120 FERC ¶ 61,271
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

California Independent System Operator Corporation	Docket Nos. ER06-615-007 ER02-1656-033

ORDER GRANTING IN PART AND DENYING IN PART REQUESTS FOR CLARIFICATION AND REHEARING, AND DENYING MOTION TO REOPEN THE RECORD

(Issued September 24, 2007)

1. In this order, the Commission responds to requests for clarification and/or rehearing of an order on clarification and rehearing that the Commission issued on April 20, 2007.[1] Also in this order, we deny the California Department of Water Resources State Water Project's (State Water Project) motion to reopen the record in the Market Redesign and Technology Upgrade (MRTU) proceeding.

Background

2. On February 9, 2006, the California Independent System Operator Corporation (CAISO) filed its MRTU Tariff for Commission approval. Significant components of the MRTU Tariff include: a day-ahead market for trading and scheduling energy; a more effective congestion management system; improved market power mitigation measures; system improvements to increase operational efficiency and enhance reliability; a more transparent pricing system; the opportunity for demand resources to participate in the CAISO markets under comparable requirements as supply; and, lastly, a process that respects the resource adequacy (RA or resource adequacy) requirements established by the states or Local Regulatory Authorities, with provisions to allow the CAISO to procure

[1] *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076 (2007) (April 2007 Rehearing Order).

additional capacity to meet forecasted needs. On September 21, 2006, the Commission issued an order that conditionally accepted the MRTU Tariff.[2]

3. Numerous entities requested clarification and/or rehearing of the September 2006 Order. On April 20, 2007, the Commission issued the April 2007 Rehearing Order, granting in part and denying in part requests for clarification and rehearing.

Procedural Matters

4. Southern California Edison Company (SoCal Edison), the CAISO, State Water Project, and the City of Burbank, California and Turlock Irrigation District (Burbank/Turlock) filed timely requests for rehearing, or requests for clarification and/or rehearing in response to the April 2007 Rehearing Order.

5. On May 21, 2007, State Water Project filed a motion to reopen the record in the MRTU proceeding, pursuant to Rules 212 and 716 of the Commission's Rules of Practice and Procedure.[3] On June 5, 2007, the CAISO filed an answer to State Water Project's motion to reopen.

Discussion

I. Residual Unit Commitment

6. In the event that the CAISO determines that it does not have sufficient resources committed after the close of the day-ahead market to meet its next day's forecasted load, it will run a Residual Unit Commitment (RUC) process to commit additional capacity to be available in real time. This process will be performed immediately after the day-ahead market has run and the CAISO has established feasible and final schedules in the day-ahead market. The RUC process will procure energy from suppliers outside the CAISO Control Area if adequate transmission capacity is available over the interties to accommodate the energy. Resources that do not participate in the day-ahead energy and ancillary services markets will not be eligible to participate in the day-ahead RUC process.

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[2] *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274(2006) (September 2006 Order).

[3] 18 C.F.R. § 385.212 (2007); 18 C.F.R. § 385.716 (2007).

A. Bidding Parameters in the Residual Unit Commitment Process

7. The CAISO requests that the Commission clarify that the CAISO will not necessarily be required to allow multi-hour block constraints as a bidding parameter of System Resources[4] under RUC as part of MRTU Release 2. In the MRTU Tariff, the CAISO proposed that System Resources eligible to participate in the RUC will be considered on an hourly basis. In the September 2006 Order, the Commission found SoCal Edison's suggestion that the CAISO should honor multi-hour block constraint bids as a bidding parameter for System Resources under RUC to be reasonable and directed the CAISO to "examine whether such software changes could be implemented by Release 1 and report in a compliance filing whether changes to Release 1 are realistic and if not when the CAISO can implement the software changes."[5]

8. On rehearing, the CAISO argued that RUC procures capacity and there is no nexus that the associated energy will actually be dispatched in real-time. The CAISO further explained that the real-time market process does not dispatch energy on a multi-hour basis and consequently honoring multi-hour block constraints will be of little value.[6] Also, in its November 20, 2006 compliance filing, the CAISO stated that the RUC multi-hour block constraint would cost approximately $500,000, including support for additional functional and integration testing, and would take up to 14 additional weeks to develop and test.[7] The April 2006 Rehearing Order, thus noted that, although there could be instances where capacity selected in RUC would have associated energy dispatched in

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[4] A System Resource is generally a resource that is located outside or external to the CAISO Control Area. The CAISO defines a System Resource as:

> A group of resources, [a] single resource, or a portion of a resource located outside of the CAISO Control Area, or an allocated portion of a Control Area's portfolio of generating resources that are either a static interchange schedule or directly responsive to that Control Area's Automatic Generation Control (AGC) capable of providing Energy and/or Ancillary Services to the CAISO Control Area, provided that if the System Resource is providing Regulation to the CAISO it is directly responsive to AGC.

MRTU Tariff, Appendix A, Master Definitions Supplement.

[5] September 2006 Order, 116 FERC ¶ 61,274 at P 143.

[6] *See* CAISO Oct. 23, 2006 Request for Clarification and Rehearing, Docket No. ER06-615-001, at 9.

[7] *Se*e CAISO Nov. 20, 2006 Compliance Filing, Docket No. ER06-615-003, at 7.

real-time (*e.g.*, generators producing energy at minimum output), the Commission recognized the limitations to the value of multi-hour block constraint bids. The Commission found that the costs of implementation and potential delay to MRTU cited by the CAISO outweighed the potential benefits of including this functionality at this time. Consequently, the Commission granted the CAISO's request for rehearing on this matter and directed the CAISO to implement this bidding parameter in Release 2 of MRTU.[8]

9. The CAISO requests that the Commission clarify, or in the alternative, grant rehearing, that its directive that the CAISO implement multi-hour block constraint bids under the RUC process in Release 2 of MRTU does not mean that the CAISO must implement such a feature for all System Resources if, during the post-Release 1 stakeholder process, the CAISO determines that the limitations to the value are not outweighed by the necessity and benefits of such a feature for the efficient functioning of the MRTU markets.

10. The CAISO explains that enforcing multi-hour block constraints for System Resources in RUC would provide no benefit because it would not result in awarding System Resources a constant energy schedule over the block time period. According to the CAISO, the fact that generators producing energy at minimum output could have capacity selected in RUC, with the associated energy dispatched in the real-time market, does not in any way undermine the CAISO's point. The CAISO explains that, in the case of non-dynamic System Resources,[9] determining what capacity from RUC is needed and dispatched in real-time is made in the hour-ahead scheduling process (HASP). Because the HASP does not dispatch energy on a multi-hour basis (and should not since the real-time market is a real-time balancing market), multi-hour block constraints will not be observed in the HASP dispatch.

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[8] April 2006 Rehearing Order, 119 FERC ¶ 61,076 at P 56.

[9] A non-dynamic System Resource can generally be described as a resource located outside the CAISO Control Area that is not able to respond to real-time dispatch instructions. The CAISO defines non-dynamic System Resource as: A System Resource that is not capable of submitting a dynamic schedule. The CAISO defines dynamic schedule as:

> A telemetered reading or value which is updated in Real-Time and which is used as a schedule in the CAISO Energy Management System calculation of Area Control Error and the integrated value of which is treated as a schedule for interchange accounting purposes.

MRTU Tariff, Appendix A, Master Definitions Supplement.

11. The CAISO further explains that "the MRTU functionality already contemplates the ability to honor minimum load and minimum run time constraints for resource specific System Resources, which effectively is a physical based multi-hour constraint."[10] This is so, according to the CAISO, because, for *resource specific* System Resources, Scheduling Coordinators are able to define their minimum load and minimum run-time operating constraints, as they are related to physical constraints of the resource. However, it notes that because some resources, specifically the *non-dynamic* System Resources, are dispatched in HASP, it would be inappropriate to allow just any System Resource to define multi-hour block constraints that must be enforced in RUC and real-time. The CAISO states that doing so could allow these System Resources the ability to constrain the solution beyond the day-ahead market, thus increasing costs. Therefore, it states that for *non-resource specific* System Resources, there could be limitations to the value of multi-hour block constraint bids in RUC because they could unnecessarily constrain capacity.

12. The CAISO requests that the Commission clarify that the CAISO will be permitted to follow a stakeholder process prior to implementing this requirement for *non-resource specific* System Resources to ensure that any limitations in such functionality are addressed in the rules it will ultimately adopt. The CAISO will then report to the Commission its findings. The CAISO asks that, if through this stakeholder process, it determines that including such functionality for *non-resource specific* System Resources would provide no practical benefit that would outweigh any identified limitations in the value of multi-hour block constraint bids for *non-resource specific* System Resources, the Commission would not continue to require the CAISO to implement this feature for all System Resources across the board as part of Release 2. If the Commission does not make this clarification, then the CAISO requests rehearing on this issue.

Commission Determination

13. We note that the CAISO's request concerning this issue provides additional information that was not previously raised by the CAISO, and thus reveals this issue to be more complex than originally presented to the Commission. The CAISO has provided additional information regarding the effect of implementing a multi-hour block constraint bidding parameter on differently-situated resources (*i.e.*, System Resources that are resource-specific or non-resource-specific, and dynamic or non-dynamic) under the RUC process. Considering this new information, we will reverse our finding, in the April 2006 Rehearing Order, requiring the CAISO to implement this bidding parameter in Release 2 of MRTU and allow the CAISO to further examine with stakeholders whether this

[10] CAISO May 21, 2007 Request for Clarification, Docket No. ER06-615-007, at 7 (CAISO May 21, 2007 Request for Clarification).

bidding parameter is appropriate. While we believe that there may be some value in providing such parameters, we direct the CAISO, when it makes its Federal Power Act (FPA) section 205[11] filing to implement MRTU Release 2, to fully explain the inclusion or exclusion of such bidding parameters for System Resources.

B. Non-Compliant Resource Adequacy Resources

14. In the April 2007 Rehearing Order, the Commission found that Local Regulatory Authorities can impose penalties on Resource Adequacy (RA) resources for not adhering to the terms and conditions of their RA contracts. Since RUC resources that are RA resources are compensated for availability through their RA contracts, they do not receive a RUC availability payment, and accordingly would have no payment to be rescinded by the CAISO if the resource engages in uninstructed deviations or does not respond to the CAISO's dispatch instruction. Therefore, the Commission directed the CAISO to submit tariff sheets clarifying that, under MRTU Tariff section 8.10.8.1, no payment obligation applies to RA resources and that the CAISO will notify the appropriate Local Regulatory Authority of any non-compliance of RA resources.[12]

15. The CAISO requests clarification that the Commission intended to require the CAISO to communicate not with the Local Regulatory Authority but with the Scheduling Coordinator for the applicable LSE and supplier with respect to any instances of non-compliance on the part of RA resources listed by LSEs in their RA plans. The CAISO submits that Local Regulatory Authorities generally cannot impose additional payments on suppliers, but that the LSE may be entitled to additional payments for non-compliance of a contractual obligation.

Commission Determination

16. We note that, as part of its August 3, 2007 compliance filing,[13] the CAISO states that it has revised MRTU Tariff sections 8.10.8.1 and 11 regarding the absence of a financial consequence for unavailability or un-deliverability of RA RUC capacity. Therefore, we deny requests for rehearing of this issue, without prejudice to parties raising their concerns in response to the August 3, 2007 compliance filing when a more complete record can be presented.

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[11] 16 U.S.C. § 824e (2000).

[12] April 2007 Rehearing Order, 119 FERC ¶ 61,076 at P 66.

[13] *See* CAISO Aug. 3, 2007 Compliance Filing, Docket No. ER06-615-011.

II. Market Power Mitigation

17. The CAISO requests further clarification regarding filing negotiated default energy bids with the Commission. In the September 2006 Order, the Commission approved the CAISO's proposed market power mitigation package, which identifies suppliers with potential local market power and mitigates those suppliers' bids to established default energy bids.[14] The Commission concluded that the negotiated option, whereby a market participant could negotiate with the CAISO to develop a specific bid price, was a flexible means by which a mitigated market participant could recover its costs during market power mitigation.[15] Based on the Commission's responsibility to ensure that rates are just and reasonable, the Commission further directed the CAISO to modify the MRTU Tariff to indicate that, at the time the CAISO and market participants negotiate a bid price, the CAISO must file the negotiated default energy bid with the Commission.[16]

18. In the April 2007 Rehearing Order, the Commission clarified that its September 2006 Order's directive to file the negotiated default energy bids is satisfied with a regular *ex post* informational filing of these bids, "provided parties have notice that the rate is tentative and may later be adjusted with retroactive effect" and that "every 30 days constitutes a sufficiently regular time interval basis for making such filings."[17]

19. Now, the CAISO requests further clarification that any such retroactive adjustments will be limited to modifying the bid price payments of the affected generating unit, and will not require the CAISO to engage in reruns to revise market-wide Locational Marginal Pricing (LMPs) that might have been impacted by these default energy bids. The CAISO argues that such clarification is appropriate because

> . . . the alternative would be to subject nearly all CAISO Market Participants to a high degree of price uncertainty on a regular basis, that is, any time an LMP is affected by a Default Energy Bid. Also, the CAISO submits that although making regular informational filings of Default Energy Bids constitutes sufficient notice for purpose of the specific Default Energy Bids under consideration, it would be

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[14] September 2006 Order, 116 FERC ¶ 61,274 at P 1005.

[15] *Id*. P 1057.

[16] *Id*.

[17] April 2007 Rehearing Order, 119 FERC ¶ 61,076 at P 510.

> unreasonable to expect that the entire market will be on notice as a result of such filings simply because of the fact that Default Energy Bids may impact market-wide LMPs. Such an expectation would place an unreasonably high administrative burden on Market Participants.[18]

20. The CAISO also requests the Commission clarify that there will be a reasonable time limit on the ability to make retroactive adjustments to the filed default energy bids, and suggests 60 days. The CAISO argues that such a limitation:

> . . . is necessary to provide Market Participants with a sense of price stability and commercial certainty, which would be undermined if there were an unlimited amount of time during which the Commission can retroactively adjust Default Energy Bids. The CAISO submits that providing Market Participants with a sense of price stability is particularly important given the transition to a new market structure and Market Participants' concerns relating to this transition.[19]

21. If the Commission denies these requested clarifications, the CAISO requests rehearing on this issue.

Commission Determination

22. We conditionally grant the CAISO's requested clarifications, on a provisional basis, as explained below. Under the MRTU Tariff, a generating resource unit's bid is replaced with a default energy bid when the CAISO's local market power mitigation procedures identify that bid as having potential market power. The default energy bid is intended to provide the supplier with a reasonable opportunity to recover its costs while mitigating market power concerns. The negotiated option is one of four options a Scheduling Coordinator may elect under the MRTU Tariff for determining a resource's default energy bid.[20] If a Scheduling Coordinator elects the negotiated option, it must

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[18] CAISO May 21, 2007 Request for Clarification at 10.

[19] *Id*.

[20] The MRTU Tariff provides a variable cost option (variable costs plus 10 percent), a LMP option (a weighted average of LMPs at the generating unit node during the preceding 90 days), a frequently-mitigated unit option (providing a bid adder to units that are frequently mitigated), and the negotiated option (market participants negotiate with the CAISO to develop a specific bid price, which is then filed with the Commission).

submit a proposed default energy bid to the CAISO, along with supporting information and documentation as described in the relevant Business Practice Manual.[21]

23. The CAISO is concerned about the possibility that it may have to perform a market rerun if a negotiated default energy bid impacts market-wide LMPs and is later revised by the Commission. This possibility might arise under the following chain of events: (1) a supplier finds that the three other options for setting its default energy bid do not provide a reasonable opportunity for the supplier to recover its costs in the event that its unit is mitigated, so its Scheduling Coordinator elects the negotiated option for the default energy bid; (2) the seller and the CAISO negotiate a default energy bid; (3) local market power mitigation measures are triggered for that resource, requiring its bid to be replaced with the default energy bid; (4) the negotiated default energy bid becomes the marginal bid that sets a market clearing price in the local constrained area during some time intervals; and (5) the Commission later finds the rate negotiated by the CAISO and the supplier to be unjust and unreasonable.[22] At the outset, we note that it is difficult to predict how often such a unit's mitigated bid will set a market clearing price in the local constrained area. Even if this were limited to a single occurrence, however, we recognize that the cost and complexities that the Commission and the CAISO would face, if required to reset retroactively the market clearing price and dispatch for the specific intervals during which an unjust and unreasonable rate impacted market-wide LMPs, would be substantial.

24. While the Commission has a duty, under the FPA, to ensure that rates are just and reasonable, when the Commission determines that a rate is not just and reasonable, it has broad remedial discretion in fashioning a remedy. Indeed, "the breadth of agency discretion is . . . at [its] zenith when the action assailed relates primarily not to the issue of ascertaining whether conduct violates the statute, or regulations, but rather to the fashioning of remedies."[23] Consequently, when the Commission determines that a rate is

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[21] The CAISO may accept the proposed default energy bid, or may enter into negotiations with the Scheduling Coordinator that may continue as long as 60 days. *See* MRTU Tariff section 39.7.1.3 for additional detail regarding the negotiation process.

[22] We note that, if the CAISO and the supplier cannot agree on a negotiated price (step 2 in the chain of events), the CAISO might file a temporary default bid. It is possible that that the Commission could later find the temporary bid to be unjust and unreasonable. Thus, we will treat such situations similarly in our determination, discussed below.

[23] *Conn. Valley Elec. Co. v. FERC*, 208 F.3d 1037, 1043 (D.C. Cir. 2000) (*citing Niagara Mohawk Serv. Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) (*Niagara Mohawk*); *La. Pub. Serv. Comm'n v. FERC*, 174 F.3d 218, 225 (D.C. Cir. 1999)).

unjust and unreasonable, it may set a just and reasonable rate prospectively, and is not obligated to order refunds.[24] In fashioning remedies, it is appropriate for the Commission to consider the administrative burden associated with the remedy.[25] Significantly, when markets yield unjust and unreasonable prices, the Commission may, and should, weigh the complication and cost of resetting the market and the uncertainty such action could create for market participants against the benefit, if any, to be gained by such endeavor.

25. It is our experience that market reruns in the event of a *post hoc* price revision can be highly complex and/or impracticable. In particular, default energy bids are used in *ex ante* bid mitigation and can affect not only overall prices paid and charged to other participants, but also which other supply/demand bids are accepted and which generating units are dispatched. Thus, default energy bids used in *ex ante* bid mitigation can affect overall market outcomes in a variety of ways that may not be fully remediable. We find that, in the event that a negotiated default energy bid is found to be unjust and unreasonable, the time, expense and complexity associated with attempting to recreate putative market outcomes may outweigh whatever benefit might accrue to the market through this exercise. We therefore find that, although we cannot commit that we will never order a market rerun, a market rerun would be the exception, not the rule. Accordingly, we conditionally grant the CAISO's requested clarification that we limit any retroactive default energy bid price adjustment to the affected generating unit, with two important caveats.[26]

26. First, our approval of the CAISO's request is conditional. To facilitate our oversight of negotiated default energy bids, we direct the CAISO to file a report 12 months after implementation of MRTU Release 1, detailing its experience with default energy bids. In particular, the report should provide detail on: (1) what information the CAISO used in developing the negotiated default energy bid; (2) the CAISO's treatment of requests for the negotiated option; (3) the frequency of the use of the negotiated option relative to how often the Commission requires subsequent price adjustment to the default energy bid; (4) how often the adjusted bids set the market clearing price; and (5) what impact bid adjustment has on market clearing prices. We emphasize that this is a test period and, depending on the CAISO's report and our own observations, we may reconsider the viability of this approach. Second, while we generally will not require the

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[24] *See, e.g., Towns of Concord, Norwood and Wellesly, Mass. v. FERC*, 955 F.2d 67, 72-74 (D.C. Cir. 1992).

[25] *See, e.g., Otter Tail Power Co.*, 119 FERC ¶ 61,217, at P 16 (2007) (*citing Niagara Mohawk*, 379 F.2d at 159).

[26] We note that the rate determined by the Commission would also apply prospectively to the resource in question.

CAISO to revise market-wide LMPs, we reserve the right to exercise our remedial discretion to require market reruns in exceptional circumstances.[27]

27. In addition, we grant the CAISO's request that the Commission establish a time limit for requiring retroactive adjustments to the filed default energy bids. We clarify that the Commission will act within 90 days of the filing of a negotiated default energy bid. We emphasize that the supplier is obligated to justify its negotiated rate;[28] consequently, we expect any such filing by the CAISO to have sufficient support and justification, presumably provided by the supplier, for the negotiated default energy bid. In the event of such a filing, the Commission will notice the filing and provide a 21-day comment period, and will rule on the paper hearing within 90 days.

III. Resource Adequacy

A. Resource Adequacy Capacity under Bilateral Contracts

28. In the April 2007 Order, the Commission granted Imperial Irrigation District's (Imperial) request for rehearing that the MRTU Tariff be amended to specify that the resource adequacy requirement does not apply to generation designated to serve bilateral contracts or committed for minimum operating reserves. The Commission agreed that such generation capacity should not be offered as RA capacity, because this capacity cannot meet the availability requirements under resource adequacy. The Commission directed the CAISO to file amended tariff sheets providing that Scheduling Coordinators representing RA capacity must show that, through their supply plans, their generation capacity is not already under bilateral contract or committed for minimum operating reserves.[29]

29. The CAISO requests clarification that the Commission did not intend to exclude generation capacity already under a bilateral contract from consideration as RA capacity. The CAISO argues that as long as the generation capacity is committed to service in the CAISO Control Area and is "visible" to the CAISO through a self-schedule or bid, the underlying contractual commitment is unimportant. It submits that the critical factor, as already captured in the MRTU Tariff, is that the generation capacity be listed in a supply

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[27] We note that we will treat temporary default bids the same as successfully negotiated default energy bids, *i.e.*, we will limit the price adjustment to the unit associated with the temporary default energy bid, unless the temporary default energy bid severely distorted the market.

[28] *See, e.g., Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,313, at P 337 (2007).

[29] April 2007 Rehearing Order, 119 FERC ¶ 61,076 at P 618.

plan and a corresponding RA plan from an LSE serving demand in the CAISO Control Area.

30. Alternatively, the CAISO submits that, if the Commission's concern is narrowly directed to the potential for double counting capacity that is both committed to an LSE within the CAISO Control Area and an LSE without an obligation to submit a RA plan (*i.e.*, an LSE exclusively serving demand outside the CAISO Control Area), then the current MRTU Tariff already mitigates against this situation. According to the CAISO, under MRTU Tariff section 40.4.7, Scheduling Coordinators for RA resources must submit a supply plan that includes an obligation to provide accurate and complete information. The CAISO states that the resource then becomes bound by the provisions governing RA capacity. Furthermore, the CAISO contends that it may initiate an enforcement action against a Scheduling Coordinator for a resource if double counting of capacity occurred. The CAISO adds that entities such as Imperial also have the ability to protect themselves by including, in their bilateral arrangements, provisions that create a financial disincentive for suppliers to utilize their capacity in a manner that would prevent compliance with the contractual obligations.

Commission Determination

31. We clarify that the Commission, in the April 2007 Rehearing Order, only addressed the potential for double counting of capacity that is both committed to an LSE within the CAISO Control Area and an LSE without an obligation to submit an RA plan. As noted, the CAISO has provided an explanation of how the current MRTU Tariff adequately addresses this situation. Upon reconsideration, we agree with the CAISO and thus will not require the CAISO to make any additional modifications to the MRTU Tariff.

B. Exports from RA Capacity

32. In the April 2007 Rehearing Order, the Commission responded to a request for clarification from Imperial that MRTU Tariff section 40.6.11 be amended to state that firm exports will continue to preserve their scheduling priority above interruptible, non-firm transmission. The Commission found that no clarification was necessary and concluded that exports supplied by RA capacity are non-firm opportunity sales that should be subject to curtailment to prevent or alleviate a system emergency.[30]

33. SoCal Edison and Burbank/Turlock argue that the Commission erred in finding that exports supplied by RA capacity should be considered non-firm opportunity sales. They submit that the CAISO does not offer "non-firm" transmission service under

[30] April 2007 Rehearing Order, 119 FERC ¶ 61,076 at P 159, 619.

MRTU, and therefore no export from a CAISO Control Area RA resource would utilize non-firm transmission service. SoCal Edison and Burbank/Turlock note that, according to the CAISO April 2007 Joint Quarterly Seams Report:

> Once the [day-ahead market] has concluded and day-ahead export schedules are established… export schedules are firm in the usual sense of the word regardless of whether they are supported by RA capacity or non-RA capacity. That is, the CAISO carries reserves to support them, and they are afforded the highest priority in the subsequent RTM/HASP market processes. Similarly, once the HASP has concluded and hour-ahead export schedules are established, such export schedules are firm without regard to their reliance on RA or non-RA capacity, and they are supported by CAISO-procured reserves.[31]

34. Burbank/Turlock request further clarification as to whether the e-tags associated with RA resource schedules should indicate, after the day-ahead market has closed, that the schedule is firm and that no schedule will be curtailed outside normal contingency operations.

Commission Determination

35. We believe that the misunderstanding raised in the rehearing requests arises from a question of timing. As noted in the CAISO April 2007 Quarterly Seams Report, at the conclusion of the day-ahead market or HASP, exports are firm, because the CAISO carries operating reserves for both RA and non-RA exports. As such, we agree with SoCal Edison and Burbank/Turlock that exports supplied by RA capacity should not be considered non-firm opportunity sales but rather firm schedules subject to curtailment only during system emergencies.[32] However, prior to the conclusion of the day-ahead market, export self-schedules from RA capacity remain subject to adjustment ahead of other self-schedules as a part of the CAISO's congestion management process.[33]

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[31] SoCal Edison May 21, 2007 Rehearing Request, Docket No. ER06-615-007, at 5; Burbank/Turlock May 21, 2007 Rehearing Request, Docket No. ER06-615-007, at 7-8 (*citing* CAISO Apr. 30, 2007 Quarterly Seams Report for the First Quarter of 2007, Docket No. ER06-615, at Attachment J (CAISO April 2007 Quarterly Seams Report).

[32] MRTU Tariff section 40.6.11.

[33] *See* CAISO April 2007 Quarterly Seams Report, Attachment J at 2-3.

36. With respect to Burbank/Turlock's additional clarification request regarding e-tags, we note that the CAISO stated in the April 2007 Joint Quarterly Seams Report that e-tags associated with finalized day-ahead export schedules will indicate the schedule is firm and that no schedule will be curtailed outside normal contingency operations.[34] We find that the CAISO's statement satisfies Burbank/Turlock's concerns, and therefore find that no further clarification is necessary.

C. Local Capacity Area Resource Adequacy Requirements

1. State Water Project's Request for Rehearing

37. State Water Project asserts that the April 2007 Rehearing Order's conclusion that Local Regulatory Authorities such as State Water Project will have input into the CAISO's determination of local capacity area requirements lacks substantial evidence. It states that the CAISO has failed to live up to the expectations included in the April 2007 Rehearing Order that the CAISO will provide Local Regulatory Authorities with meaningful deference under the local capacity area resource adequacy requirements.[35] State Water Project contends that the April 2007 Rehearing Order finding regarding CAISO collaboration with Local Regulatory Authorities will not meet standards for substantial evidence.[36]

38. State Water Project contends that it has not experienced any meaningful stakeholder process with respect to the designation of the Big Creek-Ventura Local Capacity Area. State Water Project asserts that it was informed that this new local capacity area had been developed only after the CAISO had made its determination. It also contends that the CAISO has failed to collaborate with Local Regulatory Authorities within the CAISO Control Area to set parameters, assumptions, and criteria for the technical studies concerning local capacity area resource requirements, as required by MRTU Tariff section 40.3.1.

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[34] *Id.* at 12.

[35] *See* State Water Project May 21, 2007 Request for Rehearing, Docket No. ER06-615-007, at 9 (State Water Project Request for Rehearing) (*quoting* April 2007 Rehearing Order, 119 FERC ¶ 61,076 at P 562 (The April 2007 Rehearing Order relied upon the CAISO's representations that it is "engaged in a process with representative stakeholders to reassess the reliability criteria and assumptions that will drive Local Capacity Area requirements").

[36] *See City of Centralia v. FERC*, 213 F.3d 742, 749 (D.C. Cir. 2000).

39. State Water Project asserts that the Big Creek-Ventura area is a generation pocket rather than a local capacity area. It states that, if the Big Creek corridor is in fact a generation pocket, the CAISO's treatment of it as a local capacity area raises questions about the April 2007 Rehearing Order's assumptions in approving the market reform adopting LMP as a means of sending accurate price signals concerning the choice of generation purchases.

40. State Water Project contends that the CAISO's designation of Big Creek-Ventura as a local capacity area has immediate and severe impacts. It notes that, at the same time it will be facing challenges to make essential water deliveries, it does not know if it will have to increase or decrease pumping to address problems in the Big Creek area. It also states that there are no currently-effective tariff provisions that govern procedures for determining the consequences of a new 2008 local capacity area, and therefore this exposes State Water Project to uncertainty and potential costs.

41. State Water Project claims that the April 2007 Rehearing Order's conclusion that jurisdictional limits will be respected through deference to Local Regulatory Authorities is undermined by the CAISO's actual operations concerning the evaluation of 2008 local capacity areas. It states that the lack of deference to Local Regulatory Authorities fails statutory requirements to protect customers[37] and ensure just and reasonable rates,[38] and that the Commission cannot disregard jurisdictional prohibitions against regulating exempt governmental entities[39] and power purchases.[40]

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[37] State Water Project Request for Rehearing at 7-8 (*quoting Lockyer v. FERC*, 383 F.3d 1006, 1017 (9th Cir. 2004) (recognizing "the [Federal Power] Act's 'primary purpose' of protecting consumers"); *Nat'l Ass'n for the Advancement of Colored People v. FPC*, 520 F.2d 432, 438 (D.C. Cir. 1975), *aff'd*, 425 U.S. 662 (1976) ("[FERC's] primary task . . . is to guard the consumer from exploitation by non-competitive electric power companies").

[38] *Id.* (*quoting NStar Elec. & Gas Corp. v. FERC*, 481 F.3d 794, 796 (D.C. Cir. 2007); *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1118-19 (D.C. Cir. 2002) (requiring the Commission to ensure that ISO actions produce just and reasonable rates).

[39] *Id.* (*citing Bonneville Power Admin. v. FERC*, 422 F.3d 908, 924 (9th Cir. 2005); *New W. Energy Corp.*, 83 FERC ¶ 61,004, at 61,018 (1998)).

[40] *Id.* (*quoting Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395, 401 (D.C. Cir. 2004) ("Congress' specific and limited enumeration of FERC's power over corporate governance in section 305 is strong evidence that section 206(a) confers no such authority on FERC").

42. State Water Project asserts that the April 2007 Rehearing Order failed to specify how, with respect to outcomes from the CAISO's local capacity area designations, the Commission will ensure that wholesale rates are just and reasonable and not unduly discriminatory. Similarly, it notes the example of Commission review of a specific, filed allocation of costs, as in the *Groton* case,[41] is inapposite here. It contends that no clear need and no clear allocation is known with respect to the Big Creek area - and since no tariff provisions are in effect with respect to 2008 local capacity area designations and allocations, it is not possible to determine when or how any allocation might be made. State Water Project asserts that the April 2007 Rehearing Order's conclusion that imposing resource adequacy power purchasing dictates on non-jurisdictional entities is necessary to sustain price caps makes sense only when and if the CAISO has established that a local capacity area is in fact a load pocket. State Water Project adds, however, that it makes no sense where, as in the case with the Big Creek area, the problem may arise from excess generation in a localized area. It further contends that the April 2007 Rehearing Order's assertion of reliability benefits, just and reasonable rates, and prevention of a load's leaning on others is not only meaningless, but is vitally betrayed in an instance where load may be forced to buy local power to alleviate a generation pocket.

43. Therefore, State Water Project requests that the Commission grant rehearing and order the CAISO to remove tariff language imposing resource adequacy purchasing requirements for local capacity areas and stop imposing such requirements in 2008, inasmuch as the safeguards of consultation and collaboration that the April 2007 Rehearing Order assumed would ensure an appropriate jurisdictional balance have not been honored in practice.

2. State Water Project's Motion to Reopen

44. State Water Project filed a motion to reopen the MRTU record due to certain new facts and circumstances that it claimed had only recently become known, including: (1) the extent and transparency of the CAISO's stakeholder process; (2) designations currently being made by the CAISO with respect to local capacity areas; and (3) the factual predicates for the CAISO's local capacity area determinations. It asserts that the CAISO has made designations for 2008 local capacity areas that conflict with other CAISO representations, and that are based upon inaccurate and unverifiable facts.

45. State Water Project asserts that the CAISO failed to meaningfully consult with Local Regulatory Authorities and failed to review the CAISO's input assumptions with State Water Project, in direct conflict with currently-effective CAISO tariff section 40.5.2.1. It states that the CAISO's lack of communication and collaboration with Local

[41] *Muns. of Groton v. FERC*, 587 F.2d 1296 (D.C. Cir. 1978) (*Groton*).

Regulatory Authorities refute the Commission's conclusion that the CAISO is engaged in a process with stakeholders regarding local capacity area requirements.

46. State Water Project contends that the CAISO's determination that Big CreekVentura is a local capacity area is unsupported. It asserts that evidence shows that the Big Creek Corridor area is a generation pocket rather than a load pocket. It states that restricting free market choice by imposing regulatory requirements that force purchasers to buy power within a certain location can interfere with price signals that LMP sends.

47. State Water Project states the Rule 716 of the Commission's Rules of Practice and Procedure provides that if the Commission "has reason to believe that reopening of a proceeding is warranted by any changes in conditions of fact or of law or by the public interest, the record in the proceeding may be reopened. . . ."[42] It asserts that reopening the record here is necessary due to changes in conditions of fact and the public interest. It further notes that precedent concerning the CAISO system supports reopening the record in this proceeding.[43]

48. In its answer to State Water Project's motion, the CAISO states that the motion is procedurally defective, having failed to offer a new material fact that would permit the Commission to reopen the record. The CAISO states that State Water Project's motion is based upon an impermissible request for rehearing. The CAISO notes that, even if State Water Project's motion was not procedurally defective, it is factually and legally flawed. The CAISO contends that it shares State Water Project's desire that the process for evaluating local capacity area needs proceed in a transparent, effective way with stakeholder input. However, the CAISO notes that the best format for State Water Project to communicate its concerns is through direct communication with the CAISO,

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[42] State Water Project Request for Rehearing at 3 (*citing* 18 C.F.R. § 385.716(c) (2007)).

[43] State Water Project May 21, 2007 Motion to Reopen Record, Docket No. ER06-615, at 15 (*citing Cities of Anaheim & Riverside, Cal.*, Docket Nos. EL03-15, "Order of Chief Judge Granting Motion to Reopen the Record and Establishing New Procedural Schedule" (June 3, 2004) (*Cities of Anaheim & Riverside*)).

commenting on the August 3, 2007 compliance filing, and the CAISO's Order No. 890[44] compliance activities.[45]

49. The CAISO cites *CSM Midland Inc.*[46] for the proposition that a party requesting to reopen the record must demonstrate the existence of extraordinary circumstances. The CAISO states that State Water Project does not indicate in which proceeding the Commission should consider the evidence that State Water Project is presenting. The CAISO contends that State Water Project's request for rehearing is impermissible and therefore the motion to reopen cannot be considered there. Alternatively, the CAISO states that the Commission could open a new proceeding to consider the motion, which the CAISO calls a waste of resources given its August 2007 compliance filing on this matter. The CAISO contends that it implemented the stakeholder process that the Commission expected for development of 2008 local area capacity needs. However, it notes that, even if it had not, then this would be an issue about the CAISO's compliance with the MRTU Tariff, not of whether the Commission's approval of the tariff provisions was erroneous.

50. The CAISO states that State Water Project's lack of knowledge regarding the 2008 process for the determination of local capacity area needs does not provide a basis for questioning the opportunity for Local Regulatory Authorities to provide input. The CAISO asserts that State Water Project had timely access to necessary data regarding the identification of the Big Creek-Ventura local capacity area, with the information that led to the identification being made available at least four times. The CAISO states that State Water Project asserts that it first became aware of the Big Creek-Venture local capacity area on March 21, 2007 and by then the determination had already been made. However, the CAISO states that the determinations were still being finalized as of June 5, 2007.

51. The CAISO contends that State Water Project's uncertainty as to whether the Big Creek-Ventura local capacity area is a load pocket has no basis. It states that, even if Big Creek-Ventura were a generation pocket, this does not preclude it from also being a load

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[44] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *reh'g pending*.

[45] The CAISO notes that, as part of its Order No. 890 compliance process, it is working on revisions to its local capacity area needs process and schedule. *See* CAISO June 5, 2007 Answer to Motion to Reopen Record, Docket No. ER06-615, at 3 n.5 (CAISO Answer).

[46] CAISO Answer at 8 (*citing CSM Midland Inc.*, 56 FERC ¶ 61,177, at 61,624 (1991)).

pocket. It also asserts that State Water Project has exaggerated the consequences of uncertainty regarding the designation of local capacity area needs. The CAISO states that, since MRTU Tariff provisions have been approved, even if they are not in effect, there is no uncertainty about the provisions that will apply.

Commission Determination

52. State Water Project requests that the Commission grant rehearing of the April 2007 Rehearing Order and direct the CAISO to remove tariff language imposing resource adequacy purchasing requirements for local capacity areas and stop imposing such requirements in 2008. Additionally, in its motion to reopen, State Water Project requested that the Commission reopen the MRTU record based on its assertion that there have been changes in conditions of fact regarding: (1) the extent and transparency of the CAISO's stakeholder project; (2) designations currently being made by the CAISO with respect to local capacity areas; and (3) the factual predicates for the CAISO's local capacity area determinations. We will address each of State Water Project's requests in sequence below.

53. In the September 2006 Order, the Commission conditionally approved the MRTU RA local capacity area requirements, directing the CAISO to make a compliance filing regarding the determination of local capacity area obligations that would: (1) clarify that the detailed criteria and results from the technical study on local capacity area resources will be provided to market participants; (2) incorporate into the MRTU Tariff the set of reliability criteria that the CAISO will use in developing the local capacity area needs; and (3) incorporate into the MRTU Tariff a statement distinguishing the reliability needs addressed by the Reliability Must Run (RMR) technical study process from those addressed by the local capacity area study process, so that it is clear which criteria are being addressed in each process.[47] In the April 2007 Rehearing Order, the Commission reaffirmed its findings on the MRTU Tariff's local capacity area RA requirements in the September 2006 Order, further describing the CAISO's obligations and stakeholder's opportunities to address the CAISO's compliance with those obligations.[48] Rehearing of an order on rehearing lies only when the order on rehearing modifies the result reached in the original order in a manner that gives rise to a wholly new objection.[49] We find that

[47] September 2006 Order, 116 FERC ¶ 61,274 at P 1166-67.

[48] April 2007 Rehearing Order, 119 FERC ¶ 61,076 at P 562.

[49] *See, e.g., KeySpan-Ravenswood, LLC v. N.Y. Indep. Sys. Operator, Inc.*, 112 FERC ¶ 61,153 (2005); *S. Co. Servs., Inc.*, 111 FERC ¶ 61,329 (2005); *AES Warrior Run, Inc. v. Potomac Edison Co. d/b/a Allegheny Power*, 106 FERC ¶ 61,181 (2004); *Sw. Pub. Serv. Co.*, 65 FERC ¶ 61,088, at 61,533 (1993); *Gustavus Elec. Co.*, 111 FERC

(continued….)

the April 2007 Rehearing Order did not modify the results of the Commission's September 2006 Order in this respect, and therefore we reject State Water Project's second rehearing request. Any other result would lead to unending litigation as every response by the Commission to a party's arguments would allow yet another opportunity for rehearing.[50] The Commission cannot allow litigation to drag on indefinitely. The United States Court of Appeals for the District of Columbia Circuit has stated that, when the Commission "merely supplies a new improved *rationale*," it does not justify another request for rehearing.[51] Further, the Commission has found that the occurrence of new events also does not justify a rehearing of a rehearing order.[52]

54. We next consider State Water Project's motion to reopen the record in the MRTU proceeding. In order to persuade the Commission to exercise our discretion to reopen the record, the requesting party must demonstrate the existence of "extraordinary circumstances."[53] The Commission has held that

> [t]he party must demonstrate a change in circumstances that is more than just material -- it must be a change that goes to the very heart of the case. This policy against reopening the

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¶ 61,424, at P 3 (2005); *Symbiotics, L.L.C.*, 99 FERC ¶ 61,064 (2002); *PacifiCorp*, 99 FERC ¶ 61,015 (2002); *Entergy Servs., Inc.*, 115 FERC ¶ 61,378 (2006).

[50] *See, e.g., Canadian Ass'n of Petroleum Producers v. FERC*, 254 F.3d 289, 296 (D.C. Cir. 2001) (rejecting the notion of "infinite regress" that would "serve no useful end").

[51] *See S. Natural Gas Co. v. FERC*, 877 F.2d 1066, 1073 (D.C. Cir. 1999) (*citing Tenn. Gas Pipeline Co. v. FERC*, 871 F.2d 1099, 1109-10 (D.C. Cir. 1988)).

[52] *See San Diego Gas & Elec. Co.*, 99 FERC ¶ 61,160, at 61,649 (2002) (finding that neither the "intervening California [Public Utilities Commission] decision nor the [CA]ISO's implementation of the dispatch penalty provide grounds for revisiting these issues during these times of evolving markets and regulatory changes. Rather, the proper avenue of recourse is for Dynegy to file a complaint").

[53] *See CSM Midland Inc.*, 56 FERC at 61,624.

> record except in extraordinary circumstances is based on the need for finality in the administrative process.[54]

In *Southern Companies*, the Commission found that "the question of whether to reopen the evidentiary record is a matter of agency discretion" with courts only requiring agencies to reopen records when there are "extraordinary circumstances."[55] The Commission noted that "extraordinary circumstances" have been defined as a change in circumstances "that is not merely 'material' but rises to the level of a change in 'core' circumstances, the kind of change that goes to the very heart of the case."[56]

55. Upon consideration of State Water Project's motion, we find that it has failed to demonstrate the existence of "extraordinary circumstances" that would lead us to reopen the MRTU record. While State Water Project cites *Cities of Anaheim & Riverside*[57] to support its motion, we note that that facts before us differ greatly from that case. In *Cities of Anaheim & Riverside*, the Administrative Law Judge granted a motion to reopen the record to allow the submission of operating procedure revisions that could moot most of the issues in that proceeding and potentially avoid additional litigation. In contrast, while State Water Project has raised concerns about the stakeholder process for the CAISO's designations of 2008 local capacity areas and the CAISO's stakeholder process in general, we find that its concerns are an issue regarding the CAISO's implementation of or compliance with the MRTU Tariff rather than whether the Commission should have approved the tariff provisions in the first place. These circumstances diverge greatly from the facts of *Cities of Anaheim & Riverside* where the newly presented evidence constituted a change in the core circumstances of the case. Further, as noted above, the Commission has discretion in deciding whether to reopen the evidentiary record. We find that State Water Project's motion goes not to the core circumstances or heart of the

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[54] *See id.* (*citing S. Co. Servs., Inc.*, 43 FERC ¶ 61,003, at 61,024 (*Southern Companies*), *reh'g denied*, 43 FERC P61,394 (1988), *aff'd mem. sub nom. Gulf States Utils. Co. v. FERC*, 886 F.2d 442 (D.C. Cir. 1989), *cert. denied*, 110 S. Ct. 2206 (1990); *Friends of the River v. FERC*, 720 F.2d 93, 98 n.6, 109 (D.C. Cir. 1983)).

[55] *Southern Companies*, 43 FERC ¶ 61,003 at 61,024 (*citing Bowman Transp., Inc. v. Ark. Best Freight System, Inc.*, 419 U.S. 281, 296 (1974)).

[56] *Id.* (*quoting Am. Fin. Servs. Ass'n v. FTC*, 767 F.2d 957, 964, n. 5 (D.C. Cir. 1985); *Am. Optometric Ass'n v. FTC*, 626 F.2d 896, 907 (D.C. Cir. 1980); *see also*, *Greater Boston Television Corp. v. FCC*, 463 F.2d 268, 283 (D.C. Cir. 1971), *cert. denied*, 406 U.S. 950 (1972)).

[57] *Cities of Anaheim & Riverside*, Docket Nos. EL03-15, "Order of Chief Judge Granting Motion to Reopen the Record and Establishing New Procedural Schedule."

MRTU proceeding, but instead constitutes a tariff compliance matter that does not justify the reopening of the MRTU record. Therefore, we deny State Water Project's motion.

56. We find that State Water Project has failed to meet its burden regarding its request to reopen the MRTU record, and therefore reject its request. We note, however, that State Water Project is not without other avenues to address its concerns regarding the CAISO's designation of local capacity areas. First, if State Water Project believes that the CAISO failed to fulfill its obligation to work with stakeholders in designating 2008 local capacity areas in accordance with the MRTU Tariff, then State Water Project can file a complaint with the Commission. Second, we note that State Water Project had an opportunity to comment on the CAISO's compliance filing regarding the local capacity area RA requirements to express its concerns regarding stakeholder input into the designation process. Finally, as the CAISO stated in its answer, the CAISO's Order No. 890 compliance process provides an additional avenue for State Water Project to express its concerns.

The Commission orders:

(A) The Commission hereby grants in part and denies in part requests for rehearing, as discussed in the body of this order.

(B) The Commission hereby grants in part and denies in part requests for clarification, as discussed in the body of this order.

(C) The Commission hereby denies State Water Project's motion to reopen the MRTU record, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.