145 FERC ¶ 61,082
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

California Independent System Operator Corporation — Docket No. ER13-2296-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued October 29, 2013)

1. On August 30, 2013, the California Independent System Operator Corporation (CAISO) filed revisions to its open access transmission tariff (tariff) to refine its procedures for determining certain costs included in bid cost recovery and related calculations. In this order, we accept CAISO's proposed tariff revisions, effective November 1, 2013, as requested.

## I. Background and CAISO Proposal

2. The CAISO tariff permits resources to recover energy bid costs, along with start-up and minimum load costs, through bid cost recovery uplift payments when market revenues do not cover these costs.[1] In order to specify their start-up and minimum load costs for use in calculating the CAISO market bids, scheduling coordinators select either a proxy cost option or a registered cost option. The proxy cost option is cost-based and uses resource-specific cost information to calculate variable start-up and minimum load costs. The registered cost option allows scheduling coordinators to register fixed start-up and minimum load cost values at any level up to the registered cost cap, which is currently set at 200 percent of a resource's projected proxy cost.[2] According to CAISO, the registered cost option was implemented to, among other things, allow resources to

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[1] CAISO Tariff, § 11.8.

[2] The Commission previously accepted the 200 percent cost cap for maximum start-up and minimum load values for all resources electing the registered cost option. *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,288, at P 30 (2008) (June 2008 Order).

recover potential non-fuel-related costs and fuel price volatility that may not be captured under the proxy cost option.

3. In the instant filing, CAISO proposes to include additional categories of costs for inclusion in the calculation of a resource's proxy costs for start-up and minimum load, generated bids, and variable cost default energy bids.[3] Specifically, CAISO proposes to include the market services charge and the system operations charge in the calculation of proxy start-up and minimum load costs, generated bids, and default energy bids.[4] In addition, CAISO proposes to include the bid segment fee, a flat per-bid-segment charge of $0.005 per megawatt hour (MWh), in the proxy cost calculation for minimum load, generated bids, and default energy bids. CAISO explains that it will not include the bid segment fee in the calculation of proxy start-up costs because a unit's start-up costs are not considered a bid.[5]

4. CAISO also proposes to include a new adder for major maintenance expenses incurred by generators in the calculation of proxy start-up and minimum load costs.[6] The current tariff includes a maintenance adder that is proportional to energy output. CAISO states that the proposed adder will reflect marginal costs that are proportional to the number of times a unit starts up or the number of hours it operates, a category of costs that CAISO states is not included in the current major maintenance expenses adder.[7]

5. Under CAISO's proposal, scheduling coordinators choosing the proxy cost option will be able to propose adders for major maintenance expenses as a component of start-up costs, minimum load costs, or both. CAISO states that the proposed adders will be based solely on resource-specific information derived from actual maintenance costs, when

[3] Generated bids are generated by CAISO when a bid is not submitted by a scheduling coordinator but is required for resource adequacy or other purposes. CAISO Tariff, §§ 30.7.3.4, 40.6.8. Default energy bids are used by CAISO's local market power mitigation process to replace market bids that are identified as having potential market power. CAISO Tariff, § 39.7.1.

[4] The market services charge and the system operations charge are based on the megawatt-hour (MWh) quantities of energy that are scheduled, injected into the grid, or withdrawn from the grid, and represent a part of CAISO's marginal costs for operating its markets. CAISO August 30, 2013 Proposal at 6 (CAISO Proposal).

[5] *Id.* at 6-7.

[6] *Id.* at 8.

[7] *Id.* at 7-8.

available, or estimated maintenance costs provided by the scheduling coordinator to CAISO or an independent entity chosen by CAISO.[8] CAISO also proposes a dispute resolution process, which it represents is based on existing tariff provisions,[9] for any disputes that may arise concerning a resource's proposed adder for major maintenance expenses.[10]

6. In light of its proposal to allow additional categories of costs in the calculation of start-up and minimum load costs under the proxy cost option, CAISO proposes to reduce the cost cap under the registered cost option from 200 percent of a resource's projected proxy cost to 150 percent. CAISO asserts that the proposed reduction is just and reasonable because CAISO has expanded the types of costs that can be recovered under the proxy cost option, on which the registered cost cap is based. Thus, CAISO asserts that the need for room to account for costs not recovered under the proxy cost option is reduced. Further, CAISO contends that lowering the level of the registered cost cap will limit opportunities for market participants to receive inflated bid cost recovery uplift payments.[11]

7. CAISO maintains that its analysis of historical fuel price levels and fuel price volatility demonstrates that the 150 percent registered cost cap will cover the monthly fuel price risk associated with purchasing natural gas on the spot market.[12] CAISO also states that it expects the 150 percent registered cost cap to account for any risk in the intra-day gas markets and any non-fuel costs not included in the proxy cost calculation. In addition, CAISO notes that market participants will remain able to switch from the

[8] The CAISO or independent entity will evaluate information provided by the scheduling coordinator to determine a reasonable adder for major maintenance expenses or to conduct an audit of major maintenance expenses. *Id.* at 8-9; CAISO Tariff, Proposed § 30.4.1.1.4.

[9] *Id.* at 9 (citing CAISO Tariff, § 39.7.1.3.1, which establishes the process that applies to disputes related to the negotiated rate option for determining default energy bids).

[10] This includes disputes regarding sufficiency or accuracy of information as well as the determination of the adder for major maintenance expenses. *Id.* at 8-9.

[11] *Id.* at 10-11.

[12] Specifically, CAISO states that, from January 2002 to August 2011, the maximum spot gas price was 150 percent or less of the gas futures price 98 percent of the time and the average spot gas price was 150 percent or less of the gas futures price 100 percent of the time. *Id.* at 11-12.

registered cost option to the proxy cost option in the event that natural gas prices spike such that the calculated proxy value exceeds the resource's registered costs.[13] CAISO also indicates that the Market Surveillance Committee supports its proposal to lower the registered cost cap and states that the proposed 150 percent cap is a conservative measure.[14]

8. Finally, CAISO proposes three additional tariff updates: (1) replacing Platt's Daily with CME Group as one of the listed publications that it may use to calculate greenhouse gas allowance prices in section 39.7.1.1.1.4 of its tariff; (2) revising the definition of the term "grid management charge" to reflect its three components, i.e. the market services charge, the system operations charge, and the congestion revenue rights services charge; and (3) updating the definition of "independent entity" to accurately describe the current function of that entity and to eliminate an outdated reference.[15]

9. CAISO requests an effective date of November 1, 2013, for its proposed tariff revisions, but requests that the Commission issue its order on or before October 29, 2013, to allow time for the required software deployment.[16]

## II. Notice and Responsive Pleadings

10. Notice of CAISO's proposed tariff revisions was published in the *Federal Register*, 78 Fed. Reg. 55,247 (2013), with protests or motions to intervene due on or before September 20, 2013. Timely motions to intervene and/or protests were filed by NRG Companies (NRG);[17] Exelon Corporation; Calpine Corporation; Southern California Edison Company (SoCal Edison); Western Power Trading Forum;

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[13] *Id.* at 12.

[14] *Id.*; CAISO Market Surveillance Committee, Opinion on Bid Cost Recovery Mitigation Measures and Commitment Costs Refinement (May 7, 2012) (included as Attachment F to CAISO Proposal).

[15] *Id.* at 13.

[16] *Id*.

[17] The NRG Companies are NRG Power Marketing LLC; GenOn Energy Management, LLC; Cabrillo Power I LLC; Cabrillo Power II LLC; El Segundo Power LLC; NRG Delta LLC; NRG Marsh Landing LLC; NRG California South LP; High Plains Ranch II, LLC; Long Beach Generation LLC; NRG Solar Alpine LLC; NRG Solar Borrego I LLC; NRG Solar Blythe LLC; NRG Solar Roadrunner LLC; and Avenal Solar Holdings LLC.

Cogeneration Association of California and Energy Producers and Users Coalition; Northern California Power Agency (NCPA); Pacific Gas & Electric Company (PG&E); California Department of Water Resources State Water Project; and the City of Santa Clara, California. CAISO filed an answer. NRG filed an answer to CAISO's answer.

## III. Comments and Protests

11. SoCal Edison and PG&E generally support CAISO's proposed tariff revisions, but both suggest additional Commission action. PG&E notes that CAISO has discussed further revisions to permit the inclusion of the costs associated with multi-stage generating resource transitions in proxy costs calculations with its stakeholders, but has not established an implementation timeline for this initiative. Thus, PG&E requests that the Commission encourage CAISO to establish a clear implementation plan to address the inclusion of these costs.[18]

12. SoCal Edison states that although CAISO's proposal to permit reasonable major maintenance expense adders is acceptable, it is ambiguous. First, SoCal Edison asserts that actual major maintenance costs may not be obtainable, and contractual costs may be the only available data. Also, SoCal Edison argues that, even when costs are known, it is unclear how CAISO and/or the independent evaluator will allow scheduling coordinators to recover such costs using the start-up and minimum load components. Therefore, SoCal Edison requests that the Commission direct CAISO to report back in one year's time regarding the efficacy of its process.[19]

13. NCPA takes no position on whether the 150 percent registered cost cap is the appropriate level, but urges the Commission to direct CAISO to file a study within a year that assesses whether the cap could be lowered to 125 percent.[20]

14. NRG opposes CAISO's proposal to lower the registered cost cap to 150 percent of a resource's projected proxy costs, arguing that the proposed reduction will, in some instances, prevent generators from recovering their fuel costs because gas balancing costs[21] cannot be recovered through proxy costs and likely will, at times, exceed the

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[18] PG&E September 20, 2013 Comments at 3-4.

[19] SoCal Edison September 20, 2013 Comments at 3-4.

[20] NCPA September 20, 2013 Comments at 4.

[21] NRG asserts that these balancing charges consist of additional charges and penalties relating to how accurately a resource is able to predict its natural gas usage. NRG September 20, 2013 Protest at 3 (NRG Protest). CAISO states that it has

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proposed cap on registered costs. NRG asserts that it has found two instances during the past 12 months in which it incurred gas balancing costs that exceeded the proposed 150 percent registered cost cap. NRG contends that these unrecoverable gas costs are the result of pipeline balancing rules and the difficulty of anticipating the amount of gas that an infrequently run unit may require. In addition, NRG argues that the lower registered cost cap fails to provide generators with an opportunity to recover gas costs associated with selling unburned gas back to the pipeline at a loss due to operational flow orders. NRG asserts that the proposed cap contradicts recent Commission precedent in which the Commission found the ISO New England LLC (ISO-NE) tariff to be unjust and unreasonable because generators dispatched by ISO-NE were, in certain situations, unable to recover their costs of meeting those dispatch obligations.[22] NRG asserts that CAISO's proposal does not meet the standard set by the Commission in *Dominion Energy Marketing* because it does not provide an avenue for generators to recover their costs, under certain situations, either through the proxy cost or registered cost option.

## IV. <u>CAISO and NRG Answers</u>

15. CAISO argues that NRG appears to have based its calculations on the method for calculating a resource's proxy costs currently in effect without accounting for CAISO's proposal to include the grid management charges and additional maintenance expenses in that calculation. CAISO explains that the inclusion of these additional cost components in the proxy cost option renders the current 200 percent registered cost cap unnecessary because the original proxy costs on which the registered costs are based will be higher. In addition, CAISO contends that Commission precedent does not require that the registered cost cap be set at a level that will guarantee complete recovery of all fuel costs, including gas imbalance charges and penalties, for every five-day period, in order to be just and reasonable.[23] CAISO asserts that NRG's reliance on *Dominion Energy Marketing* is misplaced because, unlike the cost recovery provision in the ISO-NE tariff, under which "resources could suffer significant financial loss in unrecovered costs,"[24] the

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considered tariff provisions relating to the recovery of natural gas pipeline penalties, but requires additional time to develop these provisions. CAISO Proposal at 4-5.

[22] NRG Protest at 7 (citing *Dominion Energy Marketing, Inc. v. ISO New England Inc.*, 143 FERC ¶ 61,233, at P 25 (2013) (*Dominion Energy Marketing*)).

[23] CAISO October 3, 2013 Answer at 6 (citing June 2009 Order, 123 FERC ¶ 61,288 at P 30 (finding that cost recovery under the proxy cost option was adequate even without the inclusion of certain fuel-related costs such as gas imbalance penalties)).

[24] *Id.* at 8, n.15 (quoting *Dominion Energy Marketing*, 143 FERC ¶ 61,233 at P 25) (CAISO Answer).

use of a 150-percent registered cost cap will provide resources an adequate opportunity to recover costs.[25]

16. CAISO asserts that the level of the registered cost cap is just and reasonable if it "provides a reasonable balance between preventing the exercise of market power and enabling recovery of supplier costs."[26] CAISO contends that NRG's own evidence, which documents only two instances in the past 12 months of gas costs that were marginally above the 150 percent of resources' projected proxy costs, demonstrates that the proposed 150 percent cap is sufficiently compensatory. CAISO also asserts that gas balancing costs and pipeline penalties are not costs associated with specific start-ups or minimum load dispatches and, therefore, are not appropriately accounted for in the proxy costs that form the basis of the registered cost cap.[27]

17. CAISO argues that the Commission should reject the requests by NCPA and SoCal Edison, respectively, for studies on whether the registered cost cap can be further reduced and the efficacy of the process for major maintenance cost adders. CAISO contends that NCPA and SoCal Edison have not provided compelling reasons for requiring CAISO to dedicate its limited resources to conducting two very different studies and submitting reports to the Commission in the absence of any actual harm. In response to PG&E's comments, CAISO claims that it is premature to establish an implementation plan regarding the inclusion of major maintenance costs associated with the transition of multi-stage generators because stakeholder consensus indicated that this initiative should be deferred until more experience is gained with multi-stage resource functionality.[28]

18. NRG refutes CAISO's assertion that the inclusion of new adders in the proxy cost calculation will provide adequate room for gas imbalance costs as speculative. NRG posits that the proposed major maintenance adder is intended only to cover maintenance expenses and not to account for gas imbalance charges. Further, NRG contends that the grid management fee will be a *de minimis* addition that has little impact under the proposed 150 percent registered cost cap. NRG acknowledges that the calculations in its protest did not reflect the inclusion of the proposed additional proxy costs. However, NRG states that the data provided in its protest was merely representative and provides

[25] *Id.* at 4-8.

[26] *Id.* at 6 (quoting *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,282, at P 30 (2009) (March 2009 Order)).

[27] *Id.* at 6-8.

[28] *Id.* at 3, 9-12.

ten more instances where the costs incurred by two NRG units were above 150 percent of its projected proxy costs. Given this data, NRG contends that generators will not be able to recover their fuel costs under all situations under the proposed cap and urges the Commission to reject it.[29]

## V. Discussion

### A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by CAISO and NRG because they have provided information that assisted us in our decision-making process.

### B. Commission Determination

21. We accept CAISO's proposed revisions, including the proposed reference and definition updates to the tariff, as just and reasonable. Specifically, we find that the inclusion of the market services and system operations charges and the new major maintenance adder in the calculation of certain costs is an improvement over the existing cost recovery measures, which will enhance resources' ability to recover appropriate start-up and minimum load costs. CAISO acknowledges that it is developing tariff language to include additional costs in the future.[30] While we will not require CAISO to establish an implementation plan for any particular category of costs, we encourage CAISO to continue to work with its stakeholders on further enhancements to its cost recovery measures.

22. Because more costs will be included in the proxy cost calculations, we find that a reduction in the registered cost cap is an appropriate safeguard against resources receiving inflated bid cost recovery uplift payments. Thus, like the 200 percent cap under the old cost recovery measures, we find that CAISO's proposal here strikes a "reasonable balance between preventing the exercise of market power and enabling recovery of supplier costs."[31] However, due to the current lack of data regarding the impact of the

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[29] NRG October 16, 2013 Answer.

[30] CAISO Proposal at 5.

[31] *Id.* P 26; March 2009 Order, 128 FERC ¶ 61,282 at P 30.

new adders on a resource's projected proxy cost and, as a result, on cost recovery under the registered cost option, we direct CAISO to file a report,[32] one year after the date of issuance of this order, that evaluates the effectiveness of the 150 percent cap and its effect on cost recovery.

23. We find that NRG has failed to show that the use of a 150 percent registered cost cap will deny resources an adequate opportunity to recover costs. The instances of under-recovery cited by NRG appear to rely on proxy costs that do not account for the new categories of costs that would be factored into a resource's projected proxy costs under the instant revisions. Even if the major maintenance adder is not intended to factor in gas imbalance charges, we find that the inclusion of this adder should have the effect of increasing a unit's overall projected proxy cost and, consequently, the amount that can be recovered under the 150 percent cap. NRG has not provided any information to demonstrate how the incorporation of additional costs into the calculation of proxy costs may impact its overall cost recovery. Further, because we find that NRG has not demonstrated the type of potential for significant financial loss through unrecovered costs that was present in *Dominion Energy Marketing*, we find that case to be inapposite. As stated above, we find that, consistent with Commission precedent,[33] CAISO's proposal strikes a reasonable balance between preventing the exercise of market power and enabling the recovery of costs.

24. Moreover, whether the cap on registered costs is set at 200 percent or 150 percent, the cap on registered costs was initially proposed by CAISO and accepted by the Commission as a market mitigation measure and not as a vehicle for ensuring higher cost recovery.[34] As such, the Commission has previously considered and rejected similar arguments regarding the potential volatility of gas prices and its effect on cost recovery under the registered cost option, as well as the adequacy of cost recovery under the proxy cost option.[35]

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[32] We note that this report is for informational purposes only and will neither be noticed nor require Commission action.

[33] March 2009 Order, 128 FERC ¶ 61,282 at P 30.

[34] *Id.* PP 11-14, 30.

[35] *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,257, at PP 12-14, 24-25, 31 (2011) (affirming the justness and reasonableness of CAISO's registered cost option, rejecting claims that CAISO's cost recovery provisions systematically under-compensate resources for costs, and rejecting requests to require CAISO to include additional categories of costs in its proxy cost calculation methodology). *See also* June 2008 Order, 123 FERC ¶ 61,288 at P 29 (finding that bid cost recovery calculations were adequate

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25. Regarding SoCal Edison's claim that CAISO's proposal is not clear about how major maintenance costs will be recovered in the start-up and minimum load components, we find that CAISO appears to have addressed this question in its proposed revisions. Specifically, CAISO states that for start-up costs, these costs will be calculated in dollars per start-up, and will be calculated in dollars per operating hour for minimum load costs.[36] As noted above, we find CAISO's proposal to include a new major maintenance adder to be just and reasonable as proposed and, therefore, will not require CAISO to submit a study on the effectiveness of this process. Nevertheless, we expect CAISO to closely monitor these elements of its proposal and work with its stakeholders to make any modifications that may become necessary.

<u>The Commission orders</u>:

(A) CAISO's proposed tariff revisions are hereby accepted to be effective November 1, 2013, as discussed in the body of this order.

(B) CAISO is hereby directed to submit a report, within one year of the date of this order, that evaluates the impact on cost recovery of the 150 percent cap on registered costs, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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because they were the minimum amount that a supplier will be paid when committed to start up or operate at minimum load, and, typically, committed generators will also be dispatched for energy for which they will be paid market clearing prices and earn revenues in excess of start-up and minimum load costs).

[36] CAISO Proposal at n.25; CAISO Tariff, Proposed § 30.4.1.1.2(a).