent a legally impermissible attack on the Commission's approval of CAISO's resource adequacy construct.²⁹ Lastly, CAISO asserts that, even if NV Energy could demonstrate that the tariff and proposed business practice manual changes are unjust and unreasonable, it has not demonstrated that granting wheeling through transactions supported by firm transmission service a scheduling priority higher than resource adequacy imports on non-firm transmission service is just and reasonable, and that the outcome sought by NV Energy is inconsistent with the native load protections embodied in Order Nos. 888 and 890.³⁰

B. Comments

13. Arizona Utilities, Idaho Power, and Powerex support the Complaint. According to Arizona Utilities, Idaho Power, and Powerex, the penalty price modifications cannot be made through a business practice manual revision because such revisions fundamentally alter the terms of transmission service to and across the CAISO system and therefore require prior Commission review under the rule of reason.³¹

²⁵ CAISO Answer at 15-17.

²⁶ Letter order dated January 8, 2019, Docket No. ER18-2398-000.

²⁷ CAISO Answer at 14-21.

²⁸ *Id.* at 21-38.

²⁹ *Id.* at 38-43.

³⁰ *Id.* at 43-48.

³¹ Arizona Utilities Comments at 9-15; Idaho Power Comments at 3-4; Powerex Comments at 3-13.

14. Arizona Utilities contend that CAISO's proposed business practice manual changes are unjust, unreasonable, and unduly discriminatory by offering preferential treatment of non-firm transactions serving CAISO load that places such transactions on the same priority level as firm transactions serving non-CAISO load.³² Idaho Power argues that the tariff revisions proposed by CAISO in Docket No. ER21-1790-000 are not just and reasonable because they violate open access principles and significantly depart from the requirements and practices of other transmission providers in the West.³³

15. CPUC and Joint LSEs oppose the Complaint. CPUC asserts that the Commission should dismiss the Complaint because (1) the Complaint is contingent upon the Commission's disposition of a proposed tariff change currently under review and therefore is not ripe for consideration; and (2) NV Energy's claims that the proposed business practice manual revisions are inconsistent with the CAISO tariff is false.³⁴ CPUC and Joint LSEs also contend that NV Energy has not met its burden under FPA section 206 to demonstrate with substantial evidence that the current tariff is unjust, unreasonable, or unduly discriminatory or preferential.³⁵

16. Joint LSEs argue that the firmness of transmission on external systems is irrelevant to the implementation of existing and proposed penalty prices, regardless of the duration of the firm transmission service, and should not dictate the firmness of service on the CAISO system.³⁶ Finally, Joint LSEs argue that, because CAISO has the right to establish native load priorities on its own transmission system, the proposed business practice manual revisions are not unduly discriminatory.³⁷

³² Arizona Utilities Comments at 15-20.

³³ Idaho Power Comments at 2.

³⁴ CPUC Comments at 2.

³⁵ *Id.* at 8-11; Joint LSEs Comments at 5-8.

³⁶ Joint LSEs Comments at 5-7, 19-20.

³⁷ *Id.* at 7-19.

IV. Discussion**A. Procedural Matters**

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), the timely, unopposed motions to intervene and notice of intervention serve to make the entities that filed them parties to this proceeding.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2020), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept NV Energy's answer and will, therefore, reject it.

B. Substantive Matters

19. We dismiss the Complaint as moot. As NV Energy states, the relief requested in the Complaint is premised upon the Commission's potential rejection of CAISO's proposal in Docket No. ER21-1790-000.³⁸ As noted above,³⁹ in the Scheduling Priorities Order, the Commission accepted CAISO's proposal and directed CAISO to submit a compliance filing to include the penalty price parameters in its tariff. Accordingly, we find that we need not address the merits of the Complaint and therefore dismiss it.

The Commission orders:

NV Energy's Complaint is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

³⁸ Complaint at 12.

³⁹ *See supra* P 4.