137 FERC ¶ 61,191
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket No. ER12-50-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF CHANGES AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 12, 2011)

1. On October 7, 2011, the California Independent System Operator Corporation (CAISO) submitted proposed amendments to its tariff[1] to implement a flexible ramping constraint in its real-time market processes (Flexible Ramping Constraint) and provide related compensation. In this order, we accept the Flexible Ramping Constraint and suspend it for a nominal period, to become effective December 13, 2011, as requested, subject to refund. We also establish hearing and settlement judge procedures to consider contested factual issues involving CAISO's proposed Flexible Ramping Constraint.

I. Background

A. CAISO's Shortage of Ramping Capability

2. CAISO explains that it has recently experienced insufficient ramping capability that is, the ability to adjust the power output of committed resources fast enough to match real-time supply with real-time demand.[2] CAISO states that these shortages affect CAISO's market operations and cause CAISO to begin relying on regulation capacity and

[1] California Independent System Operator Corporation, FERC Electric Tariff, Fifth Replacement.

[2] *See* CAISO Tariff, Appendix A (Ramping capability is defined as the capability to change "the loading level of a Generating Unit in a constant manner over a fixed time (e.g., Ramping up or Ramping down)").

operating reserves that have not been designated for use only in a contingency (non-contingent operating reserves).[3]

3. CAISO runs both day-ahead and real-time markets to procure energy and ancillary services to serve its load. CAISO operates two real-time market processes: the real-time unit commitment process that runs every 15 minutes, and the real-time dispatch process that runs every 5 minutes to dispatch available resources to economically meet the load. CAISO states that, in certain situations, non-contingency operating reserves (consisting of spinning and non-spinning reserves) and regulation service procured in the 15-minute real-time unit commitment process do not provide sufficient ramping capability and flexibility to meet actual conditions that arise in the 5-minute real-time dispatch interval.[4] CAISO cites several unanticipated conditions that contribute to the variations that lead to ramping needs, including resources shutting down without sufficient notice, variable energy resource forecast errors, sudden changes in expected deliveries, contingencies, high hydro runoff and interties tagging and delivering less than awarded in the hour-ahead scheduling process.[5] CAISO explains that the shortage is most prominent during the morning and evening ramps, during which load increases.[6]

B. <u>CAISO's Flexible Ramping Constraint Proposal</u>

4. CAISO proposes to implement a Flexible Ramping Constraint to procure upward ramp capability from committed, flexible generation resources and proxy demand response resources that are not designated to provide regulation or contingent operating reserves, and whose upward ramping capability is not committed for load forecast needs. CAISO states that the primary objective of the Flexible Ramping Constraint is to ensure sufficient upward ramping flexibility between 15-minute real-time unit commitment and

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[3] *See* CAISO Tariff, Appendix A (CAISO defines operating reserves as the combination of Spinning and Non-Spinning Reserves). *See also* CAISO October 7, 2011 Filing at 3, 9 (CAISO explains that market participants can designate spinning reserves as non-contingent or contingency-only, but that only the non-contingent operating reserves can be dispatched in real-time to meet the ramping shortage. Contingency-only spinning reserves can be dispatched only when specific contingency events occur, such as an unplanned transmission or generation outage, or when there is an imminent or actual system emergency).

[4] CAISO October 7, 2011 Filing at 2.

[5] *Id.* at 2-3.

[6] *Id.* at 3.

5-minute real-time dispatch.[7] CAISO explains that the Flexible Ramping Constraint will be applied to the market optimization for the real-time pre-dispatch runs, which include the hour-ahead scheduling process, the short-term unit commitment process, 15-minute real-time unit commitment, and also in the real-time economic dispatch run as part of the 5-minute real-time dispatch process. CAISO states that the constraint will only apply to internal generation resources and proxy demand response resources, and cannot be satisfied by resources external to the system, such as static or dynamic imports and exports.[8]

5. CAISO explains that the quantity of flexible ramping capability will be determined by system operators using tools that estimate expected levels of imbalance variability, uncertainty due to forecast error, and differences between the hourly, 15-minute average and actual 5-minute load levels. CAISO states that it will publish the quantity of upward ramping capability needs identified in the constraint for each relevant market process (i.e., real-time unit commitment and real-time dispatch). CAISO explains that the quantity of ramping capability needed may decrease from the 15-minute unit commitment to the 5-minute real-time dispatch, and that the resource may therefore be available to participate in the real-time dispatch and eligible to set real-time locational marginal prices.[9]

6. CAISO notes that its on-going Renewable Integration Market and Product Review Phase 2 stakeholder initiative is addressing the creation of a new flexible ramping product with bid-based pricing.[10]

II. Notice of Filing and Responsive Pleadings

7. Notice of CAISO's filing was published in the *Federal Register*, 76 Fed. Reg. 64,937 (2011), with motions to intervene, comments, and protests due on or before October 28, 2011. Timely motions to intervene and/or comments and protests were filed by the following: J.P. Morgan Ventures Energy Corporation; Calpine Corporation (Calpine); the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities); Modesto Irrigation District; California Department of Water Resources State Water Project (SWP); Pacific Gas and Electric Company (PG&E);

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[7] *Id.* at 3, 5, 9 (CAISO does not plan to use the Flexible Ramping Constraint to procure downward ramping capacity at this time).

[8] *Id*. at 4 n.4, 5.

[9] *Id.* at 4, 7.

[10] *Id.* at 10.

Western Power Trading Forum (WPTF); Southern California Edison Company (SoCal Edison); City of Santa Clara, California and the M-S-R Public Power Agency (Santa Clara); GenOn Energy Management, LLC, GenOn Delta, LLC, GenOn West LP (collectively, GenOn);[11] NRG Companies (NRG); Powerex Corporation (Powerex); and Northern California Power Agency (NCPA).[12] NextEra Energy Resources, LLC (NextEra) filed a motion to intervene out-of-time. CAISO filed an answer.

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept CAISO's answer because it has provided information that assisted us in our decision-making process. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant NextEra's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Need for the Flexible Ramping Constraint

1. CAISO's Proposal

9. CAISO states that it lacks sufficient ramping capability and operational flexibility. CAISO states that, during conditions of real-time ramping shortages, the CAISO system will automatically rely on regulation capacity and non-contingent operating reserves.[13] If necessary, CAISO will then rely on other interconnected balancing authorities or resort to dispatching (and potentially depleting) its operating reserves. CAISO warns that, if calling on the interconnection becomes excessive, or if CAISO is not able to maintain its required operating reserves, CAISO may jeopardize its ability to meet NERC operating

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[11] GenOn supports the protest of WPTF.

[12] NCPA seeks intervention on behalf of itself and its pool members, which include the Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto and Ukiah, the Plumas-Sierra Rural Electric Cooperative, and the Port of Oakland.

[13] CAISO October 7, 2011 Filing at 3.

criteria, could incur penalties, could be forced to consider load curtailment and could be subject to compliance actions from WECC and/or NERC.[14]

2. Comments

10. Commenting parties generally recognize the need for a mechanism to procure additional ramping capacity. SoCal Edison states that operational challenges related to ramping insufficiencies pose the potential for unacceptable reliability risks to the bulk-electric system, and therefore must be addressed reasonably soon. SoCal Edison also contends that the operational challenges will likely increase with greater penetration of renewable resources.[15] Calpine asserts that it appreciates CAISO's reliability needs for flexible ramping capacity.[16] WPTF notes that when CAISO cannot match demand and supply in real-time, it temporarily relaxes the power balance constraint, generally without creating reliability concerns.[17] WPTF and NRG assert that CAISO has proposed the Flexible Ramping Constraint to manage price spikes caused by ramping shortages, not because of reliability concerns.[18]

3. CAISO Answer

11. CAISO responds that while several protesters oppose the compensation methodology and cost allocation of the Flexible Ramping Constraint (as discussed below), no party objects to the adoption of the constraint itself and no party challenges CAISO's need to address the operational and reliability issues resulting from the lack of needed flexible capacity.[19]

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[14] *Id.* at 4.

[15] SoCal Edison October 28, 2011 Protest at 3.

[16] Calpine October 28, 2011 Protest at 2.

[17] WPTF October 28, 2011 Protest at 5.

[18] *Id.* at 5, 9-11; NRG October 28, 2011 Protest at 8-11.

[19] CAISO November 14, 2011 Answer at 2.

C. Compensation for Resources Resolving the Flexible Ramping Constraint

1. CAISO's Proposal

12. CAISO proposes to compensate resources that resolve the Flexible Ramping Constraint based on the marginal unit's resource specific opportunity cost for providing flexible ramping capability and the ramping MW quantity of capacity that each resource has been awarded.[20] CAISO explains that enforcement of the proposed Flexible Ramping Constraint in 15-minute real-time unit commitment can result in opportunity costs for resources that are held back to resolve the Flexible Ramping Constraint rather than awarded incremental ancillary services or energy in the 15-minute real-time unit commitment process. For instance, the marginal unit's resource specific opportunity cost for resolving the Flexible Ramping Constraint may be calculated as the difference between the ancillary service marginal price and the resource's ancillary service bid price.[21]

13. CAISO expresses that it is difficult to evaluate fully the costs and benefits of the Flexible Ramping Constraint given the uncertain nature of the actual conditions that will be present each time the constraint is enforced. CAISO commits to providing regular reports to market participants regarding the performance and costs associated with enforcing the constraint.[22]

14. CAISO's Market Surveillance Committee cautions that the compensation is likely to be higher on average than actual opportunity costs for the resources that are identified as resolving the Flexible Ramping Constraint. The Market Surveillance Committee explains that CAISO's proposal may overstate actual opportunity costs when the

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[20] CAISO October 7, 2011 Filing at 7 (CAISO will procure and compensate flexible ramping capability only in the 15-minute real-time unit commitment, and prior to the 5-minute real-time dispatch.).

[21] CAISO provides an example where the spinning reserves 15-minute ancillary service price is $5.00. If a resource had a $3.00 bid for spinning reserve, but was not awarded incremental spinning reserves in order to resolve the Flexible Ramping Constraint over the horizon, then the resource incurred an opportunity cost of $2.00. As an alternative scenario, if the resource had a $7.00 bid for spinning reserves, even though the upward capability of the resource resolved the Flexible Ramping Constraint over the horizon, the resource did not incur an opportunity cost because it would not have been awarded incremental spinning reserves due to its bid price. *Id.* at 6-7.

[22] *Id.* at 8.

resources receiving compensation for resolving the Flexible Ramping Constraint subsequently produce energy in the real-time dispatch and receive the real-time locational marginal price for energy.[23]

2. Protests and Comments

15. SoCal Edison argues that CAISO's proposed compensation methodology should be rejected.[24] According to SoCal Edison, not all resources that resolve the Flexible Ramping Constraint should be paid the marginal unit's opportunity cost. SoCal Edison contends that the compensation is inappropriate because the Flexible Ramping Constraint is not a market product and resources should not be paid a clearing price. Furthermore, SoCal Edison observes that the compensation proposal does not include no-pay provisions, and does not account for revenues in bid cost recovery. SoCal Edison argues that CAISO instead should calculate unit-specific payments to units that incur verifiable opportunity costs in satisfying the Flexible Ramping Constraint, based on an individual unit's ancillary services bid price.[25]

16. NCPA argues that compensating resources based on the opportunity cost could result in overcompensation and could alter bidding behavior to maximize these overpayments. For these reasons, NCPA requests that the Commission require CAISO to submit frequent reports on the performance and costs associated with the implementation of the Flexible Ramping Constraint.[26]

17. Six Cities contends that CAISO's Flexible Ramping Constraint should allow CAISO to rescind payment if resources fail to provide ramping service when dispatched.[27] Six Cities notes that CAISO's tariff provides for rescission of payments for ancillary services if the service is not available when dispatched.[28] Six Cities argues that without rescission provisions resources receiving payments for flexible ramping capacity will have no incentive to stand ready to provide the ramping service. Six Cities also

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[23] *Id.* at 8, Attachment D at 13.

[24] SoCal Edison October 28, 2011 Protest at 4.

[25] *Id.* at 11, 13.

[26] NCPA October 28, 2011 Comments at 4-6.

[27] Six Cities October 28, 2011 Protest at 3.

[28] *Id*. (citing CAISO Fifth Replacement FERC Electric Tariff at §§ 8.10.8 and 11.10.9).

contends that CAISO should recognize revenues from flexible ramping revenues in bid cost recovery, stating that CAISO acknowledged this during its stakeholder process.[29]

18. SWP asks that the Commission ensure maximum transparency with CAISO's proposal and asserts that the Flexible Ramping Constraint compensation, as well as the overall costs and benefits of this program should be made clear. SWP notes that CAISO's Market Surveillance Committee expressed uncertainty as to whether the benefits of the Flexible Ramping Constraint will outweigh its costs, and also observed that the proposed opportunity cost payment is not entirely transparent.[30] SWP argues that transparency is hindered because there is no bidding mechanism.

19. WPTF and NRG contend that the proposed compensation is not just and reasonable. WPTF argues that CAISO's proposal holds back resources from providing spinning reserves and potentially compensates resources at less than the bid price offered to provide spinning reserves.[31] WPTF and NRG argue that the proposal would discriminate among suppliers providing exactly the same product by paying one supplier for spinning reserves and another supplier an opportunity-based price for ramping service.[32] WPTF argues that the compensation mechanism fails to compensate units for the value that they provide, and would send an inappropriate signal as CAISO begins to address variable energy resource integration.[33]

20. NRG also contends that CAISO's proposed compensation mechanism is not just and reasonable because it does not allow the marginal unit that ensures reliable operations to set the price and it fails to provide sufficient incentives for resources to provide ramping.[34] In this way, NRG argues that CAISO's proposed payment mechanism discourages generators from providing ramping capability by compensating providers of ramping service at less than their bid price for ancillary services, or failing to compensate them at all. NRG states that the CAISO proposal results in ramping capability being valueless when CAISO has enough to meet ramping needs, but it

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[29] *Id.* at 4-5.

[30] SWP October 28, 2011 Comments at 4.

[31] WPTF October 28, 2011 Protest at 7.

[32] *Id.*; NRG October 28, 2011 Protest at 2.

[33] WPTF October 28, 2011 Protest at 7-8.

[34] NRG October 28, 2011 Protest at 2, 5-6.

becomes valuable when CAISO needs additional capacity to meet projected ramping needs.[35]

21. Calpine argues that the Commission should reject CAISO's methodology for determining opportunity cost because it is incorrect. Calpine explains that, when the Flexible Ramping Constraint binds in the ancillary services markets, generators are deprived of profits that they would have otherwise earned from a spinning reserve award and from the energy market, and that these foregone profits are the resource's true opportunity cost. Calpine argues that a resource's true opportunity cost from being held back from providing ancillary services upon binding of the Flexible Ramping Constraint is the loss of the resource's bid price (which reflects implicit energy profits), and the lost profits created by the difference between the resource's bid price and the market's clearing price. Calpine contends that the Commission should direct CAISO to calculate resource-specific opportunity costs when the Flexible Ramping Constraint binds in the ancillary services market, without reduction for the specific resource's spinning reserve bid price.[36]

3. CAISO Answer

22. CAISO reiterates that its proposal to pay all units resolving the Flexible Ramping Constraint at the opportunity cost of the marginal unit is just and reasonable.[37] CAISO argues that the resource's opportunity cost is simply the profit the resource would have made if the resource was awarded operating reserves. CAISO explains that, if a resource is identified as relieving the constraint, it will have already been identified for dispatch and will be fully compensated for its bid-in costs and fixed costs through CAISO's locational marginal pricing based markets and the bid cost recovery process. CAISO argues that a resource should not expect to "earn" its costs if not awarded operating reserves. Moreover, according to CAISO, operating reserves and flexible ramping serve a different market function, and therefore warrant different compensation, contrary to WPTF's claims.[38]

23. CAISO responds to Six Cities' argument by stating that rescission of payments is unnecessary because a resource incurs opportunity cost regardless of whether it actually provides the ramping capability in the real-time. Further, CAISO did not include

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[35] *Id.* at 7-8.

[36] Calpine October 28, 2011 Protest at 7-8.

[37] CAISO November 14, 2011 Answer at 7-8.

[38] *Id.* at 10- 12.

Flexible Ramping Constraint compensation in bid cost recovery calculations because the opportunity cost is not bid into the market, so it is not clear what bid costs CAISO would consider. CAISO states that it will consider these issues more closely in its current stakeholder process on the flexible ramping product.[39]

D. Cost Allocation

1. CAISO Proposal

24. CAISO proposes to allocate the costs of the Flexible Ramping Constraint to measured demand (load).[40] CAISO states that this allocation is consistent with the cost allocation for all ancillary services and is administratively efficient.[41] The Market Surveillance Committee supports the cost allocation, but indicates that it would be preferable to allocate costs to the responsible parties, which could include both suppliers and consumers of energy, rather than charging all costs to load.[42]

2. Protests and Comments

25. NCPA, Powerex, Six Cities, SoCal Edison, and SWP also argue that the proposed cost allocation to measured demand is inconsistent with cost causation principles. Parties argue that the shortage of ramping capability is caused by variable energy resource imports, and that load serving entities should not be responsible for costs that they cannot control.[43] SoCal Edison contends that the resources solving the Flexible Ramping Constraint are not providing an ancillary service and, therefore, the costs should not be allocated consistent with other ancillary services.[44]

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[39] *Id.* at 12-13.

[40] *See* CAISO Tariff, Appendix A ("The metered CAISO Demand plus Real-Time Interchange Export Schedules, excluding that portion of Demand of Non-Generator Resources Dispatched as Regulation through Regulation Energy Management").

[41] CAISO October 7, 2011 Filing at 10.

[42] *Id.* at Attachment D at 13.

[43] *See* NCPA October 28, 2011 Comments at 5-6; Powerex October 28, 2011 Comments at 11-12; Six Cities October 28, 2011 Protest at 4-5; SoCal Edison October 28, 2011 Protest at 6-10.

[44] SoCal Edison October 28, 2011 Protest at 7.

3. CAISO Answer

26. CAISO agrees with parties that costs should be allocated on the basis of cost causation principles. However, CAISO states that recent studies conducted by CAISO on the impact of renewable resources show that approximately 80 percent of the load following requirements are attributable to load, with 20 percent attributable to wind and solar resource variations.[45] CAISO states that as the penetration of wind and solar increases, their share of load following requirements is likely to increase 30 to 40 percent. The CAISO states that future initiatives may examine alternative cost allocation methodologies, but it asserts that the current methodology is reasonable given the current attribution.

E. Commission Determination

27. The Commission is persuaded that CAISO's proposed Flexible Ramping Constraint may help CAISO by providing the dispatch flexibility to address potential reliability and operational issues. However, the Commission finds that CAISO's proposed implementation of the Flexible Ramping Constraint may not be just and reasonable. We find that the proposal raises issues of material fact (including but not limited to the compensation and cost allocation methodologies) that cannot be discerned based on the information provided. Therefore, we will set the proposed Flexible Ramping Constraint for hearing and settlement judge procedures, discussed and ordered below.[46]

28. With respect to compensation, the difference between the Flexible Ramping Constraint service and non-contingent spinning reserves is not clear. Similarly, the difference in the price paid for the two services is also not clear. In other words, CAISO has not demonstrated how the two services differ, and why non-contingent spinning reserves are paid the ancillary services marginal price while the Flexible Ramping Constraint is compensated based on the marginal resource's opportunity cost. In addition, CAISO has not explained how its proposed level of compensation accurately reflects opportunity costs for resources to resolve the Flexible Ramping Constraint. Finally, it is not clear how the characteristics of various resources will be considered in the development of the various requirements of the Flexible Ramping Constraint, including eligibility, deployment, compensation, and cost allocation. Because the Flexible Ramping Constraint compensation raises factual disputes that require more data

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[45] CAISO November 14, 2011 Answer at 19-20.

[46] The Commission encourages CAISO to continue developing its bid-based flexible ramping product.

to fully evaluate, we will set the matter for hearing and settlement judge procedures, discussed and ordered below.

29. With respect to cost allocation methodology, CAISO attributes the need for flexible ramping capacity to a number of factors. CAISO has not adequately demonstrated to the Commission that its proposed allocation reflects the Commission's cost causation principles, and accordingly that allocation may not be just and reasonable. Therefore, the Commission finds that the Flexible Ramping Constraint cost allocation raises factual issues that require more data to evaluate fully; we are setting the matter for hearing and settlement judge procedures, discussed and ordered below.

F. Other Matters

30. Several parties also urge CAISO to develop a bid-based product.[47] CAISO agrees that the Flexible Ramping Constraint is not as ideal as a bid-based market mechanism, and CAISO explains that it is currently in the process of creating a permanent flexible ramping product as a new ancillary service, as part of CAISO's on-going Renewable Integration Market and Product Review Phase 2 stakeholder initiative.[48] The Commission strongly encourages CAISO to continue its work toward a bid-based flexible ramping product.

G. Hearing and Settlement Judge Procedures

31. CAISO's proposed Flexible Ramping tariff amendment raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

32. Our preliminary analysis indicates that CAISO's proposed Flexible Ramping Constraint has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept CAISO's proposed Flexible Ramping Constraint tariff amendment for filing, suspend it for a nominal period, make it effective December 13, 2011, as requested, subject to refund, and set CAISO's proposed Flexible Ramping Constraint for hearing and settlement judge procedures.

33. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing

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[47] *See* NRG October 28, 2011 Protest at 8; WPTF October 28, 2011 Protest at 9; Calpine October 28, 2011 Protest at 3-4.

[48] CAISO November 14, 2011 Answer at 3-6.

procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[49] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[50] The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) CAISO's proposed Flexible Ramping Constraint tariff amendment is hereby accepted for filing and suspended for a nominal period, to become effective December 13, 2011, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning CAISO's proposed Flexible Ramping Constraint tariff amendment. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

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[49] 18 C.F.R. § 385.603 (2011).

[50] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (http://www.ferc.gov/legal/adr/avail-judge.asp).

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.