

168 FERC ¶ 61,105
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

California Independent System
Operator Corporation

Docket No. ER18-1344-002

ORDER ON REHEARING

(Issued August 22, 2019)

1. On June 29, 2018, the Commission issued an order accepting California Independent System Operator Corporation's (CAISO) proposed tariff amendments it filed under section 205 of the Federal Power Act (FPA)¹ to improve the efficiency of its congestion revenue rights (CRR) auction, effective July 1, 2018, as requested.²
2. Requests for rehearing of the June 2018 Order were filed by Appian Way Energy Partners, LLC and Mercuria Energy America, Inc. (Appian/Mercuria), DC Energy, LLC and Vitol Inc. (DC Energy/Vitol), and Western Power Trading Forum (WPTF). In this order, we reject Appian/Mercuria's rehearing request as untimely and deny the remaining rehearing requests, as discussed below.

I. Background

A. CAISO CRRs

3. In its initial filing in this proceeding, CAISO explained that CRRs are financial instruments meant to hedge congestion costs associated with supply delivery in the CAISO markets.³ CAISO stated that the primary purpose of CRRs is to facilitate long-term contracting by load-serving entities and suppliers by permitting them to hedge

¹ 16 U.S.C. § 824d (2012).

² *Cal. Indep. Sys. Operator Corp.*, 163 FERC ¶ 61,237 (2018) (June 2018 Order).

³ CAISO April 11, 2018 Filing, Attachment C, Declaration of Guillermo Bautista Alderete, Director, Market Analysis and Forecasting at 5 (Bautista Alderete Declaration).

congestion costs incurred in the day-ahead market.⁴ CAISO also stated that it settles CRRs based on the difference in the marginal cost of the congestion component of the locational marginal price (LMP) between two pricing points – called a source and a sink – on the CAISO system as determined in the integrated forward market, multiplied by the megawatt (MW) quantity of the CRRs a market participant holds between two points. Market participants can hedge against the cost of congestion by acquiring CRRs through the CAISO-administered auction and allocation processes.⁵

4. CAISO stated that with an efficient CRR auction, prices of auctioned CRRs should roughly reflect market participants' expectations of congestion exposure in the day-ahead market.⁶ However, CAISO noted that this has not been the case in recent years. CAISO stated that as part of its analysis it has found that, on average since 2014, CRRs purchased at auction paid out \$99.5 million per year more in CRR revenues from the day-ahead market than bidders paid for those CRRs in the auctions.⁷ CAISO characterized this disparity between CRR auction revenues and payouts to holders of auctioned CRRs as an auction revenue shortfall.⁸

B. CAISO Filing and June 2018 Order

5. On April 11, 2018, CAISO submitted a tariff filing concerning its CRR process consisting of two parts. The first was an outage reporting proposal, which would create an additional annual outage reporting deadline to be aligned with the annual CRR allocation and auction process to improve the CRR model used in the annual process. The second was a path restriction proposal, which would limit allowable source and sink pairs in the auction to align CRRs with their primary purpose of hedging congestion associated with supply delivery.

6. With respect to the path restriction proposal, CAISO proposed to limit the allowable source and sink pairs eligible for nomination in the CRR auction to only those

⁴ CAISO April 11, 2018 Filing, Transmittal at 2. CAISO notes that the Commission has recognized that CRRs give market participants a level of financial protection against the risks associated with unpredictable congestion charges. *Id.* at 7 (citing *Cal. Indep. Sys. Operator Corp.*, 149 FERC ¶ 61,093, at P 2 (2014)).

⁵ *Id.* at 6-7.

⁶ *Id.* at 8 (citing Bautista Alderete Declaration at 7-8).

⁷ *Id.* at 2.

⁸ *Id.*

pairs that are associated with supply delivery and to exclude nominations for non-delivery pair CRRs. Specifically, under the proposal, the only eligible source and sink pairs would be: (1) from a generator bus to either a load aggregation point, a trading hub, or an intertie (scheduling point); (2) from a trading hub to either a load aggregation point or an intertie; and (3) from an intertie to either a load aggregation point or a trading hub. All other source and sink pairs would be ineligible for bids in the CRR auction. CAISO argued that removing these non-delivery pair CRRs would comport with its analysis that shows that non-delivery pair CRRs account for the vast majority of the auction revenue shortfall.

7. On June 29, 2018, the Commission issued an order finding CAISO's April 11, 2018 filing to be just and reasonable and not unduly discriminatory or preferential.⁹ As to the annual outage reporting requirements for the annual CRR release process, the Commission found that the proposed amendments would allow CAISO to improve its CRR auction model to more closely align it with the day-ahead models.¹⁰ As to the tariff amendments on source and sink pairs, the Commission found that CAISO's proposed amendments limiting the allowed source and sink pairs to delivery pairs in the CRR auction will help alleviate the persistent auction revenue shortfall by removing non-delivery source and sink pair CRRs that CAISO has demonstrated significantly contribute to the shortfall.¹¹

II. Procedural Matters

8. On August 14, 2018, CAISO filed a motion for leave to answer and answer to the requests for rehearing. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure¹² prohibits answers to a request for rehearing. Accordingly, we deny the motion for leave to answer and reject the answer.

9. Appian/Mercuria electronically filed a request for rehearing, which was received by the Commission on July 30, 2018, at 7:52:13 p.m. Pursuant to Rule 2001 of the Commission's Rules of Practice and Procedure, any document received after regular

⁹ June 2018 Order, 163 FERC ¶ 61,237 at P 58.

¹⁰ *Id.* P 60.

¹¹ *Id.* P 62.

¹² 18 C.F.R. § 385.713(d)(1) (2019).

business hours is considered filed on the next business day.¹³ Therefore, Appian/Mercuria's request for rehearing was filed on July 31, 2018.

10. Pursuant to section 313(a) of the FPA,¹⁴ an aggrieved party must file a request for rehearing within 30 days after the issuance of a Commission decision, in this case no later than July 30, 2018. Because the 30-day rehearing deadline is a statutory requirement, it cannot be waived or extended.¹⁵ Therefore, Appian/Mercuria's request for rehearing must be rejected as untimely. In any event, we note that the majority of Appian/Mercuria's arguments are also raised by other parties seeking rehearing and are therefore addressed below.

III. Substantive Matters

A. Open Access and Undue Discrimination

11. On rehearing, DC Energy/Vitol argue that the June 2018 Order departs from longstanding Commission precedent requiring open access to transmission facilities by all market participants on a competitive basis.¹⁶ DC Energy/Vitol state that CAISO's proposal limits open access by restricting available CRR source/sink combinations and eliminates the flexibility necessary to efficiently auction residual transmission capacity. Specifically, DC Energy/Vitol argue that the restricted path set leaves market participants

¹³ 18 C.F.R. § 385.2001(a)(2) (2019). The Commission's regular business hours end at 5:00 p.m., U.S. Eastern Time. 18 C.F.R. § 375.101(c) (2019) ("[T]he offices of the Commission are open each day, except Saturdays, Sundays, and Holidays, from 8:30 a.m. to 5:00 p.m."); 18 C.F.R. § 385.2003(c) (2019); FERC, eFiling User Guide, www.ferc.gov/efiling.asp.

¹⁴ 18 U.S.C. § 8251(a) (2012).

¹⁵ See, e.g., *Londonderry Neighborhood Coalition v. FERC*, 273 F.3d 416, 424 (1st Cir. 2001); *Wabash Valley Power Ass'n, Inc. v. FERC*, 268 F.3d 1105, 1114 (D.C. Cir. 2001); *North American Elec. Reliability Corp.*, 130 FERC ¶ 61,002, at P 2 (2010).

¹⁶ DC Energy/Vitol Rehearing Request at 6-10. DC Energy/Vitol assert that the net result of competing CRR bids and offers is an efficient market-based price for transmission capacity across each modeled constraint, which results in open access because it represents the maximum feasible use of the transmission system. DC Energy/Vitol assert that eliminating competitive CRR bids and offers cannot lead to more efficient pricing of transmission capacity, which violates open access because such elimination will not ensure the maximum feasible use of the transmission capacity. *Id.* at 8.

unable to efficiently provide counterflow or efficiently obtain capacity or set forward prices on certain constraints while leaving the CRR holder more exposed to other constraints.¹⁷ DC Energy/Vitol assert that the CRR path restrictions limit the CRR auction, which limits open access and ignores the objective function of the CRR auction which is to ensure the maximum feasible use of the transmission system by maximizing total auction revenue.¹⁸

12. DC Energy/Vitol also argue that the June 2018 Order violates the FPA by unduly discriminating in favor of load-serving entities. DC Energy/Vitol argue that by following the CRR path restrictions, only those hedges valued by incumbent load-serving entities will be available and other market participants, such as power producers, retail competition providers, and financial participants, will be limited to bidding for only those paths instead of the paths they want.¹⁹ They assert that under CAISO's proposal, market participants will be forced to bid on less efficient paths, which may require them to take on less desirable transmission contracts in order to achieve the same hedge on the desired constraint.

13. We disagree that CAISO's proposal infringes on open access transmission service. Open access "requires all public utilities that own, operate or control interstate transmission facilities to offer network and point-to-point transmission services (and ancillary services) to all eligible buyers and sellers in wholesale bulk power markets, and to take transmission service for their own uses under the same rates, terms and conditions offered to others."²⁰ In other words, open access requires non-discriminatory treatment

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 7-8.

¹⁹ DC Energy/Vitol state that, for example, it may be useful to hedge the price of power at a renewable generator against the price of power at a relevant dispatchable power source. They argue that a CRR between a renewable generator and a dispatchable generator may be "useful" without a CRR from the generators to a particular load aggregation point or trading hub. DC Energy/Vitol assert that a market participant may be exposed to the risk in the price difference between the renewable generator and the most relevant dispatchable generator, without reference to a particular load aggregation point or trading hub, and may wish to hedge this exposure. *Id.* at 11-12.

²⁰ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), (cross-referenced at 75 FERC ¶ 61,080, *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,176, (cross-referenced at 78 FERC ¶ 61,220, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC

for all eligible users of the transmission system.²¹ Here, all CRR auction participants are being offered the same rates, terms, and conditions. While CAISO has proposed to remove non-delivery source and sink pair CRRs that contribute to the revenue shortfall, all auction participants are subject to this restriction, including incumbent load-serving entities. Thus, all auction participants are receiving non-discriminatory treatment and there is no violation of the Commission's open access requirement. Moreover, as the Commission set forth in the June 2018 Order, "CRRs . . . play a key role in ensuring open access to firm transmission service by providing a congestion hedging function."²² Under CAISO's proposal, CRRs will continue to play this role as they permit hedging of the delivery of power between generation and load. DC Energy/Vitol have provided no argument on rehearing to persuade us otherwise.

14. We also disagree with DC Energy/Vitol that eliminating competitive CRR bids and offers "violates open access because such elimination will not ensure the maximum feasible use of the transmission capacity."²³ As the Commission explained in the June 2018 Order, all transmission capacity over which it is feasible to schedule energy flows in the day-ahead market remains available.²⁴ Thus, CAISO's proposal will not deprive market participants of the full use of the transmission system in the CRR auction.²⁵ Moreover, the Commission's open access policy does not require that Independent System Operators and Regional Transmission Organizations set market rules such that they maximize the revenue generated in the CRR auction.

15. We also disagree with DC Energy/Vitol's argument that the CRR path restrictions are inconsistent with statements in the Commission's September 21, 2006 order

¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

²¹ Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,176.

²² June 2018 Order, 163 FERC ¶ 61,237 at P 64 (citing *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,093, at P 27 (2017)).

²³ DC Energy/Vitol Rehearing Request at 8.

²⁴ June 2018 Order, 163 FERC ¶ 61,237 at P 66.

²⁵ *Id.*

approving CAISO's current market design.²⁶ In the September 2006 Order, the Commission stated that CAISO "manage[s] congestion through the use of locational prices that are determined by bids and offers for energy at given locations. This allows all available resources to participate in redispatch for congestion management because they all receive the congestion price signal."²⁷ DC Energy/Vitol argue that CAISO's CRR auctions with non-delivery pair CRRs offer available transmission capacity within a fully configurable network intended to represent the same transmission system used for operational congestion management. With only delivery path CRRs under the current proposal, DC Energy/Vitol argue that prices are less efficient and the transmission system is less than fully reconfigurable.

16. We disagree. In the September 2006 Order, the Commission discussed the physical and financial transmission rights that would exist under CAISO's proposed market design.²⁸ With respect to CRRs, the Commission highlighted the ability of

²⁶ DC Energy/Vitol Rehearing Request at 10 (citing *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 899 (2006) (September 2006 Order)).

²⁷ September 2006 Order, 116 FERC ¶ 61,274 at P 899.

²⁸ The paragraph cited to by DC Energy/Vitol provides as follows:

In addition to these "physical" rights, market participants under the [Market Redesign and Technology Upgrade or MRTU] Tariff will also have the opportunity to acquire financial transmission rights, or CRRs. By acquiring CRRs that would hedge the congestion charge between the source and sink, a market participant can lock in the transmission cost (except for losses) and hedge the associated congestion charge. We acknowledge that it is possible that market participants may not be able to acquire CRRs to cover all of their desired transmission needs, in part because there may be competition for certain transmission paths. However, unlike a pure physical rights system, if a CRR-holder does acquire CRRs over a particular path, to the extent a CRR holder is not physically transmitting electricity between its designated source and sink, the holder can profit by receiving congestion revenues from the CRRs or by selling the CRRs. This is an advantage over a pure physical rights approach to congestion management, which only allows the entity to resell physical rights at the higher of original cost, the transmission provider's maximum rate on file at the time of the resale, or the reseller's opportunity cost, capped at the transmission provider's cost of expansion. Another advantage is that, under MRTU, the CAISO will manage congestion through the use of locational prices that are determined by bids and offers at given locations. This allows all available resources to

market participants to acquire CRRs to hedge congestion costs between the source and sink points for electricity and, also, to the extent a market participant was not physically transmitting energy, the ability to “profit by receiving congestion revenues from the CRRs or by selling the CRRs.”²⁹ As the Commission explained in the June 2018 Order, “CAISO’s proposed framework provides all market participants an opportunity to obtain hedges for congestion costs associated with supply delivery transactions.”³⁰ Thus, the benefits explained in the September 2006 Order are preserved in CAISO’s proposal.

17. Moreover, in the September 2006 Order, the Commission discussed the benefits of locational marginal pricing in congestion management more generally.³¹ However, the Commission did not endorse a CRR methodology where all paths were biddable in the auction.

B. Substantial Evidence

18. DC Energy/Vitol argue that the June 2018 Order is not based on substantial evidence. As noted above, the June 2018 Order found that CAISO’s proposal will help alleviate persistent auction revenue shortfall by removing non-delivery source and sink pair CRRs that CAISO has demonstrated significantly contribute to the shortfall.³² On rehearing, DC Energy/Vitol argue that the Commission improperly dismissed evidence establishing that CAISO will sell the same underlying system capacity entitling CRR

participate in redispatch for congestion management because they all receive the congestion price signal. As a result, market participants have more accurate price signals and can make more cost effective decisions concerning their energy consumption and use of the transmission system, as well as investment in new generation and transmission upgrades. The CAISO is less likely to have to invoke transmission loading relief procedures or service curtailments than would be the case under a pure physical rights model. Accordingly, we find that this combination of physical and financial rights is superior to a pure physical rights approach to congestion management. *Id.*

²⁹ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 at P 899.

³⁰ June 2018 Order, 163 FERC ¶ 61,237 at P 62.

³¹ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 at P 899; *see supra* note 28.

³² June 2018 Order, 163 FERC ¶ 61,237 at P 62.

holders to the same aggregate congestion revenue, for less total auction revenue.³³ DC Energy/Vitol explain that selling the same residual system capacity with the same total congestion revenue awarded to CRR holders for less total auction revenue, will increase rather than decrease auction revenue shortfalls.³⁴

19. We disagree that the Commission summarily dismissed evidence or did not base the June 2018 Order on substantial evidence. The Commission reviewed all the evidence presented in the record before making its determination that CAISO's proposed amendment limiting the allowed source and sink pairs to delivery pairs was just and reasonable. Specifically, the Commission was persuaded by CAISO's analysis demonstrating that market participants purchased CRRs at auction at an average annual cost of \$99.5 million less than the eventual payout to CRR holders, and CAISO's finding that CRR pairs using non-delivery sources and sinks accounted for 81 percent of the auction revenue shortfalls.³⁵

20. As to DC Energy/Vitol's evidence on the impact of CAISO's proposal on auction revenue and quantities of CRRs sold, the Commission did not summarily dismiss the evidence as DC Energy/Vitol argue. Rather, the Commission explained that "because DC Energy/Vitol's empirical analysis simply removes non-delivery pairs and is rooted in the unrealistic assumption that market participants cannot compete efficiently or reconstruct effective counterflow transactions if the non-delivery pairs were removed from the auction, we do not find their empirical analysis to be a fair and accurate way to identify baseline deficiencies with CAISO's proposal."³⁶ The Commission went on to conclude that, instead, "it [is] more likely that some percentage of these auction participants would bid on the remaining supply delivery paths, because some auction participants who have been using non-delivery pairs to construct hedges may use delivery pairs as a substitute for the non-delivery CRR pairs."³⁷ In the June 2018 Order, the Commission agreed with CAISO that the reduction in paths available in the CRR auction will lead auction participants to acquire hedges on more liquid paths, and that this will

³³ DC Energy/Vitol Rehearing Request at 14-16. DC Energy/Vitol argue that, while it may be true that the average MWh price for CRR capacity will increase if the CAISO sells CRRs on fewer paths, the CAISO will sell far fewer total MWhs of CRR capacity, generating less total auction revenue. *Id.* at 15.

³⁴ *Id.* at 14-15.

³⁵ June 18 Order, 163 FERC ¶ 61,237 at PP 62, 71, 75.

³⁶ *Id.* P 71.

³⁷ *Id.*

bring prices more in line with the expected value of the CRRs.³⁸ The Commission therefore not only did not summarily dismiss DC Energy/Vitol's evidence, but it instead provided a reasoned explanation for why it reached a conclusion notwithstanding DC Energy/Vitol's arguments. We affirm these findings and conclude that CAISO's expert analysis is more persuasive, and that CAISO's proposal was well supported by the evidence it presented.³⁹

21. DC Energy/Vitol's evidence that auction revenues will decrease as a result of CAISO's proposal consisted of a re-run of the auction without the non-delivery pair CRRs. The question of whether CAISO's proposal will increase or reduce auction revenues depends on whether bids for non-delivery pair CRRs are replaced by bids for

³⁸ *Id.* P 75. CAISO's expert witness offered that:

[M]aking non-delivery source/sink CRR bids ineligible in the auction will result in a change in bidding behavior. Market participants would have to reconfigure their CRR bids to reflect their delivery needs. Restricting the number of eligible CRR locations in the auction will create more competition and liquidity for the eligible CRR locations. As such, the CAISO expects prices for those CRRs at eligible source and sink combinations to increase, producing auction revenues that are more consistent with market participants' expectations of congestion price exposure in the day-ahead market.

Bautista Alderete Declaration at 24-25; *see also* June 2018 Order, 163 FERC ¶ 61,237 at P 71.

³⁹ Moreover, while we do not rely on this information for our holding here, we note for informational purposes that data subsequently collected by CAISO's Department of Market Monitoring (DMM) on auctioned CRRs demonstrates that in the first quarter of 2019, the first period during which CAISO's proposal to limit available paths in the CRR auction was in effect, the auction revenue shortfall was reduced to \$1.5 million compared to an average of \$24 million in the first quarter of the previous three years. DMM noted the proposal to limit available paths in the CRR auction was a contributing factor to the reduction in auction revenue shortfall. *See* CAISO DMM Q1 Report on Market Issues and Performance, at 38-39 (June 28, 2019), <http://www.caiso.com/Documents/2019FirstQuarterReportOnMarketIssuesAndPerformance.pdf>. We also note that the DMM presented the results of its Q1 2019 quarterly report to stakeholders. *See* CAISO, *Market issues and performance report calls*, <http://www.caiso.com/Pages/documentsbygroup.aspx?GroupID=D49E2EEE-2B42-49AE-AC0E-6A974D1400D0>.

CRRs on more liquid and more expensive paths. By assuming that the non-delivery pair CRRs will be removed from the auction and not replaced, DC Energy/Vitol's analysis automatically resolves this question in favor of the conclusion it reaches. DC Energy/Vitol's evidence therefore did not provide useful insight as to whether auction revenues are more likely to increase or decrease as a result of CAISO's proposal.

22. Further, DC Energy/Vitol's contention that a decrease in auction revenue would necessarily lead to a widening auction revenue shortfall has no merit. Even to the extent that auction revenues decrease as a result of CAISO's proposal, the proposal will likely reduce the auction revenue shortfall by eliminating the illiquid CRR pairs that receive inflated payouts as a result of the difference between the CRR auction model and the day-ahead market model. By limiting the CRR pairs available for bidding in the auction, CAISO reduces the possibility for market participants to use bidding strategies that exploit differences between the day-ahead market model and CRR auction model.⁴⁰

23. DC Energy/Vitol also argue that CAISO's claim that non-delivery pair CRRs are inefficient is based on a misleading figure, i.e., that non-delivery pair CRRs cleared for an average of \$0.38 on the dollar compared to the congestion revenue CAISO paid out to CRR holders for 2014-2017.⁴¹ We are not persuaded by this argument; the Commission did not base its determination in the June 2018 Order on this figure, nor did it rely on any difference between delivery and non-delivery pair CRRs in making its determination on CAISO's proposal. Rather, the Commission found that CAISO's proposal would relieve the persistent auction revenue shortfall by removing the non-delivery pair CRRs that contribute extensively to the shortfall. While CAISO presented evidence that non-delivery pair CRRs were on average more revenue inadequate than delivery pairs, the Commission did not rely on those arguments to reach the conclusion that CAISO's proposal was just and reasonable.

24. We also reject DC Energy/Vitol's argument that removing non-delivery pair CRRs cannot reasonably be expected to improve auction revenue shortfall. Specifically, DC Energy/Vitol argue that non-delivery pair CRRs constituted approximately 80 percent of CRR capacity while contributing to approximately 80 percent of the auction revenue and so their contribution to the auction revenue shortfall was roughly proportional.⁴² We do not find this comparison to be particularly significant. CAISO's proposal aimed to: (1) reduce the auction revenue shortfall; and (2) preserve the core function of the CRR auction. CAISO's proposal eliminated non-delivery pair CRRs which were contributing significantly to the auction revenue shortfall and not part of the core function of the CRR

⁴⁰ CAISO April 11, 2018 Filing, Transmittal at 19-20.

⁴¹ DC Energy/Vitol Rehearing Request at 16-18.

⁴² *Id.* at 20-21.

auction, which is to allow market participants to hedge congestion costs between the source and the sink of electricity. Thus, CAISO's proposal is beneficial even to the extent the non-delivery pair CRRs' contribution to the auction revenue shortfall was proportional to their capacity. Moreover, as the Commission explained in the June 2018 Order, there is reason to believe that CAISO's proposal will improve the performance of the remaining pairs by redirecting bids from non-delivery pair CRRs to delivery pair CRRs.⁴³

25. We also dismiss DC Energy/Vitol's presentation of additional evidence on rehearing to show that prevailing non-delivery pair CRRs were just as efficient on average from 2014-2017 and were more efficient in 2016 and 2017 than delivery pair CRR clearing prices.⁴⁴ This information was available to DC Energy/Vitol at the time of their original filings in this matter. "Parties seeking rehearing of Commission orders are not permitted to include additional evidence in support of their position, particularly when such evidence is available at the time of the initial filing."⁴⁵ DC Energy/Vitol's evidence comparing the efficiency of prevailing flow and counterflow CRRs during the 2014-2017 timeframe is presented for the first time on rehearing despite being available previously and is therefore not permissible.⁴⁶

⁴³ June 18 Order, 163 FERC ¶ 61,237 at P 71.

⁴⁴ DC Energy/Vitol Rehearing Request at 19. DC Energy/Vitol argue that non-delivery pair CRRs only appear less efficient by CAISO's measure because the average clearing price is artificially depressed by combining it with all of the counterflow CRRs that source at load and/or sink at generation and are therefore categorized as non-delivery pair CRRs. *Id.* at 19-20.

⁴⁵ *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 116-117 (D.C. Cir. 2017) (citing *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,187, at P 49 (2004)). Section 385.713(c)(3) of the Commission's Rules of Practice and Procedure provides that parties may set forth new matters in a rehearing request only when rehearing is "based on matters not available for consideration by the Commission at the time of the final decision or final order." 18 C.F.R. § 385.713(c)(3) (2019).

⁴⁶ In addition, as noted above, the Commission did not rely on any difference between delivery and non-delivery pair CRRs in making its determination on CAISO's proposal. Rather, the Commission found that CAISO's proposal would relieve the persistent auction revenue shortfall by removing the non-delivery pair CRRs that contribute extensively to the shortfall. June 2018 Order, 163 FERC ¶ 61,237 at P 62. Therefore, DC Energy/Vitol's evidence would also have no bearing on the Commission's finding.

C. Benefits of Non-Delivery Pair CRRs

26. On rehearing, WPTF argues that the Commission failed to address its argument that non-delivery pair CRRs provide multiple benefits.⁴⁷ WPTF also states that the Commission erred in allowing CAISO to eliminate all non-delivery pair CRRs when not all “non-delivery subcategories” contribute to the auction revenue shortfall.⁴⁸ WPTF argues that instead of restricting only those subcategories that contribute to the shortfall, CAISO sought to restrict the larger set when the evidence in their own counterfactual simulations contravenes this conclusion.⁴⁹

27. We reject these arguments. WPTF claims that non-delivery pair CRRs have benefits beyond providing counterflow, as they can be used for additional congestion hedging opportunities.⁵⁰ The Commission has never disputed that these non-delivery pair CRRs may be useful in congestion hedging, but the Commission has found that CAISO’s proposal to exclude them from the auction is nevertheless just and reasonable. Any proposal that addressed the auction revenue shortfall would likely result in the elimination of certain profitable bidding strategies and hedges, and the Commission balanced the benefits of the proposal against any concerns regarding negative impacts in determining that the proposal was just and reasonable.

28. The Commission has acknowledged that market participants may not be able to hedge substitute generation for outages or intermittent resources on generation to generation non-delivery pairs as easily,⁵¹ but we believe CAISO has justified this result. Under CAISO’s current auction, CRRs are being purchased at prices far lower than their value in congestion payments. This is an indication that the CRR market is not functioning as efficiently as possible because an efficient market would attract

⁴⁷ WPTF states that it did not argue that CAISO must preserve all pairs that create counterflows. Rather, WPTF argued that a CRR provides important benefits whether or not it creates counterflows. WPTF Rehearing Request at 6.

⁴⁸ *Id.* at 7-9. WPTF argues that if the primary purpose of CAISO’s proposal is to reduce the CRR auction revenue shortfall, and non-delivery pair CRRs serve a useful purpose that provides many CAISO customers tangible benefits, then it is unlawful for the Commission to eliminate all non-delivery pair CRRs, regardless of which ones are tied to auction revenue shortfalls.

⁴⁹ *Id.* at 7.

⁵⁰ *Id.* at 5.

⁵¹ June 2018 Order, 163 FERC ¶ 61,237 at P 65.

participants to bid CRR capacity up to its expected value. In its proposal, CAISO chose to address this problem by reducing the complexity of the CRR auction, so that CRR capacity would be available across paths directly related to hedging and thus concentrate CRR bids on more liquid paths.

29. WPTF also claims that non-delivery pair CRRs provide market liquidity, price transparency, and market efficiency.⁵² However, as the Commission found in the June 2018 Order, CAISO's proposal will result in other, more comprehensive benefits, including improving market transparency and leading to more accurate congestion costs reflected in the auction.⁵³ This, in turn, will increase CRR auction efficiency and reduce the auction revenue shortfall while preserving the ability of market participants to acquire hedges. The Commission also noted that the proposal may increase liquidity and prices for the supply delivery CRR pairs.⁵⁴

30. We disagree with WPTF's assertion that because CAISO's proposal eliminates certain non-delivery pair CRRs that historically have not contributed to the auction revenue shortfall, it is therefore unjust and unreasonable. As the Commission set forth in the June 2018 Order, CAISO's proposal is just and reasonable because it seeks to mitigate the auction revenue shortfall by concentrating CRR bids on more liquid paths while preserving the core functions of the CRR auction.⁵⁵ CAISO has done so here by eliminating a category of CRRs which, by definition, do not directly implicate the core function of its CRR auction. We continue to find that this is a just and reasonable approach to accomplishing CAISO's stated goal. We note that any reduction in a large number of biddable pairs, which is an integral component of CAISO's evidence-based approach here, will likely include pairs that may not have contributed historically to the auction revenue shortfall, but we find that this possibility does not render CAISO's proposal unjust and unreasonable. Moreover, we note that, under FPA section 205, the Commission is limited to considering whether the proposal before it is just and reasonable and not unduly discriminatory or preferential, not whether an alternative approach might also be just and reasonable.⁵⁶

⁵² WPTF Rehearing Request at 5.

⁵³ June 2018 Order, 163 FERC ¶ 61,237 at PP 70, 75.

⁵⁴ *Id.* P 71.

⁵⁵ *Id.*; *see supra* P 20.

⁵⁶ *See, e.g., California Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,265, at P 21 (2009) ("the issue before the Commission is whether the CAISO's proposal is just and reasonable and not whether the proposal is more or less reasonable than other

31. DC Energy/Vitol argue that the June 2018 Order dismissed evidence that the CRR path restrictions will undermine efficient competition.⁵⁷ DC Energy/Vitol state that without non-delivery pair CRRs, the market will not be able to price each constraint efficiently and market participants may not be able to acquire their preferred hedge and may instead be forced to bid for another, less preferable hedge.⁵⁸ Thus, DC Energy/Vitol claim that, without non-delivery pair CRRs, pricing efficiency will be lost.⁵⁹ However, DC Energy/Vitol do not develop a definition or measure of pricing efficiency to support its assertion that pricing efficiency would be lost through the elimination of non-delivery hedges. To the extent DC Energy/Vitol argue that CAISO's proposal will result in prices that do not reflect the expected value of CRRs, we disagree. CAISO's proposal seeks to address the problem that CRR prices do not currently reflect their expected value by concentrating bids along more liquid paths and by reducing the opportunities for market participants to arbitrage differences between the CRR auction model and the day-ahead market model.

32. DC Energy/Vitol also argue that the June 2018 Order dismisses evidence that CRR path restrictions will limit beneficial counterflows.⁶⁰ DC Energy/Vitol assert that under CAISO's proposal, market participants cannot submit counterflow bids sourcing at a load node or sinking at a generator. They argue that there is no set of available CRR delivery paths available under CAISO's proposal that can make up for the inability of market participants to submit direct counterflow bids. DC Energy/Vitol state that it is arbitrary and capricious for the Commission to accept CAISO's hypothetical summer auction results, which simply removed non-delivery pair CRRs and then dismiss DC Energy/Vitol's analysis of the results of this same hypothetical because the hypothetical

alternatives"); *see also OXY USA Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (finding that under the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology "need not be the only reasonable methodology, or even the most accurate" one).

⁵⁷ DC Energy/Vitol argue that efficient competition in the CRR auction comes from solving for the combination of paths that maximizes auction revenue while satisfying simultaneous feasibility, and CAISO's proposal would eliminate the flexibility needed to reconfigure the network to its maximum use. DC Energy/Vitol Rehearing Request at 25.

⁵⁸ *Id.* at 25-27.

⁵⁹ *Id.* at 27.

⁶⁰ *Id.* at 21-24.

simply removed non-delivery pair CRRs.⁶¹ DC Energy/Vitol state that a closer look at CAISO's hypothetical summer auction results demonstrates that non-delivery pair CRRs provided valuable counterflow where it is needed the most.⁶²

33. We reject these arguments. As the Commission recognized in the June 2018 Order, non-delivery pair CRRs can be used in constructing useful hedges, and market participants may not be able to hedge generation for outages or intermittent resources on generation to generation non-delivery pair CRRs as easily. However, the Commission found that "on balance, the potential loss in market functionality is acceptable given the scope of the auction revenue shortfall CAISO is attempting to remedy."⁶³ While CAISO's proposal may deprive some market participants of desirable hedges, it would not restrict the capacity available for auction.⁶⁴ Also, as the Commission found in the June 2018 Order, the CRR auction would continue to allow CRRs to function as a financial equivalent of firm transmission service by permitting hedging of the delivery of power between generation and load, and thus would continue to play an important role in the Commission's open access framework.⁶⁵

34. The Commission also found that, per CAISO's analysis, counterflow transactions represented less than 1.66 percent of generator to generator pairs and less than one percent of all CRR capacity.⁶⁶ The Commission therefore concluded that CAISO's proposal was unlikely to deprive the CRR auction of useful counterflow. DC Energy/Vitol characterize the Commission's decision to accept CAISO's analysis but to reject DC Energy/Vitol's analysis based on the same data as arbitrary. However, the Commission did not reject DC Energy/Vitol's analysis because of the data set they used, but rather because DC Energy/Vitol attempted to accomplish the complex task of recreating the auction results as governed by CAISO's proposal using unrealistic assumptions, such as its assumption, contrary to its own arguments, that bids for non-delivery pair CRRs would not be replaced by bids for the remaining delivery pair CRRs. CAISO's conclusions concerning counterflow were derived from a straightforward analysis of the bids actually submitted in that auction with no assumptions about future

⁶¹ *Id.* at 23.

⁶² *Id.* at 24.

⁶³ June 2018 Order, 163 FERC ¶ 61,237 at P 65.

⁶⁴ *Id.* PP 66, 73.

⁶⁵ *Id.* P 64.

⁶⁶ *Id.* P 65.

behavior. Thus, the Commission acknowledged that there are advantages and disadvantages to this approach, but that, on the whole, CAISO's proposal was just and reasonable.⁶⁷ DC Energy/Vitol and WPTF have not persuaded us on rehearing to modify this finding.

D. Other Tariff Changes

35. DC Energy/Vitol argue that the Commission should grant rehearing in order to reconsider the proposed elimination of CRR paths in light of CAISO's recently filed Track 1B tariff changes.⁶⁸ Similarly, WPTF argues that the Commission erred in allowing CAISO to eliminate all non-delivery pair CRRs when other changes proposed by CAISO will address the auction revenue shortfall.⁶⁹ For example, WPTF states that CAISO was able to implement its Track 0 modeling improvements without a tariff filing, and that CAISO filed Track 1B reforms with the Commission on July 17, 2018 in Docket No. ER18-2034-000. WPTF states that CAISO failed to demonstrate that it is just and reasonable to take the "extreme measure" of eliminating non-delivery pair CRRs when other changes could solve the problem in a less dramatic matter for CAISO's customers.⁷⁰

36. Under section 205 of the FPA, a transmission provider such as CAISO has discretion to determine not only what to propose in its filing, but also when to submit such a filing.⁷¹ While CAISO also has the burden to justify its proposed changes as just and reasonable, and not unduly discriminatory or preferential, because the Commission has found CAISO's proposal to, in fact, be just and reasonable, there is no reason to

⁶⁷ *Id.*

⁶⁸ DC Energy/Vitol Rehearing Request at 28-32. WPTF Rehearing Request at 3-5.

⁶⁹ WPTF Rehearing Request at 3-5.

⁷⁰ *Id.* at 4.

⁷¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 153 FERC ¶ 61,229, at P 168 (2015); *Sw. Power Pool, Inc.*, 131 FERC ¶ 61,252, at P 117 (2010); *W. Mass. Elec. Co.*, 23 FERC ¶ 61,025 (1983) (company has the right in the first instance to change its rates as it will, unless it has undertaken by contract not to do so), *aff'd sub nom. Commonwealth of Mass. v. FERC*, 729 F.2d 886 (1st Cir. 1984).

consider the alternative approaches suggested by DC Energy/Vitol and WPTF.⁷² Accordingly, we dismiss these arguments.

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷² See, e.g., *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (when determining whether a proposed rate was just and reasonable, the Commission properly did not consider “whether a proposed rate schedule is more or less reasonable than alternative rate designs.”).