

136 FERC ¶ 61,156
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket Nos. ER10-1559-002
ER11-2128-000
ER11-2128-002
ER11-2128-004

ORDER ON REHEARING AND SECTION 206 PROCEEDING

(Issued July 25, 2011)

1. This order accepts the California Independent System Operator Corporation's (CAISO) justification for the level of its virtual award charge. This order also terminates the section 206 proceeding in Docket Nos. ER11-2128-000 and 004 and denies the request for rehearing of the Commission's order instituting a Federal Power Act (FPA) section 206 proceeding.¹

I. Background²

2. In its 2006 order conditionally accepting CAISO's Market Redesign and Technology Upgrade (MRTU), the Commission directed CAISO to file tariff language to implement convergence bidding (also referred to as virtual bidding) within 12 months of the effective date of MRTU.³ In November 2009, CAISO made a conceptual filing

¹ *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,070 (2011) (January 2011 Convergence Bidding Rehearing Order).

² For a more detailed description of the history of convergence bidding, please *see Cal. Indep. Sys. Operator Corp.*, 130 FERC ¶ 61,122, at P 3-5 (2010) (Convergence Bidding Design Order).

³ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 452 (2006) (September 2006 MRTU Order).

regarding convergence bidding,⁴ and the Commission addressed CAISO's filing and granted an extension of time to implement convergence bidding in its February 2010 Convergence Bidding Design Order.⁵

3. In the Convergence Bidding Design Order, the Commission approved, in principle, the majority of the proposed convergence bidding features and provided guidance and sought additional details on other aspects of the proposal.⁶ The Commission's determination included a finding that establishing a new convergence bidding charge was reasonable. However, the Commission's acceptance of the convergence bidding charge, and other charges, was subject to the Commission finding that a subsequent FPA section 205 tariff filing demonstrated that the level of the charge and the tariff provision implementing the charge were just and reasonable.⁷

4. On June 25, 2010, CAISO filed its convergence bidding proposal. The proposal included a series of charges to convergence bidding scheduling coordinators including a convergence bidding award charge (called a "virtual award charge"), a transaction fee and a metering and client relations charge.

5. On October 15, 2010, the Commission conditionally accepted CAISO's convergence bidding proposal.⁸ The Commission noted that while CAISO committed to file tariff language in a subsequent proceeding with the exact level of the virtual award charge, the existing language regarding the level of the virtual award charge was ambiguous, and the Commission directed that such ambiguity be removed in a compliance filing.⁹

6. On November 15, 2010, CAISO submitted a compliance filing that established the virtual award charge, in the tariff, to be calculated as nine percent of the Forward

⁴ CAISO, Convergence Bidding Design Filing, Docket No. ER10-300-000 (filed November 20, 2009) (Convergence Bidding Design Filing).

⁵ Convergence Bidding Design Order, 130 FERC ¶ 61,122 at P 24.

⁶ *Id.* P 1.

⁷ *Id.* P 111.

⁸ *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,039 (2010) (October 2010 Convergence Bidding Order).

⁹ *Id.* P 218.

Scheduling Charge and Market Usage – Forward Energy services categories.¹⁰ The Commission found that CAISO’s proposed modification was beyond the scope of a compliance filing directive to remove the ambiguous language, and the Commission considered the proposed virtual award charge separate from the rest of the compliance filing as a new FPA section 205 filing.¹¹

7. The Commission found that CAISO did not fully justify how it arrived at the nine percent figure for the calculation of the virtual award charge.¹² The Commission noted that CAISO’s supporting documents assume that convergence bidding will lead to a ten percent increase in megawatt volume of cleared virtual and physical bids without explanation for the assumption.¹³ Therefore, the Commission, in the interest of assuring that convergence bidding began on schedule, accepted the proposed nine percent virtual award charge for filing, to become effective on February 1, 2011, subject to refund and further order by the Commission. The Commission also established, under FPA section 206, an investigation to evaluate CAISO’s nine percent virtual award charge and directed CAISO to make a filing providing justification for the charge.

8. On March 2, 2011, CAISO made a filing to demonstrate the justness and reasonableness of the proposed percentage value for calculating the rate of the virtual award charge.

II. Notice of Filing and Responsive Pleadings

9. On February 2, 2011, the Commission issued Notice of Institution of Section 206 Proceeding and Refund Effective Date that was published in the *Federal Register*, 76 Fed. Reg. 7187 (2011). Also, notice of CAISO’s March 2, 2011 filing was published in the *Federal Register*, 76 Fed. Reg. 13399 (2011). Pursuant to an errata notice issued March 10, 2011, comments, protests, or interventions were due on April 1, 2011.

10. SESCO Enterprises, LLC, Silverado Energy LP and JPTC, LLC, (collectively, Financial Marketers) timely filed a motion to intervene and protest. The Cities of

¹⁰ Convergence Bidding Design Order, 130 FERC ¶ 61,122 at P 105, 111 (the virtual award charge combines the Forward Scheduling Charge and the Market Usage Charge for the day-ahead energy market).

¹¹ January 2011 Convergence Bidding Rehearing Order, 134 FERC ¶ 61,070 at P 69.

¹² *Id.* P 78.

¹³ *Id.* P 77.

Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California; the City of Santa Clara, California, the M-S-R Public Power Agency and the City of Redding, California filed motions to intervene. CAISO filed an answer to the protest. Financial Marketers filed an answer.

11. On March 2, 2011, Financial Marketers, joined by Jump Power, LLC and Solios Power, LLC, timely filed rehearing requests concerning the January 2011 Convergence Bidding Rehearing Order's institution of an FPA section 206 proceeding.

III. Discussion

A. Procedural Matters

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the filed answers and will, therefore, reject them.

B. Substantive Matters

1. Justification for Virtual Award Charge

13. CAISO submits that it determined the proposed nine percent value for calculating the virtual award charge by benchmarking against the convergence bidding practices of other Independent System Operators (ISO) and Regional Transmission Operators (RTO). CAISO maintains that there was no actual market data on the impact of convergence bidding on the bid volume in the CAISO market prior to the implementation of convergence bidding.¹⁴ Therefore, CAISO explains that it considered data from: PJM Interconnection, L.L.C. (PJM), the New York Independent System Operator, Inc. (NYISO), the Midwest Independent Transmission System Operator, Inc. (MISO), and ISO New England Inc. (ISO-NE) to establish the nine percent value for calculating the virtual award charge.¹⁵

14. CAISO argues that through this benchmarking process, it determined that it was reasonable to assume that the implementation of convergence bidding would cause an incremental increase of approximately ten percent in the megawatt volume of cleared bids as compared with the megawatt volume of cleared bids in the preceding year. CAISO notes that convergence bidding represented approximately ten percent of the

¹⁴ CAISO March 2, 2011 FPA Section 206 Filing at 5 (CAISO 206 Filing).

¹⁵ *Id.* at 4.

volume of cleared physical and convergence bids in the MISO and ISO-NE markets in 2008.¹⁶ CAISO also notes that the ten percent value is comparable to the percentage values for the PJM and NYISO markets, which range from approximately five to 20 percent.¹⁷

15. CAISO states that it arrived at the nine percent value for calculating the virtual award charge rate by dividing the projected ten percent incremental increase in cleared bids caused by convergence bidding by the 110 percent projected overall bidding volume figure, reflecting a 10 percent increase due to convergence bidding. This calculation equals nine percent, which estimates the share of overall cleared bids caused by convergence bidding.

16. CAISO adds that, at a stakeholder meeting held on April 21, 2010, CAISO delivered a presentation that showed, based on its 2010 budget and anticipated market volumes, the use of the nine percent value in the calculation of the virtual award charge rate would result in a rate of \$0.078 per gross cleared megawatt-hour.¹⁸ CAISO continues that the actual virtual award charge rate based on the actual budget for 2011 has turned out to be lower – \$0.0618 per gross cleared megawatt-hour.¹⁹ CAISO states that this rate will apply for 2011. CAISO notes that it is conducting a grid management charge stakeholder process this year that is likely to result in new rates for all grid management charges in the future.²⁰

17. CAISO contends that the resulting virtual award charge rate of \$0.0618 per gross cleared megawatt-hour is almost exactly midway within the range of dollar levels of the convergence bidding charges for other comparable entities.²¹ CAISO further states that the methodology it uses to determine the proposed nine percent value and resulting virtual award charge rate are consistent with the Commission's specific findings

¹⁶ *Id.* at 5 (citing Ex-1 at 8-15).

¹⁷ *Id.* (citing Ex-1; Margaret Miller Declaration at P 7).

¹⁸ *Id.* at 6 (citing Ex-3; Margaret Miller Declaration at P 10).

¹⁹ *Id.* at 6.

²⁰ *Id.* at 6 n.21.

²¹ *Id.* at 7.

concerning CAISO's convergence bidding charge in its Convergence Bidding Design Order.²²

Protest

18. Financial Marketers argue that under cost causation principles, the allocation of transmission-related costs to convergence bids should be based on an approximation of the amount of such costs caused by convergence bids. Financial marketers argue that CAISO has failed to make any cost causation showing because it has neither alleged nor demonstrated that implementation of convergence bidding will result in any increase in the costs that CAISO has been recovering through its Forward Scheduling Charge and Market Usage Charge for Forward Energy, and that the proposed virtual award charge is designed to recover the expected cost increase. Therefore, Financial Marketers contend that there is no basis on which the Commission could lawfully approve that cost shift as just and reasonable.²³

19. Financial Marketers contend that CAISO expects that implementation of convergence bidding will reduce the costs incurred and historically recovered through its Forward Scheduling Charge and Market Usage Charge for Forward Energy. Therefore, Financial Marketers maintain that CAISO's projected decrease in costs demonstrates that its proposed virtual award charge is not just and reasonable.²⁴

20. Financial Marketers add that imposing costs based on what other ISOs and RTOs charge is arbitrary and an inadequate basis on which to justify a rate change. Financial Marketers state that the Commission has long recognized the level of a properly designed rate or charge will vary depending on the costs incurred by the utility at issue, its projected megawatt-hour volumes, and the amount of costs, if any, attributable to each category of customer. Financial Marketers claim CAISO has made no showing of how these variables in CAISO compare to those in the other markets, and without such information, no rational conclusions can be drawn.

21. Financial Marketers argue that there is no justification for assuming that, in the first partial year in which convergence bids are permitted in CAISO, convergence bids

²² *Id.* at 7-8 (citing Convergence Bidding Design Order, 130 FERC ¶ 61,122 at P 112).

²³ Financial Marketers April 1, 2011 Motion to Intervene and Protest at 4-5 (Financial Marketers Protest).

²⁴ *Id.* at 5.

will reach a level comparable to that achieved in other organized markets years after they implemented convergence bidding. Financial Marketers state that such a comparison should look at the level of convergence bidding achieved by those markets in their first year of convergence bidding.

22. Financial Marketers note that CAISO's filing looks at the portion of cleared bids in PJM that were virtual bids in the first quarter of 2009.²⁵ Financial Marketers argue that CAISO provides no explanation why that quarter is representative of PJM's experience since implementing convergence bidding, or why it is indicative of the volume increase CAISO should expect in its first partial year after implementing convergence bidding.

23. Financial Marketers continue that CAISO's filing relies on ISO-NE figures for the year 2008, but virtual bids comprised a much smaller segment of cleared bids in 2006.²⁶ Financial Marketers contend that ISO-NE's earlier experience with convergence bidding is a better indicator of what one might expect CAISO to experience in its first year of convergence bidding.

24. Financial Marketers argue that the MISO and NYISO information that CAISO relies on shows that virtual bids constitute only five percent of all cleared bids in each of those markets in 2009. Financial Marketers note that CAISO assumes the level of market share will be reached in the first year, despite the fact that convergence bids will only have been permitted during part of the year.²⁷

25. Financial Marketers argue that CAISO has not shown that it is comparing similar charges. For example, Financial Marketers allege that the NYISO's charge is designed to recover all of the NYISO's annual budgeted costs and FERC-assessed regulatory fees,²⁸ whereas CAISO's proposed virtual award charge is supposed to recover only the costs of Forward Scheduling and Market Usage-Forward Energy service. Additionally, Financial Marketers claim that while the dollar amount of the bid charge may appear to be in the same range as that imposed by other ISOs and RTOs, CAISO proposes to impose the

²⁵ *Id.* at 7.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 8.

charge on a per megawatt-hour basis, while MISO imposes its charge on a per-bid basis.²⁹

26. Financial Marketers contend that, unlike the other markets, CAISO is imposing bid limits and position limits that decrease through the first year of convergence bidding. Financial Marketers contend that the position limits make it a “mathematical certainty” that convergence bids will fall well short of achieving a ten percent market share in 2011.³⁰

27. Financial Marketers contend other practices unique to CAISO’s system will discourage convergence bidding including: posting nodal virtual bid data on a daily basis, and imposing uplift costs and other charges on convergence bids. Also, Financial Marketers state that CAISO’s collateral requirements for convergence bids are more stringent than those of other ISOs and RTOs. Financial Marketers add that the fact that MISO, PJM, ISO-NE, and the NYISO are physically integrated likely hastened the development of convergence bidding in those markets in a way that will not apply in CAISO.

Commission Determination

28. The Commission finds just and reasonable CAISO’s use of nine percent to calculate the rate for the virtual award charge. The Commission finds that CAISO provides sufficient justification for the level of its virtual award charge. CAISO argues that the new virtual award charge is based on the expected level of convergence bidding activity that will occur in CAISO’s market. This estimate is based upon a consideration of the volume of bidding that other ISOs and RTOs have experienced with the inclusion of convergence bidding. In the absence of actual CAISO data and cost support, we find it is reasonable for CAISO to consider the experience of other ISOs and RTOs in order to estimate the appropriate level of participation and charges associated with convergence bidding. Accordingly, we terminate the section 206 proceeding in Docket Nos. ER11-2128-000 and 004. We direct CAISO to file, for informational purposes, a study after 18-months of convergence bidding market experience that includes data demonstrating whether the estimated level of bidding resulting from convergence bidding is an accurate representation of actual activity in the CAISO market.³¹

²⁹ *Id.* at 9.

³⁰ *Id.* at 8.

³¹ We note that this study is for informational purposes only. The Commission will not notice the filing, nor accept comment on it, and the filing does not require

29. We also reject Financial Marketers' arguments that CAISO improperly considers the effect convergence bidding had on bidding in other ISOs and RTOs because CAISO did not explain why it considered certain time periods and because in certain periods convergence bidding did not account for ten percent of cleared bids. Convergence bidding levels will likely vary from year to year, as demonstrated by bidding activities in other ISOs and RTOs. For instance, in ISO-NE the megawatt volume due to virtual bidding was less than ten percent in 2006, more than ten percent in 2007, and almost exactly ten percent in 2008.³² Thus, CAISO properly considers the range of convergence bidding levels that other ISOs and RTOs have experienced and uses that range to approximate the amount of additional bidding that convergence bidding would cause. As the Commission has previously found, elements of CAISO's convergence bidding system, including its charges, are comparable to the convergence bidding systems in other ISOs and RTOs.³³ If actual CAISO market experience with convergence bidding reveals a different level of bidding due to convergence bidding and the virtual award charge should be changed, parties may file a complaint with the Commission under FPA section 206.³⁴

30. We reject Financial Marketers' arguments that go beyond the level of the virtual award charge as a collateral attack on the Commission's Convergence Bidding Design Order. In the Convergence Bidding Design Order, the Commission approved the use of the virtual award charge as a mechanism to administer grid management charges associated with convergence bidding.³⁵ Although the Commission did not address the level of the rate, the Commission found reasonable CAISO's proposal to establish such a charge, dismissing arguments concerning whether the proposed charges follow cost causation that are repeated here by Financial Marketers.

Commission action. The study should be filed by August 1, 2012, in Docket No. ER11-2128.

³² See CAISO 206 Filing, Ex-1 at 15.

³³ See, e.g., Convergence Bidding Design Order, 130 FERC ¶ 61,122 at P 35-37, 87, 111-113.

³⁴ 16 U.S.C. § 824e (2006); see also *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 542 (D.C. Cir. 2010) (finding that, if in the future, an allocation process results in an unjust outcome, a party may petition the Commission to order appropriate changes at that time under section 206 of the FPA).

³⁵ Convergence Bidding Design Order, 130 FERC ¶ 61,122 at P 111.

31. The Commission previously rejected Financial Marketers' assertions that the virtual award charge departed from cost causation principles,³⁶ and we again reject Financial Marketers' assertions here that assessing charges to convergence bidders is inconsistent with cost causation principles. We reiterate that "cost causation principles do not require costs to be allocated with exacting precision, as long as the costs incurred are reasonably commensurate with the benefits received."³⁷ We again disagree with Financial Marketers' assertion that the only costs that can lawfully be allocated to virtual transactions are those that would not have been incurred absent virtual transactions.³⁸ As we previously explained,

We expect that it would be difficult for the CAISO to isolate the incremental increase in the costs of convergence bidding activities that these fees are designed to recover. Rather, the CAISO has taken an alternative approach that allocates a nominal share of the relevant costs to convergence bidding activities. We find that this practical approach to ratemaking is, in this context, fair to all market participants in that it will reasonably allocate costs to those causing them.³⁹

It is reasonable that convergence bidders, as participants in the CAISO market, should bear some of the costs CAISO incurs receiving and processing bids and related activities included in the grid management charge.

32. Similarly, the Commission rejected Financial Marketers' arguments, made again in this proceeding, against CAISO's proposal to assess the convergence bidding charge on a per-megawatt-hour basis.⁴⁰ Although Financial Marketers argue that MISO imposes charges on convergence bidders on a per-bid basis, we again note that both NYISO and PJM assess similar bid charges on a per-megawatt-hour basis, and find Financial Marketers' arguments without merit.⁴¹

³⁶ *Id.* P 112.

³⁷ *Id.* (citing *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1369 (D.C. Cir. 2004); *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009)).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* P 113.

⁴¹ *Id.*

33. We are not convinced by Financial Marketers' claim that the virtual award charge is unnecessary because CAISO expects a lower overall grid management charge in 2011 than it had originally estimated. The data CAISO used to prepare its original virtual award charge estimate was based on its 2010 budget and anticipated market volumes. CAISO updated the values to reflect the lower 2011 grid management charge budget. The lower budget can be the result of any number of factors, and was not attributed to convergence bidding. The updated budget resulted in a lower virtual award charge.

34. Even though there are some differences between CAISO and other ISOs and RTOs, the experience of other ISOs and RTOs offers valuable guidance in estimating the effects of the introduction of CAISO's convergence bidding. The Commission notes that Financial Marketers appear to make contradictory arguments. On one hand, Financial Marketers contend that convergence bidding will have such a significant impact on the CAISO market that it will reduce overall costs to the market, making it inappropriate to shift more of the costs to convergence bidders. On the other hand, Financial Marketers argue that it is unlikely that convergence bidding will represent ten percent of the market because of the limitations on convergence bidding. Such contradictory arguments demonstrate the difficulty in predicting how convergence bidding will influence the CAISO market. Especially as position limits gradually lift, one cannot be "mathematically certain" of the level of bidding in the market. These challenges further support CAISO's method of reviewing the experiences of other ISOs and RTOs with convergence bidding and benchmarking against their experience.

2. Rehearing Request

35. Financial Marketers⁴² argue that the Convergence Bidding Rehearing Order commits legal error in failing to order the investigation of CAISO's virtual award charge in the FPA section 205 proceeding, as opposed to in a new FPA section 206 proceeding.⁴³ Financial Marketers claim that, to the extent the Commission finds that a proposed charge has not been proven to be just, reasonable, and not unduly discriminatory, the Commission is required to either reject the proposed charge or commence an investigation/hearing regarding the lawfulness of the charge pursuant to FPA section

⁴² The Commission notes that Financial Marketers are joined by Jump Power, LLC and Solios Power, LLC in the request for rehearing. These parties were included among the Financial Marketers in previous convergence bidding filings, but they did not join in the protest to CAISO's FPA section 206 filing above.

⁴³ Financial Marketers Rehearing Request at 4.

205(e).⁴⁴ According to Financial Marketers, the Commission had a statutory duty to commence an investigation in this FPA section 205 proceeding.⁴⁵

36. Financial Marketers argue that establishing an FPA section 206 proceeding unlawfully shifts the burden of proof to Financial Marketers. Financial Marketers note that in an FPA section 205 proceeding involving a rate change, the utility bears the burden of proof, while in an FPA section 206 proceeding, the burden of proof falls on the Commission and/or parties seeking a change in the utility's existing rates.

37. Financial Marketers contend that the virtual award charge is a rate CAISO proposes to charge both old and new customers for services that CAISO already provides. Thus, Financial Marketers continue, the virtual award charge is not an "initial rate" under established Commission policy.⁴⁶ Financial Marketers argue that to the extent the decision to institute an FPA section 206 proceeding was made based on an assumption that the virtual award charge qualifies as an "initial rate," the Convergence Bidding Rehearing Order errs and violates long established Commission policy. Financial Marketers contend that the virtual award charge is nothing more than a way of reallocating the costs of services CAISO already provides and should be treated as a rate change, not an initial rate.

38. Financial Marketers argue that converting the case with respect to the virtual award charge into an FPA section 206 proceeding, unlawfully erects a 15-month limit on the amount of time for which Financial Marketers can be awarded refunds. Financial Marketers maintain that in an FPA section 205 proceeding, the refund period is unlimited but in an FPA section 206 proceeding, the Commission is generally limited to ordering refunds "for the period subsequent to the refund effective date through a date fifteen months after such refund effective date."⁴⁷ Financial Marketers argue that there is no guarantee that the Commission will fully address the virtual award charge within a 15-month period commencing on the applicable refund effective date. Financial Marketers contend that this potential harm can be prevented by adjudicating the virtual award charge in an FPA section 205 proceeding.

⁴⁴ *Id.* (citing *Cities of Anaheim, et al. v. FERC*, 723 F.2d 656, 657-58 (9th Cir. 1984)).

⁴⁵ *Id.* (citing 16 U.S.C. §§ 824d(a), (b), and (e)).

⁴⁶ *Id.* at 5.

⁴⁷ *Id.* at 8 (citing 16 U.S.C. § 824d(e)).

Commission Determination

39. The Commission denies Financial Marketers' rehearing request regarding the institution of the FPA section 206 proceeding. The Commission has discretion to determine the best procedures to address the issues before it.⁴⁸ Here, the Commission exercised its discretion and determined that an FPA section 206 proceeding was the best procedure to address the issue of the proposed level of the virtual award charge and has the authority to institute such a proceeding.⁴⁹

40. We also find Financial Marketers' claims regarding whether the institution of the FPA section 206 proceeding unlawfully causes them harm or whether the virtual award charge constitutes an "initial rate" are not persuasive. As discussed above, we find that CAISO has justified its proposed level of the virtual award charge, and it is within the Commission's discretion to institute an FPA section 206 proceeding regarding the level of the virtual award charge.⁵⁰ Regardless which party bore the burden of proof or whether the virtual award charge constitutes an "initial rate," CAISO demonstrated that

⁴⁸ *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,207, at P 49 n.78 (2010) (citing *Mobil Oil Exploration v. United Distrib. Cos.*, 498 U.S. 211, 230 (1991) ("An agency enjoys broad discretion in determining how to handle related, yet discrete, issues in terms of procedures . . . [such as] where a different proceeding would generate more appropriate information and where the agency was addressing the question."); *Tennessee Gas Pipeline Co. v. FERC*, 972 F.2d 376, 381 (D.C. Cir. 1992) ("The agency is entitled to make reasonable decisions about when and in what type of proceeding it will deal with an actual problem"); *Nader v. FCC*, 520 F.2d 182, 195 (D.C. Cir. 1975) ("[T]his court has upheld in the strongest terms the discretion of regulatory agencies to control the disposition of their caseload."); *see also ISO New England, Inc.*, 130 FERC ¶ 61,236, at P 12 n.9 (2010) (citing *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 524-25 (1978) (agencies have broad discretion over the formulation of their procedures)); *Mich. Pub. Power Agency v. FERC*, 963 F.2d 1574, 1578-79 (D.C. Cir. 1992) (the Commission has discretion to mold its procedures to the exigencies of the particular case).

⁴⁹ 16 U.S.C. § 824e; *see also Trans Bay Cable, LLC*, 132 FERC ¶ 61,083, at P 27-28 (2010) (instituting an FPA section 206 proceeding regarding the level of a proposed rate).

⁵⁰ 16 U.S.C. § 824e.

the level of the virtual award charge was just and reasonable. Therefore, Financial Marketers' arguments do not affect the Commission's determination.⁵¹

41. Also, Financial Marketers' concern regarding the potential for a 15-month refund limit is not relevant. Since CAISO provided justification demonstrating that the level of its virtual award charge is just and reasonable, the matter of the refund period need not be reached by the Commission. Further, the Commission addresses Financial Marketers' rehearing requests well within the 15-month period.

The Commission orders:

(A) CAISO's justification for its proposed level of the virtual award charge is hereby accepted, as discussed in the body of this order.

(B) Request for rehearing of the Convergence Bidding Rehearing Order is hereby denied, as discussed in the body of this order.

(C) The section 206 proceeding in Docket Nos. ER11-2128-000 and 004 is hereby terminated, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵¹ See, e.g., *Public Utility District No. 1 of Snohomish County, Washington*, 115 FERC ¶ 61,375, at P 72 (2006) (stating, "[W]e need not decide, here, which of these two competing standards should be applied. . . [because] [petitioner] has satisfied its burden of proof under *either* standard.").