

114 FERC ¶61,194  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Sudeen G. Kelly.

California Independent System Operator

Docket No. ER06-354-001

ORDER GRANTING MOTION FOR CLARIFICATION AND DENYING REQUEST  
FOR REHEARING AND MOTION FOR STAY

(Issued February 23, 2006)

1. On January 24, 2006, the California Independent System Operator Corporation (CAISO) filed a motion for clarification or, in the alternative, request for rehearing and motion for stay of the Commission's January 13, 2006 Order regarding the CAISO's energy and adjustment bid cap.<sup>1</sup> In this order, we grant the CAISO's request for clarification of the January 13 Order that the Commission did not intend to require the CAISO to change the existing "hard" cap on adjustment bids to a "soft" cap. Therefore, we deny the CAISO's request for rehearing and stay of the January 13 Order.

**Background**

2. On December 21, 2005, the CAISO filed a tariff amendment (Amendment No. 73) proposing to change its current "soft" \$250/MWh bid cap for real-time energy bids and adjustment bids to a "hard" \$400/MWh bid cap, effective January 1, 2006 or as soon thereafter as possible. The January 13 Order accepted the CAISO's proposal to increase the energy and adjustment bid caps to \$400/MWh. However, the Commission modified the CAISO's proposal to change the existing "soft" caps to "hard" caps. The January 13 Order also instituted a Federal Power Act (FPA) section 206 investigation<sup>2</sup> into the CAISO's ancillary service capacity bid cap and the price cap in the WECC outside the CAISO.

**CAISO Request for Clarification and Rehearing**

3. In the instant filing, the CAISO requests that the Commission clarify that the January 13 Order did not intend to require the CAISO to change its existing Commission-approved "hard" cap on adjustment bids to a "soft" cap. If the Commission denies the

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<sup>1</sup> *California Independent System Operator Corp.*, 112 FERC ¶ 61,026 (2006) (January 13 Order).

<sup>2</sup> 16 U.S.C. § 824e (2000).

CAISO's request for clarification, then the CAISO alternatively requests that the Commission grant rehearing and a stay of the directive to change to a "soft" cap on adjustment bids.

4. The CAISO asserts that the ambiguity in the January 13 Order was created solely by two instances where the CAISO's misstatement in its Amendment No. 73 transmittal letter was repeated in the January 13 Order. In Amendment No. 73, the CAISO proposed to change the "soft" \$250/MWh bid cap applicable to real-time energy bids to a "hard" \$400/MWh bid cap. The transmittal letter also explained that a \$250/MWh bid cap was applicable to adjustment bids used in the day-ahead and hour-ahead congestion management markets and indicated that the CAISO was also proposing to raise the bid cap for adjustment bids to \$400/MWh.<sup>3</sup> However, the CAISO states that, in its Amendment No. 73 transmittal letter, it proposed to "replace the current \$250/MWh soft bid cap on real-time energy bids and adjustment bids with a \$400/MWh hard cap."<sup>4</sup> The CAISO states that it regrets any confusion that this misstatement may have created, and asserts that a more accurate wording of that sentence would have made clear that the CAISO was proposing to "replace the current \$250/MWh soft bid cap on real-time [e]nergy [b]ids and the current hard cap on [a]djustment [b]ids with a \$400/MWh hard cap."

5. In the January 13 Order, the Commission accepted the CAISO's proposal to raise the current bid cap from \$250/MWh to \$400/MWh. However, the Commission rejected the CAISO's proposal to change the current "soft" nature of the cap to a "hard" cap during this interim period prior to the implementation of the CAISO's Market Redesign and Technology Upgrade (MRTU) and a resource adequacy mechanism, and stated "we will *retain* the cap as a 'soft' cap during the interim period."<sup>5</sup>

6. The CAISO notes that since inception, the CAISO has applied a "hard" cap on adjustment bids, and the Commission has accepted this practice in prior orders.<sup>6</sup> The CAISO states its belief that the language in the January 13 Order makes it clear that the Commission's objective was to maintain the *status quo* concerning the "hard" or "soft" nature of the CAISO's bid caps pending MRTU implementation. Accordingly, the

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<sup>3</sup> According to the CAISO's filing, an adjustment bid is an offer by a Scheduling Coordinator to move its generating unit either up or down the bid curve at a given cost for each segment from its preferred MW operating point to relieve congestion on one side of a transmission constraint or the other. Attachment A at 2-3.

<sup>4</sup> See Amendment No. 73 Transmittal Letter at 5; see also *Id.* at 1, 2.

<sup>5</sup> See January 13 Order, 112 FERC ¶ 61,026 at P 26.

<sup>6</sup> The CAISO notes that when a "soft" cap for energy bids was implemented during the energy crisis, the cap on adjustment bids remained a "hard" cap. *San Diego Gas & Electric Co.*, 97 FERC ¶ 61,275 at 62,232-33 (2001); *San Diego Gas & Electric Co.*, 97 FERC ¶ 61,293 at 62,362 (2001).

CAISO requests the Commission confirm that its reiteration of the misstatement in the January 13 Order was not intended to direct a substantive change in the nature of the CAISO's adjustment bid cap from the long-standing "hard" cap to a "soft" cap.

7. In the event that the Commission does not grant the requested clarification, the CAISO requests that the Commission grant rehearing of the January 13 Order, in part, given that (1) any directive to implement a "soft" cap on adjustment bids was based on a misunderstanding of the facts concerning the nature of the existing cap on adjustment bids (due to the CAISO's misstatement in its Amendment No. 73 transmittal letter); (2) the Commission has no basis in the record to conclude that the existing "hard" cap on adjustment bids approved in prior Commission orders is unjust and unreasonable; and (3) the Commission has no basis in the record to conclude that a "soft" cap on adjustment bids is justified.

8. Additionally, the CAISO states that if it were required to implement a "soft" bid cap for adjustment bids, it would need to resolve numerous complexities and unresolved issues before it could implement such "soft" cap.<sup>7</sup> In addition to raising issues about cost allocation, cost justification, and a disconnect between energy schedules, adjustment bid prices, and congestion charges and payments, the CAISO is concerned that such a requirement could result in unanticipated detrimental market impacts, inefficient results, and potential gaming opportunities.

### **Motions to Intervene Out-of-Time**

9. On January 20, 2006, the California Public Utilities Commission (CPUC) filed a motion to intervene out-of-time in Docket No. ER06-354-000. On January 23, 2006, Avista Energy, Inc., Puget Sound Energy, Inc., Coral Power, L.L.C., Sempra Global, and Constellation Energy Commodities Group, Inc. (CCG), (together, Indicated Parties) filed a motion to intervene out-of-time in Docket No. ER06-354 for CCG and Sempra Global.<sup>8</sup>

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<sup>7</sup> The CAISO adds that applying the concept of a "soft" cap to adjustment bids is highly problematic, largely because adjustment bids are not accepted individually. The CAISO points out that adjustment bids must be accepted in combination with one or more other adjustment bids submitted by the same Scheduling Coordinator, with congestion prices being set based on the maximum difference between the prices of different adjustment bids accepted from each Scheduling Coordinator.

<sup>8</sup> CPUC and Indicated Parties each filed timely motions to intervene in the FPA section 206 proceeding, Docket No. EL06-44-000. The Commission's February 13, 2006 order granted CPUC and Indicated Parties' motions to intervene in that proceeding. *California Independent System Operator Corp.*, 114 FERC ¶ 61,135 (2006). Each of those motions also included a motion to intervene out-of-time in this FPA section 205 proceeding, ER06-354-000. The Commission will address those motions to intervene out-of-time in this order.

## **Discussion**

### **Procedural Matters**

10. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention.<sup>9</sup> CPUC and Indicated Parties have not met this higher burden of justifying their late motions to intervene.

### **Commission Determination**

11. We hereby grant the CAISO's request for clarification that the January 13 Order was not intended to direct a substantive change in the nature of the CAISO's adjustment bid cap from the current "hard" cap to a "soft" cap. In the January 13 Order, we were concerned that a "hard" energy cap, in combination with a must-offer requirement, could force a seller to sell energy into the CAISO's real-time market at a loss, because the capped offer price could be less than the seller's costs. In contrast, adjustment bids are not related to the must-offer requirement, and an adjustment bid is not an offer to sell energy in the CAISO's energy markets. Therefore, a "hard" cap on an adjustment bid would not result in forcing a seller to sell energy below its costs. Accordingly, we find that the adjustment bid cap for the CAISO is a \$400/MWh "hard" cap, effective as of the issuance of the January 13 Order.

12. We hereby direct the CAISO to make a compliance filing within 20 days of the date of this order to incorporate language into its tariff clarifying that adjustment bids will be set at a "hard" \$400/MWh bid cap. Because we are granting the CAISO's requested clarification, we hereby deny the CAISO's alternative request for rehearing and motion for a stay of the Commission's January 13 Order.

#### **The Commission orders:**

(A) The Commission hereby clarifies that the CAISO's adjustment bid cap is a "hard" \$400/MWh cap, effective as of the issuance of the January 13 Order. The Commission hereby also directs the CAISO to make a compliance filing within 20 days of the date of issuance of this order revising its tariff to incorporate this \$400/MWh "hard" bid cap for adjustment bids.

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<sup>9</sup>See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250 at P 7 (2003).

(B) The Commission hereby denies the CAISO's motion for rehearing and request for stay of the January 13 Order, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.