

182 FERC ¶ 61,067
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

California Independent System Operator Corporation Docket No. ER23-474-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued February 10, 2023)

1. On November 21, 2022, pursuant to section 205 of the Federal Power Act,¹ the California Independent System Operator Corporation (CAISO) filed revisions to its Open Access Transmission Tariff (Tariff) to allow resources located within the state of Washington, registered with the Washington Department of Ecology and participating in the Western Energy Imbalance Market (WEIM), to reflect the costs of greenhouse gas (GHG) compliance associated with Washington's cap-and-invest program in their default energy bids and commitment costs. In this order, we accept the Tariff revisions, effective as of the actual implementation date, as requested, subject to a compliance filing, and subject to CAISO notifying the Commission of the actual implementation date within five business days after CAISO's actual implementation date.

I. Background

2. CAISO states that Washington's cap-and-invest program begins on January 1, 2023 pursuant to Washington's Climate Commitment Act.² According to CAISO, Washington's cap-and-invest program sets a limit on carbon emissions in Washington and requires emitters to obtain allowances for their GHG emissions.³ CAISO indicates that the obligation to obtain allowances under Washington's cap-and-invest program applies to electric generators that operate within the state of Washington and emit over

¹ 16 U.S.C. § 824d.

² CAISO Filing at 1 (citing Washington Senate Bill 5126 (2021); codified Rev. Code Wash. § 70A.65 (2021)).

³ One GHG allowance is equal to the price of one metric ton of carbon dioxide. CAISO Filing at 5 n.17.

25,000 metric tons of carbon dioxide equivalent. However, CAISO explains that the regulations also generally impose a compliance obligation on all electricity serving Washington demand, including imports.⁴

3. CAISO states that the first quarterly allowance auction for emitters to obtain GHG allowances is scheduled to occur in February 2023, and notes that until Washington completes this allowance auction, only estimates for the cost of a GHG allowance exist. According to CAISO, the Washington program is not linked with the existing California GHG program and, therefore, the price of a GHG allowance in Washington's market will likely be different for the initial compliance period.⁵

4. CAISO explains that including the cost of GHG compliance⁶ in reference levels is important to ensure that market processes accurately consider GHG compliance costs for a resource. CAISO indicates that it uses reference levels to calculate a resource's default energy bid and default commitment costs in its market and WEIM. CAISO asserts that without updating the reference level inputs for resources located within Washington, registered with the Washington Department of Ecology, and participating in the WEIM, these resources will still have a GHG compliance cost associated with their generation, but such costs will not be included in the market processes. As such, these resources will inappropriately appear to be less expensive than their actual costs.⁷

5. CAISO explains that it modeled its proposal here on its existing Tariff provisions for resources located in California and subject to the California Air Resources Board's (CARB) cap-and-trade program. The existing Tariff provisions specify that for resources located in California and subject to the CARB's cap-and-trade program, the default energy bid and commitment costs utilize a GHG allowance price based on the average of two index prices from separate vendors. CAISO states that its existing Tariff provisions used index prices for the cost of GHG compliance because, prior to implementation, stakeholders expressed concern that the futures market may not be sufficiently developed to allow CAISO to rely on a futures price.⁸

⁴ CAISO Nov. 21, 2022 Filing at 1–3 (Transmittal).

⁵ *Id.* at 3.

⁶ This order uses the terms “cost of GHG allowance,” “cost of compliance,” “cost of GHG compliance,” and “cost of the adder” interchangeably, based on the usage in the various pleadings.

⁷ Transmittal at 2–5.

⁸ *Id.* at 5.

II. CAISO's Proposed Tariff Revisions

6. CAISO proposes revisions to Tariff sections 30 (Bids And Self-Schedule Submission For All CAISO Markets) and 39 (Market Power Mitigation Procedures) to update the default energy bid and commitment costs to include a Washington-specific GHG allowance price to reflect the costs of Washington's cap-and-invest program in the reference levels for resources located in the state of Washington and registered with the Washington Department of Ecology. This is similar to CAISO's existing practice for resources located in California, registered with the CARB, and subject to the CARB's cap-and-trade program.⁹

7. CAISO proposes a three-phase rate that changes based upon certain triggers, and explains that each phase's rate is independent and severable from each other.¹⁰ CAISO proposes this implementation approach for the Washington-specific GHG allowance price because it does not expect the Washington Department of Ecology to hold an allowance auction until February 2023. CAISO proposes for the first phase of implementation to use an estimate value for the cost of a GHG allowance until Washington completes its GHG allowance auction. CAISO explains that the Washington Department of Ecology, through a consultant, conducted economic and market modeling that indicated a reasonable estimate value of \$41 per metric ton of carbon dioxide. CAISO explains that this price is supported by the fact that it falls near the midpoint between the cap-and-invest program's allowance price floor of \$19.70 per metric ton of carbon dioxide and the allowance price ceiling of \$72.29 per metric ton of carbon dioxide.¹¹

8. CAISO proposes for the second phase of implementation to use the clearing price for the most recent GHG allowance auction until index prices become available. Thus, CAISO explains, the trigger for the second phase is Washington holding its first allowance auction, which is expected to occur in February 2023. Once Washington holds its first allowance auction, CAISO proposes to use the initial clearing price, and thereafter, it will use the most recent auction clearing price (expected to occur quarterly), until index prices for GHG allowances become available. CAISO explains that the auction price will allow CAISO to calculate reference levels to respond to actual allowance trading market information once it is available.¹²

⁹ *Id.* at 5–6.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 6–7.

¹² *Id.* at 7–8.

9. In the third phase, CAISO proposes to use an average of two vendor index prices for Washington, similar to how CAISO uses index prices for the cost of compliance with California's cap-and-trade program. CAISO explains that an index price provides a more accurate reflection of the market for GHG allowances and thus more accurately reflects the cost of compliance as compared to an auction price. CAISO indicates that while the auction price is a starting point, as Washington's cap-and-invest program evolves, CAISO expects market participants will engage in bilateral trading, which will cause deviations from the auction price. According to CAISO, an index price, updated daily on weekdays, provides a timelier estimate of the allowance price. CAISO indicates that it expects to use the same index vendors for Washington that it uses for California, the Intercontinental Exchange and Argus, both of which are currently listed in the Tariff. CAISO notes, however, if these vendors do not offer an index for Washington, it will make a Tariff filing to identify the vendors it will use.¹³

10. CAISO explains that it is targeting implementation in the first quarter of 2023 and is developing an implementation schedule for technology enhancements necessary to implement the proposed changes. CAISO states that once it has a final implementation schedule, it will inform market participants through its release user group. CAISO also commits to inform market participants of the actual effective date through a market notice and requests authorization to notify the Commission of the actual effective date of the Tariff changes within five days of implementation.¹⁴

III. Notice and Responsive Pleadings

11. Notice of CAISO's filing was published in the *Federal Register*, 87 Fed. Reg. 73,294 (Nov. 29, 2022), with interventions and protests due on or before December 12, 2022. Timely motions to intervene were filed by Pacific Gas & Electric Company, Modesto Irrigation District, and the City of Santa Clara, California. Timely motions to intervene and comments or protests were filed by CAISO's Department of Market Monitoring (DMM) and Utah Division of Public Utilities (UDPU). CARB and Invenenergy Thermal LLC filed out-of-time motions to intervene. The State of Washington, by and through Attorney General Robert W. Ferguson, filed an out-of-time motion to intervene and answer. CAISO also filed an answer.

12. DMM supports CAISO's proposal and encourages CAISO to work with stakeholders in a future initiative so that the optimization can consider the emissions costs of resources outside of Washington.

¹³ *Id.* at 7–8 & n.27.

¹⁴ *Id.* at 2.

A. UDPU Protest

13. UDPU requests that the Commission reject CAISO's proposed Tariff revisions because they violate the United States Constitution and would result in rates that are not just and reasonable. Specifically, UDPU claims that the proposed Tariff revisions violate the Supremacy Clause of the United States Constitution, effectively impose an unlawful border tax on imported electricity in violation of the dormant Commerce Clause of the United States Constitution, and fail to fully integrate all of the compliance paths Washington's cap-and-invest program allows.¹⁵

14. UDPU argues that CAISO's revisions to incorporate state-levied GHG allowances for wholesale generators located in other states run afoul of the Commission's "exclusive authority to regulate the sale of electric energy at wholesale in interstate commerce,"¹⁶ and thus violate the Supremacy Clause. UDPU states that the CAISO adders for compliance with state-specific cap-and-invest programs will affect the set of resources selected for generation in the WEIM, causing Commission-jurisdictional markets to clear in significantly different ways than they would in the absence of those directly-imposed bid costs. UDPU argues that because the Washington cap-and-invest program unequivocally regulates the price of wholesale electricity to some degree, it exceeds state authority under the FPA and unconstitutionally intrudes on the Commission's jurisdiction.¹⁷

15. UDPU claims that the Washington cap-and-invest program is also unconstitutional under the dormant Commerce Clause of the United State Constitution because it imposes a border tax and gives preferential treatment to in-state interests, discriminating against out-of-state interests.¹⁸ Specifically, UDPU states that GHG allowances are akin to a tax credit and available to Washington customers, which prevents the imposition of some significant portion of compliance costs on Washington ratepayers. UDPU asserts that a tax credit is not provided for customers outside Washington state, thus if a generator outside Washington is dispatched to meet Washington's load, a border tax will be effectively paid by customers in other states and Washington customers will be wholly or significantly exempted from that tax. UDPU concludes that as they pertain to the system of free allowances granted to a vertically-integrated, multi-state utility to offset the compliance cost for only in-state customers, each of the California and Washington

¹⁵ UDPU Dec. 8, 2022 Protest at 4 (Protest).

¹⁶ *Id.* (quoting *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 154 (2016) (*Hughes*)).

¹⁷ *Id.* at 10–13.

¹⁸ *Id.* at 4–5.

programs imposes a discriminatory tax on out-of-state interests.¹⁹ Additionally, UDPU asserts that Washington's cap-and-invest program likely violates the principle that if a restriction on commerce is discriminatory, it is virtually *per se* invalid.²⁰ UDPU suggests that insulating Washington retail customers from at least some of the consequences borne by others is facially discriminatory.²¹

16. UDPU argues that CAISO's proposed Tariff revisions do not allow a participating utility to avail itself of all the compliance options the Washington cap-and-invest program provides and that it is unclear that any tariff could. UDPU states that because CAISO will begin incorporating the compliance cost as an estimated figure before auctions reveal the market price for the required allowances, the mechanism forecloses compliance pathways in some circumstances. For example, UDPU argues that for a resource that participates in WEIM and holds free allowances for a portion of the resource, CAISO's Tariff revisions appear to preclude the resource from including the allowances in its bids to offset the cost of the adder for Washington customers while including the adder for the portion represented by its other customers. UDPU argues that while the inclusion of the adder might be the same as retiring an allowance, there are benefits and burdens of each approach. UDPU avers that a utility will face the choice of participating in the WEIM but forgoing avenues of compliance otherwise available to it or forgoing participation in the WEIM. UDPU concludes that those decisions would affect the amount of supply bid into the WEIM and therefore would likely directly affect its clearing prices.²²

B. CAISO Answer

17. CAISO argues that the Tariff amendment does not contravene the Commission's exclusive jurisdiction, allows generators to reflect their variable costs in commitment costs and default energy bids, and is just and reasonable. First, CAISO states that it incorporates default commitment costs and default energy bids as reference levels in its market. CAISO reiterates that the Tariff revisions allow Washington generators to reflect the costs of compliance with Washington's cap-and-invest program in their default energy bids and commitment costs, ensuring greater market efficiency. CAISO explains

¹⁹ *Id.* at 7, 13.

²⁰ *Id.* at 14 (citing *Ore. Waste Sys., Inc. v. Ore. Dept. of Env't'l Quality*, 511 U.S. 93, 99 (1994)).

²¹ *Id.* at 13–14.

²² *Id.* at 8–9, 11.

that it proposes to use the Tariff's existing methodology to determine the reference levels for resources subject to the Washington cap-and-invest program.²³

18. CAISO contends that its Tariff revisions do not contravene the Commission's exclusive jurisdiction by proposing to reflect the costs of a Washington program in wholesale market rates. CAISO states that instead, it is requesting the Commission to exercise its exclusive jurisdiction and approve CAISO's Tariff revisions. CAISO argues that UDPU's reliance on *Hughes* is misplaced. CAISO states that its Tariff revisions cannot be preempted because the proposed Tariff revisions are not a state law and that the Washington cap-and-invest program is not before the Commission in this proceeding. As such, CAISO argues that this docket is not the appropriate venue to undertake a collateral attack of Washington's cap-and-invest program or the implementation of PacifiCorp's multi-state rate protocol. Furthermore, CAISO argues that the proposed Tariff amendment meets the two-part jurisdiction test articulated in *FERC v. Electric Power Supply Association* because it directly affects wholesale rates in the CAISO market and allows Washington to retain authority over the price of GHG allowances.²⁴

19. CAISO states that contrary to UDPU's arguments that the proposed revisions effectively impose an unlawful border tax on imported energy, the Tariff revisions do not themselves impose any cost or compliance scheme. CAISO asserts that the Tariff revisions reflect costs resulting from a state policy that applies to resources operating in Washington and that disallowing inclusion of these costs would risk incompletely reflecting a generator's costs and ultimately distorting CAISO's markets. CAISO argues that if UDPU believes the Washington cap-and-invest program improperly discriminates against out-of-state generators or out-of-state ratepayers, it should seek remedy in an appropriate venue.²⁵

20. CAISO argues that the Commission need not assess whether its proposed Tariff revisions are more or less reasonable than alternative approaches, such as those that would allow alternative compliance options available in the Washington cap-and-invest program.²⁶ CAISO asserts that the proposed Tariff revisions will ensure that the market

²³ CAISO Dec. 19, 2022 Answer at 2–4 (CAISO Answer).

²⁴ *Id.* at 6–8 (citing *Carbon Pricing in Org. Wholesale Elec. Mkts.*, 175 FERC ¶ 61,036, at PP 9–10 (2021)); see *FERC v. Elec. Power Supply Ass'n*, 136 S. Ct. 760, 774–75 (2016), as revised (Jan. 28, 2016) (articulating a two-part test for evaluating whether a Commission action is within its jurisdiction to regulate practices affecting wholesale rates).

²⁵ CAISO Answer at 2–5.

²⁶ *Id.* at 8–9 (citing *Cities of Bethany v. FERC*, 727 F.2d 1131, 1135–1137 (D.C.

can consider the costs Washington generators will face when they generate electricity, and the Commission need not consider other potential rule changes. CAISO states that because wholesale markets reflect the cost of generation, which for Washington resources includes the cost of compliance with Washington's cap-and-invest program, that cost should be included in reference levels so that the CAISO market recognizes the costs generators incur. CAISO states that default commitment costs and default energy bids simply provide the mechanism to allow generators to bid their marginal costs. Further, CAISO states that the Tariff revisions do not require generators to include the cost of GHG allowances in their commitment costs or to submit an energy bid into the market that includes these costs that would potentially be subject to bid mitigation. CAISO concludes that the Tariff revisions remain flexible for resources, with the option to self-schedule available and the potential to utilize different reference levels for their default energy bid through the negotiated option.²⁷

C. State of Washington Answer

21. State of Washington argues that the Commission is not empowered to deny the Tariff amendment based on constitutional arguments, and that even if the Commission had authority to review the Washington cap-and-invest program, UDPU fails to raise a cognizable constitutional violation. State of Washington states that it disagrees with UDPU's Supremacy Clause and dormant Commerce Clause arguments and asserts that the Washington cap-and-invest program is fully consistent with all relevant constitutional limitations. State of Washington claims that UDPU fails to establish how its constitutional arguments are relevant to CAISO's Tariff application or how the Commission has jurisdiction to determine the reasonableness of a Tariff amendment based on the constitutionality of a duly enacted state law. State of Washington argues that it is well settled that the constitutionality of legislative enactments is beyond the scope of administrative agencies, including the Commission.²⁸ State of Washington states that UDPU's opinions on the constitutionality of the Washington cap-and-invest program have nothing to do with the reasonableness of the Tariff amendment itself nor do the constitutional arguments address the Tariff amendment in any way.²⁹

Cir. 1984)).

²⁷ *Id.* at 8–10.

²⁸ State of Washington Dec. 21, 2022 Answer at 3 (State of Washington Answer) (citing *Oestereich v. Selective Serv. Sys. Local Bd. No. 11*, 393 U.S. 233, 242 (1968) (Harlan, J., concurring); *PennEast Pipeline Co., LLC*, 170 FERC ¶ 61,064, at P 55 & n.212 (2020)).

²⁹ *Id.* at 3–4.

22. Further, State of Washington explains that the program, which does not apply to generation for out-of-state customers, requires utilities serving Washington customers to reduce their GHG emissions to neutral by 2030 and to zero by 2045. State of Washington states that the function of the no-cost allowances in its cap-and-invest program is to avoid double charging Washington customers for the costs of the energy transition to non-emitting generation and applies to all utilities serving Washington customers, regardless of whether they are in-state or out-of-state entities. State of Washington avers that UDPU fails to acknowledge that PacifiCorp may receive and use no-cost allowances at its out-of-state facilities that serve Washington load by transferring allowances to those facilities, contradicting UDPU's Commerce Clause arguments. State of Washington argues that UDPU's Supremacy Clause arguments that CAISO's adders interfere with the Commission's authority to regulate wholesale sales of electricity are similarly unpersuasive because the Commission is exercising its exclusive authority to approve the CAISO adders. State of Washington asserts that to the extent UDPU's Supremacy Clause argument stretches to the Washington cap-and-invest program, the allowances in the state program are intended to avoid an initial spike in energy costs to ratepayers and therefore address the retail sale of power, not the wholesale market.³⁰

IV. Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2021), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

24. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant the late-filed motions to intervene of California Air Resources Board, Invenergy Thermal LLC, and the State of Washington given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2021), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept State of Washington's and CAISO's answers because they have provided information that assisted us in our decision-making process.

³⁰ *Id.* at 4–6.

B. Substantive Issues

26. We accept the Tariff revisions, subject to a compliance filing,³¹ effective as of the actual implementation date, as requested, subject to CAISO notifying the Commission of the actual implementation date within five business days after the actual implementation date.³² We find that the Tariff revisions allow resources located within Washington, registered with the Washington Department of Ecology, and participating in the WEIM to reflect the compliance costs associated with Washington's cap-and-invest program in their default energy bids and commitment costs. We agree with CAISO that the proposed revisions are required to provide resources located within Washington a reasonable opportunity to recover the cost of purchasing GHG allowances as a result of Washington's cap-and-invest program. Our finding is consistent with the Commission's prior orders for resources located in California, registered with CARB, and subject to CARB's cap-and-trade program.³³

27. We find that CAISO's three-phase implementation approach and the associated rates are just and reasonable. For the first phase, CAISO explains that the Washington Department of Ecology, through a consultant, has conducted economic and market modeling which indicates that a reasonable value for GHG allowance is \$41 per metric ton of carbon dioxide, which happens to be near the midpoint between the cap-and-invest program's allowance price floor of \$19.70 per metric ton of carbon dioxide and the allowance price ceiling of \$72.29 per metric ton of carbon dioxide. We agree with CAISO that the estimated value appears to be a reasonable starting point, for the reasons CAISO provides. The remaining two phases largely mirror the existing CAISO Tariff provisions applicable to resources located in California, registered with CARB, and subject to CARB's cap-and-trade program. Accordingly, we find that the second and third phases proposed in this filing are reasonable for resources located within Washington, registered with the Washington Department of Ecology, subject to Washington's cap-and-invest program, and participating in the WEIM.

28. We are not persuaded by UDPU's protest. In this proceeding, we consider only whether CAISO's proposed Tariff revisions are just and reasonable under FPA section

³¹ See *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017) (discussing the Commission's authority to propose modifications to a utility's FPA section 205 rate proposal). As discussed below, we direct CAISO to address on compliance what appears to be a typographical error in its filing.

³² CAISO must submit its subsequent filing to confirm the actual effective date for the Tariff revisions using Type of Filing Code 150 – Report.

³³ See *Cal. Indep. Sys. Operator Corp.*, 141 FERC ¶ 61,237 (2012).

205, not the legality of the underlying state law that motivated the revisions.³⁴ UDPU primarily argues that CAISO's Tariff revisions are not just and reasonable because they violate the United States Constitution. However, CAISO's Tariff revisions simply allow generators to incorporate compliance costs associated with Washington's cap-and-invest program in their default energy bids and commitment costs, which account for the variable costs of generation and provide generators a reasonable opportunity to recover their costs.³⁵ These revisions are consistent with other Commission-accepted tariff provisions that incorporate compliance costs associated with a state's environmental requirements, including in the WEIM,³⁶ and compliance costs associated with Washington's cap-and-invest program are no different than costs to comply with other state laws for purposes of FPA section 205.

29. We therefore find that UDPU's preemption and border tax arguments are directed at the constitutionality of the Washington cap-and-invest program, not whether CAISO's Tariff revisions are just and reasonable.³⁷ As a result, we find that this proceeding is not the appropriate procedural vehicle to address the constitutionality of the Washington statute and that UDPU's arguments are properly brought in a federal court, which, unlike the Commission, has the authority to review and enjoin the enforcement of unconstitutional state statutes.³⁸ In any case, if the Commission were to reject CAISO's filing based on constitutional grounds, and if Washington's cap-and-invest program were not ultimately enjoined by a federal court, generators would be deprived of the opportunity to recover costs that they are legally obligated to incur.³⁹ As long as the

³⁴ See *The Dayton Power & Light Co.*, 176 FERC ¶ 61,025, at P 71 (2021) (*Dayton*) (“[E]ven if we were to agree the [state] statute is preempted, only a federal court has the ultimate authority to invalidate the [state] statute.”), *order on reh’g*, 178 FERC ¶ 61,102 (2022).

³⁵ *Cal. Indep. Sys. Operator Corp.*, 141 FERC ¶ 61,237 at P 30.

³⁶ See *id.* P 29 (accepting filing to incorporate the costs of GHG allowances into the calculation of generating units' variable costs, in preparation for California's cap-and-trade program); *Pub. Serv. Co. of Colo.*, 182 FERC ¶ 61,010, at P 20 (2023) (accepting utility's proposed tariff revisions that incorporated the state-determined social cost of carbon value in unit commitment determinations in light of state environmental requirements).

³⁷ See *Dayton*, 176 FERC ¶ 61,025 at P 71.

³⁸ *Id.*

³⁹ See *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944) (regulated utilities are entitled to a reasonable opportunity to recover their prudently-incurred costs); see also *Mkt.-Based Rates for Wholesale Sales of Elec. Energy, Capacity & Ancillary Servs. by*

tariff revisions at issue apply to the mandatory compliance costs incurred by generators within the borders of Washington and which are subject to Washington's jurisdiction, we are required to allow the opportunity for their recovery.

30. Regarding UDPU's request that the Commission reject CAISO's proposal and require CAISO to include all the compliance options available, we agree with CAISO that the Tariff revisions do not require generators to include the cost of compliance in their default energy bids or commitment costs. Thus, generators complying with Washington's cap-and-invest program by retiring a free allowance, which we understand to be an offset of the GHG compliance requirement, can simply not include such GHG costs in their default energy bids or commitment costs.⁴⁰ This flexibility should allow resources employing different compliance strategies to appropriately reflect their costs. In any event, as CAISO correctly recognizes, when addressing a proposed tariff revision under FPA section 205, the Commission only considers the specific proposal in front of it,⁴¹ not whether it is the best proposal among all alternatives. We otherwise find UDPU's concerns to be speculative.

31. However, we do have a concern that there is an error in one of the Tariff revisions submitted in section 30.4.5.1(c)(iii). The existing Tariff includes references to CARB and/or California as it relates to GHG costs. CAISO proposes Tariff revisions to add the terms "Washington" and "the Washington Department of Ecology" so that the Tariff language indicates that, for example, resources are eligible for GHG cost recovery if located within Washington and registered with the Washington Department of Ecology, or within California and registered with the CARB. However, in section 30.4.5.1(c)(iii), the Tariff language is revised to read "a greenhouse gas cost adder for each resource located within the CAISO Balancing Authority Area or an EIM Entity Balancing Authority Area within California and Washington, and registered with the California Air Resources Board or the Washington Department of Ecology as having a greenhouse gas

Pub. Utils., Order No. 697, 119 FERC ¶ 61,295, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, 123 FERC ¶ 61,055, at P 409, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, 125 FERC ¶ 61,326 (2008), *order on reh'g*, Order No. 697-C, 127 FERC ¶ 61,284 (2009), *order on reh'g*, Order No. 697-D, 130 FERC ¶ 61,206 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011).

⁴⁰ See Protest at 7 ("[F]or the portion of its facilities covered by freely-granted allowances, the utility need not necessarily incur an additional cost to comply with the rules. It may simply retire an allowance it obtained freely.").

⁴¹ CAISO Answer at 8 (citing *Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656, 662 (D.C. Cir. 2017)).

compliance obligation” We believe the underlined “and” should be revised to “or” so it is clear that the GHG allowance costs apply to resources in the relevant balancing authority area in either state and it is not necessary for the resource to be located in both areas for eligibility. Accordingly, we direct CAISO to submit a compliance filing within 30 days of the date of this order correcting this Tariff language.

The Commission orders:

(A) CAISO’s proposed revisions to its Tariff are hereby accepted, to become effective on CAISO’s actual implementation date, as requested, subject to a compliance filing, 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 after the actual implementation date in an eTariff submittal using Type of Filing Code 150 – Report.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.