134 FERC ¶ 61,004
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corp. Docket Nos. ER10-765-001
ER10-2621-000

ORDER ON COMPLIANCE AND REHEARING

(Issued January 4, 2011)

1. On August 16, 2010, the California Independent System Operator Corporation (CAISO) filed a motion for clarification or, in the alternative, rehearing[1] of the Commission's July 15, 2010 order conditionally accepting CAISO's proposal to implement its Proxy Demand Resource proposal.[2] CAISO seeks clarification or rehearing on a single issue – verification of Proxy Demand Resource ancillary services capacity for periods longer than one hour. For the reasons set forth below, we grant CAISO's request for rehearing. Also, on September 13, 2010, CAISO made a compliance filing revising tariff provisions related to its Proxy Demand Resource proposal, as required by the Proxy Demand Resource Order. As discussed below, we find that the compliance filing complies with the Proxy Demand Resource Order directions.

[1] CAISO August 16, 2010 Motion for Clarification or, in the Alternative, Rehearing (Rehearing Request).

[2] *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,045 (2010) (Proxy Demand Resource Order).

I. **Background**[3]

2. The Commission's Order No. 719[4] set out certain requirements that CAISO addressed in its Proxy Demand Resource proposal. Specifically, the Commission directed Independent System Operators (ISO) and Regional Transmission Operators (RTO) to amend their market rules to permit aggregators of retail customers (Demand Response Providers) to bid demand response on behalf of retail customers into the organized electricity markets operated by ISOs and RTOs, unless prohibited by the laws or regulations of the relevant electric retail regulatory authority.

3. On February 16, 2010, CAISO filed its Proxy Demand Resource proposal. In its proposal, Demand Response Providers may take part in CAISO's day-ahead and real-time energy markets and certain ancillary services markets, once they have executed a *pro forma* Proxy Demand Resource agreement with CAISO and satisfied other applicable requirements, including any local regulatory authority requirements.

4. CAISO proposed to provide payment based on the verified performance of Proxy Demand Resources in comparison to historical metered-demand customer baselines. The proposal requires Demand Response Providers to submit information allowing CAISO to establish customer baselines. The customer baseline represents an estimate of metered demand that normally would be expected for a particular Proxy Demand Resource in the absence of a demand response bid.

5. The proposal allows Proxy Demand Resources to participate in both day-ahead and real-time markets, and at the time the Proxy Demand Resource is first implemented, the non-spinning reserve market will be the only ancillary services market for which Proxy Demand Resources will be certified. The scheduling coordinator representing the Demand Response Provider schedules and bids its Proxy Demand Resources into the CAISO market to curtail load.

6. In its comments on CAISO's proposal, the California Public Utilities Commission (CPUC) requested refinements to the ancillary services performance and payment mechanism. The CPUC claimed that the use of a "meter-before-meter-after" methodology for verifying load curtailment as ancillary services capacity from a Proxy Demand Resource for periods in excess of an hour may be inaccurate. The CPUC argued

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[3] For a more detailed description of this matter's background, *see* Proxy Demand Resource Order, 132 FERC ¶ 61,045 at P 2-13.

[4] *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats & Regs. ¶ 31,281 (2008), *order on reh'g*, Order No. 719-A, 74 Fed. Reg. 37,776 (Jul. 29, 2009), FERC Stats & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

that in periods longer than an hour the usual daily use cycle for a resource may ordinarily increase and such an increase would not be factored into the methodology, which could underpay and/or overburden Proxy Demand Resources that provide load curtailment as ancillary service capacity.

7. On July 15, 2010, the Commission conditionally accepted CAISO's tariff revisions, and the Commission directed a compliance filing on a number of issues including verifying ancillary services capacity.

8. On August 16, 2010, CAISO filed a motion for clarification or, in the alternative rehearing, and on September 13, 2010, CAISO submitted a compliance filing.

9. On July 12, 2010, CAISO submitted tariff revisions in a separate docket (Docket No. ER10-1755) to facilitate the provision of ancillary services by non-generator resources. Among the revisions proposed by CAISO were a reduction of the continuous energy requirement for spinning and non-spinning reserve ancillary service from two hours to 30 minutes and a reduction of the continuous energy requirement for regulation ancillary service from two hours to 60 minutes in the day-ahead market and to 30 minutes in the real-time market. Finding that the proposed reductions make the provision of ancillary services less burdensome for non-generator resources, while still supplying the service needed by CAISO, the Commission conditionally accepted the revisions in a September 10, 2010 order.[5]

II. Notice and Responsive Pleadings

10. Notice of the compliance filing was published in the *Federal Register*, 75 Fed. Reg. 53,293 (2010), with interventions and comments due on or before October 4, 2010. Motions to intervene were filed by Northern California Power Agency, Modesto Irrigation District, and the City of Santa Clara, California and the M-S-R Public Power Agency.

11. On August 31, 2010, the CPUC filed an answer to CAISO's motion for clarification or in the alternative rehearing.

[5] *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,211, at P 26 (2010) (September 2010 Ancillary Services Order).

III. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the compliance proceeding.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a request for rehearing or protest unless otherwise ordered by the decisional authority. We will accept the CPUC's answer to CAISO's motion for clarification or, in the alternative, rehearing because it provides information that assisted us in our decision-making process.

B. Substantive Matters

Summary of Proxy Demand Resource Order

14. In the Proxy Demand Resource Order, the Commission directed CAISO to undertake a study for informational purposes to determine if the effects of demand response apply more broadly than to the individual load-serving entity in which the Proxy Demand Resource is located.[6] The Commission added that the study should include an analysis of 12 months of actual market data of Proxy Demand Resource participation in the CAISO's market.[7] The Commission noted that much of the potential new Proxy Demand Resource participation is contingent on an upcoming CPUC decision, and the 12-month study period should begin at the time that the CPUC implements its protections, rules and protocols and not include the period in which the current "pilot program" is in place.[8]

15. The Commission also directed CAISO to make revisions to sections 4.3 and 8.3 of the *pro forma* Proxy Demand Resource agreement to make clear that a Demand Response Provider that aggregates the demand response of customers for utilities that distributed: (1) over four million MWh in the previous fiscal year must certify (in the case of section 4.3) and represent and warrant (in the case of section 8.3) to the CAISO that its participation is not **prohibited** by the local regulatory authority; or (2) four million MWh or less in the previous fiscal year must certify (in the case of section 4.3) and represent

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[6] Proxy Demand Resource Order, 132 FERC ¶ 61,045 at P 34.

[7] *Id*.

[8] *Id*. P 34 n.23.

and warrant (in the case of section 8.3) to the CAISO that its participation is **permitted** by the local regulatory authority.[9]

16. The Commission further directed CAISO to modify the definition of "Ancillary Service Provider" to change the reference to "Proxy Demand Response" to "Proxy Demand Resource."[10] The Commission also directed CAISO to remove proposed tariff language in tariff section 4.13.2 requiring Proxy Demand Resources to receive load serving entity approval because it afforded load serving entities authority that Order No. 719 vests with the local regulatory authorities and may present an unnecessary barrier to demand response.[11]

17. The Commission found that the customer baseline methodologies significantly affect the rates, terms, and conditions of jurisdictional service and, accordingly, must be included as part of the CAISO Tariff.[12]

18. The Commission also directed CAISO to revise its proposed language in tariff sections 4.13.4 and 11.6.2, which related to potential CAISO actions in the event it was provided a bid for energy that does not represent an actual adjustment of the Proxy Demand Resource in response to a dispatch instruction. These provisions outlined how CAISO could rescind a Proxy Demand Resource payment, suspend a Proxy Demand Resource, as well as submit a matter to the Commission for review. The Commission directed CAISO to modify the provisions to be consistent with the existing tariff provisions and Commission orders concerning referring matters to the Commission and related suspension and sanction provisions.[13]

19. Finally, the Commission directed CAISO to include in its tariff a methodology for verifying that a Proxy Demand Resource provided ancillary service capacity, which addresses ancillary services requirements lasting longer than one hour.[14]

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[9] *Id*. P 47.

[10] *Id*. P 47 n.31.

[11] *Id*. P 55.

[12] *Id*. P 68.

[13] *Id*. P 75.

[14] *Id*. P 84.

Compliance Filing

20. CAISO's compliance filing: (1) offers the Commission a timeline for when Proxy Demand Resources will be allowed full participation and therefore when the Commission can expect to receive the study;[15] (2) revises sections 4.3 and 8.3 of the *pro forma* Proxy Demand Resource Agreement in order to include the Commission's requested changes; (3) corrects the definition of the term "Ancillary Service Provider" to replace the word "Response" with "Resource;" (4) revises tariff section 4.13.2 to state that registration of a location for participation in the Proxy Demand Resource product requires approval from CAISO rather than from the applicable Load Serving Entity (LSE) or Utility Distribution Company (UDC), but that the Demand Response Provider, LSE, and UDC will have an opportunity to review the registration information and provide comments regarding its accuracy; (5) adds the customer baseline methodology to the tariff in new tariff section 4.13.4; and (6) removes tariff sections 4.13.4 and 11.6.2 and removes a proposed sentence referencing those tariff sections from tariff section 8.9, claiming that the Department of Market Monitor has the authority under the existing tariff to refer matters to the Commission that may involve either the provision of false information by market participants to CAISO or market manipulation.[16]

21. As discussed below, CAISO did not include a methodology that accounts for ancillary services capacity for periods longer than an hour, as directed.

Commission Determination on Compliance Filing

22. We find that CAISO's compliance filing complies with the Proxy Demand Resource Order with the exception of the direction regarding ancillary services verification methodology for periods of longer than one hour, on which we grant rehearing, as discussed below. Specifically, we find the timeline offered by CAISO for the submittal of the informational study is consistent with the Commission's direction to file the study 14 months after Proxy Demand Resources begin participating in CAISO's markets, and the CPUC implements the ratepayer protections and other relevant rules and protocols that it contemplates developing.

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[15] CAISO states that it would likely file the study based on 12 months of data no earlier than August 2012 or August 2013, depending on when the current CPUC proxy demand resource pilot program is completed and the CPUC implements ratepayer protections and other relevant rules and protocols.

[16] CAISO September 13, 2010 Compliance Filing at 6 (citing CAISO Tariff sections 37.5, 37.7, and Appendix P).

23. We further find that CAISO's revisions to sections 4.3 and 8.3 of the *pro forma* Proxy Demand Resource Agreement make clear that a Demand Response Provider that aggregates the demand response of customers for utilities must ensure that such action is either not prohibited or permitted (depending on the size of the utility) by the local regulatory authority.

24. We also find that CAISO correctly changed the definition of the term "Ancillary Service Provider" to replace the phrase "Proxy Demand Response" with "Proxy Demand Resource," and CAISO includes the customer baseline methodology in its tariff.

25. We also find that CAISO's revisions to tariff section 4.13.2 satisfy concerns that the tariff language may present an unnecessary barrier to demand response by affording LSEs authority to determine whether a Proxy Demand Resource may participate in CAISO's program. The Commission accepts the proposal to require CAISO approval to register a location for participation in the Proxy Demand Resource product and allow the appropriate Demand Response Provider, designated LSE and UDC the opportunity to review the registration information and provide comments regarding its accuracy.[17]

26. The Commission also accepts CAISO's proposed removal of tariff sections 4.13.4 and 11.6.2. CAISO reliance on existing tariff sections on sanctions and referring matters to the Commission related to the provision of false or misleading information by market participants or market manipulation satisfies the Commission's directives to comply with tariff provisions and Commission orders. The Commission notes that cited tariff section 37.7 and Appendix P relate to referring matters to the Commission, and tariff section 37.5 concerns certain sanctions. In addition, the Commission's regulations prohibit the submission of false or misleading information to an ISO, 18 C.F.R. section 35.41(b), and market manipulation, 18 C.F.R. section 1c.

27. Further, the Commission's September 2010 Ancillary Services Order in another docket accepted CAISO's proposal to reduce the continuous energy requirements for spinning reserve, non-spinning reserve and regulation ancillary services from two hours to 60 minutes or 30 minutes in certain cases.[18] Therefore, as discussed more fully below, the concerns regarding verifying ancillary services capacity for periods lasting longer than one hour are no longer an issue and a compliance filing is not necessary.

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[17] Compliance Filing at 4.

[18] September 2010 Ancillary Services Order, 132 FERC ¶ 61,211 at P 29.

Motion for Clarification or Rehearing

28. In its motion for clarification or, in the alternative, request for rehearing, CAISO contends that in its answer to comments on its original February 16, 2010 Proxy Demand Resource proposal it clarified that dispatches of ancillary services awards are for short durations.[19] CAISO submits that its five-minute real-time market dispatch process should not result in dispatches lasting longer than one hour. CAISO argues that by failing to take into account CAISO's current tariff and its answer, which provided information relevant to the resolution of the issue, the Commission did not engage in reasoned decision-making.[20]

29. CAISO argues that there is no record evidence to support a determination that CAISO will issue dispatches of ancillary service capacity awarded to Proxy Demand Resources that last longer than an hour. CAISO adds that requiring it to develop, test and implement tariff rules that have no practical effect is an inefficient use of CAISO's and stakeholders' resources. Thus, CAISO requests that the Commission clarify its Proxy Demand Resource Order to eliminate this directive.

30. CAISO continues that its July 12, 2010 proposal in another docket to include opportunities for demand response to participate in its markets reduced the continuous energy requirements for non-spinning reserves from two hours to 30 minutes.[21] CAISO claims that this modification allows a Proxy Demand Resource to provide non-spinning reserve, if it can demonstrate the ability to provide continuous energy for 30 minutes. CAISO adds that under its proposed modification to the requirements for non-spinning reserve, Proxy Demand Resources that receive ancillary service awards should not face dispatches for longer than one hour. Therefore, CAISO claims that this change resolves any concern regarding dispatches of Proxy Demand Resources with ancillary service awards lasting longer than one hour.

CPUC's Answer

31. In the CPUC's answer, it states that CAISO's revised tariff provisions reducing the continuous energy requirements and CAISO's clarification that dispatches of ancillary services should not last longer than one hour satisfies the concerns it raised earlier, and there is no need for CAISO to address the ancillary services verification

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[19] Rehearing Request at 6-7.

[20] *Id*. at 7.

[21] *Id*. at 9-10 (citing CAISO July 12, 2010 Filing, Docket No. ER10-1755-000).

problem initially claimed by the CPUC.[22] The CPUC now supports CAISO's motion not to propose a methodology for verifying that a Proxy Demand Resource has provided ancillary service capacity when dispatches of that capacity last longer than one hour.

32. The CPUC states that CAISO should not be required to develop methodologies to address circumstances that will not arise in practice. The CPUC states that assuming the accuracy of CAISO's assertions regarding the duration of Proxy Demand Resource ancillary services dispatches, and that the Commission accepts the substance of CAISO's proposed reductions in minimum run-time requirements; the CPUC is satisfied that no further verification of Proxy Demand Resource ancillary services capacity performance for dispatches longer than an hour appears to be necessary. Should either of the foregoing assumptions fail to come to fruition resulting in inadvertent penalization of providers of Proxy Demand Resource ancillary services, the CPUC states that it reserves the right to raise this issue in the future with the CAISO and/or the Commission to request that an appropriate remedy be developed.[23]

Commission Determination on Request for Clarification or Rehearing

33. In light of the Commission's finding in the September 2010 Ancillary Services Order that CAISO could reduce the continuous energy requirements for spinning and non-spinning reserve ancillary services to 30 minutes and reduce the continuous energy requirements for regulation ancillary services to 60 minutes in the day-ahead market and 30 minute in the real-time market, we find that it is unnecessary for CAISO to include in its tariff a methodology for verifying that a Proxy Demand Resource provided ancillary service capacity lasting longer than one hour. Consistent with the Commission's determination in the September 2010 Ancillary Serves Order that CAISO's reduced continuous energy requirement for spinning reserve, non-spinning reserve and regulation ancillary services was appropriately based on data concerning the length of contingency events and recovery time and was reasonable based on CAISO's existing tariff provisions, we agree with CAISO that its ancillary services are unlikely to last longer than one hour. Thus, there is no need for CAISO to develop and include in its tariff a methodology that accounts for ancillary service capacity for periods longer than an hour. Therefore, the Commission grants CAISO's request for rehearing on this issue and eliminates the condition that CAISO include in its tariff a methodology for verifying that a Proxy Demand Resource provided ancillary service capacity lasting longer than one hour.

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[22] CPUC Answer at 2-3.

[23] *Id*. at 3-4.

The Commission orders:

(A) CAISO's compliance filing is hereby accepted.

(B) The Commission hereby grants rehearing on CAISO's request that it not be required to include in its tariff a methodology for verifying that a Proxy Demand Resource provided ancillary service capacity lasting longer than one hour, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.