

114 FERC ¶ 61,339
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
Corporation

Docket No. ER05-849-004

ORDER GRANTING MOTION FOR STAY

(Issued March 31, 2006)

1. In this order, we grant the unopposed motion for stay of the California Independent System Operator Corporation (CAISO) of orders issued June 22, 2005 and February 17, 2006 conditionally accepting in part and rejecting in part the CAISO's proposed Amendment No. 68.¹ The proposed revisions to CAISO's open access transmission tariff (Tariff), intended to implement the Commission's policies related to the procurement and delivery of station power. The stay pertains to a directive in the June 22 Order ordering the CAISO to remove certain tariff provisions regarding Permitted Netting. The Commission acted on a single rehearing issue in the February 17 Order, requiring that the station power protocol be implemented by April 1, 2006. As the stay pertains to only one aspect of the prior orders, the CAISO will still be implementing the remainder of the station power provisions by April 1, 2006.

Background

2. In a September 1, 2004 complaint, Duke Energy Moss Landing LLC (Moss Landing) challenged the treatment of station power by the CAISO in its Tariff. The CAISO acknowledged in its answer that the Tariff did not conform to the Commission's station power policies, and requested a stakeholder process to develop Tariff revisions to reflect such policies. In an order issued November 19, 2004, the Commission directed the CAISO to make a compliance filing that contains revised Tariff sheets conforming to such policies.²

¹ *California Independent System Operator Corporation*, 111 FERC ¶ 61,452 (2005) (June 22 Order), *partial order on reh'g*, 114 FERC ¶ 61,176 (2006) (February 17 Order), *reh'g pending*.

² *Duke Energy Moss Landing LLC v. California Independent System Operator Corp.*, 109 FERC ¶ 61,170 (2004), *reh'g denied*, 111 FERC ¶ 61,451 (2005).

3. On April 18, 2005, as amended on May 3, 2005, the CAISO filed Amendment No. 68 to its Tariff, which proposed revisions intended to conform to the Commission's station power policies. The CAISO proposed that eligible generators be allowed to engage in on-site, self-supply of station power and remote self-supply from facilities owned by the same entity, and proposed a monthly netting interval to determine whether a generator's net output is negative or positive for the month. The proposed Amendment No. 68 retained an existing Tariff provision which allowed netting of load at times contemporaneous with plant generation (and prohibited netting at all other times). This is called Permitted Netting. The CAISO proposed that station power that is self-supplied through Permitted Netting need not be scheduled and will not be subject to any transmission charges. In contrast, station power supplied by remote self-supply and third party supply must be scheduled and meter data collected, and would be assessed all charges applicable to metered demand under the CAISO tariff, including ancillary services charges.

4. Moss Landing and the Cogeneration Association of California and the Energy Producers and Users Coalition protested the Permitted Netting provisions.

June 22 and February 17 Orders

5. In the June 22 Order, the Commission stated that by retaining the current Tariff provisions that allow Permitted Netting, the CAISO has in fact allowed a fourth category of station power that is inconsistent with the Commission's station power precedent.³ The Commission stated that, on compliance, the CAISO may propose a separate station power protocol applying only to Qualifying Facilities (QFs) to address their unique issues, including their concern that they need not qualify their portfolios and execute a metering agreement.

6. The June 22 Order also allowed the CAISO to defer the effective date of its station power protocol until the implementation of its new Settlement and Market Clearing System (SaMC), then expected to be operating by the end of the first quarter of 2006.⁴ The June 22 Order required that, in the event that SaMC is not ready by July 1, 2006, the CAISO must nonetheless implement the station power protocol at that time using manual tools.⁵

³ June 22 Order, 111 FERC ¶ 61,452 at P 41.

⁴ *Id.* at P 62.

⁵ *Id.*

7. Southern California Edison Company (SoCal Edison) filed a request for rehearing of the June 22 Order in which it argues, among other things, that the June 22 Order erred to the extent that it could be read to disallow Permitted Netting. Moss Landing filed an answer to SoCal Edison's request for rehearing in which it supports SoCal Edison's position that Permitted Netting should be allowed. In addition, Moss Landing and Constellation Generation Group, LLC (Constellation) argued on rehearing that the Commission erred by allowing the CAISO to defer implementation of the station power protocol until July 1, 2006, and requested that the Commission direct the CAISO to implement the station power protocol using its existing settlement system by no later than March 31, 2006.

8. In the February 17 Order, the Commission granted rehearing of the June 22 Order in part regarding the effective date of the station power protocol.⁶ The order required the CAISO to implement the station power protocol by April 1, 2006 rather than July 1, 2006 at the latest.

The CAISO's Motion for Stay

9. On March 16, 2006, the CAISO filed a compliance filing in response to the prior orders to implement its station power protocol on April 1, 2006, and a motion for stay of the requirement that the CAISO remove Permitted Netting for non-QF suppliers. The compliance filing consists of two sets of Tariff changes, one which includes the necessary changes to implement the station power protocol other than the removal of Permitted Netting, and another which includes the removal of Permitted Netting.⁷

10. While the CAISO seeks a stay of the June 22 Order insofar as it directed the CAISO to remove existing Permitted Netting options for non-QFs, and asks that this revision not be made effective until after the Commission issues an order on the merits of SoCal Edison's request for rehearing on this issue, it emphasizes that it will be implementing the station power protocol effective as of April 1, 2006. The CAISO also requests that, in the event the Commission denies rehearing, it be allowed a transition period to provide for the orderly modification of existing metering configurations that would be necessary for numerous facilities.

⁶ The Commission stated that its order addresses just the issue of the effective date of the station power protocol, and that other issues raised in requests for rehearing and clarification of the June 22 Order would be addressed in a later order.

⁷ The compliance filing portion of the CAISO's submittal, assigned Docket No. ER05-849-003, will be addressed in a later order.

11. The CAISO claims that, in response to a market notice it issued on February 24, 2006, it has received numerous comments from generators that, if the Commission eliminates Permitted Netting in its entirety, it would place an onerous burden on generators, including costs, time to implement, availability of equipment, personnel training, internal controls, and compliance.⁸ The CAISO states that the supplier comments demonstrate a strong desire to retain Permitted Netting with the associated exemption from the CAISO's scheduling requirements and load-based charges. The CAISO states that retention of Permitted Netting would benefit both the CAISO and its market participants, and that it is unaware of any opposition to it.

12. In support of its motion for stay, the CAISO argues that, given the pending rehearing request of SoCal Edison, which is supported by Moss Landing, substantial harm could come to the CAISO and generators if they were to make the difficult and expensive changes that would be necessary only to later have the Commission grant rehearing and find that Permitted Netting is permissible. The CAISO explains that there are several hundred generators in its control area that have installed metering that complies with the current metering requirements under the Tariff that allow Permitted Netting. The CAISO states that in order to separately meter generation and station power load, which would be required without Permitted Netting, all generators would have to review their existing metering configurations and determine whether they could reconfigure their metering or whether installation of new metering would be necessary. The CAISO states that it is simply not feasible for generators to install the additional metering and have them operational by April 1, 2006. Next, the CAISO argues that removal of Permitted Netting would also be a sizable project for the CAISO, including needing to review every generating unit to determine if generation and load are separately metered, assisting generators in determining whether new metering must be installed or if existing metering could be reconfigured, and inspecting and recertifying the meters. The CAISO and generators estimate that this process could take up to one year.

13. The CAISO also argues that the elimination of Permitted Netting would impact many other aspects of its business because many commercial arrangements and contracts the CAISO has with generators are based on a net metering methodology. The CAISO also states that the elimination of Permitted Netting could increase the capital and operating costs of Reliability Must Run units, which would then be passed on to the transmission owner.

⁸ The CAISO states that one owner of generation resources claimed that changes it would have to make to its generating units to comply with this Commission directive would cost it in excess of \$2 million and take one year or more to complete.

Notice and Comments

14. The CAISO's motion for stay was noticed on March 23, 2006, with comments due on or before March 28, 2006. On March 20, 2006, Pacific Gas and Electric Company (PG&E) filed comments in support of the CAISO's motion for stay. On March 22, 2006, Williams Power Company, Inc. (Williams) filed comments and an answer in support. On March 24, 2006, NRG Power Marketing, Inc. and West Coast Power LLC (together, NRG Companies) filed a motion to intervene out-of-time and comments in support of the motion. Subsequently, Calpine Corporation (Calpine) and Reliant Energy Inc. (Reliant) filed comments in support of the motion.

15. On rehearing of the February 17 Order, PG&E requests a stay of the effective date to eliminate Permitted Netting, to the extent that the June 22 Order required the CAISO to remove the existing Permitted Netting Tariff provisions.⁹ PG&E also supports the CAISO's motion for stay.

16. Williams states that it supports the CAISO's motion for stay.¹⁰ Williams contends that other Independent System Operators (ISOs) that have station power programs appear to permit the contemporaneous netting that occurs when a generator is synchronized to the grid and provides net output, and that therefore such a practice is consistent with the Commission's station power precedent.¹¹ Williams suggests that the language in the June 22 Order requiring the CAISO to eliminate Permitted Netting may stem from an issue of terminology that was not intended to require the CAISO to eliminate the contemporaneous netting of station load against generation. Williams also states that it should not be necessary to prohibit the natural contemporaneous netting of station load against generation in order to implement the monthly settlements netting contemplated by the CAISO's station power protocol. Williams states that it agrees with the CAISO that the elimination of Permitted Netting will affect all business with the CAISO and will potentially require the overhaul of many processes. Williams states that the elimination of Permitted Netting would be a fundamental departure from the established business practices of the CAISO for metering and settlement, and simply could not be done before April 1, 2006. In addition, Williams states that the elimination of Permitted Netting

⁹ We will address PG&E's request for rehearing in a later order.

¹⁰ Williams states that it has been authorized to state that AES Corporation supports its pleading and requests the same relief.

¹¹ Williams points to the PJM Tariff, which it states contains language that indicates that the hourly amounts used in settlement are positive/negative net output.

would materially affect the must-offer obligation and minimum load cost compensation, and expose generators to the cost of imbalance energy for station power and possibly to uninstructed deviation penalties.

17. NRG Companies state that they support Williams' comments and request that the Commission grant the relief sought in the CAISO's motion for stay. In support of the motion to intervene out-of-time, NRG Companies explain that, due to a recent acquisition, they will soon be operating generating facilities and will be responsible for utilization and payment of station power services. As such, the pending clarification regarding Permitted Netting will directly impact the NRG Companies. In addition, they state that they accept the record as it currently exists, and assert that their intervention will not disrupt the proceeding or cause additional burden to any party.

18. Calpine asserts that Permitted Netting is consistent with the Commission's established station power policies and concludes that there is no policy reason to disallow the use of Permitted Netting. Explaining that removal of the Permitted Netting program would impose significant and unnecessary costs and risks (including increasing the potential for incurring imbalance energy charges), Calpine urges the Commission to grant the CAISO's motion. Similarly, Reliant characterizes the result of eliminating Permitted Netting as causing "profound physical and financial consequences" and notes that that requirement would constitute a different approach for California as compared to other ISOs.

Discussion

19. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and the burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for the granting of such late intervention. In this instance, NRG Companies have met their burden of justifying late intervention, and we will grant their motion to intervene out-of-time.

20. Under the standards of the Administrative Procedures Act, the Commission may stay its action "when justice so requires."¹² In addressing motions for stay, the Commission considers: (1) whether the moving party will suffer irreparable injury without a stay; (2) whether issuing the stay will substantially harm other parties; and

¹²5 U.S.C. § 705 (2000).

(3) whether a stay is in the public interest.¹³ The Commission's general policy is to refrain from granting a stay of its orders, to assure definiteness and finality in Commission proceedings.¹⁴ The key element in the inquiry is irreparable injury to the moving party.¹⁵ However, the Commission may examine the other factors where appropriate.¹⁶

21. The Commission has considered the CAISO's request for a stay in light of the legal standards described above. To avoid the potential significant expenditures and other consequences described in the motion and the comments thereto pending rehearing, the Commission concludes that justice requires the granting of a stay. While the Commission has held that purely economic consequences of enforcing an order do not justify a stay,¹⁷ other considerations here warrant a stay. First, the Commission received no comments in opposition to the requested stay. No parties protested retention of the program in the underlying case,¹⁸ and the CAISO states that it does not know of any opposition to retaining Permitted Netting. Also, not only would compliance with our orders cause costs for the movant seeking a stay, but many other market participants could pay large amounts that are not subject to refund. If the Commission were to grant rehearing regarding Permitted Netting, there would be no way to return these entities to their status quo ante. In addition, the CAISO and commenters have indicated significant indirect consequences such as shifting how RMR owners are paid for station auxiliary load and exposure to increased imbalance energy charges.

¹³ See, e.g., *CMS Midland, Inc., Midland Cogeneration Venture Limited Partnership*, 56 FERC ¶ 61,177 at 61,361 (1991), *aff'd sub nom. Michigan Municipal Cooperative Group v. FERC*, 990 F.2d 1377 (D.C. Cir.), *cert. denied*, 510 U.S. 990 (1993).

¹⁴ *Id.* at 61,630. See also *Sea Robin Pipeline Company*, 92 FERC ¶ 61,217 (2000).

¹⁵ *Id.* at 61,621.

¹⁶ See *The Montana Power Company, Confederated Salish and Kootenai Tribes of the Flathead Reservation*, 85 FERC ¶ 61,400 at 62,535 (1998) (granting stay even without a finding of irreparable injury).

¹⁷ See, e.g., *Boston Edison Company*, 81 FERC ¶ 61,102 (1997).

¹⁸ While two protests were filed related to this issue, neither argued that Permitted Netting should be eliminated. See June 22 Order, 111 FERC ¶ 61,452 at P 37-40.

22. Accordingly, we find that justice requires staying the requirement to eliminate Permitted Netting in advance of an order on rehearing, and we will grant the CAISO's motion.

The Commission orders:

The CAISO's motion for stay is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.