

131 FERC ¶ 61,145
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Western Electric Coordinating Council

Docket No. EL10-56-000

ORDER INSTITUTING A SECTION 206 PROCEEDING

(Issued May 20, 2010)

1. On March 31, 2009, the California Independent System Operator Corporation's (CAISO) Market Redesign and Technology Upgrade (MRTU) tariff, which includes an energy bid cap of \$500/MWh, became effective.¹ On April 1, 2010, pursuant to a prior Commission order, the energy bid cap for the CAISO market rose from \$500/MWh to \$750/MWh, and on April 1, 2011, unless otherwise directed by the Commission, the CAISO energy bid cap will increase automatically to \$1000/MWh.²

2. Currently, spot market energy prices in the Western Electricity Coordinating Council (WECC) outside of the CAISO are capped at \$400/MWh.³ To remove any potential for market distortions created by the difference between the current and future bid caps in the CAISO energy market and the spot market price cap in the rest of the WECC, we will institute an investigation into the spot market energy price cap in the WECC outside the CAISO, under section 206 of the Federal Power Act (FPA).⁴ The Commission institutes this section 206 investigation because we find that, due to changes in circumstances discussed below, the WECC price cap may no longer be just and

¹ See, *California Independent System Operator Corp.*, 126 FERC ¶ 61,221 (2009)

² *California Independent System Operator Corp.*, 112 FERC ¶ 61,013, at P 104 (2005).

³ *California Independent System Operator Corp.*, 114 FERC ¶ 61,135, at P 14 (2006).

⁴ 16 U.S.C. § 824e (2000).

reasonable. In addition and as discussed below, we hereby establish a refund effective date pursuant to the provisions of section 206.

Background

3. In a July 17, 2002 Order,⁵ the Commission established a bid cap of \$250/MWh for the California real-time energy and ancillary services markets, to become effective on October 1, 2002, as recommended by the CAISO's Market Surveillance Committee. The July 2002 Order also imposed a price cap of \$250/MWh for all spot market sales in the WECC, beginning on October 1, 2002.⁶

4. On October 1, 2002, the Commission issued an order on rehearing regarding the CAISO's bid cap.⁷ The October 2002 Order clarified that the cap is a "soft" cap and that bids above the cap will be subject to justification and refund, which must be filed within seven days after the end of the month in which the excess sale occurred.⁸

5. On January 13, 2006, the Commission issued an order authorizing an adjustment to the CAISO energy bid cap from \$250/MWh to \$400/MWh. The Commission also instituted a section 206 investigation into the price cap in the WECC outside of the CAISO to remove any opportunity for market distortions created by the Commission's approval of an increase in the CAISO energy bid cap.⁹ On February 13, 2006, the

⁵ *California Independent System Operator Corp.*, 100 FERC ¶ 61,060, *order on reh'g*, 101 FERC ¶ 61,061 (2002) (July 2002 Order).

⁶ *Id.* The Commission extended the October 1, 2002 deadline to October 30, 2002 in a subsequent order. *California Independent System Operator Corp.*, 100 FERC ¶ 61,351 (2002).

⁷ *California Independent System Operator Corp.*, 101 FERC ¶ 61,061 (2002) (October 2002 Order).

⁸ *Id.* at P 17, n.7. A "soft" cap is one where market participants may submit bids above the bid cap with adequate cost justification, but without setting the market clearing price. A "hard" cap is one where market participants' bids are not permitted to exceed the cap, regardless of the seller's costs.

⁹ *California Independent System Operator Corp.*, 114 FERC ¶ 61,026 (2006).

Commission modified the price cap on spot market sales in the WECC outside of the CAISO to a \$400/MWh soft cap.¹⁰

6. In addition, on July 1, 2005, the Commission issued an order finding that the bid cap for California market energy bids should be increased to a hard \$500/MWh cap on MRTU implementation.¹¹ The bid cap was set for the first 12 months following MRTU implementation. Pursuant to the order, the bid cap would then increase to \$750/MWh, unless the CAISO makes a filing with the Commission showing that its markets are non-competitive and the Commission supports this assessment. This process would then be repeated 12 months later and the bid cap would increase automatically to \$1000/MWh, unless the Commission supports a CAISO analysis that the markets are non-competitive.¹²

Discussion

7. Our preliminary review indicates that the \$400/MWh soft price cap in the WECC outside the CAISO may no longer be just and reasonable and therefore should be raised to a \$750/MWh soft cap, consistent with the current CAISO \$750/MWh bid cap. As we have previously stated, “California is an integral part of a trade and reliability region in the West. Because of this interdependency of market and infrastructure, conditions in and changes to the California market affect the entire region.”¹³ Given this interdependency, we have previously determined that it would be advisable to have consistent caps in the CAISO and the rest of the WECC.¹⁴ In addition, a lower cap in the WECC could result in reduced supply options available to WECC purchasers.

8. As noted above, the bid cap in the CAISO increased on April 1, 2010 to \$750/MWh, while WECC retains a \$400/MWh soft cap. This \$350/MWh differential between the CAISO and WECC outside of CAISO could cause the WECC to have

¹⁰ *California Independent System Operator Corp.*, 114 FERC ¶ 61,135 (2006) (February 2006 Order).

¹¹ *California Independent System Operator Corp.*, 112 FERC ¶ 61,013, at P 104 (2005).

¹² *Id.*

¹³ *California Independent System Operator Corp.*, 100 FERC ¶ 61,060, at P 2 (2002).

¹⁴ *See California Independent System Operator Corp.*, 114 FERC ¶ 61,135, at P 14 (2006).

difficulty competing for energy if CAISO energy prices were to rise substantially above the WECC price cap, which in turn could cause market distortions between those markets. Accordingly, pursuant to our authority under section 206 of the FPA, we propose to increase the cap to a \$750/MWh soft cap for all spot market sales in the WECC outside the CAISO.¹⁵

9. We propose to maintain a soft cap in the WECC outside of the CAISO. We recognize that under MRTU, CAISO energy bids are subject to a hard cap. However, although CAISO market participants are not allowed to offer their energy at a price above the bid cap, locational marginal prices (LMPs) can sometimes rise above the cap.¹⁶ That is, the market participants in CAISO will receive a market clearing price that at times can exceed the hard bid cap due to congestion and other constraints. Conversely, market participants in WECC energy markets, which are bilateral markets, are subject to a price cap. In general, participants in these markets must offer their energy at a price that does not exceed the price cap. However, because we propose to maintain a soft price cap, market participants can receive a price above the price cap when they can justify a higher price. Thus, while participants in the CAISO's clearing-price markets and those in WECC's bilateral markets are both subject to caps on their asking prices for energy, at times participants in either market can receive a price that exceeds the applicable caps. Accordingly, the Commission proposes for competitive and consistency reasons to retain a soft price cap in the WECC market.

10. Similarly, on April 1, 2011 the energy bid cap in the CAISO is scheduled to increase to \$1000/MWh.¹⁷ Unless the price cap in WECC outside of CAISO is also adjusted at that time, the resulting energy cap differential of \$250/MWh between CAISO and the WECC could again set the stage for market distortions. As the Commission believes it may no longer be just and reasonable at this time to maintain different caps in

¹⁵ See, *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange*, 95 FERC ¶ 61,418, at n.3 (2001).

¹⁶ During the first year of MRTU operation, an LMP price cap of \$2,500/MWh was in effect. However, as of April 1, 2010, there is no LMP price cap in effect in CAISO. See, *California Independent System Operator Corp.*, 126 FERC ¶ 61,082, at P 39 (2009) (directing CAISO to establish a price cap sunset date of 12 months after the implementation of MRTU).

¹⁷ *California Independent System Operator Corp.*, 112 FERC ¶ 61,013, at P 104 (2005).

the West, pursuant to our authority under section 206 of the FPA,¹⁸ we propose to increase the price cap to a \$1000/MWh soft cap for all spot market sales in the WECC outside the CAISO effective, April 1, 2011.

11. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, the Commission is required to establish a refund effective date that is no earlier than publication of notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months subsequent to that date. In order to give maximum protection to customers, and consistent with our precedent,¹⁹ we will establish a refund effective date at the earliest date allowed. This date will be the date on which notice of our investigation in this proceeding is published in the *Federal Register*.

12. In addition, section 206 requires that, if no final decision has been rendered by the earlier of the refund effective date or the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it failed to do so and shall state its best estimate as to when it reasonably expects to make such a decision. We expect that we should be able to render a decision by September 30, 2010.

The Commission orders:

(A) Pursuant to the authority conferred upon the Commission by the Federal Power Act, particularly section 206 thereof, the Commission institutes an investigation into the price cap in the WECC outside the CAISO. Entities may submit comments regarding this issue within 30 days from the date of issuance of this order.

(B) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the investigation ordered in Ordering Paragraph (A) above, under 206 of the Federal Power Act, in Docket No. EL10-56-000.

¹⁸ The refund effective date shall be the date of publication in the *Federal Register* of the notice concerning this investigation.

¹⁹ See, e.g., *PJM Interconnection, L.L.C.*, 90 FERC ¶ 61,137 (2000); *Cambridge Elec. Light Co.*, 75 FERC ¶ 61,1777, *clarified*, 76 FERC ¶ 61,020 (1996); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

(C) The refund effective date in Docket No. EL10-56-000, established pursuant to section 206(b) of the Federal Power Act, shall be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (B) above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.