

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

California Independent System Operator
Corporation

Docket No. ER03-1102-000

ORDER ACCEPTING AND SUSPENDING TARIFF AMENDMENT

(Issued September 22, 2003)

1. In this order, the Commission accepts and suspends for five months, to be effective subject to refund and further Commission order, the California Independent System Operator Corporation's (California ISO or ISO) proposed Amendment No. 55 to its Open Access Transmission Tariff (ISO Tariff). This order benefits market participants by providing a consistent approach to the development of market behavior rules.

I. Background

2. On July 22, 2003, the California ISO filed proposed Amendment No. 55 to its ISO Tariff. In Amendment No. 55, the California ISO proposes to monitor, investigate and enforce nine Rules of Conduct (market rules) under its Oversight and Investigations Program (O&I Program).¹ These market rules will be implemented through the proposed ISO Enforcement Protocol and revisions to the existing ISO Market Monitoring and Information Protocol (MMIP) to the ISO Tariff. Violations of seven of the proposed market rules relating to market operations and grid reliability will be identified by the

¹The nine market rules are as follows: (1) comply with operating orders; (2) submit feasible energy and ancillary service bids and schedules; (3) no physical withholding; (4) no economic withholding; (5) comply with availability reporting requirements; (6) provide factually accurate information; (7) provide information required by the ISO Tariff; (8) no detrimental practices; and (9) no market manipulation.

market monitor and reported to the California ISO alone for investigation and the assessment of various prescribed penalties, in accordance with the process proposed in the ISO Enforcement Protocol. The California ISO will notify the Commission of violations relating to “detrimental practices” and “market manipulation” (Rules 8 and 9) before it assesses certain enumerated penalties.

3. In addition, the California ISO proposes changes to existing confidentiality provisions under the ISO Tariff to allow for information sharing with partner agencies (*i.e.*, the Commission, the U.S. Department of Justice or any of its subsidiaries, the California Department of Justice or any of its subsidiaries, the Public Utilities Commission of the State of California (CPUC), or the California Electricity Oversight Board (EOB)). Amendment No. 55 also proposes certain changes to the existing ISO Tariff to impose additional remedies targeted to particular trading strategies set forth in the Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices in the Western U.S., 98 FERC ¶ 61,165 (2002).

II. Notice of Filings and Responsive Pleadings

4. Notice of the California ISO’s filing was published in the Federal Register, 68 Fed. Reg. 46,177 (2003), with comments, interventions and protests due on or before August 12, 2003. By notice dated August 8, 2003, an extension of time was granted to and including August 18, 2003 to file comments.

5. Timely motions to intervene with no substantive comments were filed by Bill Lockyer, Attorney General of the State of California; Calpine Corporation; Tucson Electric Power Company; and Turlock Irrigation District. Pinnacle West Capital Corporation, Arizona Public Service Company, Pinnacle West Energy Corporation and Arizona Public Service Energy Services Inc. (collectively, Pinnacle West Companies) filed a motion to intervene out-of-time.

6. Timely motions to intervene and comments were filed by the EOB; the City and County of San Francisco; the City of Los Angeles Department of Water and Power; Pacific Gas and Electric Company; PacifiCorp; and the CPUC. Southern California Edison Company filed a timely motion to intervene, comments and a request for extension of time. Members of the California ISO Market Surveillance Committee submitted comments in support out-of-time.

7. The California Department of Water Resources State Water Project filed a timely motion to intervene, comments in partial support and a partial protest. Automated Power Exchange, Inc.; the Cogeneration Association of California; Duke Energy North America LLC and Duke Energy Trading and Marketing L.L.C.; FPL Energy, LLC; the Independent Energy Producers Association (IEP), Electric Power Supply Association

(EPSA) and the Western Power Trading Forum (WPTF);² the M-S-R Public Power Agency and the Cities of Redding and Santa Clara, California, Silicon Valley Power; Modesto Irrigation District; the Northern California Power Agency; Powerex Corp.; the Sacramento Municipal Utility District; Sempra Energy; Strategic Energy L.L.C.; and the Transmission Agency of Northern California filed timely motions to intervene and protests.

8. Reliant Energy Power Generation, Inc., Reliant Energy Services, Inc., Mirant Americas Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, Mirant Potrero, LLC, Dynegy Power Marketing, Inc., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, Cabrillo Power II LLC and Williams Energy Marketing & Trading Co. filed a timely joint motion to intervene³ and protest. The California Municipal Utilities Association; the Cities of Anaheim, Azusa, Banning, Colton and Riverside, California; and the Metropolitan Water District of Southern California (Metropolitan) filed timely motions to intervene, protests and motions to reject. Metropolitan also requested a Commission-facilitated technical conference. The City of Vernon, California filed a timely motion to intervene, protest and motion to summarily reject the filing or, alternatively, a request for hearing.

9. While intervenors raise a plethora of issues, most intervenors argue that, among other things: (1) the California ISO is not sufficiently independent to administer a market monitoring program, much less, be trusted to fairly police the market and enforce penalties, (2) the penalties proposed under the O&I Program are unduly punitive and the California ISO has failed to demonstrate a causal link between the penalty and the prohibited action,⁴ (3) the O&I Program does not provide an effective means to appeal the California ISO's decisions, (4) various terms under the O&I Program are vague with respect to what constitutes acceptable and sanctionable behavior, and (5) the O&I Program proposal contains redesign issues which should be considered in the context of the California ISO's Comprehensive Market Redesign proceeding in Docket Nos. ER02-1656-000 and EL01-68-017.

²IEP, EPSA and WPTF filed separate, timely motions to intervene.

³Dynegy Power Marketing, Inc., El Segundo Power, LLC, Long Beach Generation LLC, Cabrillo Power I LLC and Cabrillo Power II LLC filed a separate, timely motion to intervene.

⁴Fixed penalty amounts range from \$10,000 per event to \$110,000 per event for specific violations, and the California ISO may triple the maximum penalty amount if the violation occurs during a system emergency or if the California ISO determines that the violation is part of a recurring pattern of behavior.

10. In addition, some intervenors disagree with the California ISO's attempt to prohibit economic and physical withholding of generation under the O&I Program's market rules. While the California ISO justifies this prohibition by stating that its market rules are consistent with provisions in the New York Independent System Operator, Inc.'s (NYISO) and ISO New England, Inc.'s (ISO New England) Tariffs, some intervenors argue that the California market is different from the NYISO and ISO New England models. These intervenors contend that the O&I Program ignores the fact that the markets in the East include capacity markets in which generation owners may recoup some of their fixed costs in exchange for being required to hold their resources available. Intervenors emphasize that while generators in eastern markets are paid for their unit commitment, the California ISO proposal, by contrast, includes a permanent must-offer requirement in real-time and no capacity market or other process through which generators may commit units for a price. According to intervenors, the absence of any meaningful installed capacity payment (ICAP) feature has led to mistaken descriptions of rational economic behavior as physical and economic withholding.

11. Certain intervenors also disagree with the California ISO's proposal to coordinate its market monitoring and oversight efforts and share sensitive commercial information with the CPUC and the EOB. This group argues that, since the CPUC and the EOB have no oversight authority over entities that fall under the Commission's exclusive jurisdiction, the California ISO should not be allowed to share market participants' commercially sensitive information with any agency without first obtaining the consent of the owner of the information.

12. Many intervenors contend that the California ISO's proposal to fund its O&I Program with penalty proceeds creates an inherent conflict. These intervenors claim that this process will provide the California ISO with an incentive to aggressively police the market and impose greater penalties in order to fund more investigations. Therefore, some intervenors argue that funding for the O&I Program should be through the Grid Management Charge.

13. On August 29, 2003, the California ISO filed an answer and a request for extension of time. On September 5, 2003, the California ISO filed an answer in which it agreed to revise proposed Amendment No. 55 to reflect certain intervenor comments.

III. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. ' 385.214 (2002), the timely motions to intervene in this docket serve to make those who filed parties to this proceeding. In addition, we will grant Pinnacle West

Companies' untimely intervention, since we find that doing so at this early stage of this proceeding will not unduly disrupt the proceeding or place undue burdens on the parties.

15. Under Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. ' 385.213 (2003), no answer may be made to a protest or answer unless otherwise ordered by the decisional authority. However, we will allow the California ISO's answer to the protests because it provides information that aids us in understanding the matters at issue in this proceeding.

B. Commission Determination

16. Our preliminary review of proposed Amendment No. 55 indicates that the filing has not been shown to be just and reasonable and may, in fact, be unjust, unreasonable and unduly discriminatory. Moreover, proposed Amendment No. 55 includes tariff changes that address issues that are before the Commission in Docket Nos. EL01-118-000 and EL01-118-001.

17. On November 20, 2001, the Commission instituted a proceeding in Docket No. EL01-118-000, pursuant to Section 206 of the Federal Power Act, in which the Commission proposed to condition the grant of market-based rate authority to public utilities that sell energy and ancillary services at wholesale in interstate commerce by expressly prohibiting sellers from engaging in anticompetitive behavior or abuses of market power.⁵ On June 26, 2003, the Commission proposed to modify tariff provisions by identifying more precisely and comprehensively the transactions and practices that would be prohibited under sellers' market-based rate tariffs and authorizations.⁶ Comments on these proposed provisions were due on August 18, 2003, and reply comments were due on September 18, 2003. The Commission desires a consistent approach to the development of market behavior rules. Accordingly, we will defer issuance of a final order on the California ISO's proposed Amendment No. 55 pending further review and in conjunction with the Commission's proceedings in Docket Nos. EL01-118-000 and EL01-118-001. We find that our decision here will allow these issues to be addressed in a coordinated manner.

⁵Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 97 FERC ¶ 61,220 (2001).

⁶Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 103 FERC ¶ 61,349 (2003).

18. Therefore, we will accept for filing Amendment No. 55 and suspend it for five months to become effective on February 21, 2004, subject to refund and subject to further order by the Commission.

The Commission orders:

The proposed Amendment No. 55 is hereby accepted for filing and suspended for five months to become effective on February 21, 2004, subject to refund and subject to further order by the Commission, as discussed in the body of this order.

By the Commission.⁷

(S E A L)

Magalie R. Salas
Secretary

⁷Action in this proceeding was required on September 19, 2003. On that day, however, all Federal Government offices in the Washington, D.C. metropolitan area, including the offices of the Federal Energy Regulatory Commission, were officially closed.