

111 FERC ¶61,342  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

California Independent System Operator  
Corporation

Docket Nos. ER04-609-003  
ER04-609-004

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued June 2, 2005)

1. In an order issued on August 5, 2004,<sup>1</sup> the Commission accepted, in part, and rejected, in part, proposed tariff revisions that the California Independent System Operator Corporation (CAISO or ISO) filed as Amendment No. 58 to its open access transmission tariff (ISO Tariff) and ordered the CAISO to make a compliance filing. The revisions relate to the implementation of a Real-Time Market Application (RTMA) and uninstructed deviation penalties (UDPs). In this order, we deny the request for rehearing of the August 5 Order and accept the CAISO's September 7, 2004 Compliance Filing submitted in response to the August 5 Order. This order benefits customers by clarifying and implementing measures to improve market efficiency and enhance communication between the CAISO and market participants.

**Background**

2. On July 8, 2003, the CAISO sought approval to implement the CAISO's Market Redesign Technology Upgrade (MRTU) Phase 1B elements of the Real Time Imbalance Energy Market, including approval of UDPs, real-time economic dispatch, and inclusion of multiple ramp rates and other operational constraints into dispatch decisions. These ISO Tariff revisions were identified as Amendment No. 54. In an order issued on October 22, 2003, the Commission accepted, in part, and rejected, in part, the

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<sup>1</sup> *California Indep. Sys. Operator Corp.*, 108 FERC ¶ 61,141 (2004) (August 5 Order).

Amendment No. 54 ISO Tariff revisions and ordered the CAISO to make a compliance filing.<sup>2</sup> The CAISO submitted compliance filings on November 21, 2003 (Amendment No. 54 Compliance Filing) and March 11, 2004.<sup>3</sup>

3. On March 2, 2004, as amended March 19, 2004, the CAISO filed as Amendment No. 58 to the ISO Tariff proposed revisions regarding the implementation of a RTMA and UDPs, previously approved by the Commission in the October 22 Order. On June 10, 2004, the Director of Division of Tariffs and Market Development – West issued a letter order pursuant to delegated authority<sup>4</sup> directing the CAISO to submit additional information. On June 17, 2004, the CAISO submitted a response in Docket No. ER04-609-002. In the August 5 Order, the Commission accepted, in part, and rejected, in part, the Amendment No. 58 revisions and directed the ISO to make a compliance filing.

4. On September 7, 2004, the CAISO filed a request for rehearing of the August 5 Order and a compliance filing in response to the August 5 Order. On September 17, 2004, the CAISO notified the Commission of its intent to implement Phase 1B on September 30, 2004 for the October 1, 2004 real time market.

5. On April 18, 2005, the CAISO filed a conditional withdrawal of its request for rehearing of the Commission's rejection of its proposal to require reliability must-run generators to use one set of values for minimum operating level and start-up lead time.<sup>5</sup>

### **Notice of Filing and Pleadings**

6. Notice of the CAISO's September 7, 2004 Compliance Filing was published in the *Federal Register*, 69 Fed. Reg. 56,209 (2004), with protests and interventions due on or before September 28, 2004. The California Department of Water Resources State Water

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<sup>2</sup> *California Indep. Sys. Operator Corp.*, 105 FERC ¶ 61,091 (2003) (October 22 Order), *order on reh'g*, 108 FERC ¶ 61,142 (2004), *reh'g denied*, 111 FERC ¶ 61,207 (2005).

<sup>3</sup> The Commission accepted, in part, and rejected, in part, these compliance filings. *See California Indep. Sys. Operator Corp.*, 108 FERC ¶ 61,142.

<sup>4</sup> 18 C.F.R. § 375.307 (2004).

<sup>5</sup> The CAISO states that it withdraws this request for rehearing as it applies to the CAISO's current market design without prejudice to whether single values for minimum operating level and start-up lead times are a just and reasonable element of the comprehensive MRTU tariff to be filed later this year.

Project (CDWR) and Sacramento Municipal Utility District (SMUD) filed timely motions to intervene. Calpine Corporation (Calpine) filed an untimely provisional protest. On April 18, 2005, Calpine filed a conditional withdrawal of its protest conditioned upon its retention of its right to protest the CAISO's MRTU filing.

## **Discussion**

### **A. Procedural Matters**

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), CDWR's motion to intervene serves to make it a party to this proceeding. Inasmuch as SMUD is already a party to these proceedings,<sup>6</sup> we dismiss its intervention request.

8. Pursuant to Rule 216 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.216(b) (2004), the withdrawal of any pleading is effective 15 days from the date of filing of a notice of withdrawal, if no motion in opposition to the notice of withdrawal is filed and the decisional authority does not issue an order disallowing the withdrawal within that period. No motion in opposition was filed and the Commission did not disallow the withdrawals. Accordingly, the CAISO's withdrawal of a portion of its request for rehearing and Calpine's withdrawal of its provisional protest are effective. Consequently, we do not need to address them.

### **B. Minimum Load Cost Compensation (MLCC)**

#### **Revocation of MLCC**

9. In Amendment No. 54, the CAISO proposed to monitor a resource's energy production on a settlement interval basis and revoke: (1) MLCC during a waiver denial period when energy production in a settlement interval varies by more than the tolerance band; or (2) MLCC and bid cost recovery in a settlement interval when energy within that interval varies from the total expected output by more than the tolerance band.

10. In the October 22 Order, the Commission rejected the CAISO's proposal not to compensate a must-offer generator for either minimum load costs or bid costs for energy dispatched above minimum load when it generates outside of the tolerance band within a settlement interval.<sup>7</sup> The Commission found that the proposed language revoking

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<sup>6</sup> See August 5 Order, 108 FERC ¶ 61,141 at P 9 & App. A.

<sup>7</sup> October 22 Order, 105 FERC ¶ 61,091 at P 107.

payment for minimum load costs contravened its directive that the CAISO must compensate a generator under the must-offer obligation for that generator's minimum load costs.<sup>8</sup> The Commission further found that the CAISO's proposed ISO Tariff language which would deny bid cost recovery to a must-offer generator whose energy output varies from its expected output by more than the tolerance band was unacceptable because it was inconsistent with the proposal for UDPs which are assessed only against energy generated outside of the tolerance band.<sup>9</sup>

11. In the Amendment No. 54 Compliance Filing, the CAISO proposed to revise ISO Tariff section 11.2.4.1.1.1 to include language which stated that "[t]he Tolerance Band requirement will not apply to Must-Offer Generators that produce a quantity of energy at [or] above minimum load due to an ISO Dispatch Instruction." In Amendment No. 58, the CAISO stated that the proposed language could be interpreted to waive the application of the tolerance band and assure bid cost recovery in any interval in which the ISO dispatched Imbalance Energy, including those intervals outside of waiver denial periods regardless of the manner in which the unit performed in that interval. It stated that it was reasonable to apply the tolerance band to condition the recovery of bid costs outside of a waiver denial period. It added that providing bid cost recovery when a resource failed to follow dispatch instructions would dilute the incentive to follow dispatch instructions. Therefore, the ISO proposed to modify ISO Tariff section 11.2.4.1.1.1 to clarify that (1) the ISO will not condition bid cost recovery or payment of minimum load costs using the tolerance band when the unit is dispatched while it is operating under the must-offer obligation (*i.e.*, during a waiver denial period), and (2) the ISO will not guarantee bid cost recovery if the unit deviates outside of the tolerance band when it is not operating under the must-offer obligation (*i.e.*, outside of a waiver denial period). Thus, the ISO proposed to apply UDP to energy provided outside of the tolerance band during a waiver denial period.

12. In the August 5 Order, the Commission rejected the CAISO's proposal to eliminate bid cost recovery payments for non-must-offer resources operating outside the tolerance band amount of the dispatch operating point. The Commission noted that, in a concurrently issued order, it found "unconvincing the CAISO's argument . . . that UDP would not be a sufficient deterrent to generators who could choose not to perform at all and still receive compensation. The Commission has put into place market behavior

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<sup>8</sup> *Id.* (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Serv.*, 102 FERC ¶ 61,285 (2003)).

<sup>9</sup> *Id.*

rules<sup>10</sup> which, in combination with vigilant market monitoring and UDP, should be more than adequate safeguards against this type of behavior.”<sup>11</sup>

13. On rehearing, the CAISO argues that, under the bid cost recovery procedure ordered by the Commission, a generator can fail to respond to an instruction from the ISO and still receive substantial compensation because the ISO settles the imbalance energy and provides bid cost recovery based on the instruction yet applies UDPs based on the delivery. The ISO adds that UDPs do not have the same power as providing incentives for proper generator behavior because they are an after-the-fact remedy. It contends that providing bid cost recovery for generators outside the tolerance band will create a poor market design by giving generators an incentive to fail to follow ISO dispatch instructions under some circumstances.

14. In prior orders, the Commission has found unconvincing similar arguments that UDP would not be a sufficient deterrent to generators who could choose not to perform at all and still receive compensation.<sup>12</sup> The Commission’s prior orders have rejected the CAISO’s proposal to eliminate bid cost recovery payments for non-must-offer resources operating outside the tolerance band amount of the dispatch operating point. The CAISO’s rehearing argument is, in effect, a collateral attack on those prior Commission orders; accordingly, we deny this request for rehearing.

### **C. Compliance Filing in Response to August 5 Order**

15. In the August 5 Order, the Commission directed the CAISO to submit a compliance filing with the revisions directed therein.<sup>13</sup> We find that the CAISO’s September 7, 2004 Compliance Filing complies with our directive. Pursuant to the CAISO’s September 17, 2004 notice of implementation of Phase 1B, the CAISO notified

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<sup>10</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorization*, 107 FERC ¶ 61,175 (2004).

<sup>11</sup> August 5 Order, 108 FERC ¶ 61,141 at P 67 (quoting *California Indep. Sys. Operator Corp.*, 108 FERC ¶ 61,142 at P 71).

<sup>12</sup> *California Indep. Sys. Operator Corp.*, 108 FERC ¶ 61,142 at P 71, *reh’g denied*, 111 FERC ¶ 61,207 at P 15. In these orders, the Commission explained that it has put into place market behavior rules which, in combination with vigilant market monitoring and UDP, should be more than adequate safeguards against this type of behavior.

<sup>13</sup> August 5 Order, 108 FERC ¶ 61,141 at P 79.

the Commission and market participants that Phase 1B would be implemented on October 1, 2004. Accordingly, we accept for filing the proposed revisions in the compliance filing to become effective on October 1, 2004.

The Commission orders:

(A) The request for rehearing is hereby denied, as discussed in the body of this order.

(B) The CAISO's proposed compliance filing is hereby accepted for filing, without suspension or hearing, to become effective on October 1, 2004, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.