172 FERC ¶ 61,263
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and James P. Danly.

California Independent System Operator Corporation Docket No. ER20-2360-000

ORDER ACCEPTING TARIFF REVISIONS, SUBJECT TO CONDITION

(Issued September 21, 2020)

1. On July 9, 2020, the California Independent System Operator Corporation (CAISO) filed, pursuant to section 205 of the Federal Power Act (FPA),[1] amendments to its open access transmission tariff (Tariff) intended to enhance CAISO's market rules so suppliers can request adjustments to their CAISO-calculated commitment costs (start-up and minimum load costs) and energy price reference levels to more accurately reflect their costs (CCDEBE proposal).[2] In this order, we accept CAISO's filing, to be effective on CAISO's actual implementation date, as requested, subject to the condition that CAISO submit a compliance filing within 30 days of the date of this order.

I. Background

A. CAISO Market Structure

2. CAISO administers day-ahead and real-time wholesale electricity markets. The Tariff sets forth rules for the submission of bids and self-schedules of energy and ancillary services in the CAISO markets. The existing market design allows participants

[1] 16 U.S.C. § 824d.

[2] The acronym CCDEBE stands for "Commitment Costs and Default Energy Bid Enhancements" and is the name of CAISO's stakeholder process that resulted in this filing. CAISO's filing also contains some Tariff revisions arising from a separate stakeholder initiative to refine the gas prices used in reasonableness thresholds for the real-time market. CAISO notes that, through the CCDEBE stakeholder process, it developed a comprehensive set of market rule changes in response to stakeholder concerns, which initially encompassed a broader proposal that included replacing CAISO's existing static commitment cost cap with market-based commitment cost bids. Citing implementation constraints, CAISO elected to go forward initially with only a portion of these proposals and it is this portion that is the subject of the instant filing. Transmittal at 1, 13-14.

to submit separate bid components for commitment costs and bids for energy above minimum load. The maximum energy bid price is $1,000/MWh.[3]

3. CAISO calculates and uses reference levels in four circumstances. First, suppliers can bid commitment costs up to a resource's cost-based commitment cost reference level calculated by CAISO. Second, although CAISO allows resources to bid up to $1,000/MWh for energy above minimum load, when a resource's energy bid is subject to market power mitigation, the market uses the resource's default energy bid to schedule or dispatch the resource. Third, CAISO uses a resource's default energy bid to financially settle residual energy and exceptional dispatches under certain scenarios. Fourth, the CAISO market systems calculate resources' commitment costs and energy costs (1) to produce generated bids for resource adequacy resources that fail to submit required bids; or (2) to complete an incomplete bid.[4]

4. For natural gas-fired resources, the CAISO-calculated reference levels are based on published natural gas price indices used to reflect resources' daily fuel costs. However, CAISO explains that suppliers' actual natural gas costs may be greater than a price derived from these published indices.[5]

B. Order No. 831

5. Order Nos. 831 and 831-A directed Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs) to implement certain requirements regarding (1) offer cap structure; (2) a verification process for cost-based offers for energy above minimum load; (3) resource neutrality; and (4) virtual transactions and external transactions.[6] Specifically, as relevant here, the Commission required ISOs/RTOs to verify that cost-based energy offers above $1,000/MWh reasonably reflect a supplier's actual or expected costs prior to being used to calculate locational marginal prices.[7] In Order No. 831, the Commission recognized that ISOs/RTOs would build on

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[3] *Id.* at 6-7. CAISO operates its markets using a market software system that utilizes various information, including constraints on the transmission system. *Id.* at 8.

[4] *Id.* at 4.

[5] *Id.*

[6] *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 831, 157 FERC ¶ 61,115 (2016), *order on reh'g and clarification*, Order No. 831-A, 161 FERC ¶ 61,156 (2017).

[7] Order No. 831, 157 FERC ¶ 61,115 at PP 139-140.

existing mitigation processes for calculating or updating cost-based incremental energy offers.[8]

6. CAISO's Tariff currently does not have pre-market verification procedures that it could leverage to comply with Order Nos. 831 and 831-A. Under CAISO's existing market power mitigation processes, which include using default energy bids when suppliers are subject to mitigation, CAISO does not have procedures that allow it to verify increases in a supplier's default energy bid that could also be used to verify cost-based energy offers (i.e., energy reference levels) above $1,000/MWh. CAISO states that the CCDEBE proposal provides a robust set of rules that will enable CAISO to verify cost-based energy offers above $1,000/MWh.[9]

7. In a concurrently issued order in Docket No. ER19-2757-000, the Commission finds that CAISO partially complies with the requirements of Order No. 831 and directs a further compliance filing.[10]

C. 2019 CCDEBE Proposal

8. In 2019, the Commission rejected CAISO's proposed tariff revisions to enhance CAISO's market rules to allow suppliers to request changes to their bid reference levels to more accurately reflect their costs.[11] CAISO filed a proposal that contained four components: (1) allow suppliers to request adjustments to their CAISO-calculated commitment cost and energy price reference levels to more accurately reflect their costs (2019 CCDEBE Proposal); (2) allow the use of Monday-only volume-weighted average prices to more accurately reflect available trading data in commitment cost bid caps and default energy bids for the day-ahead and real-time markets for Monday operating days; (3) permanently implement some of the measures the Commission previously accepted on an interim basis to address the limited operability of the Aliso Canyon natural gas storage facility; and (4) clarify CAISO's application of a bid-effectiveness threshold.[12]

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[8] *Id.* P 131.

[9] Transmittal at 25.

[10] *Cal. Indep. Sys. Operator Corp.*, 172 FERC ¶ 61,262 (2020).

[11] *Cal. Indep. Sys. Operator Corp.*, 170 FERC ¶ 61,015 (2020) (January Order).

[12] The Commission accepted CAISO's proposals regarding the use of Monday-only volume-weighted average prices, the permanent implementation of the previously accepted proposals relating to the limited operability of Aliso Canyon, and the clarification of the application of the bid effectiveness threshold while rejecting the 2019 CCDEBE proposal. January Order, 170 FERC ¶ 61,015 at PP 10-24, 43-46, 51-54, and 57.

9. In rejecting the 2019 CCDEBE Proposal, the Commission found that CAISO had not demonstrated that it was just and reasonable to apply a 125% multiplier to commitment cost bid caps derived using supplier submitted costs. Specifically, the Commission stated that "whereas a multiplier applied to an index captures deviations from an average cost, and therefore may account for resource-specific cost deviations from the index, a multiplier applied to supplier submitted costs would provide additional headroom on top of verifiable actual costs" and that CAISO had not provided sufficient evidence to support this upward adjustment.[13]

II. CCDEBE Proposal

10. CAISO proposes Tariff revisions to allow suppliers to request adjustments to their commitment cost and energy reference levels. CAISO asserts that the proposed revisions will provide a just and reasonable method for verifying a supplier's request to increase a resource's reference levels when its actual or expected costs will be greater than CAISO-calculated costs, based on verifiable contemporaneously available information. CAISO explains that these procedures will enable it to use fuel or fuel-equivalent prices in calculating reference levels that reflect suppliers' actual or expected fuel or fuel-equivalent costs. CAISO contends that this, in turn, will provide CAISO with more efficient resource schedules and dispatches and will ensure that suppliers are adequately compensated.[14]

11. CAISO's proposed Tariff revisions specify a process for CAISO to adjust reference levels upon a supplier's request prior to the CAISO market process.[15] Under the proposal, suppliers will be able to choose either an automated process or a manual process for proposing and evaluating adjustments.

12. CAISO states that suppliers for all types of resources, except non-resource-specific system resources, can submit requests to change their resource's reference levels to reflect the resource's actual or expected fuel or fuel-equivalent costs. Suppliers under the registered cost methodology may not submit reference level change requests for their commitment costs, because costs under this methodology are not based on variable fuel prices.[16] Further, CAISO explains that suppliers may not submit reference level change requests to recover costs associated with gas company imbalance penalties. According to CAISO, such reference level change requests are inappropriate, because the fuel price

[13] *Id.* P 41.

[14] Transmittal at 26.

[15] *Id.* at 27.

[16] Under the registered cost methodology, costs are based on projected gas prices and are eligible for a 150% multiplier. *Id.* at 27.

indices CAISO uses capture the bulk of the costs associated with gas imbalance charges.[17]

A. Automated Reference Level Change Requests

13. Under the proposed automated process, a supplier can request an adjustment to its resources' reference levels, and the CAISO market systems will compare the proposed adjusted amount to a resource-specific "reasonableness threshold." CAISO explains that its market systems will calculate the reasonableness thresholds by recalculating commitment cost bid caps and default energy bids using fuel prices increased by fixed percentages. According to CAISO, the reasonableness thresholds will be different for each resource because each resource has different operational characteristics.[18]

14. CAISO states that, for natural gas-fired resources, the reasonableness thresholds will be determined using the same methodology CAISO currently uses to calculate resources' proxy cost-based default start-up bids, proxy cost-based default minimum load bids, and variable cost-based default energy bids, except that the fuel price used to calculate the reasonableness thresholds will be multiplied by a fixed percentage.[19] CAISO states that, for days with a published daily gas price index, the CAISO market systems will multiply the natural gas commodity price component of the calculation by 110%. CAISO states that, for days without a published daily gas price index (i.e., Mondays, weekends and weekdays following holidays), the CAISO market systems will multiply the natural gas commodity price component of the calculation by 125%.[20]

15. For non-natural gas-fired resources, CAISO explains that the reasonableness threshold will equal the resource's proxy cost-based default start-up bid, proxy cost-based default minimum load bid, or variable cost-based default energy bid, with the fuel or fuel-equivalent cost component of the calculation being multiplied by 110%.[21]

16. CAISO states that if the costs submitted in an automated reference level change request is equal to or less than the resource's reasonableness threshold, CAISO will include the verified reference level as soon as practicable in the next applicable market run. If, on the other hand, the cost submitted in an automated reference level change request exceeds the resource's reasonableness threshold, CAISO will approve the reference level change request only to the level that equals the resource's reasonableness

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[17] *Id*.

[18] *Id.* at 30.

[19] *Id.* at 34

[20] *Id.* at 35-37.

[21] *Id.* at 35-36.

threshold. The supplier can then request after-market recovery for any amounts not accepted through the automated reference level change request process.[22]

17. CAISO states that, although a supplier is not required under this proposal to submit supporting documentation when it submits an automated reference level change request, each such request must be supported by contemporaneously available documentation that the supplier has on hand when it submits the request. Further, CAISO requests authority to audit automated reference level change requests to ensure suppliers submit such requests based on an actual expectation of increased exposure to fuel costs.[23]

18. CAISO notes that automated reference level change requests will not be available for hydro default energy bids because they are based on an opportunity cost methodology based on both electricity prices and natural gas prices. CAISO explains that only the natural gas component of the hydro default energy bid is eligible for adjustment, and CAISO will evaluate that through its proposed manual adjustment request process.[24]

19. CAISO also proposes updates to natural gas prices used to calculate reasonableness thresholds and reference levels. CAISO also seeks authority to update the natural gas commodity price used to calculate a resource's real-time reasonableness threshold. CAISO proposes to revise reasonableness thresholds for all resources within a fuel region if the same-day gas price is 10% greater than the next-day gas price that CAISO uses to calculate reasonableness thresholds and reference levels. CAISO notes that it is possible that CAISO will not be able to determine that same-day gas prices are in fact 10% greater than the next-day gas price previously used to calculate the reasonableness thresholds. CAISO states that, if it is not able to make this determination, it will not update the reasonableness thresholds for affected resources.[25]

20. CAISO states that if it updates the fuel price used in the reasonableness thresholds, it will automatically recalculate the gas floor component portion for all hydro default energy bids in the applicable fuel regions. According to CAISO, this component of the hydro default energy bid is intended to ensure that the bid is at least as high as the cost of marginal gas generation. CAISO asserts that this provision is necessary to account for

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[22] *Id.* at 30.

[23] *Id.* at 30-31, 45-48.

[24] *Id.* at 31.

[25] *Id.* at 38-39.

changes in natural gas prices, so the gas floor component of the hydro default energy bid accurately reflects current gas prices.[26]

21. CAISO also seeks authority to adjust the reasonableness threshold for a specific resource if CAISO observes the resource's actual fuel or fuel-equivalent costs are repeatedly systematically greater than the costs CAISO used in calculating the resource's corresponding reference level. CAISO will adjust the resource's reasonableness threshold based on observing persistent payments made to a resource through the after-market cost recovery process. CAISO states that these adjustments will be in the form of a percentage multiplier to the reasonableness threshold, and this would allow CAISO to tune the resource's reasonableness thresholds to be more reflective of the resource's actual costs.[27]

B. Manual Reference Level Change Requests

22. CAISO proposes to allow suppliers to request manual reference level changes. CAISO explains that for natural gas-fired resources, the manual process may be used to propose changes to default start-up bids, default minimum load bids, and default energy bids. For non-natural gas-fired resources, manual reference level change requests can be submitted only for default energy bids. CAISO states that a supplier can request a manual reference level change when its actual or expected fuel or fuel-equivalent costs exceed the fuel or fuel-equivalent costs CAISO used to calculate the resource's reference level by the higher of 10% or $0.50/MMBTU. CAISO reasons that, if the resource's costs exceeded those used by CAISO by less than 10%, the supplier would have submitted an automated reference level request change. CAISO expects to conduct manual requests only if costs exceed the automated thresholds, and therefore, these metrics indicate when reasonable grounds exist to submit manual reference level change requests.[28]

23. CAISO states that suppliers must submit manual reference level change requests by 8:00 a.m. on the business day the applicable CAISO market is executed, and such requests must include documentation of contemporaneously available information at the time of submission. CAISO explains that prior to the day-ahead market, if practicable, or as soon as practicable for the real-time market, it will validate the submitted information and any other available evidence of current costs that apply to the manual reference level change request. CAISO states it will implement the reference level change if it determines that the information supports the request and will use the revised reference level in the CAISO market processes and for settlement purposes. If CAISO cannot

[26] *Id.* at 41-42.

[27] *Id.* at 42-43.

[28] *Id.* at 48-49.

validate the information, it will reject the manual reference level change request and make no changes to the resource's reference levels. However, as with automated reference level change requests, suppliers may request after-market reference level adjustments for any amounts CAISO does not validate prior to the execution of the applicable market run.[29]

24. CAISO explains that if it accepts a manual reference level change request, it will update the resource's reasonableness threshold in addition to updating the supplier's reference levels. CAISO states that this will ensure that if the supplier's costs increase further after its manual request, and the supplier has in its possession new contemporaneously available information that supports an increase in its actual or expected fuel costs, the supplier has the ability to submit an automated reference level change request. According to CAISO, this will allow the supplier to increase its reference levels in the event CAISO increases the fuel costs used to update the resource's reasonableness threshold on its own initiative as discussed above.[30]

C. Exclusion of Commitment Cost Multipliers and Default Energy Bid Multipliers from Reference Level Change Requests

25. CAISO states that all reference level change request calculations for default commitment cost bids and default energy bids processed through the automated and manual processes will exclude the 125% commitment cost multiplier and the 110% default energy bid multiplier that had been included in reference level change request calculations under CAISO's 2019 CCDEBE Proposal that was rejected by the Commission. CAISO explains that these multipliers are included in the existing calculation of reference levels under the current Tariff. According to CAISO, if a supplier chooses to submit a reference level change request, it is an indication that the supplier anticipates the weighted index price does not capture an anticipated or actual higher fuel cost. Consequently, CAISO explains, the supplier must submit a proposed reference level using the same methodology used to calculate the reference level, except the calculation will reflect a higher actual or expected fuel cost. CAISO states that the rationale for excluding these multipliers from reference level change request calculations is that the updated reference level includes actual or expected fuel costs.[31]

D. After-Market Cost Recovery Procedures

26. CAISO proposes new procedures to allow suppliers to request adjustments to their resource reference levels based on a resource's actual fuel or fuel-equivalent costs up to

[29] *Id.* at 49-50.

[30] *Id.* at 50.

[31] *Id.* at 50.

60 business days after the applicable trading day. CAISO explains that the proposed procedures are similar to its existing Tariff provisions, but they allow a supplier to request CAISO to consider and approve the after-market recovery of costs instead of, or before, Commission review. CAISO states that to seek after-market cost recovery from CAISO, or via an FPA section 205 filing at the Commission, a supplier must submit supporting documentation demonstrating that the submitted costs represent actually incurred daily fuel or fuel-equivalent costs that exceed the fuel or fuel-equivalent costs CAISO used to calculate the resource's reference levels. CAISO states that these costs must be reasonable and reflect prudent procurement practices. CAISO also explains that the supplier can seek recovery from the Commission if CAISO determines the resource is ineligible for after-market fuel cost recovery, or the supplier chooses to seek recovery from the Commission instead of from CAISO.[32]

27. CAISO states that, during the stakeholder process preceding this Tariff amendment, one stakeholder argued that CAISO should reimburse resources for gas usage imbalance penalties after the fact. CAISO asserts that doing so would provide a disincentive for suppliers to follow gas pipeline instructions and contends that the Commission has taken this position as well.[33] For these reasons, CAISO states that it does not propose to provide after-the-fact cost reimbursement for gas penalties. According to CAISO, if a resource wants to recover gas usage penalty costs associated with a CAISO dispatch instruction after CAISO has dispatched the resource, it can seek relief from the pipeline or local distribution company.[34]

E. Revisions to Clarify and Reorganize Proxy Cost Methodology Tariff Provisions

28. CAISO proposes to reorganize and clarify its Tariff provisions on the proxy cost methodology to reflect the other Tariff amendments proposed in the filing.[35] CAISO states that these changes do not modify the substance of the existing Tariff provisions. In addition, CAISO proposes to introduce new defined terms to capture the default commitment cost bids it calculates for resources.[36]

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[32] *Id.* at 54-55.

[33] *Id.* at 56 (citing *Cal. Indep. Sys. Operator Corp.*, 155 FERC ¶ 61,224, at PP 90, 96 (2016) (Aliso Canyon Order); *N.Y. Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,111, at P 39 (2016) (*NYISO*)).

[34] *Id.*

[35] *Id.* at 57.

[36] *Id.* at 57-58.

F. Other Tariff Revisions

29. CAISO states that it calculates generated bids using the same cost components and resource-specific information used in the variable-cost default energy bid when a supplier does not submit a bid for a resource adequacy resource subject to a must-offer requirement or pursuant to CAISO's generally applicable scheduling and bidding rules. CAISO explains that it determines natural gas costs for generated bids of natural gas-fired resources using the same gas pricing provisions it uses to determine gas costs for commitment costs and variable cost default energy bids.[37] CAISO proposes to revise its Tariff to define a generated bid as a post-market bid generated by CAISO "using the applicable Default Energy Bid and Default Commitment Cost Bids."[38] CAISO also proposes revisions to correctly capitalize existing Tariff-defined terms and use existing defined terms more precisely, clarify the meaning of certain Tariff provisions, and implement new and more precise definitions that in some cases supersede existing Tariff terms.[39]

III. Notice and Responsive Pleadings

A. Comments

30. Notice of CAISO's filing was published in the *Federal Register*, 85 Fed. Reg. 42,852 (July 15, 2020), with interventions and protests due on or before July 30, 2020. Timely motions to intervene were filed by Pacific Gas and Electric Company, Calpine Corporation, NRG Power Marketing LLC, Southern California Edison Company, San Diego Gas & Electric Company, Northern California Power Agency, California Department of Water Resources State Water Project, Powerex Corp., the City of Santa Clara, California, and the Modesto Irrigation District. A timely motion to intervene and comments were filed by the Department of Market Monitoring of the California Independent System Operator Corporation (DMM). A timely motion to intervene and a protest were filed by the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, Six Cities). On August 14, 2020, CAISO filed an answer.

31. DMM supports CAISO's filing. Specifically, DMM agrees with CAISO's proposal not to allow suppliers to include an additional adder or multiplier to their estimated or actual costs when requesting reference level adjustments for commitment

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[37] *Id.* at 59.

[38] *Id.* (citing CAISO, CAISO eTariff, app. A (Definitions), Generated Bid (3.0.0)).

[39] *Id.*

cost or default energy bids.[40] In light of CAISO's clarifications in the filing that market participants cannot include gas imbalance penalties in reference level change requests and may not request additional uplift payments associated with these penalties, DMM states that it also supports CAISO's proposal not to allow market participants to include gas imbalance penalties in reference level change requests or to request additional uplift payments associated with these penalties.[41] DMM recommends that CAISO clarify proposed Tariff section 30.12.4.3 to explicitly include all categories of settlement potentially limited by an inappropriately low reference level upon verification of a resource's actually incurred costs. According to DMM, in addition to bid cost recovery, some exceptional dispatch energy is settled at default energy bid reference levels. DMM recommends including this category of settlement for resettlement upon verification that the resource's incurred costs were not recovered, in addition to bid cost recovery settlement already included in this section.[42]

32. Six Cities protest CAISO's proposal not to allow recovery of costs actually incurred for gas usage penalties under any circumstances. Six Cities acknowledge that compliance with restrictions on gas consumption imposed by pipelines and local distribution companies generally should be expected, and penalties for non-compliance should be recoverable only under very limited circumstances. However, Six Cities contend that categorical rejection of any request to recover gas usage penalties is unjustified. According to Six Cities, where a resource owner can demonstrate that it has incurred penalties for violation of gas usage restrictions that were caused by compliance with CAISO dispatch orders and were unavoidable, refusal to allow recovery of such costs is unjust, unreasonable, and confiscatory. Six Cities argue that confiscatory denial of cost recovery is not justified simply because it is likely to occur only on rare occasions.[43]

33. Six Cities contend that CAISO has mischaracterized the Commission's precedent on recovery of gas imbalance penalties. According to Six Cities, a complete reading of the Aliso Canyon Order supports case-by-case consideration of requests for recovery of gas imbalance penalties, as requested by Six Cities, not categorical disallowance as proposed by CAISO.[44] Likewise, Six Cities argue, *NYISO* does not support the categorical denial of recovery for gas usage penalties, regardless of the reasons such penalties are incurred. According to Six Cities, *NYISO* presumes that generators have the

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[40] DMM Comments at 3-6.

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

[42] *Id.* at 8.

[43] Six Cities Protest at 1-2.

[44] *Id.* at 2-4 (citing Aliso Canyon Order, 155 FERC ¶ 61,224 at PP 93, 96).

ability to avoid gas usage penalties by declining to operate, but CAISO has provided no such assurance and a resource should not be placed in the position of having to decline or disregard a CAISO dispatch order or incur non-recoverable and otherwise unavoidable gas penalties to comply with the dispatch instruction.[45]

B. CAISO Answer

34. CAISO states that it is not appropriate or necessary to allow scheduling coordinators to submit requests to recover costs associated with gas company imbalance penalties. According to CAISO, allowing such requests could provide a disincentive for suppliers to follow gas pipeline instructions, thereby threatening gas system reliability. CAISO asserts that if a resource wants to recover gas imbalance penalty costs associated with a CAISO dispatch instruction, the resource is able to seek relief from the pipeline or local distribution company.[46]

35. Moreover, CAISO points to DMM's analysis showing that natural gas imbalance penalties and limitations are reflected in gas price indices and, in turn, suppliers' natural gas procurement costs. According to CAISO, DMM also demonstrated that the difference between next-day gas prices at the SoCal Citygate hub correlates with the declaration of operational flow orders (OFOs) and the different gas imbalance charges associated with these OFOs. Thus, CAISO asserts that most of the gas imbalance penalties should already be captured in the gas price indices used to calculate a resource's reference levels.[47]

36. CAISO also agrees with DMM that the Tariff revisions concerning the settlement of recoverable amounts should be clarified to permit the recovery of incurred costs for exceptional dispatch energy. CAISO states that the Commission should accept the CCDEBE proposal as filed, subject to a compliance filing to make DMM's suggested clarification.[48] If directed to make a compliance filing, CAISO states that it would revise Tariff section 30.12.4.3 to read:

> To the extent the CAISO's evaluation results in verification that the resource's actually incurred costs claimed by the Scheduling Coordinator were not recovered through the Bid Cost Recovery process, the CAISO will resettle Bid Cost Recovery <u>and Exceptional Dispatch</u> using revised Bid Costs <u>and revised Default Energy Bids, as applicable,</u> for the resource and

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[45] *Id.* at 4 (citing *NYISO*, 154 FERC ¶ 61,111 at P 9).

[46] CAISO Answer at 4-5.

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

[48] *Id.* at 6.

will issue Recalculation Settlement Statement(s) within the normal Recalculation Settlement Statements timelines specified in Section 11.29.[49]

IV. Discussion

A. Procedural Matters

37. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

38. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2020), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept CAISO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

39. As discussed below, we accept CAISO's proposed Tariff revisions, to be effective on CAISO's actual implementation date, as requested, subject to the condition that CAISO submits a compliance filing within 30 days of the date of this order.[50]

40. We find that CAISO's CCDEBE proposal will allow resources that face high gas costs resulting from inter-day variation in natural gas prices to reflect those costs in their reference levels. By reflecting the actual costs of these resources in reference levels, CAISO's proposal will facilitate a more efficient dispatch of its system.

41. We also find that CAISO's proposal for automated reference level adjustments will provide resources with an efficient way to update their reference levels when they face costs not captured by those reference levels. CAISO's proposal to audit these requests should prevent resources from submitting automated requests that do not reflect their actual or expected costs. Moreover, CAISO's proposal for manual reference level adjustments provides resources with a further opportunity to recover actual or expected costs not captured by the reasonableness threshold subject to CAISO's review. CAISO's proposal to include an after-market cost recovery program will provide resources further assurance that they will be able to recover prudently incurred costs that were not able to be included in their reference levels prior to the market run.

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[49] *Id.* at 7.

[50] The United States Court of Appeals for the District of Columbia Circuit has held that, in certain circumstances, the Commission has "authority to propose modifications to a utility's [FPA section 205] proposal *if the utility consents to the modifications*." *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017).

42. CAISO's proposal to adjust the reasonableness threshold in response to inter-day fuel price increases in a fuel region, and in response to persistent conditions faced by a resource, will also ensure that its markets accurately reflect natural gas price volatility, which in turn will result in dispatching resources more efficiently.

43. Additionally, we find that CAISO's proposal to exclude existing commitment cost and default energy bid multipliers from the calculation of a resource's adjusted reference level is just and reasonable and addresses the concerns that led to rejection of the 2019 CCDEBE Proposal.[51] Under CAISO's proposal in this filing, reference level adjustments will be based on a resource's actual or expected costs and will not provide additional headroom above a resource's verifiable actual or expected costs.

44. Moreover, consistent with our determination in *NYISO*, we find that it is just and reasonable to exclude the recovery of natural gas imbalance penalties from cost recovery under these provisions.[52] As we found in *NYISO*, allowing generators to recover these penalties could jeopardize the reliability of the natural gas pipeline and transmission systems and is therefore at odds with the reliability benefits associated with allowing generators to recover actual fuel costs.

45. We disagree with Six Cities that a prohibition on the recovery of gas imbalance penalties results in confiscatory rates. The Commission has found that compensation based on a resource's reference levels in CAISO represents a reasonable opportunity to recover costs.[53] Because the reference levels represent a reasonable opportunity to recover costs, such compensation is sufficient to avoid confiscatory rates. CAISO's proposal enhances the ability of resources to recover costs by allowing resources to reflect high gas costs in their reference levels. We also disagree with Six Cities that Commission precedent supports the recovery of gas imbalance penalties. Six Cities assert that the Commission's findings in *NYISO* relied on assurance that resources could avoid penalties by declining to operate; however, the Commission's reasoning in *NYISO* does not support this assertion. While the Commission noted in *NYISO* that generators could seek approval from a gas pipeline company to avoid the characterization of its gas usage as "unauthorized," it did not condition its approval of the exclusion of gas imbalance penalties on this ability, nor did it rely on any assurances that resources could avoid gas imbalance penalties by declining to operate.[54] Similarly, in the Aliso Canyon Order, while the Commission declined to require CAISO to explicitly exclude gas

[51] January Order, 170 FERC ¶ 61,015 at PP 39-42.

[52] *NYISO*, 154 FERC ¶ 61,111 at PP 39-40.

[53] *J.P. Morgan Ventures Energy Corp.*, 141 FERC ¶ 61,131, at P 59 (2012) (citing *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at PP 1033-57 (2006)).

[54] *NYISO*, 154 FERC ¶ 61,111 at P 42.

imbalance penalties from cost recovery, the Commission nevertheless found that the recovery of those costs was not appropriate for the reasons articulated in *NYISO*.[55]

46. Finally, we agree with CAISO that the proposed revision by DMM concerning the settlement of recoverable amounts clarifies CAISO's proposal.[56] We therefore direct CAISO to submit a compliance filing no later than 30 days from the date of this order reflecting the revision to section 30.12.4.3 of its Tariff included in CAISO's answer.

<u>The Commission orders</u>:

(A) CAISO's proposed revisions to its Tariff are hereby accepted, subject to condition, to become effective on CAISO's actual implementation date, as requested, as discussed in the body of this order.

(B) CAISO is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(C) CAISO is hereby directed to notify the Commission of the actual effective date of the Tariff revisions within five business days of their implementation, in an eTariff submittal using Type of Filing Code 150 – Report.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[55] Aliso Canyon Order, 155 FERC ¶ 61,224 at PP 93, 96.

[56] *See* CAISO Answer at 6-7.