

151 FERC ¶ 61,247
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

California Independent System Operator Corporation Docket Nos. ER15-861-001
EL15-53-001

ORDER GRANTING MOTION FOR RELIEF

(Issued June 19, 2015)

1. In this order, we grant the California Independent System Operator Corporation's (CAISO) request in its April 15, 2015 motion (April 15 Motion) seeking: (1) to revise the refund effective date established in the March 16, 2015 order in this proceeding¹ to the latest refund effective date permitted under section 206(b) of the Federal Power Act (FPA); and (2) to further extend the waiver granted in the December 1, 2014 order in Docket No. ER15-402-000.² Specifically, we grant CAISO's request for a limited extension of the waiver of the pricing parameters in sections 27.4.3.2 and 27.4.3.4 of CAISO's tariff, effective June 23, 2015, and ending on the date of implementation of the directives in a Commission order addressing CAISO's April 23, 2015 comments and proposal (April 23 Proposal) in this proceeding. We also dismiss CAISO's alternative request for rehearing as unnecessary.

I. Background

2. On November 13, 2014, CAISO filed in Docket No. ER15-402-000 a petition (Initial Waiver Petition) seeking limited waiver of the pricing parameters in sections 27.4.3.2 and 27.4.3.4 of its tariff for the 90-day period from November 14, 2014 to February 12, 2015. In the Initial Waiver Petition, CAISO explained that transitional

¹ *Cal. Indep. Sys. Operator Corp.*, 150 FERC ¶ 61,191 (2015) (March 16 Order).

² *Cal. Indep. Sys. Operator Corp.*, 149 FERC ¶ 61,194 (2014) (December 1 Order).

conditions in the Energy Imbalance Market (EIM)³ caused the transmission and system energy-balance constraints described in these tariff sections to bind more frequently than expected since the EIM began operation on November 1, 2014, resulting in high prices that were not always indicative of actual physical conditions on the system.⁴ CAISO asserted that these high prices reflected challenges in providing timely and complete data to ensure system visibility under the new procedures, exacerbated by limitations on the resources available to PacifiCorp for use in the EIM and several forced outages of large EIM participating resources.⁵

3. In the December 1 Order, the Commission granted the requested limited waiver for the period from November 14, 2014 through February 12, 2015⁶ and directed CAISO to file informational reports at 30-day intervals during the waiver period providing supporting data demonstrating progress towards identifying and eliminating the problems giving rise to the Initial Waiver Petition.⁷

4. On January 15, 2015, CAISO filed in Docket No. ER15-861-000 proposed tariff revisions (January 15 Filing) intended to address the imbalance energy price spikes in EIM BAAs that would apply the waiver of the pricing parameters to all new entities joining the EIM for a 12-month period and would also set the flexible ramping constraint relaxation parameter to a range between \$0 and \$0.01 (instead of \$60) for each new

³ The EIM enables entities with balancing authority areas (BAA) outside of CAISO to voluntarily take part in the imbalance energy portion of the CAISO locational marginal price-based real-time market alongside participants from within the CAISO BAA. *Cal. Indep. Sys. Operator Corp.*, 149 FERC ¶ 61,231, *order on rehearing, clarification, and compliance*, 149 FERC ¶ 61,058 (2014) (conditionally accepting proposed tariff revisions to implement the EIM).

⁴ Initial Waiver Petition at 3, 11.

⁵ *Id.* at 8-11.

⁶ On December 31, 2014, CAISO filed an additional waiver petition, which seeks to apply the same relief granted in the December 1 Order to the period from November 1, 2014 through November 13, 2014. This petition is currently pending in Docket No. ER15-817-000.

⁷ December 1 Order, 149 FERC ¶ 61,194 at PP 22-23, 25-26.

entity's BAA during such period.⁸ CAISO proposed that the new provisions would also apply to the PacifiCorp BAAs for the remainder of their first 12 months of participation in the EIM. The Commission subsequently issued the March 16 Order rejecting CAISO's proposed tariff revisions, extending the waiver of EIM pricing parameters granted in the December 1 Order,⁹ and instituting an investigation pursuant to section 206 of the FPA¹⁰ into the justness and reasonableness of the EIM pricing provisions of CAISO's tariff.¹¹ In the March 16 Order, the Commission established a refund effective date of 90 days from the date of publication of notice in the *Federal Register* of the initiation of the FPA section 206 proceeding, and extended the existing waiver until the refund effective date.¹² Notice of the initiation of the FPA section 206 proceeding was published in the *Federal Register* on March 24, 2015, establishing the refund effective date as June 22, 2015.

5. As directed in the March 16 Order, Commission staff convened a technical conference in Docket Nos. ER15-861-000 and EL15-53-000 on April 9, 2015. On April 23, 2015, CAISO filed post-technical conference comments (April 23 Proposal) responding to questions posed by Commission staff at the technical conference, and describing a proposed market enhancement to address the imbalance energy price spikes. Intervenors submitted initial comments on CAISO's April 23 Proposal on May 7, 2015, and reply comments were filed on May 21, 2015.

II. Motion for Relief

6. In the April 15 Motion, CAISO seeks relief pending a final order in the FPA section 206 proceeding instituted in the March 16 Order. Specifically, CAISO requests that the Commission revise the refund effective date established in the March 16 Order

⁸ Tariff Amendment to Implement Transition Period Pricing for Energy Imbalance Market, Request for Expedited Consideration and Waiver of Notice Period, Docket No. ER15-861-000 (filed Jan. 15, 2015).

⁹ The Commission issued an earlier order in the proceeding on February 12, 2015, extending the waiver granted in the December 1 Order, effective February 13, 2015 and subject to further order in that proceeding. *Cal. Indep. Sys. Operator Corp.*, 150 FERC ¶ 61,086 (2015) (February 12 Order).

¹⁰ 16 U.S.C. § 824e (2012).

¹¹ March 16 Order, 150 FERC ¶ 61,191 (2015).

¹² *Id.* PP 33, 36.

from June 22, 2015 to August 24, 2015, and extend the existing waiver of EIM pricing parameters until the date of CAISO's compliance with an order resolving the FPA section 206 proceeding in Docket No. EL15-53-000.¹³

7. With regard to the refund effective date, CAISO states that it and PacifiCorp have already taken remedial actions to address the imbalance energy price spikes, including enhancing market systems visibility for PacifiCorp, training, and adopting various operational and process improvements.¹⁴ CAISO asserts, however, that the EIM will remain susceptible to imbalance energy price spikes in PacifiCorp's BAAs until an automated process can be implemented to provide the market with timely and accurate information regarding PacifiCorp's management of its other available capacity, including regulation and reserves. CAISO explains that it will not be able to complete the tariff and software changes, training, and testing necessary to implement this automated process by the current refund effective date, June 22, 2015, and therefore may be required to recalculate prices and resettle the market going back to this date.¹⁵ CAISO further asserts that any market rules that are ultimately adopted would be difficult to implement on a retroactive basis, "because they entail the need to inform specific market runs before they are executed and the information will impact the market solution," and therefore the market runs cannot be recreated after-the-fact as they would have been originally executed with the modified inputs.¹⁶ CAISO argues that re-running the market to incorporate this information after-the-fact would not only be problematic, but would also require diverting its staff and technology from the actual operation of the market to the re-run process. Finally, CAISO points out that additional comments from intervenors on CAISO's proposed solutions may further influence the Commission's final determination in this proceeding and ultimately result in a solution that is not entirely consistent with the solution CAISO is contemplating at this time.¹⁷ CAISO asserts that, in light of these circumstances, the Commission should provide the maximum five-month period permitted under section 206 of the FPA before establishing a refund effective date.

8. With regard to its request for an extension of the existing waiver of EIM pricing parameters, CAISO submits that this relief is necessary to protect ratepayers from unjust

¹³ April 15 Motion at 1.

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 5-6.

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 7.

and unreasonable prices pending the implementation of remedial actions that will avoid such price spikes.¹⁸ According to CAISO, while it and PacifiCorp continue to make progress in reducing the imbalance energy price spikes, a number of price spikes are still likely to recur until the implementation of the automated process, because the current remedial actions are based on manual procedures which are susceptible to human error and challenges as system conditions change.¹⁹ CAISO therefore requests that the Commission protect ratepayers by extending the waiver until CAISO's actual implementation of the Commission's order resolving the FPA section 206 proceeding in Docket No. EL15-53-000.²⁰ CAISO commits to making every effort to implement these solutions as soon as possible, but notes that certain changes may not be able to be fully implemented until a date beyond August 24, 2015.²¹

9. Should the Commission not grant the relief requested in the April 15 Motion, CAISO seeks rehearing of the March 16 Order with respect to the refund effective date and the length of the waiver extension.²² Specifically, CAISO asserts that the Commission erred by establishing a refund effective date that provides insufficient time for implementation of remedial actions, and by establishing a date for determination of the existing waiver that will expose ratepayers to unjust and unreasonable prices during the time required for CAISO's implementation of remedial actions. CAISO claims that these circumstances, if not otherwise corrected, are sufficient to require the Commission to grant rehearing granting the requested relief.

¹⁸ *Id.* at 1, 7-8.

¹⁹ *Id.* at 7.

²⁰ In footnote 2 of the April 15 Filing, CAISO states that, in conjunction with waiving the pricing parameters in section 27.4.3.2 and the second sentence of section 27.4.3.4 of its tariff and instead using the applicable 15-minute or real-time dispatch locational marginal prices, "it was also necessary to adjust the penalty price for the flexible ramping constraint parameter for the EIM [BAA] in order to allow the market software to discover the marginal energy bid price that would set the locational marginal price, to avoid otherwise setting the price at the constraints parameter." *Id.* at 2-3 n.2.

²¹ *Id.* at 8.

²² *Id.* at 1, 9.

III. Responsive Pleadings

10. PacifiCorp, Pacific Gas and Electric Company (PG&E), and Powerex Corporation (Powerex) each filed answers to CAISO's April 15 Motion. On May 13, 2015, CAISO filed a motion for leave to file answer and answer to Powerex's answer.

11. PacifiCorp supports CAISO's request to revise the refund effective date established in the March 16 Order to August 24, 2015. PacifiCorp agrees with CAISO's assessment that the market is still susceptible to price excursions until the automated feature can be put into place.²³ Accordingly, PacifiCorp requests that the Commission allow for the maximum five-month period permitted under section 206 of the FPA before establishing a refund effective date.²⁴ PacifiCorp also supports protecting customers by extending the existing waiver of sections 27.4.3.2 and 27.4.3.4 of CAISO's tariff to the date of CAISO's compliance with an order resolving the proceeding in Docket No. EL15-53-000.

12. PG&E supports CAISO's motion to extend the current waiver as "a common sense measure to provide the market with price certainty" while permitting CAISO and its stakeholders to focus on implementing a permanent, workable solution to the imbalance energy price spikes.²⁵ PG&E states that the technical conference yielded no evidence suggesting that the imbalance energy price spikes following PacifiCorp's implementation in the EIM were the result of physical shortages in PacifiCorp's BAAs.²⁶

13. Powerex asserts that footnote 2 of the April 15 Motion inappropriately expands the scope of the existing waiver by indicating that CAISO also intends to waive or modify the pricing requirements in section 27.10 of its tariff.²⁷ According to Powerex, footnote 2 makes clear that CAISO has been violating its tariff by failing to apply the \$60 pricing parameter for relaxation of the flexible ramping constraint in tariff section 27.10, and intends to keep doing so if the Commission extends the existing waiver.²⁸ Powerex states

²³ PacifiCorp Answer at 1-2.

²⁴ *Id.* at 2.

²⁵ PG&E Answer at 1-2.

²⁶ *Id.* at 1.

²⁷ Powerex Answer at 2.

²⁸ *Id.* at 2-3.

that CAISO has never been granted authority to waive or adjust the pricing parameter contained in section 27.10 of its tariff, or to take any actions CAISO deems necessary to implement a “price discovery” mechanism, and notes that the grant of waiver in the December 1 Order was confined to sections 27.4.3.2 and 27.4.3.4 of CAISO’s tariff and that the Commission rejected CAISO’s request to adjust the pricing parameter in section 27.10 in the March 16 Order.²⁹ Powerex asserts that CAISO’s admission that it is unilaterally setting the flexible ramping constraint relaxation parameter to \$0 is an affront to the Commission’s authority under the FPA and inconsistent with the Filed Rate Doctrine.³⁰ Powerex states that if CAISO determined that it needed waiver of section 27.10 of its tariff to effectively implement the waiver of sections 27.4.3.2 and 27.4.3.4 following the December 1 Order, it should have immediately submitted an emergency petition for waiver seeking expedited action.³¹ Powerex asserts that, to the extent that CAISO has taken unilateral action with respect to section 27.10 of its tariff without notifying its stakeholders or the Commission, it has also repeatedly failed to disclose this action to the Commission in its Second Waiver Petition and January 15 Filing.³² Powerex concludes that the Commission “should not countenance CAISO’s unlawful actions or its back-door attempt to expand the scope of the waiver through the current motion.”³³

14. Should the Commission grant CAISO’s request to extend the current waiver, Powerex requests that the Commission confirm that CAISO must comply with all terms of its tariff absent an explicit waiver granted by the Commission.³⁴

15. In its response, CAISO requests that the Commission reject Powerex’s answer as an inappropriate attempt to expand the Commission’s investigation in this proceeding without filing its own complaint under section 206 of the FPA.³⁵ CAISO asserts that setting the flexible ramping constraint to \$0, or a value close to zero, for the PacifiCorp

²⁹ *Id.* at 3-4.

³⁰ *Id.* at 3.

³¹ *Id.* at 5.

³² *Id.* at 5-6.

³³ *Id.* at 6.

³⁴ *Id.*

³⁵ CAISO Answer at 2-3.

East and PacifiCorp West BAAs is necessary to implement the existing waiver, because otherwise the pricing run will establish prices based on the value of the flexible ramping constraint parameter and not the last economic bid.³⁶ CAISO states that it did not believe that seeking an explicit waiver of its tariff was necessary to take this action because the \$60 flexible ramping constraint pricing parameter in section 27.10 of its tariff did not become effective until January 15, 2015, which was after the waiver went into effect on November 14, 2014.³⁷ CAISO likewise claims that it did not interpret the March 16 Order as directing a change in the manner in which it had been implementing the waiver since its approval. Finally, CAISO notes, as mentioned at the April 9, 2015 technical conference, that it has recently determined that the flexible ramping constraint was set to \$0 in all intervals for the individual PacifiCorp BAAs, and not only those intervals in which the power balance constraint was relaxed in the scheduling run.³⁸ CAISO reports that it is working with its Department of Market Monitoring to determine the impact of this error, and commits to taking all necessary steps to remedy this issue.

IV. Discussion

A. Procedural Matters

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answer submitted by CAISO because it has provided information that assisted us in our decision-making process.

B. Commission Determination

17. We grant CAISO's request to extend the refund effective date in this proceeding to August 24, 2015, the latest refund effective date permitted under section 206(b) of the FPA.³⁹ Based on CAISO's representations in the April 15 Motion, we expect that

³⁶ *Id.* at 4. CAISO asserts this information was previously noted in the January 23, 2015 report filed by the CAISO Department of Market Monitoring in Docket No. ER15-402-000. *Id.* at 4-5.

³⁷ *Id.* at 5.

³⁸ *Id.* at 5-6.

³⁹ 16 U.S.C. § 824e (b) (2012). This order does not address the merits of the April 23 Proposal and should not be construed to accept any proposal therein. The Commission will issue a subsequent order in Docket Nos. ER15-861-000 and EL15-53-000 addressing the April 23 Proposal as well as the comments filed by other parties.

CAISO will be able to implement its proposed solution concurrently with, or shortly after, the refund effective date. In addition, as discussed below, we grant an extension of the existing waiver of the pricing parameters in sections 27.4.3.4 and 27.4.3.2 of CAISO's tariff, which will provide protection to customers prior to the refund effective date.⁴⁰

18. We also grant CAISO's request for limited extension of the waiver previously granted in the December 1 Order for good cause shown, and direct CAISO to continue to waive the applicability of section 27.4.3.2 and the second sentence of section 27.4.3.4 of its tariff for constraints that are within PacifiCorp's BAAs or affect EIM transfers between PacifiCorp's BAAs, effective June 23, 2015, until the implementation of a solution directed in a subsequent Commission order in this proceeding. The Commission has previously granted one-time waivers of tariff provisions in situations where, as relevant here: (1) the waiver is of limited scope; (2) a concrete problem needed to be remedied; and (3) the waiver did not have undesirable consequences, such as harming third parties.⁴¹ We find that CAISO's request in the April 15 Motion for further extension of the existing waiver meets these criteria. Specifically, we continue to find, for the same reasons enumerated in the February 12 and March 16 Orders, that CAISO's requested waiver is of limited scope, addresses a concrete problem, and will not have undesirable consequences, such as harming third parties.⁴²

19. First, the requested waiver is of limited scope, as it pertains only to the PacifiCorp BAAs and will apply only for the period of time between the date of this order and the implementation of solutions directed by the Commission in a subsequent order in this proceeding. Second, we find that a limited extension of the existing waiver will address a concrete problem. The informational reports filed in Docket No. ER15-402-000 and the information presented at the April 9, 2015 technical conference demonstrate that, while the remedial actions CAISO and PacifiCorp are currently implementing have reduced the occurrence of imbalance energy price spikes, the circumstances underlying the price spikes have not been fully resolved. CAISO asserts that these issues will not be fully resolved until it can adopt a process providing the market with timely and accurate

⁴⁰ Our action here is consistent with the March 16 Order, which extended waiver of the relevant tariff provisions until the refund effective date established therein, i.e., June 22, 2015.

⁴¹ See, e.g., December 1 Order, 149 FERC ¶ 61,194 at PP 22-23; *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,078, at P 38 (2014); *Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,218, at P 22 (2014).

⁴² February 12 Order, 150 FERC ¶ 61,086 at PP 13-14.

visibility into the capacity available to prevent infeasibilities. We find that transmission customers in PacifiCorp's BAAs could be at risk of experiencing similar anomalous pricing were the waiver to expire prior to implementation of long-term solutions. CAISO has committed to make every effort to implement such solutions as quickly as possible, and has suggested that it might be able to implement its proposed solution as soon as August 2015.⁴³ We accept this commitment, and expect CAISO to implement any directives in a subsequent Commission order in this proceeding with all due haste, consistent with any timelines established in such subsequent order. Accordingly, we find that extending the waiver for this limited period will protect customers pending the implementation of a long-term solution pursuant to the FPA section 206 proceeding established in the March 16 Order.⁴⁴ Finally, we conclude that extending the waiver will not lead to undesirable consequences. We note that while Powerex raises concerns regarding the manner in which CAISO has applied—and, according to Powerex, expanded—the waiver, no party objects to a further limited extension of the existing waiver, as granted in the December 1 Order.

20. With respect to CAISO's statement in footnote 2 of the April 15 Motion that, in implementing the waiver of the pricing parameters granted in the December 1 Order it was also "necessary to adjust the penalty price for the flexible ramping constraint parameter for the EIM [BAA]," we acknowledge CAISO's assertion that setting the flexible ramping constraint to \$0, or a value close to zero, for the PacifiCorp East and PacifiCorp West BAAs appears to be a necessary action to effectuate the existing waiver granted for the EIM pricing parameters. Nonetheless, we clarify that CAISO has not requested, and the Commission has not granted, a waiver with respect to the flexible ramping constraint relaxation parameter in section 27.10 of CAISO's tariff.⁴⁵

⁴³ April 15 Motion at 8.

⁴⁴ We note that the waiver granted in the December 1 Order, and extended in the current proceeding, applies only "for constraints that are within PacifiCorp's BAAs or affect EIM transfers between PacifiCorp's BAAs." December 1 Order, 149 FERC ¶ 61,194 at P 22. We expect CAISO to have implemented its long-term solution, and the waiver to no longer be in effect, at the time that NV Energy joins the EIM. If, however, the waiver is still in place with respect to PacifiCorp's BAAs at the time that NV Energy commences financially binding participation in the EIM, that waiver would not apply to the pricing parameters with respect to constraints in or affecting the NV Energy BAA.

⁴⁵ In the January 15 Filing, CAISO proposed to revise its tariff to reduce the flexible ramping constraint relaxation parameter in section 27.10 for the EIM, but did not request waiver of this tariff section should its proposed revisions not be accepted. Accordingly, the Commission limited the grant of an extension in the March 16 Order to

(continued ...)

Accordingly, to the extent that CAISO intends to continue setting the flexible ramping constraint to \$0, or a value close to zero, when CAISO waives the applicability of section 27.4.3.2 and the second sentence of section 27.4.3.4 of its tariff for constraints that are within PacifiCorp's BAAs or affect EIM transfers between PacifiCorp's BAAs, we direct CAISO to file, no later than 10 days from the date of this order, a request to waive the penalty price for the flexible ramping constraint relaxation parameter in section 27.10 of its tariff on a prospective basis.⁴⁶

21. Finally, because we are granting CAISO's request to revise the refund effective date, as well as its request to extend the limited waiver of sections 27.4.3.2 and 27.4.3.4 of its tariff, as discussed herein, we find that CAISO's alternative request for rehearing is moot and therefore dismiss it.

The Commission orders:

(A) The refund effective date is hereby revised to August 24, 2015, as discussed in the body of this order.

(B) CAISO's request for an extension of the limited waiver of sections 27.4.3.2 and 27.4.3.4 of its tariff is hereby granted, as discussed in the body of this order.

(C) As necessary, CAISO is hereby directed to file a request for waiver within 10 days of the date of this order, as discussed in the body of this order.

“[t]he same waiver of pricing parameters in these tariff sections granted in the December 1 Order,” and further specified that “we do not grant CAISO's request to revise its tariff to set the flexible ramping constraint relaxation parameter specified in tariff section 27.10 between \$0 and \$0.01.” March 16 Order, 150 FERC ¶ 61,191 at P 36 n.87.

⁴⁶ With respect to the prior period, we note that the Commission has broad discretion with respect to remedies and has, as a general matter, declined to require resettlement of the market, in circumstances like this one, when doing so would create uncertainty and undermine confidence in the markets, and when customers cannot revisit their past economic decisions. *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,184, at PP 128-129 (2010); *N.Y. Indep. Sys. Operator, Inc.*, 92 FERC ¶ 61,073, at 61,307 (2000), *reh'g denied*, 97 FERC ¶ 61,154 (2001); *Towns of Concord v. FERC*, 955 F.2d 67, 76 (D.C. Cir. 1992).

(D) CAISO's alternative request for rehearing is dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.