

129 FERC ¶ 61,144
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

California Independent System Operator Corporation	Docket Nos.	ER08-1178-001
		ER08-1178-002
		EL08-88-001
		EL08-88-002

ORDER ON REHEARING

(Issued November 19, 2009)

1. In this order the Commission denies requests for rehearing and grants in part and denies in part requests for clarification of an order issued February 20, 2009 that accepted in part, rejected in part, and implemented transitional measures with regard to the California Independent System Operator Corporation's (CAISO) proposed Exceptional Dispatch mechanism.¹ In addition, the Commission dismisses as moot a request for clarification or rehearing of the October 16, 2008 interim procedural order in these proceedings.²

I. Background

2. The Exceptional Dispatch mechanism was first accepted by the Commission in the Market Redesign Technology Upgrade (MRTU) Order³ as a means of allowing the

¹ *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,150, at P 267 (2009) (Exceptional Dispatch Order).

² *Cal. Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,055 (2008) (October 16, 2008 Order).

³ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 267 (2006) (MRTU Order), *order on reh'g*, 119 FERC ¶ 61,076 (2007) (MRTU Rehearing Order), *order on reh'g and denying motion to reopen record*, 120 FERC ¶ 61,271 (2007).

CAISO to manually commit and/or dispatch resources that are not cleared through market software in order to maintain reliable grid operations under unusual and infrequent circumstances. In addition to maintaining reliability, Exceptional Dispatch enables the CAISO to address other specific situations, including the following, that require dispatch of a resource outside of a market schedule: (1) addressing transmission-related modeling limitations; (2) performing ancillary services testing; (3) performing pre-commercial operations testing for resources; (4) mitigating over-generation; (5) providing voltage support; (6) accommodating Transmission Ownership Rights⁴ and Existing Transmission Contract⁵ self-schedule changes after the market close of the hour-ahead scheduling process; and (7) reversing a commitment instruction issued through the integrated forward market that is no longer optimal, as determined through the residual unit commitment process.⁶ Under the MRTU Tariff, the CAISO may issue Exceptional Dispatch instructions for forced start-up, forced shut-down, operation at minimum operating level (PMin),⁷ incremental energy, or decremental energy.

3. In the June Proposal,⁸ the CAISO proposed tariff revisions to mitigate exceptional dispatches out of concern that resources could potentially exercise local market power when issued Exceptional Dispatch instructions, and also because it anticipated that

⁴ Transmission Ownership Rights are existing contracts that establish joint ownership or direct ownership of transmission facilities that are within the CAISO control area and have not been turned over to the CAISO's operational control. *See generally* MRTU Order, 116 FERC ¶ 61,274 at P 975 and n.412.

⁵ Existing Transmission Contracts are encumbrances, established prior to the CAISO's operation, in the form of a CAISO participating transmission owner's contractual obligation to provide transmission service to another party using transmission facilities owned by the participating transmission owner that have been turned over to the CAISO's operational control. *Id.* P 901 and n.374.

⁶ *See* MRTU Tariff § 34.9.

⁷ CAISO June 27, 2008 Amendment to Revise Exceptional Dispatch Provisions of the MRTU Tariff in Docket No. ER08-1178-000 at 3 (June Proposal). PMin is defined in Appendix A of the MRTU Tariff as the minimum normal capability of the generating unit. For readability it will be referred to herein as minimum operating level, which is the term the CAISO uses in the June Proposal.

⁸ The details of the June Proposal are described in detail in the following orders: Exceptional Dispatch Order, 126 FERC ¶ 61,150; October 16, 2008 Order, 125 FERC ¶ 61,055 (2008).

exceptional dispatches will be far more frequent⁹ than originally expected when Exceptional Dispatch was proposed and accepted in the MRTU Order.¹⁰ The CAISO argued that mitigation is appropriate because, although the MRTU market has local market power mitigation mechanisms in place, exceptional dispatches are settled out-of-market and, consequently, not covered by the mitigation provisions contained in the MRTU Tariff.¹¹

4. In the October 16, 2008 Order, the Commission recognized the potential need to mitigate Exceptional Dispatch, but found that the June Proposal may not be just and reasonable because certain resources may not receive adequate compensation for the capacity services they provide.¹² Accordingly, the Commission accepted and suspended for a nominal period the June Proposal to become effective upon MRTU implementation, subject to refund and the outcome of a Federal Power Act (FPA) section 206 investigation into the continued justness and reasonableness of the Exceptional Dispatch mechanism. The Commission instituted the section 206 investigation upon finding that, due to changes in circumstances, the Exceptional Dispatch provisions of the MRTU Tariff may no longer be just and reasonable.¹³ Specifically, the Commission identified two main categories of changed circumstances: (1) the CAISO's significantly increased anticipated usage of Exceptional Dispatch; and (2) the evolution of the Commission's policy that non-resource adequacy resources should receive compensatory payment for the resource adequacy services they provide.¹⁴

⁹ See June Proposal at 6, 11, 19, 20-21.

¹⁰ When the Commission approved Exceptional Dispatch in the MRTU filing, it emphasized that Exceptional Dispatch instructions should "not become a frequent occurrence and should be reserved for genuine emergencies." MRTU Order, 116 FERC ¶ 61,274 at P 267.

¹¹ Because exceptional dispatches are issued outside of the MRTU software, resources that receive Exceptional Dispatch instructions are not subject to the market power mitigation and reliability requirement determination process, which the CAISO uses to mitigate the potential exercise of market power in its integrated forward and real-time markets. June Proposal at 4.

¹² October 16, 2008 Order, 125 FERC ¶ 61,055 at P 97-98.

¹³ *Id.* P 97.

¹⁴ See *id.* P 99. A resource adequacy resource is a resource that has been procured by a load serving entity in response to resource adequacy requirements implemented by either the California Public Utilities Commission (CPUC) or other local regulatory
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5. To facilitate expeditious resolution of the section 206 investigation, the Commission established a technical conference for interested parties to discuss the June Proposal, the October 16, 2008 Order, and the Exceptional Dispatch mechanism as a whole. In its post-technical conference comments, the CAISO submitted a revised proposal.¹⁵

6. In the Exceptional Dispatch Order, the Commission found Exceptional Dispatch to be a just and reasonable mechanism for maintaining grid reliability.¹⁶ We also accepted the CAISO's proposal to mitigate Exceptional Dispatch in the limited circumstances in which the CAISO had made an adequate showing of the potential to exercise market power, and rejected the proposed mitigation in all other instances. In particular, the Commission approved mitigation in two situations. First, when Exceptional Dispatch is used in connection with reliability requirements related to non-competitive constraints. Second, when Exceptional Dispatch is used to address an environmental constraint, the San Francisco Bay Area Delta Dispatch (Delta Dispatch), which is not incorporated in the MRTU model.¹⁷

7. The Exceptional Dispatch Order further implemented a temporary cap on Exceptional Dispatch revenues (four-month revenue cap) for the first four months of MRTU to facilitate a smooth transition into the new market.¹⁸ The four-month revenue cap limited Exceptional Dispatch revenues for all types of exceptional dispatches for which mitigation was rejected.¹⁹

authority. Significantly, resource adequacy resources operate under a capacity contract, which provides these resources with the opportunity to recover fixed costs. For the purpose of this proceeding, non-resource adequacy resources refer to resources that are not operating under a capacity contract (i.e., resource adequacy contract or reliability must-run contract).

¹⁵ See CAISO's November 24, 2008 Comments in Docket Nos. ER08-1178-000 and EL08-88-000 (November Proposal).

¹⁶ Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 33.

¹⁷ *Id.*

¹⁸ *Id.* P 84.

¹⁹ Resources with capacity contracts, including resource adequacy, reliability must-run, and Interim Capacity Procurement Mechanism (ICPM) resources, that were exceptionally dispatched during this period were to be paid the higher of the locational marginal price or the resource's default energy bid. Resources that lacked capacity

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8. In concluding that the four-month revenue cap was just and reasonable, the Commission recognized that when launching a new market, the CAISO could not be expected to resolve all software issues in advance through simulations and testing.²⁰ The Commission also considered that the four-month transition period would afford the CAISO an opportunity to gather evidence to demonstrate the potential to exercise market power for specific instances of Exceptional Dispatch, if such potential exists, or to develop a market power test to assess which exceptionally dispatched resources possess market power.²¹

9. In addition, the Exceptional Dispatch Order accepted the CAISO's November Proposal to allow exceptionally dispatched non-resource adequacy resources to elect, on a monthly basis, whether they prefer to receive either a 30-day ICPM²² designation or bid-based supplemental revenues.²³ Under the ICPM option, an exceptionally dispatched resource will receive the ICPM capacity payment, but will also incur the obligation of offering its designated capacity into the CAISO's markets for the duration of the designation. In contrast, resources electing bid-based revenues will receive supplemental

contracts, which were exceptionally dispatched and elected to receive bid-based revenues, were eligible to receive supplemental revenues, up to the monthly ICPM payment level (the supplemental revenues cap). Once one of these resources reached the supplemental revenues cap, it was to receive the higher of the locational marginal price or default energy bid for the remainder of the 30-day period.

²⁰ Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 85.

²¹ *Id.*

²² ICPM is the voluntary backstop capacity procurement mechanism under MRTU. ICPM is intended to enable the CAISO to acquire generation capacity to maintain grid reliability if load serving entities fail to meet resource adequacy requirements; procured resource adequacy resources are insufficient; or unexpected conditions create the need for additional capacity. ICPM designations will be offered only when the service being procured through the Exceptional Dispatch is a "capacity-type" service. ICPM designations will be only for the amount of capacity actually procured, subject to minimum operating requirements. For further background on the ICPM, *see generally Cal. Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,053 (2008) (ICPM Order). The Commission has recognized the interrelatedness between the voluntary ICPM and the backstop to the ICPM backstop, Exceptional Dispatch. *See, e.g., id.* P 56.

²³ Partial resource adequacy resources may also elect to receive either an ICPM designation or supplemental revenues if they are subject to an Exceptional Dispatch instruction. This election will apply to the resources' non-resource adequacy capacity.

revenues for incremental energy that will be capped at the ICPM payment level for 30-days, and will be paid pursuant to the MRTU Tariff once the 30-day cap is reached. These resources will not incur an on-going obligation to bid into the CAISO's markets. If a resource makes no election, it will be treated as having selected the ICPM option. Finally, the Exceptional Dispatch Order allowed for partial-unit designations, which means that the CAISO may issue an Exceptional Dispatch instruction for only the capacity that it actually needs rather than the full available capacity of a unit. Partial-unit designations are subject to the minimum operating requirements of the unit.

10. Requests for rehearing and clarification of the Exceptional Dispatch Order were filed by El Segundo Power LLC, Dynegy Moss Landing, LLC, Dynegy Morro Bay, LLC, and Reliant Energy, Inc (California Generators), and Western Power Trading Forum (WPTF). A request for rehearing and comments was filed by Southern California Edison Company (SoCal Edison). Six Cities filed a request for clarification or rehearing of the October 16, 2008 Order, which will also be addressed herein.

II. Discussion

A. Partial-Unit Designations

11. The term "partial unit designation" refers to the practice of designating and paying for only the portion of a unit's capacity that the CAISO determines it needs, rather than the entirety of a unit's potential output. In the Exceptional Dispatch Order, the Commission stated that because partial-unit designations may be offered to resource adequacy resources and ICPM resources for capacity services similar to that provided under Exceptional Dispatch, partial unit designations are also appropriate for exceptionally dispatched resources.²⁴ Furthermore, the Commission determined that the CAISO should compensate a partial-resource adequacy resource only for the incremental amount of energy that is exceptionally dispatched above its resource adequacy contract amount.²⁵

1. Requests for Rehearing and/or Clarification

12. California Generators object to the Commission's determination that the CAISO need only compensate a partial-resource adequacy resource for the incremental amount of energy that is exceptionally dispatched above its resource adequacy contract amount. California Generators submit that the amount of energy dispatched from a unit pursuant to an Exceptional Dispatch is not a reliable indicator of the amount of capacity the

²⁴ Exceptional Dispatch Order at P 189.

²⁵ *Id.*

CAISO needs or relies on when it exceptionally dispatches the unit. California Generators contend that the record evidence demonstrates that partial-unit designations provide the CAISO access to more than just the resource's exceptionally dispatched capacity.²⁶ Thus, California Generators reason that the Commission's decision to permit partial-unit designations for only incremental amounts of energy that are exceptionally dispatched above a resource's resource adequacy contract is based on misunderstanding of how the CAISO may use exceptionally dispatched capacity for reliability purposes and how fixed costs are incurred. Accordingly, California Generators assert that it is the amount of capacity that the CAISO needs, not simply the amount of capacity from which energy is exceptionally dispatched, which should be offered an ICPM designation.

13. California Generators argue that the Commission's finding that the CAISO should only pay for capacity as needed is inconsistent with the fact that the costs of capacity cannot be broken up into discrete pieces. California Generators submit that the Commission erred in determining that partial-unit ICPM designations are reasonable, regardless of whether the partial-unit ICPM designation results from an Exceptional Dispatch. California Generators explain that partial-unit ICPM designations, coupled with Exceptional Dispatch, effectively provide the CAISO with access to all of a partially-resource adequacy-contracted or ICPM-designated unit's capacity.²⁷

14. Further, California Generators do not believe the Commission has considered how partial-unit ICPM designations exacerbate deficiencies in the current resource adequacy program. If these resource adequacy program deficiencies were corrected, California Generators contend, then it is unlikely that the CAISO would have to use its ICPM backstop authority, making the issue of partial-unit ICPM designations moot.²⁸

²⁶ For example, California Generators note that the CAISO's June Proposal stated that one of the purposes of Exceptional Dispatch is "...to ramp units up from minimum operating levels to minimum dispatchable levels to protect against contingencies that are not directly incorporated or sufficiently met by the MRTU software." California Generators' March 23, 2009 Request for Rehearing and Clarification in Docket Nos. ER08-1178-002 and EL08-88-002 at 3-4 (referencing Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 46) (California Generators' Rehearing Request). According to California Generators, such a dispatch is an example of a commitment of capacity and the provision of capacity services beyond the level to which the unit is dispatched. *Id.*

²⁷ *Id.* at 5.

²⁸ California Generators assert that the Exceptional Dispatch Order's finding that partial-unit ICPM designations are reasonable in the context of Exceptional Dispatch is no different than the same erroneous finding in the ICPM Order.

15. California Generators assert that the Exceptional Dispatch Order erred in reasoning that an exceptionally dispatched non-resource adequacy resource can sell the remainder of its capacity in another market. California Generators explain that by the time a non-resource adequacy resource is exceptionally dispatched, there is no other market in which to sell capacity that provides compensation similar to that provided to resource adequacy resources, as the resource adequacy capacity market generally operates on a multi-year, annual, seasonal or monthly basis. According to California Generators, such exceptionally dispatched resources are the final reliability safeguard, making capacity cost recovery from other markets infeasible for the month or season in question. Thus, California Generators argue that a major factor underlying the Commission's decision that the Exceptional Dispatch mechanism results in sufficient payments for generators is incorrect and requires that the Commission reconsider its decision to allow partial-unit designations.²⁹

16. California Generators contend that the Exceptional Dispatch Order erred in reasoning that suppliers would seek Exceptional Dispatch instead of ICPM designations or resource adequacy contracts if the Commission permitted an ICPM offer for the "eligible capacity"³⁰ of an exceptionally dispatched unit. California Generators assert that an assured resource adequacy contract at prevailing market prices – even for a portion of a unit – would be expected to have a value exceeding that of an uncertain Exceptional Dispatch in the future. Thus, California Generators submit that a supplier would only reject that certainty if it had a reasonable expectation that it would be sufficiently exceptionally dispatched to earn supplemental revenues beyond the level of payment provided by an ICPM designation. California Generators state that such a scenario is plausible only if a supplier knows that its unit is needed for reliability. However, California Generators argue that if a supplier knows that its unit is needed for reliability, the unit should be designated as a reliability must-run resource.

17. According to California Generators, neither a reliability must-run unit nor a resource adequacy resource is required to refund capacity payments if it is not committed for energy by the CAISO during the term of service. California Generators also submit

²⁹ *Id.* at 6.

³⁰ "Eligible Capacity" is defined in the CAISO Tariff as "Capacity of [g]enerating [u]nits, [s]ystem [u]nits, [s]ystem [r]esources, or [p]articipating [l]oad that is not already under a contract to be a [r]esource [a]dequacy [r]esource, is not under [a reliability must-run] [c]ontract or is not currently designated as ICPM [c]apacity that effectively resolves a procurement shortfall or reliability concern and thus is eligible to be designated under the ICPM in accordance with [s]ection 43.1." *Id.* at 9 n.15 (citing CAISO Tariff, First Revised Sheet No. 861).

that by limiting the fixed cost compensation to the level of energy dispatched during the term of service, the Exceptional Dispatch Order fails to compensate exceptionally dispatched non-resource adequacy resources in a manner comparable to a reliability must-run unit or a resource adequacy resource.³¹ Thus, California Generators contend that the Exceptional Dispatch Order erred by exacerbating the disparity between the value and use of undischarged resource adequacy and reliability must-run capacity, on the one hand, and non-resource adequacy capacity procured through Exceptional Dispatch, on the other. According to California Generators, this inequality will perpetuate the use of Exceptional Dispatch.³²

18. Further, California Generators assert that the delineation between energy and capacity services is confused in the Commission's determination on partial-unit resource adequacy compensation. California Generators explain that while energy revenues are based on dispatched quantity, fixed costs for the unit are based on the cost of maintaining the entire unit. California Generators argue that in order to maintain consistency between the ICPM and Exceptional Dispatch proceedings, the Commission must allow the non-resource adequacy portion of an exceptionally dispatched unit to receive compensation based on the total uncontracted portion of the unit, since the result of the Exceptional Dispatch is to provide the CAISO with the full output of the facility for the designated period.³³

19. In the alternative, California Generators state that if the Commission declines to reverse its decision authorizing the CAISO to partially designate eligible capacity as ICPM capacity, the Commission should clarify that the CAISO must implement a modified version of the relevant guidelines proposed in the CAISO's Transitional Capacity Procurement Mechanism (TCPM) proceeding (Guideline B).³⁴ California Generators explain that these guidelines would require the CAISO to identify the full amount of non-resource adequacy capacity it was relying on and to offer an ICPM designation for that amount of capacity, even if this amount exceeded the level of non-resource adequacy capacity that was exceptionally dispatched. Accordingly, California Generators ask that the guidelines attached to Appendix A of its rehearing request be adopted to guide partial-unit ICPM designation offers.³⁵

³¹ *Id.* at 7.

³² *Id.*

³³ *Id.* at 7-8.

³⁴ *Id.* (referencing *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,229 (2008)).

³⁵ *Id.* at 9.

20. WPTF asserts that the Commission's decision to not provide for the offer of a full-unit ICPM designation for a non-resource adequacy unit committed by Exceptional Dispatch is arbitrary, capricious, and in error. WPTF states that prior to MRTU, under the TCPM, the Commission directed that if the CAISO committed a non-resource adequacy unit, that unit was to be provided with a full-unit TCPM designation. WPTF notes that, despite the Commission's earlier directive, the Exceptional Dispatch Order allowed the CAISO to commit a non-resource adequacy unit through Exceptional Dispatch and provide that unit with an ICPM designation for as little as the unit's minimum load amount.

21. According to WPTF, because partial-unit bilateral contracting was permitted under the TCPM, the incentives for participation in the resource adequacy program have not changed under MRTU. In addition, WPTF asserts that the pool of capacity to which the must-offer obligation applies under MRTU, as opposed to the blanket must-offer obligation under the prior market structure, has no bearing on whether it is reasonable to provide full-unit ICPM designations to non-resource adequacy capacity committed through Exceptional Dispatch. WPTF argues that despite the absence of any relevant changes in conditions, the Commission offers no justification for its change in policy. WPTF alleges, therefore, that the Commission's decision not to require full-unit ICPM designations for non-resource adequacy capacity committed by Exceptional Dispatch is arbitrary, capricious, and in error. Thus, WPTF requests that the Commission direct the CAISO to offer a full-unit ICPM designation to any exceptionally dispatched non-resource adequacy unit.³⁶

2. Commission Determination

22. The Commission denies rehearing on all issues related to partial-unit designations. In the Exceptional Dispatch Order, we explained our rationale for approving partial unit designations:

We find that the payment scheme for Exceptional Dispatch must strike a balance between, on the one hand, providing appropriate compensation to resources that are called upon to provide capacity services, and, on the other hand, avoiding incentives for suppliers to seek exceptional dispatches instead of ICPM designations or resource adequacy contracts. As we note above, we have found that resources providing similar reliability should be similarly compensated. We find that paying for capacity "as-needed," through the partial ICPM designation approach, is consistent with capacity

³⁶ WPTF March 23, 2008 Request for Rehearing and Clarification in Docket Nos. ER08-1178-002 and EL08-88-002 at 4-6 (WPTF Rehearing Request).

procurement in both the ICPM and resource adequacy programs. The ICPM allows partial designations, and the resource adequacy program allows contracts for a portion of a resource's capacity, i.e., partial resource adequacy resources. Thus, we conclude that requiring the CAISO to offer full ICPM designations to non-resource adequacy resources that are committed under Exceptional Dispatch would be unjust, unreasonable, and unduly discriminatory.³⁷

We continue to find that the Exceptional Dispatch compensation mechanism should balance the need to pay resources for capacity services provided with the need to preserve incentives for generators to participate in the CAISO's voluntary backstop procurement programs, i.e., the ICPM and resource adequacy contracting.

23. We disagree with California Generators' assertion that the Commission's acceptance of partial-unit designations was based on misunderstandings of how the CAISO uses exceptionally dispatched capacity and how fixed costs are incurred. Because the capacity procured by the CAISO via Exceptional Dispatch for capacity-type services is similar to that procured in the resource adequacy and ICPM programs, we find that it is reasonable for Exceptional Dispatch to mirror the resource adequacy and ICPM programs, both of which provide fixed cost recovery and allow partial-unit designations.

24. We also disagree with California Generators' insistence that the amount of capacity needed by the CAISO may be different than the amount exceptionally dispatched. California Generators offer no evidence that the CAISO is relying on capacity in excess of the amount it manually dispatches, nor do they attempt to quantify the amount the CAISO "relies" upon in excess of the amount manually dispatched. Thus, we find no basis for requiring the CAISO to offer an ICPM designation for the full balance of the resource's non-resource adequacy capacity when it only requires a portion of that capacity for reliability purposes.

25. We continue to find that the CAISO's access to this capacity is limited because the resource is under no obligation to keep its capacity unsold in order for it to be available to the CAISO. California Generators' assertion that there is no available market post Exceptional Dispatch is misleading. Resources are free to sell their excess capacity outside of the CAISO markets. We find that this approach provides resources with flexibility in determining the best opportunity to sell their capacity, while balancing the obligation of the CAISO to compensate capacity services in a similar manner across its

³⁷ Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 187 (footnotes omitted).

various procurement programs, versus the creation of incentives for resources to seek exceptional dispatches.

26. Further, we reiterate that the Exceptional Dispatch mechanism is consistent with the resource adequacy and ICPM programs, which permit contracts and designations for partial resource capacity, and dictate that partial capacity resources will be compensated for capacity based solely on the portion of their resources that are actually under contract. In other words, the amount of compensation is tied to the resource's reciprocal obligation to offer a specified amount of capacity into the CAISO markets for the term of the contract or designation.³⁸

27. Paying for capacity "as-needed" is a keystone of the CAISO's Exceptional Dispatch compensation mechanism. Removing it would create a discriminatory rate structure in which exceptionally dispatched resources would be the only category of resources that would receive full-unit designations, regardless of the percentage of output of the resource the CAISO actually needs. This result could distort the incentive structure for suppliers to participate in the resource adequacy and ICPM programs, as discussed further below. A different payment structure for Exceptional Dispatch could undercut the CAISO's voluntary backstop capacity programs by permitting an exceptionally dispatched resource to be better off than a resource that bilaterally contracted at least a portion of its capacity, or voluntarily elected to accept an ICPM designation.

28. Significantly, California Generators' argument that the costs of capacity cannot be broken into discrete pieces ignores the Commission's finding in the ICPM Order that an ICPM payment – \$41/kW-year payment, with the opportunity to cost justify a higher price – provides adequate fixed cost recovery.³⁹ Both the ICPM program and Exceptional Dispatch mechanism are designed to allow capacity resources to recover their fixed costs for the services they provide to the CAISO. The California Generators have provided no evidence demonstrating that this is not the case.

29. California Generators' concerns about the alleged deficiencies in the resource adequacy program, and how partial ICPM designations exacerbate those deficiencies, are misplaced. Specifically, the resource adequacy program is not before us in this proceeding. Moreover, we find that California Generators provide no evidence of how

³⁸ The rest of the resource is considered non-resource adequacy capacity, and thus may be exceptionally dispatched. The CAISO does not compensate resource adequacy and partial ICPM resources for the portion of their capacity that is not under contract, unless that capacity is called upon under Exceptional Dispatch.

³⁹ ICPM Order, 125 FERC ¶ 61,053, at P 41.

the Commission's findings in the Exceptional Dispatch Order have any negative impact on the resource adequacy program.

30. The Commission rejects California Generators' claims that full-unit designations would have little impact on resources' incentives for bilateral contracting. If full-unit designations were available to exceptionally dispatched non-resource adequacy capacity, this may incent resources to avoid voluntarily contracting their capacity and hold out for Exceptional Dispatch instead. This possibility, coupled with our finding that the \$41/kW-year payment, plus the ability to cost justify a higher payment, is just and reasonable compensation for capacity services,⁴⁰ supports our conclusion that partial-unit designations are just and reasonable. Thus, we continue to find that the Exceptional Dispatch mechanism should be a last-resort option for the CAISO and its participants that provides just and reasonable rates.⁴¹

31. We also disagree with California Generators' claim that, because resource adequacy and ICPM resources are not required to refund capacity payments if they are not committed for energy by the CAISO during the term of service, the Commission's acceptance of partial-unit designations is unduly discriminatory. Under the Exceptional Dispatch mechanism, exceptionally dispatched resources may elect to be paid as ICPM capacity, meaning that the resource would receive an ICPM offer for the size of the dispatch, and in turn, be paid a minimum 30-day payment for its services, regardless of whether the resource is committed for energy during the remainder of the designation period. Accordingly, we find payment for partial unit designations under Exceptional Dispatch to be non-discriminatory, adequate for the service provided, and similar to the compensation offered to other CAISO capacity resources.

32. We reject California Generators' request to require the CAISO to apply a modified Guideline B. Guideline B was proposed to work in conjunction with the TCPM program, a part of the pre-MRTU capacity-procurement environment that no longer exists. Guideline B would have required the CAISO to identify how much non-resource adequacy capacity the CAISO needs when issuing a must-offer waiver denial under TCPM. However, under MRTU, when an Exceptional Dispatch instruction is issued, it is issued for only the amount of capacity – resource adequacy or non-resource adequacy – the CAISO needs. Because the Exceptional Dispatch mechanism includes adequate compensation and reporting requirements, we find there is no need to implement a further

⁴⁰ *See, e.g.*, ICPM Order, 125 FERC ¶ 61,053 at P 44; Exceptional Dispatch Order, 126 FERC ¶ 61,150 at n.27.

⁴¹ To reach this result, Exceptional Dispatch must be compensated in a way that preserves incentives for resources to participate voluntarily in the CAISO's other capacity procurements programs.

procedure, such as Guideline B. Further, we reiterate that resource adequacy and ICPM contemplate a partial commitment, and we will not require Exceptional Dispatch to make full unit designations only, as this would provide disincentives to participate in the voluntary capacity programs.

33. WPTF's argument that the Exceptional Dispatch Order's acceptance of partial designations is inconsistent with our orders in the TCPM proceeding is misleading. The Exceptional Dispatch and ICPM mechanisms were accepted to function under MRTU, a different market design than the market design in effect during the TCPM's tenure.⁴² Further, partial designations were not proposed for use in the TCPM, therefore, the justness and reasonableness of partial designations was not considered. Thus, WPTF's comparison is not on point in the instant matter. Furthermore, the fact that the Commission found the TCPM just and reasonable in a prior unrelated proceeding, involving a different market design, does not preclude the Commission from finding the partial-designation feature of Exceptional Dispatch just and reasonable for MRTU. In this proceeding, pursuant to section 205 of the FPA,⁴³ the Commission appropriately limited its evaluation to whether the CAISO's rates, terms, and conditions were just and reasonable as proposed.⁴⁴ Once a determination of reasonableness was made, the Commission need not consider alternatives.⁴⁵ Unlike the TCPM proceeding, the CAISO did propose partial-unit designations in this proceeding. Upon analysis, the Commission found that the partial-unit designation proposal was just and reasonable for the reasons discussed above and in the Exceptional Dispatch Order. Accordingly, we deny WPTF's request for rehearing on this issue.

B. Reporting Requirements

34. In the Exceptional Dispatch Order, the Commission required the CAISO to make a compliance filing that establishes a 60-day reporting process to detail the "...frequency, volume, costs, causes, and degree of mitigation of exceptional dispatch."⁴⁶

⁴² TCPM worked in conjunction with the must-offer obligation, which no longer exists under MRTU.

⁴³ 18 U.S.C. § 824d (2006).

⁴⁴ *Cities of Bethany, Bushnell, et al. v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (citing *Public Serv. Co. of Indiana*, 56 FPC 3003 (1976)).

⁴⁵ *See Oxy USA v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (rate methodology accepted "need not be the only reasonable methodology").

⁴⁶ Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 263.

1. Request for Rehearing

35. With respect to the 60-day reporting process to detail the "...frequency, volume, costs, causes, and degree of mitigation of Exceptional Dispatch," California Generators seek clarification of the term "volume."⁴⁷ Specifically, California Generators ask the Commission to clarify that "volume" includes a requirement to report the quantity of capacity required by the CAISO, and specifically: (1) the dispatched megawatts; (2) megawatts of capacity required by the CAISO; and (3) total capacity made available, including non-resource adequacy capacity that was made available when a unit was committed through Exceptional Dispatch, but only part of the unit's capacity was offered an ICPM designation. According to California Generators, requiring this information would reasonably ensure that the CAISO's discretion in offering partial-unit ICPM designations is administered without preference or undue discrimination and would serve to help market participants develop new market products, such as 30-minute reserves and voltage support.

2. Commission Determination

36. We grant California Generators' request for clarification concerning the meaning of the word "volume" in the Commission's determination on reporting in the Exceptional Dispatch Order. However, we decline to accept California Generators' proposed definition of the word "volume." Rather, we reiterate the clarification provided in our order issued September 2, 2009, addressing the CAISO's Exceptional Dispatch compliance filing and associated informational reports:⁴⁸

[T]he Commission clarifies that we intended for the CAISO to provide three volumetric measures of each Exceptional Dispatch: megawatts, hours, and megawatt-hours. This volume information should be included for each instance of Exceptional Dispatch, including commitments and dispatches for incremental and decremental energy. To date, the CAISO has reported only daily, aggregate volumes, which do not provide a complete picture of the reasons for which the CAISO is relying on Exceptional Dispatch. This more detailed information will allow the CAISO, stakeholders, and the Commission to assess which exceptional

⁴⁷ California Generators Rehearing Request at 9 (citing Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 263).

⁴⁸ *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,218 (2009) (September 2, 2009 Order).

dispatches are the most substantial in terms of volume, thereby providing a means of prioritizing solutions.⁴⁹

As we stated in the September 2, 2009 Order, we find that these clarified reporting requirements will provide the Commission and market participants with transparency regarding the CAISO's use of Exceptional Dispatch.⁵⁰

C. Planned Transmission Outages

37. In the Exceptional Dispatch Order, the Commission noted that the CAISO anticipated that the most common reason for exceptional dispatch will be limitations in incorporating outages, both anticipated and unanticipated, in the Full Network Model.⁵¹ The Commission also noted the CAISO's statement that, for planned transmission outages, there may not be enough time to incorporate the configuration in the model because of the timing of the model update process, the timing of the outage, or the need to perform studies before certain outages can be modeled.⁵²

1. Requests for Clarification

38. California Generators assert that "unforced or planned outages of a short duration that cannot be modeled" are absent from the list of capacity-type services that warrant ICPM designations identified by the Commission in the Exceptional Dispatch Order.⁵³ Thus, California Generators request clarification that "a planned outage for which an [E]xceptional [D]ispatch is issued classifies as one providing capacity-type service."⁵⁴

⁴⁹ *Id.* P 40.

⁵⁰ September 2, 2009 Order, 128 FERC ¶ 61,218 at P 37-45.

⁵¹ Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 20.

⁵² *Id.*

⁵³ California Generators Rehearing Request at 11.

⁵⁴ *Id.* In the Exceptional Dispatch Order, the Commission explicitly identified the following as capacity-type services that warrant ICPM designations: (1) responding to forced transmission or generation outages or de-rates; (2) responding to on-line capacity-based constraints that are not modeled or are not fully modeled in the full network model, including south of the Path 26 constraint; (3) provision of voltage support; (4) accommodation of resource constraints, including ramping and forbidden operating region limitations; and (5) responding to environmental constraints, including the Delta Dispatch. Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 161.

Likewise, WPTF argues that resources responding to exceptional dispatches related to scheduled outages or de-rates are providing a reliability benefit by contributing capacity to the grid.

39. In terms of the service provided, WPTF contends that there is no difference between the capacity service provided in response to a forced outage or de-rate and that provided in response to a scheduled outage or de-rate. WPTF therefore requests that the Commission clarify that exceptional dispatch instructions issued to non-resource adequacy capacity by the CAISO in response to any outage or de-rate, not just in response to a forced outage or de-rate, provides the CAISO with a capacity-type service.⁵⁵

2. Commission Determination

40. We grant the requests for clarification. Specifically, we clarify that the services provided in response to any outage or de-rate are capacity-type services that warrant ICPM designations because they are providing a reliability benefit by contributing capacity to the grid.

D. Supplemental Revenue Cap

41. In the Exceptional Dispatch Order, the Commission approved a four-month cap on Exceptional Dispatch revenues as a just and reasonable way to protect customers during the transition to the new market.⁵⁶ During the four-month transition period, the CAISO was to apply a revenue cap on Exceptional Dispatch instructions that was equivalent to the “relaxed mitigation” originally proposed by the CAISO. Specifically, under the revenue cap, a resource with a capacity contract exceptionally dispatched for incremental energy would receive the higher of its default energy bid or the locational marginal price. A resource without a capacity contract exceptionally dispatched for energy would receive the higher of its energy bid, its default energy bid, or the locational marginal price. Resources without capacity contracts would be allowed to accrue supplemental revenues (as defined by the CAISO) up to the ICPM payment level; after it reached the ICPM level, the resource would earn the higher of its default energy bid or the locational marginal price for the remainder of 30-day period.⁵⁷

⁵⁵ WPTF Rehearing Request at 13.

⁵⁶ Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 85.

⁵⁷ *Id.* P 86.

1. Request for Rehearing and/or Clarification

42. WPTF contends that the four-month revenue cap unjustly discriminates against suppliers whose resources are exceptionally dispatched because, without the cap, these resources would have earned the same payment through Exceptional Dispatch as they could have through the CAISO's markets. Since the CAISO has not proposed and the Commission has not approved such an overall cap on revenues earned in the California markets under MRTU, WPTF asserts that the cap should not apply to Exceptional Dispatch revenues. WPTF asks that the Commission grant rehearing and eliminate the four-month revenue cap on supplemental revenues.⁵⁸

43. According to WPTF, the Commission has taken steps to prevent a supplier's exercise of market power through Exceptional Dispatch by ordering that any supplier exceptionally dispatched to address a non-competitive transmission constraint or for the Delta Dispatch may be paid the higher of its locational marginal price or its default energy bid, but not its bid.⁵⁹ Further, WPTF submits that given that both mitigated and non-mitigated suppliers would earn through Exceptional Dispatch what they would otherwise earn through market dispatch, the Commission's decision to impose a four-month revenue cap only on Exceptional Dispatch revenues discriminates against those suppliers that are exceptionally dispatched. If the Commission is concerned about the general possibility that parties could earn more than they are entitled to in the nascent MRTU markets, WPTF insists that the Commission "would have to impose a cap on monthly revenues for both the market and [E]xceptional [D]ispatch."⁶⁰

44. WPTF contends that a cap on Exceptional Dispatch revenues, when both mitigated and non-mitigated exceptionally dispatched resources will be paid no more than what they would be paid if they were dispatched through the market, is unreasonable and has not been justified. Thus, WPTF argues that the cap on Exceptional Dispatch supplemental revenues should be eliminated.⁶¹

45. In the alternative, WPTF states that if the Commission denies rehearing and retains the cap on supplemental revenues, it must clarify the following: (1) that the only time a resource earns Exceptional Dispatch supplemental revenues is when a resource is paid its bid price; and (2) that any revenues earned when a resource is paid its locational

⁵⁸ WPTF Rehearing Request at 6-7.

⁵⁹ *Id.* at 7.

⁶⁰ *Id.* at 7-8.

⁶¹ *Id.* at 6-7.

marginal price do not count towards the supplemental revenues cap, and that the supplemental revenues reflect the revenues above the locational marginal price.⁶² According to WPTF, revenues paid in excess of the resource's locational marginal price are the only "extra" revenues that could potentially be earned by an exceptionally dispatched resource relative to the same resource being dispatched through the market.⁶³

2. Commission Determination

46. We deny WPTF's request for rehearing and reject its arguments for elimination of the four-month cap on Exceptional Dispatch supplemental revenues. As we explained in the Exceptional Dispatch Order, resources that receive Exceptional Dispatch instructions are not subject to the automated process that the CAISO uses to mitigate the potential exercise of market power in its integrated forward and real-time markets.⁶⁴ WPTF accurately notes that when a supplier is dispatched through the market and not mitigated for local market power, it is guaranteed to earn at least its bid price.⁶⁵ However, WPTF overlooks the fact that the CAISO's day-ahead market mitigation mechanism and MRTU's automated local market power mitigation provisions employ automatic and objective tests to determine whether mitigation is appropriate for a particular resource.⁶⁶ Because these automated market power screens do not apply to out-of-market exceptional dispatches, we find that exceptionally dispatched resources are unique and not similarly situated to resources that are dispatched through the market software. Therefore, we reject WPTF's argument regarding undue discrimination.

⁶² *Id.*

⁶³ WPTF explains that what would make a resource that is guaranteed its bid price through the markets different from a resource that is paid its bid price through Exceptional Dispatch is the expectation that Exceptional Dispatch may allow for the exercise of local market power. Thus, WPTF asserts that mitigation of the revenues a supplier could earn by being paid its bid price is reasonable.

⁶⁴ Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 82.

⁶⁵ WPTF Rehearing Request at 8.

⁶⁶ Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 78; MRTU Tariff, § 31.2.1.

47. We further reject WPTF's claim that the four-month supplemental revenues cap is unreasonable and unjustified.⁶⁷ As we explained in the Exceptional Dispatch Order, the cap on supplemental revenues is appropriate and necessary to ensure proper incentives for long-term capacity contracting and voluntary ICPM participation.⁶⁸ We continue to find that the cap on supplemental revenues achieves these objectives by allowing a non-resource adequacy resource to earn unmitigated energy market revenues up to a level equivalent to an ICPM capacity payment. This unmitigated revenue is intended, like an ICPM capacity payment, to contribute towards a non-resource adequacy resource's fixed costs. Once a non-resource adequacy resource has reached the supplemental revenue cap it is entitled, just like resource adequacy resources, to keep any mitigated energy market revenues that it earns. The cap on supplemental revenues, however, ensures that suppliers do not receive higher compensation by foregoing ICPM offers in favor of supplemental revenues. Without a cap on supplemental revenues, an exceptionally dispatched resource could potentially earn substantially more during a 30-day period through its unmitigated energy bids than a resource adequacy or ICPM resource could earn through the combination its fixed capacity payment and mitigated energy market revenues. Such preferential treatment of non-resource adequacy resources could also distort the incentives for suppliers to participate in the CAISO's voluntary capacity procurement programs. Thus, we reaffirm our original finding that the cap on supplemental revenues is just and reasonable.

48. We likewise deny WPTF's request for clarification regarding which Exceptional Dispatch revenues "count" toward the 30-day supplemental revenues cap. Because a resource's default energy bid is generally designed to cover a resource's variable costs, we consider any amount earned over the default energy bid a contribution toward fixed costs. Therefore, we continue to find that the CAISO's proposal to calculate supplemental revenues as the higher of the resource's bid minus its default energy bid, or the locational marginal price minus the default energy bid, times the number of megawatts procured, is just and reasonable.

⁶⁷ We note that WPTF appears to have conflated the general four-month cap on all Exceptional Dispatch revenues with the permanent cap on supplemental revenues. *See* WPTF Rehearing Request at 4-12. The overall four-month revenue cap expired on August 1, 2009, but the cap on supplemental revenues remains in effect for those uses of Exceptional Dispatch for which the Commission has approved ongoing mitigation. To the extent WPTF intends to challenge the Commission's finding that the four-month transition period is just and reasonable, *see* section E.2. below, discussing the Commission's justification regarding the duration of the transition period.

⁶⁸ Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 222-23.

E. Four-Month Transition Period

49. In the Exceptional Dispatch Order, the Commission approved a four-month cap on Exceptional Dispatch revenues as a just and reasonable way to protect customers during the transition to the new market.⁶⁹ The Commission recognized that in launching a new market, the CAISO cannot be expected to resolve all software issues in advance through simulations and testing. We also reasoned that the four-month transition period will allow the CAISO to gather evidence to demonstrate the potential to exercise market power in specific instances of Exceptional Dispatch, if such potential exists, or to develop a market power test to assess which exceptionally dispatched resources possess the potential to exercise market power.

1. Request for Rehearing and/or Clarification

50. SoCal Edison is concerned that the four-month transition period may not provide sufficient time for all the necessary software fixes to be implemented. According to SoCal Edison, the CAISO's June and November proposals requested the ability to implement mitigation measures for units that are exceptionally dispatched as a means to address potential market power that may result due to existing software limitations. SoCal Edison further notes that in the Exceptional Dispatch Order, the Commission strongly encouraged the CAISO to continue working with stakeholders on at least two stakeholder processes to identify, develop, implement, and test solutions that are intended to reduce either the number of required exceptional dispatches or the potential for a resource to exhibit market power during an exceptional dispatch.⁷⁰ SoCal Edison provides that it has and will continue to participate in these stakeholder proceedings. However, SoCal Edison is not sure of the CAISO's basis for suggesting the four-month temporary mitigation period. SoCal Edison concurs with the Commission's statement that a temporary revenue cap is a just and reasonable measure to protect customers until the CAISO gains operational experience that will enable it to determine the full extent of the software and full network model limitations. But, SoCal Edison states that the CAISO's own post go-live release plan reflects that the final software upgrade containing fixes for identified issues is not scheduled for implementation until late November 2009.

51. SoCal Edison believes that the information contained within the CAISO's post go-live release plan is of sufficient importance that it warrants the Commission reconsidering its decision regarding the amount of time required for the CAISO to implement the fixes

⁶⁹ *Id.* P 85.

⁷⁰ SoCal Edison March 23, 2009 Request for Rehearing and Comments at 3 (citing Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 26, 44) (SoCal Edison Rehearing Request).

necessary to minimize the number of exceptional dispatches and the duration of the temporary mitigation measures. Accordingly, SoCal Edison argues that instead of an arbitrary period of four months, mitigation should instead be terminated upon the CAISO notifying the Commission that the necessary fixes have been implemented.⁷¹

2. Commission Determination

52. The Commission disagrees with SoCal Edison's contention that the four-month transition period is arbitrary and that the four-month transition period should be extended until the CAISO notifies the Commission that anticipated "fixes" have been implemented.

53. In the Exceptional Dispatch Order, the Commission found that "[a]lthough the CAISO has not satisfied its burden of showing the potential to exercise market power for the majority of its proposed uses of Exceptional Dispatch, the Commission recognizes the CAISO's need to rely on Exceptional Dispatch to ensure reliable grid operations, particularly during the start-up days of MRTU."⁷² We further acknowledged "that the limitations in the full network model and MRTU software may not become fully apparent until MRTU goes live."⁷³ For this reason, we determined that this uncertainty warranted implementing interim measures to protect customers from potentially unjust and unreasonable Exceptional Dispatch rates during the early stages of MRTU. Therefore, we established a four-month start-up period during which all Exceptional Dispatch revenues would be subject to a revenue cap to help facilitate a smooth transition into the MRTU markets.⁷⁴

54. In finding that the four-month revenue cap on Exceptional Dispatch was just and reasonable, we noted that the CAISO indicated that it expects the need for Exceptional Dispatch to be "greater at the beginning of MRTU than during the remainder" of the initial 24 months of market operations, "especially during the first few months of implementation."⁷⁵ Indeed, in its original June Proposal, the CAISO proposed to make more stringent Exceptional Dispatch mitigation applicable during the first four months of MRTU.⁷⁶ The four-month revenue cap imposed by the Commission mirrors the

⁷¹ *Id.* at 2-3.

⁷² Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 84.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* P 85 (citing November Proposal at 37).

⁷⁶ June Proposal at 12.

transition period the CAISO initially proposed. We also recognized “that in launching a new market, the CAISO cannot be expected to resolve all software issues in advance through simulations and testing.”⁷⁷ Moreover, we found that the four-month transition period would “allow the CAISO to gather evidence to demonstrate the potential to exercise market power for specific instances of Exceptional Dispatch, if it exists, or to develop a market power test to assess which exceptionally dispatched resources possess market power.”⁷⁸ As noted in the Exceptional Dispatch Order, this action was consistent with prior directives allowing system operators to implement interim measures to help facilitate a smooth transition to a new market structure.⁷⁹ By limiting the term of the cap to the four-month period immediately following MRTU start up, we ensured “that the cap on Exceptional Dispatch does not become a permanent ‘band-aid’ fix for software and modeling limitations.”⁸⁰ Thus, we reiterate our reasons for finding that the four-month transition period is appropriate.

55. On rehearing, SoCal Edison emphasizes the notion that mitigation should be extended until market “fixes” are implemented, but ignores the Commission’s finding that the CAISO has failed to demonstrate the potential for the exercise of market power in all but two instances of Exceptional Dispatch.⁸¹ Even if the “fixes” in development will ultimately address a situation in which the potential to exercise market power is found to exist, the duration of the revenue cap does not hinge on whether or when certain fixes will be introduced, but rather on a showing of the potential to exercise market power in the first place.

56. If the CAISO can identify and demonstrate the potential to exercise market power for any additional instances of Exceptional Dispatch, regardless of when a subsequent “fix” is expected to be implemented, the CAISO should propose narrowly tailored mitigation measures for the period following the expiration of the four-month revenue cap. Even though SoCal Edison argues that these “fixes” will likely reduce the frequency of Exceptional Dispatch, no evidence has been presented to show that these “fixes” are targeted to situations in which the potential to exercise market power is present. As explained in the Exceptional Dispatch Order, the Commission strives to “ensure that the analysis we adopt and the mitigation measures we design do not mistakenly attribute

⁷⁷ Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 85.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Mitigation was accepted for the Delta Dispatch and non-competitive constraints.

market power to those who do not have it, and thereby distort markets.”⁸² For these reasons, we find that absent a showing of market power by the CAISO, it is not appropriate to extend the four-month revenue cap. Thus, we deny SoCal Edison’s request for rehearing concerning the duration of the revenue cap.

F. Procedures for Addressing CAISO Errors

1. Comments

57. SoCal Edison states that while the TCPM was in effect, five events occurred during which the CAISO denied a must-offer waiver request from a non-resource adequacy resource. According to SoCal Edison, four of the five events involved the CAISO denying the waiver of a non-resource adequacy unit when a resource adequacy unit was available but not selected. For these reasons, SoCal Edison believes that a need exists to establish processes to address errors made by the CAISO.⁸³

58. SoCal Edison acknowledges the importance of providing just and reasonable compensation to a generator that has a waiver request denied, only to subsequently be informed that the denial was a mistake. Thus, SoCal Edison suggests that providing such a generator with compensation equivalent to a five-day ICPM capacity contract would be just and reasonable. SoCal Edison asserts that a process should be established as soon as possible that equitably allocates costs incurred when CAISO actions do not conform to tariff directives. Finally, SoCal Edison recommends that the costs from such events should be allocated to scheduling coordinators of all load in the CAISO control area.⁸⁴

2. Commission Determination

59. The Commission normally does not allow parties to raise new issues on rehearing, and we will not allow SoCal Edison to do so here.⁸⁵ In its rehearing request, SoCal Edison seeks a significant modification to the Exceptional Dispatch mechanism. Because SoCal Edison’s proposed modification has been raised for the first time on rehearing,

⁸² Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 72 (quoting *New England Power Pool*, 101 FERC ¶ 61,344 (2002)).

⁸³ SoCal Edison Rehearing Request at 4. SoCal Edison disagrees with any implication that the cause of the error under the TCPM and the potential for future similar errors will also sunset when MRTU goes live.

⁸⁴ *Id.* at 6-7.

⁸⁵ See *Midwest Indep. Sys. Operator, Inc.*, 117 FERC ¶ 61,241, at P 8 n.8 (2006) (referencing *Baltimore Gas & Electric Company*, 91 FERC ¶ 61,270, at 61,922 (2000)).

other parties do not have the opportunity to comment on the proposed modification.⁸⁶ For these reasons, we decline to adopt SoCal Edison's proposed modification on rehearing. Should this issue persist under MRTU, the CAISO may either seek waivers,⁸⁷ or seek to modify its tariff, or interested parties may file a complaint.

G. The October 16, 2008 Order

60. In the October 16, 2008 Order, the Commission recognized the potential need to mitigate Exceptional Dispatch, but found that the June Proposal may not be just and reasonable because certain resources may not receive adequate compensation for the capacity services they provide.⁸⁸ Accordingly, the October 16, 2008 Order accepted and suspended the CAISO's proposed Exceptional Dispatch mitigation, instituted a section 206 investigation into the continued justness and reasonableness of the Exceptional Dispatch mechanism as a whole, and established a technical conference to facilitate resolution of the proceeding.⁸⁹

1. Request for Clarification and/or Rehearing

61. Six Cities seek clarification that the October 16, 2008 Order does not preclude consideration, in this or other relevant proceedings, of other circumstances in which an Exceptional Dispatch instruction *should not* trigger an automatic offer of a capacity payment under the ICPM.⁹⁰ According to Six Cities, the CAISO states that it cannot anticipate all of the circumstances that might lead to an Exceptional Dispatch instruction. Therefore, there may be additional situations in which Exceptional Dispatch is necessary to address some need other than a need for additional capacity. Six Cities assert that the

⁸⁶ Rule 713(d)(1) of the Commission's Rules of Practice and Procedure prohibits answers to requests for rehearing. 18 C.F.R. § 385.713(d)(1) (2008).

⁸⁷ *See, e.g., Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,060 (2009) (granting a one-time waiver of the 30-day minimum designation of capacity under TCPM).

⁸⁸ October 16, 2008 Order, 125 FERC ¶ 61,055 at P 97-98. *See also* text *supra* at P 4.

⁸⁹ October 16, 2008 Order, 125 FERC ¶ 61,055 at P 97-98, 105, 109.

⁹⁰ Six Cities November 14, 2008 Request for Clarification or, in the Alternative Rehearing at 2 (citing October 16, 2008 Order, 125 FERC ¶ 61,055 at P 104) (Six Cities Rehearing Request) (“[T]he Commission expects that a just and reasonable Exceptional Dispatch mechanism would include a similar [to the ICPM monthly capacity payment approved in Docket Nos. ER08-556-000 and ER06-615-020] capacity payment to all non-resource adequacy resources that provide service under Exceptional Dispatch.”).

Commission should not foreclose consideration of such circumstances either in this or other proceedings, and Six Cities request clarification that parties may propose additional circumstances in which an Exceptional Dispatch instruction will not trigger a mandatory monthly capacity payment.

62. Six Cities state that it does not believe the October 16, 2008 Order is final because it initiates an investigation and establishes a technical conference. Nevertheless, in an abundance of caution, Six Cities alternatively frame their concern as a request for rehearing. Specifically, Six Cities contend that the Commission erred by limiting to only two specific circumstances the possible exceptions to a requirement for a monthly capacity payment to any non-resource adequacy resource that is issued an Exceptional Dispatch instruction. Six Cities assert that the Commission's only rationale for requiring a monthly capacity payment to a non-resource adequacy resource that receives an Exceptional Dispatch instruction is that such a payment is necessary to provide proper compensation for capacity that the CAISO requires to maintain grid reliability. Thus, Six Cities argue that although the October 16, 2008 Order recognizes two specific exceptions to that general conclusion, it is clear that additional circumstances are likely to occur where the CAISO issues Exceptional Dispatch instructions for reasons other than a need for additional capacity. To the extent such situations can be identified, Six Cities submit that it would be unjust, unreasonable, unduly discriminatory, arbitrary and capricious, and an abuse of discretion for the Commission to refuse to recognize or even consider additional exceptions to the requirement for a capacity payment. Six Cities assert that the Commission must provide a reasoned response to legitimate issues,⁹¹ and the Commission must articulate a rational connection between the facts and its policy choices.⁹² Six Cities contend that a refusal to recognize additional exceptions to the monthly payment requirement where the CAISO issues Exceptional Dispatch instructions for reasons other than need for capacity would violate both of those principles, and is arbitrary and capricious, an abuse of discretion, unjust, unreasonable, and unduly discriminatory.

⁹¹ *Id.* at 6 (referencing *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005) (quoting *Canadian Ass'n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C. Cir. 2001)); *Pub. Serv. Comm'n of the Commonwealth of Ky. v. FERC*, 397 F.3d 1004, 1008 (D.C. Cir. 2005).

⁹² *Id.* (referencing *Williston Basin Interstate Pipeline Co. v. FERC*, 519 F.3d 497, 499 (D.C. Cir. 2008) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)); *Edison Mission Energy, Inc. v. FERC*, 394 F.3d 964, 968 (D.C. Cir. 2005)).

2. Commission Determination

63. As explained below, we deny Six Cities' Rehearing Request concerning the October 16, 2008 Order because it has been "overtaken by events," namely by the CAISO's November Proposal and the Exceptional Dispatch Order, and, consequently, effectively rendered moot.⁹³ The Commission finds that the October 16, 2008 Order is a non-final order, and therefore, not subject to rehearing. As Six Cities point out, the October 16, 2008 Order was an interim procedural order that did not address the merits of the June Proposal, but instead proposed an alternative solution and established a technical conference with comment period.⁹⁴ Following the October 16, 2008 Order, the Commission convened a technical conference and parties filed comments addressing both the October 16, 2008 Order and the technical conference. In its post-technical conference comments, the CAISO submitted the November Proposal, which it further modified in its reply comments. In the Exceptional Dispatch Order, the Commission found that the November Proposal superseded the June Proposal. Therefore, we addressed only the merits of the November Proposal and concluded that the November Proposal, as modified by the Exceptional Dispatch Order, was just and reasonable and resolved our concerns about the Exceptional Dispatch mechanism as a whole.⁹⁵ Six Cities did not seek rehearing of the Exceptional Dispatch Order.

64. With regard to Six Cities' assertion that the October 16, 2008 Order should not preclude consideration of other circumstances in which an Exceptional Dispatch instruction should not trigger an automatic offer of a capacity payment under the ICPM provisions, we find that this issue is now moot. Specifically, in the Exceptional Dispatch Order, the Commission considered and addressed which uses of Exceptional Dispatch provide the CAISO with capacity-type services similar to those procured under the resource adequacy and ICPM programs, for which the offer of an ICPM payment would be appropriate⁹⁶ In addition, the Commission found that, after termination of the four-month transition period, mitigation of Exceptional Dispatch rates would only be

⁹³ Six Cities note that "Six Cities believe that the [October 16, 2008 Order] is non-final and therefore not subject to a request for rehearing." Nonetheless, Six Cities request rehearing on the issue above "[o]ut of an abundance of caution." *Id.* at 5.

⁹⁴ Six Cities Rehearing Request at 5.

⁹⁵ *See* Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 2.

⁹⁶ *Id.* P 76, 161-66.

appropriate for Delta Dispatch and non-competitive constraints.⁹⁷ Thus, Six Cities' concerns were addressed in the Exceptional Dispatch Order.

The Commission orders:

(A) The requests for rehearing of the Exceptional Dispatch Order are hereby denied, as discussed in the body of this order.

(B) The requests for clarification of the Exceptional Dispatch Order are accepted in part and denied in part, as discussed in the body of this order.

(C) The request for clarification or, in the alternative, rehearing of the October 16, 2008 Order is hereby dismissed because it has been superseded by subsequent events, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹⁷ *Id.* P 74-75.