

As explained below, the Commission should accept the April 8 Compliance Filing without modification.

I. Answer

A. The ISO's Revisions to the Definition of a Market Disruption Fully Comply with the Directives Contained in the March 9 Order.

The April 8 Compliance Filing included revisions to the CAISO Tariff in response to Commission directives in the March 9 Order related to Market Disruptions. SWP states that the revised definition of a Market Disruption contained in the April 8 Compliance Filing “provides greater clarity” than the original definition contained in the May 19, 2008 Compliance Filing but that the revised definition should be changed further as proposed by SWP.⁴ There is no reason for the Commission to require the ISO to make further changes to the definition. In the March 9 Order, the only change to the definition that the Commission directed the ISO to make was to “provide a definition of market disruption which is more narrowly tailored to reflect the types of market disruptions specifically outlined in sections 7.6 and 7.7 of the MRTU tariff [*i.e.*, the CAISO Tariff].”⁵ In compliance with this directive, the ISO revised the definition of a Market Disruption in the April 8 Compliance Filing to mean “[a]n action or event that causes a failure of a CAISO

213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to make an answer to WPTF's protest. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in these proceedings, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case. *See, e.g., Entergy Services, Inc.*, 116 FERC ¶ 61,286, at P 6 (2006); *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,124, at P 11 (2006); *High Island Offshore System, L.L.C.*, 113 FERC ¶ 61,202, at P 8 (2005).

⁴ SWP at 1-2.

⁵ March 9 Order at P 25. MRTU is short for Market Redesign and Technology Upgrade, which is the market design under which the ISO has operated since March 31, 2009. In the March 9 Order, the Commission conditionally accepted the tariff revisions contained in the May 19, 2008 Compliance Filing, subject to modification, effective upon the date of MRTU implementation. *Id.* at Ordering Paragraph (A).

Market, related to system operation issues or System Emergencies referred to in Sections 7.6 and 7.7, respectively.”⁶ This revised definition is tailored to contain the express requirement that the definition of Market Disruption must reflect the types of Market Disruptions specifically related to the areas of ISO activity outlined in Sections 7.6 and 7.7. As a result, the revised definition fully satisfies the Commission directive quoted above and thus does not need to be further modified as SWP suggests.

B. The Revisions to Section 7.7.15 Regarding the Circumstances in Which the ISO May Remove Bids Are Consistent With the Express Language of the March 9 Order.

WPTF argues that in the April 8 Compliance Filing the ISO inappropriately expanded its tariff authority beyond the scope of the directives in the March 9 Order by “propos[ing] to modify section 7.7.15 such that it allows the removal of bids and schedules not only under the case where the bids have resulted in a Market Disruption but also to remove bids and schedules to ‘prevent a Market Disruption’ or to ‘minimize the extent of a Market Disruption.’”⁷ The Commission should reject WPTF’s argument because it is inconsistent with the express language of the March 9 Order.

The ISO’s removal of Bids pursuant to Section 7.7.15 in the event of Market Disruption, to prevent a Market Disruption, or to minimize the extent of a Market Disruption is fully within the scope of the authorization the Commission granted in the March 9 Order. In the May 19, 2008 Compliance Filing, the ISO had requested

⁶ April 8 Compliance Filing, Attachment B, definition of Market Disruption.

⁷ WPTF at 3. The rest of WPTF’s protest elaborates upon the above-quoted argument.

authorization to remove Bids in any of those circumstances.⁸ The Commission conditionally accepted the May 19, 2008 Compliance Filing in the March 9 Order, subject to certain conditions, but those conditions *did not* include modifications that would preclude the ISO from removing Bids in any of the circumstances listed above. To the contrary, one of the modifications the Commission required was that “[t]he CAISO should identify the specific market disruption that caused the CAISO to take action, *or the market disruption that was successfully prevented or minimized by the CAISO as a result of taking action pursuant to its authority under [ISO Tariff] section 7.7.15.*”⁹ Thus, the Commission specifically authorized the ISO to remove Bids pursuant to Section 7.7.15 in the event of a Market Disruption, to prevent a Market Disruption, or to minimize the extent of a Market Disruption.¹⁰

By asserting that the ISO should not be permitted to remove Bids pursuant to Section 7.7.15 in order to prevent a Market Disruption or to minimize the extent of a Market Disruption, WPTF is essentially arguing that the March 9 Order itself is in error. Therefore, although not styled as such, WPTF’s argument constitutes a request for rehearing of the March 9 Order. Court and Commission precedent

⁸ May 19, 2008 Compliance Filing, Attachment B, Section 7.7.15 (stating that “[t]he ISO may take one or more of the following actions in the event of a Market Disruption, to prevent a Market Disruption, or minimize the extent of a Market Disruption . . . (b) remove Bids and Self-Schedules that have resulted in a Market Disruption previously”). In the April 8 Compliance Filing, the ISO proposed minor changes to this tariff language but did not propose to change its meaning substantively. See April 8 Compliance Filing, Attachment B, Section 7.7.15.1.

⁹ March 9 Order at P 29 n.29 (emphasis added).

¹⁰ WPTF is also incorrect in asserting that the provisions in Section 7.7.15 permitting the ISO to remove Bids to prevent a Market Disruption or minimize the extent of a Market Disruption render Section 7.7.15 internally inconsistent. See WPTF at 5. As the ISO explained in the answer (at 6-8) that it filed on June 24, 2008 in response to comments and protests regarding the May 19, 2008 Compliance Filing, Section 7.7.15 was designed in part to permit the ISO to remove Bids that have resulted in a Market Disruption previously in order to prevent or minimize the extent of a new Market Disruption. The Commission considered this ISO answer in authorizing the ISO to remove Bids pursuant to Section 7.7.15 in order to prevent a Market Disruption or to minimize the extent of a Market Disruption. See March 9 Order at P 10 (accepting the ISO’s answer).

clearly state that the Commission is barred by Section 313(a) of the Federal Power Act, 16 U.S.C. §8251(a), from considering any request for rehearing that is submitted more than 30 days after the issuance of the order that the request for rehearing concerns.¹¹ Also, the Commission has stated that it will reject protests of a compliance filing that constitute untimely requests for rehearing of, and thus collateral attacks on, the underlying order.¹² In the instant proceedings, WPTF did not submit a request for rehearing within the required 30 days of the issuance of the March 9 Order. Instead, WPTF has filed a protest that constitutes an untimely request for rehearing. Therefore, the Commission should reject the protest as a collateral attack on the March 9 Order.

The ISO also notes that WPTF's assertion that Section 7.7.15 as modified allows the ISO to remove "bids and schedules" is an erroneous overstatement of the authority specified in revised Section 7.7.15. While it is true that Section 7.7.15 allows the ISO to remove all types of Bids, Section 7.7.15 does not allow the ISO to remove all types of Schedules. The only type of Schedule that Section 7.7.15 allows the ISO to remove is a Self-Schedule, which is defined as being a type of

¹¹ See, e.g., *Cities of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985); *Boston Gas Co. v. FERC*, 575 F.2d 975, 977-98, 979 (1st Cir. 1978); *Alabama Electric Cooperative, Inc.*, 116 FERC ¶ 61,115 (2006).

¹² *California Independent System Operator Corp.*, 119 FERC ¶ 61,240, at P 13 (2007) ("Moreover, these protests should have been raised on rehearing and/or clarification of the January 22 Order, and therefore we reject their requests to alter the CAISO's compliance filing as untimely and a collateral attack on the Commission's January 22 Order."); *PJM Interconnection, LLC*, 104 FERC ¶ 61,020, at P 13 n.8 (2003) ("First Energy's protest on this issue is a collateral attack on the November 1 Order. First Energy should have sought rehearing of the November 1 Order if it believed the compliance obligation was incorrect, rather than raising it in a protest to the compliance filing.").

Bid.¹³ Nowhere in revised Section 7.7.15 does the ISO propose to remove any type of Schedule other than a Self-Schedule.¹⁴

C. New Section 7.7.15.2.1 Sets Forth Objective Measures for Determining Which Types of Bids the ISO May Remove, as Required by the March 9 Order.

In the March 9 Order, the Commission directed the ISO to provide objective measures for the removal of otherwise MRTU-compliant Bids.¹⁵ WPTF argues that the April 8 Compliance Filing would allow the ISO to remove Bids (or parts of Bids) pursuant to Section 7.7.15 without any clear and objective methodology for determining which Bids are removed in order to prevent a Market Disruption or minimize the extent of a Market Disruption.¹⁶ In making this argument, WPTF ignores the tariff language the ISO proposes in Section 7.7.15.2.1, entitled “Objective Measures,” which states that the ISO may remove Bids “that are not feasible based on the misalignment of resource-specific conditions and physical constraints represented in the Master File, current outage information, and the Bid itself.” Section 7.7.15.2.1 also provides three specific examples of such infeasible Bids: (1) Bids that pass through the automated Bid validation rules but not are invalid for other reasons not detectable by the automated Bid validation, including derates reflected in SLIC [Scheduling and Logging for the California ISO]; (2) Bids

¹³ CAISO Tariff, Appendix A, definitions of Bid and of Self-Schedule. The ISO tariff defines Schedule as “[a] Day-Ahead Schedule, a HASP [Hour-Ahead Scheduling Process] Advisory Schedule, or a HASP Intertie Schedule.” These are schedules issued by the ISO after market clearing of the Integrated Forward Market (“IFM”) or HASP and are not the initially submitted Bids. The ISO is not in these proceedings proposing to remove any cleared schedules.

¹⁴ See, e.g., April 8 Compliance Filing, Attachment B, Section 7.7.15.2.1 (stating that the ISO may “remove Bids, *which as defined include Self-Schedules*, from the relevant CAISO Market”) (emphasis added).

¹⁵ March 9 Order at P 26.

¹⁶ WPTF at 5-6, 7.

that are identified prior to the end of the CAISO Market run as causing a feasibility issue that prevents the CAISO Market run from clearing in the time allotted for the run, including ramp rates in SLIC that result in infeasible generation Bids; and (3) multiple Bids that do not pose a problem for processing through the CAISO Market when considered individually, but may when submitted in combination with other Bids become infeasible and present an impediment to the successful completion of the CAISO Market. These tariff provisions fully comply with the Commission's directives in the March 9 Order that the ISO must include in its tariff "objective measures for removal of otherwise MRTU-compliant bids and self-schedule outcomes, as well as examples of when such bids and self-schedules might cause market disruptions."¹⁷ WPTF fails to support its argument that Section 7.7.15 does not contain a clear and objective methodology for the removal of Bids to prevent a Market Disruption or to minimize the extent of a Market Disruption.

With regard to the third example listed in Section 7.7.15.2.1, Powerex notes that the MRTU software is designed to allow Scheduling Coordinators to enter as many Bids as they like. Powerex asserts that, to the extent Market Disruptions are caused or become likely because the MRTU software is overloaded, the ISO should work towards improving the capacity of the software as an alternative to removing Scheduling Coordinators' Bids.¹⁸ To date, the ISO has in only one instance observed difficulties in processing a class of Bids, but did not in that case actually remove any Bids. In that particular instance, it was the combined effects of a certain class of Bids that posed a problem in processing the magnitude of the types

¹⁷ March 9 Order at P 26.

¹⁸ Powerex at 6-7.

of those Bids submitted. The ISO does not believe this is currently a software overload issue, but if, in the future, the ISO finds that overloading of the software has those effects, the ISO agrees that to the extent software issues are the basis for any actions taken under Section 7.7.15, consistent with Commission's prior finding that reporting such actions will also help facilitate any stakeholder processes concerning the development of additional market rules to prevent future Market Disruptions,¹⁹ the ISO will continue to evaluate and work towards improving the capacity of the software in order to help reduce the occurrence of Market Disruptions. However, the ISO does not view such potential improvements as an alternative to the removal of Bids pursuant to Section 7.7.15, but rather the ISO views the removal of Bids as an action that the ISO might need to take prior to making software improvements if these circumstances ever were to occur.

Powerex argues that the removal of Self-Schedules pursuant to the objective methodology set forth in Section 7.7.15.2.1 may somehow be inconsistent with the provisions of Section 33.3 stating that the ISO will adjust Self-Schedules only after it uses available economic Bids.²⁰ There is no inconsistency between the provisions of Section 7.7.15.2.1 and the provisions of Section 33.3, because each of those two sections applies in very different circumstances. Section 7.7.15.2.1 applies when the ISO removes Bids in the event of a Market Disruption, to prevent a Market Disruption, or to minimize the extent of a Market Disruption, all of which the ISO anticipates will be rare and extreme occurrences requiring the unusual measures

¹⁹ March 9 Order at P 29.

²⁰ Powerex at 5.

set forth in Section 7.7.15.²¹ In contrast, Section 33.3 applies during the regular course of the ISO's market operations as part of the HASP optimization.

Specifically, as explained in Section 33.3, the HASP optimization "does not adjust submitted Self-Schedules unless it is not possible to balance Supply and the CAISO Forecast of CAISO Demand plus Export Bids and manage Congestion using the available Economic Bids, in which case the HASP performs non-economic adjustments to Self-Schedules." Because of the different circumstances in which Sections 7.7.15.2.1 and 33.3 apply, Section 7.7.15.2.1 need not and should not be modified to make it consistent with Section 33.3.

D. New Section 7.7.15.2.2 Permits the ISO to Remove Parts of Bids, as Expressly Authorized by the March 9 Order.

Powerex argues that new Section 7.7.15.2.2, which allows the ISO to remove part of a Bid while retaining other parts of that same Bid, gives the ISO unlimited authority to modify a Scheduling Coordinator's Bid, thus altering the balance of products and resources the Scheduling Coordinator was offering into the market. Powerex requests that the Commission direct the ISO to modify Section 7.7.15.2.2 to state that the ISO can remove only an entire Bid rather than part of that same Bid. In the alternative, Powerex requests that the Commission find that the ISO can remove only the part of a Bid that is affected by a SLIC outage or a transmission derate and thus poses actual feasibility issues, and should also direct the ISO to notify the affected Scheduling Coordinator in advance of removing part of a Bid,

²¹ See March 9 Order at P 29.

where time permits, and give the Scheduling Coordinator the opportunity to modify or withdraw its Bid from the market.²²

The Commission should deny all of Powerex's requests. First, the ISO's proposed removal of part of a Bid is within the scope of the March 9 Order. In the March 9 Order, the Commission directed the ISO in relevant part to modify Section 7.7.15 to "include procedures for notifying market participants when their bid or self-schedule causes a market disruption, when their bid or self-schedule is removed, *and whether the CAISO will remove all or part of their bid or self-schedule.*"²³ Therefore, the Commission authorized the ISO to remove either all or part of a Bid or Self-Schedule pursuant to Section 7.7.15.

Second, while the ISO recognizes that the removal of part of a Bid may alter the initial set of Bid requirements submitted by the Scheduling Coordinator, it is conceivable that under certain circumstances the retention of part of a Bid as opposed to the complete rejection of a Bid is favorable to both the ISO and the Scheduling Coordinator. For example, the ISO may remove the Ancillary Services Bid as part of a Bid set but retain the Energy Bid because there is no issue with that particular component of the Bid. However, the ISO agrees that to the extent a Bid for a particular service needs to be removed, the entire Bid curve for that service and particular market will be removed. In any case, the ability to retain part of the Bid does not adversely affect Scheduling Coordinators since in most instances and to the extent feasible, as required by new Section 7.7.15.2.4, the ISO will contact the Scheduling Coordinator before removing part of the affected Bid. The ISO

²² Powerex at 3-6.

²³ March 9 Order at P 27 (emphasis added).

believes that this provides sufficient opportunity for the Scheduling Coordinator to make any objections to the partial removal of a Bid if that were the intended course of action by the ISO.

In addition, there is no merit to Powerex's argument that, pursuant to Section 7.7.15.2.2, the ISO's removal of Bids in part might commit Scheduling Coordinators to Bids to which they did not agree and which might not be feasible, in violation of Scheduling Coordinators' obligations under Section 37.3.1.1.²⁴ The provisions of Section 37.3.1.1 only obligate Scheduling Coordinators (and other Market Participants) to submit Bids:

from resources that are reasonably expected to be available and capable of performing at the levels specified in the Bid, and to remain available and capable of so performing *based on all information that is known to the Market Participant or should have been known to the Market Participant at the time of submission* [emphasis added].

Therefore, if a Scheduling Coordinator did not know that the ISO has removed part of its Bid, or had no reason to know at the time of Bid submission that the ISO was going to remove part of that Bid, the Scheduling Coordinator could not be in violation of Section 37.3.1.1 due to the ISO's removal of part of the Bid. As stated in Section 7.7.15.2.4, to the extent practicable, the ISO will contact a Scheduling Coordinator's representative before removing a Bid (or part of a Bid) and advise the representative of the issues encountered with the Bid, and in any event the ISO will notify the Scheduling Coordinator as soon as practicable but no later than three Business Days after the applicable Bid (or part of the Bid) was removed, and will provide information specifying when its Bid was removed and the nature of the disruption. As a result, the Commission should find that Scheduling

²⁴ Powerex at 4.

Coordinators have no reason to worry that the ISO's removal of parts of Bids will cause Scheduling Coordinators to be in violation of Section 37.3.1.1.

The Commission also should reject Powerex's alternative proposals. Restricting the ISO to the removal of only the part of a Bid that is affected by a SLIC outage or a transmission derate, as Powerex proposes, would preclude the ISO from being able to remove all parts of Bids that are not feasible based on the misalignment of resource-specific conditions and physical constraints represented in the Master File, current outage information, and the Bid itself, as set forth in Section 7.7.15.2.1. Therefore, Powerex's restriction would limit too greatly the ISO's authority to remove parts of Bids based on the objective measures contained in that section.

As for Powerex's request that the Commission should direct the ISO to notify the affected Scheduling Coordinator in advance of removing part of a Bid, where time permits, and give the Scheduling Coordinator the opportunity to modify or withdraw its Bid from the market, the notification provisions contained in Section 7.7.15.2.4 already provide sufficient protection to Scheduling Coordinators. In the March 9 Order, the Commission found that, in order address concerns that a Market Participant receive adequate information in the event that the ISO removes its Bid, the ISO must provide such information to the Market Participant within three Business Days of the ISO taking that action.²⁵ Section 7.7.15.2.4 fully satisfies the Commission's directives. Powerex's argument that three Business Days "does not provide adequate notice for a Scheduling Coordinator that a portion of its bid has

²⁵ March 9 Order at P 28.

been rejected”²⁶ constitutes an impermissible request for rehearing of, and collateral attack on, those Commission directives, for the reasons explained above.

II. Conclusion

For the reasons provided herein, the Commission should accept the tariff revisions as submitted by the ISO in the April 8 Compliance Filing.

Respectfully submitted,

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²⁶ Powerex at 5.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service lists for the above-referenced proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 14th day of May, 2009.

/s/ Bradley R. Miliauskas
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