

131 FERC ¶ 61,148
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System
Operator Corporation

Docket Nos. ER09-1064-003
ER09-1064-004

ORDER ON COMPLIANCE FILING

(Issued May 20, 2010)

1. In this order, we conditionally accept, subject to modification, the compliance filing submitted by the California Independent System Operator Corporation (CAISO) on August 10, 2009,¹ related to the CAISO's Standard Capacity Product, which is intended to simplify and increase the efficiency of California's Resource Adequacy Program.

Background

2. On April 28, 2009, the CAISO filed proposed modifications to its tariff to adopt a resource adequacy standard capacity product (SCP) and an ancillary services must-offer obligation (A/S Must-Offer Obligation).² On June 26, 2009, the Commission conditionally accepted in part and rejected in part the SCP Proposal, and required the CAISO make certain modifications to its SCP mechanism in a compliance filing.³ Specifically the Commission ordered the CAISO to: (1) submit a revised proposal for

¹ August 10, 2009 CAISO Compliance Filing in Docket No. ER09-1064-003. On August 11, 2009 the CAISO filed revised tariff sheets in Docket No. ER09-1064-004, noting that in its original compliance filing it failed to include all the changes in the clean tariff sheets that were reflected in the red-line tariff sheets. The August 10, 2009 and August 11, 2009 filings are referred to collectively throughout the remainder of this order as CAISO Compliance Filing or Compliance Filing.

² April 28, 2009 CAISO Ancillary Services Must Offer Obligation and Resource Adequacy Standard Capacity Product Filing in Docket No. ER09-1064-000 (SCP Proposal)

³ *Cal. Indep. Sys. Operator Corp.*, 127 FERC ¶ 61,298 (2009) (SCP Order).

determining the availability standard for non-resource specific imports; (2) propose a graduated mechanism for calculating the percentage of capacity that would be subject to non-availability charges; (3) change the cut-off date for the grandfathering exemption to the SCP Proposal from Jan 1, 2009 to June 28, 2009; (4) clarify the grandfathering provisions to allow any capacity additions contemplated by the initial term of the contract to be considered as part of the initial term of the contract and therefore covered by the grandfathering provisions; (5) clarify that non-resource specific imports can substitute internal CAISO resources for their resource adequacy capacity; (6) revise the proposed must-offer obligation such that a submission to self provide ancillary services does not satisfy an entity's energy must-offer obligation; (7) clarify that medium and long start resources are only obligated to remain available for the hours for which they are scheduled in the day ahead market; and (8) clarify that, when a partial bid is submitted for a resource's resource adequacy capacity, the CAISO will only submit a generated bid for the remaining capacity. On August 10, 2009, the CAISO submitted its Compliance Filing.

Notice and Responsive Pleadings

3. Notice of the Compliance Filing was published in the *Federal Register*, 74 Fed. Reg. 42,887 (2009), with comments and protests due on or before September 1, 2009. Comments and protests to the Compliance Filing were filed by the following: (1) Dynegy Morro Bay, LLC; Dynegy Moss Landing, LLC; Dynegy Oakland, LLC; Dynegy South Bay, LLC; and RRI Energy, Inc. (Dynegy); (2) California Department of Water Resources State Water Project (SWP); (3) Powerex Corp. (Powerex); and (4) Northern California Power Agency (NCPA).⁴ The CAISO filed an answer. Powerex filed an answer to the CAISO's answer.

Discussion

Procedural Matters

4. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by the CAISO and Powerex because they have provided information that assisted us in our decision-making process.

5. We note that this order primarily addresses contested features of the Compliance Filing. Aspects of the Compliance Filing that are not contested and not specifically discussed herein, the Commission finds are just and reasonable and hereby accepted.

⁴ NCPA filed comments in support of the Compliance Filing.

Availability Standard for Non-Resource Specific Imports

6. The core purpose of the SCP program is to encourage the availability of resource adequacy capacity by providing incentive payments as a reward for high availability and imposing non-availability charges to discourage poor performance. To measure each resource's performance, the CAISO develops specific monthly availability targets and compares the monthly operating status of non-exempt resource adequacy capacity resources against the monthly targets. In general, the availability standards are based on the availability of the resource adequacy fleet that is providing reliability to the CAISO system during the availability assessment hours (the pre-defined peak hours of that respective month) for the three previous years. Availability standards calculated in this manner apply to all resource specific resource adequacy capacity, regardless of whether that capacity is internal to the CAISO or imported. However, for non-resource specific imports, the CAISO had proposed a static target availability of 100 percent, rather than calculating distinct monthly targets based on historic availability data.⁵

7. In the SCP Order, the Commission found that the CAISO had not shown its proposed 100 percent standard for non-resource specific imports to be just and reasonable. The Commission observed that the CAISO appeared to base its 100 percent standard on unsupported assumptions regarding the flexibility and performance capability of these resources under ideal conditions, rather than rigorous evaluation of historic availability. The Commission expressed concerns that non-resource specific imports may be subject to transmission outages at the interties, or constrained generation and transmission resources beyond such ties, which could prevent imports from meeting the 100 percent availability standard.⁶

Compliance Filing

8. In the Compliance Filing, the CAISO proposes to initially hold non-resource specific system imports to the same availability standard as in-area resources until the CAISO is able to compile performance data on these system imports. The CAISO states that at the present time it does not currently have sufficient data to support a specific availability category for non-resource specific imports. The CAISO also states that, for the same reason, it will not include actual availability data from these resources in determining the resource adequacy fleet average. The CAISO contends that the use of the resource adequacy fleet standard will not disadvantage the non-resource specific imports for the following reasons: (1) if the scheduling coordinator for such a resource offers the full amount of capacity into the CAISO market and the CAISO does not fully

⁵ See SCP Order, 127 FERC ¶ 61,298 at P 9-11.

⁶ *Id.* P 26-27.

accept the offer, the amount not accepted will not count against the resource's availability calculation; (2) these resources, like other resource-specific resources, will be permitted to request unit substitution to meet the availability standard; and (3) the hours in which the resource is prohibited from bidding due to a transmission outage or when the path has been de-rated to zero, pursuant to section 30.8 of the CAISO tariff, will be excluded from the availability calculation. The CAISO asserts that these measures should allow scheduling coordinators for these resources to manage the risks associated with the application of the SCP in the manner proposed.⁷ The CAISO states that after the 2010 compliance year, it will evaluate the availability of the non-resource specific imports to determine appropriate availability standards.⁸

9. In addition, the CAISO states that in order to implement its proposal to exclude hours when the necessary transmission paths have been de-rated to zero, as discussed above, it will require scheduling coordinators to provide information on these transmission outages on a monthly basis. Accordingly, the CAISO states that it is revising its business practice manual for reliability requirements to incorporate this new requirement.⁹

Comments and Protests

10. Powerex objects to the CAISO's revised proposal to temporarily apply the availability standard for internal resources to non-resource specific imports. Powerex notes that in order to be eligible for incentive payments under the CAISO's revised proposal, imports will sometimes need to achieve greater than 100 percent availability. Powerex explains that this situation arises because under the SCP, internal resources must exceed the availability standard by more than the 2.5 percent tolerance band before they are eligible for incentive payments. Powerex states that the published availability standards for internal resources have often been close to 100 percent, meaning that a resource would need to achieve greater than 100 percent availability to receive an availability incentive payment. Powerex states that while it is theoretically possible for some internal resources to achieve greater than 100 percent availability, it is impossible for non-resource specific imports to do so. Powerex argues that it is unreasonable to hold resources to a standard that is impossible to meet. Thus, Powerex requests that the availability standard be revised to provide that resources are eligible for incentive payments if a resource either: (1) exceeds the monthly availability standard by more than

⁷ SCP Compliance Filing at 6-7.

⁸ *Id.* at 7.

⁹ *Id.* at 8.

2.5 percent; or (2) achieves 100 percent availability for the month in question, whichever is less.¹⁰

11. Powerex also argues that the CAISO has not justified its proposal to require scheduling coordinators to report information about transmission line de-rates. Powerex states that the CAISO posts information about transmission line de-rates on its OASIS, making the proposed requirement both unnecessary and unduly burdensome.¹¹

Answers

12. The CAISO argues that Powerex's position regarding the availability incentive payment standard constitutes an impermissible collateral attack on the SCP Order because the 2.5 percent tolerance band was a feature of the SCP that was developed through a lengthy and robust stakeholder process and approved by the Commission in the SCP Order. Further, the CAISO rejects the substance of Powerex's protest. According to the CAISO, the intent of the incentive payment is to reward resources that perform significantly above the standard. Thus, if the availability standard is set so high as to leave no room for the 2.5 percent tolerance band between the applicable availability standard and 100 percent availability, then resources performing at 100 percent are not sufficiently superior to resources that merely meet the standard to warrant an incentive payment.¹²

13. In addition, the CAISO refutes Powerex's argument regarding the proposed new reporting requirement. The CAISO notes that while it does have access to information on transmission outages at interties, this data is only part of the information needed to determine which hours should be exempt from the availability calculation. For example, the CAISO notes that the transmission outage may occur at a time when a resource was not proposing to submit bids on that transmission path, in which case the transmission outage should not affect the entity's availability. The CAISO asserts its belief that such monthly reports are necessary and, given the limited scope of the proposed reports, will not unduly burden the scheduling coordinators.¹³

¹⁰ September 1, 2009 Powerex Comments on Compliance Filing in Docket Nos. ER09-1064-003 and ER09-1064-004 at 2-4 (Powerex Comments).

¹¹ Powerex Comments at 5.

¹² September 16, 2009 CAISO Motion for Leave to Answer and Answer to Protests and Comments in Docket Nos. ER09-1064-003 and ER09-1064-004 at 7-9 (CAISO Answer).

¹³ CAISO Answer at 6-7.

14. Powerex maintains that its arguments are not a collateral attack on the SCP order because its August 10, 2009 comments on the SCP Compliance Filing were Powerex's first opportunity to address the CAISO's revised proposal after the following pieces of information became available: (1) the CAISO now proposes subjecting non-resource specific imports to the same 2.5 percent tolerance band as internal resources, which was not proposed in the CAISO's original filing; and (2) the applicable monthly availability standards, first published on the CAISO website in August 2009, would be greater than 97.5 percent. Powerex notes that the CAISO's original proposal provided for incentive payments for non-resource specific imports that achieved 100 percent availability, rather than requiring greater than 100 percent availability. Powerex states that its objection is not to the tolerance band itself, but only to how the tolerance band is being applied to the non-resource specific imports in the CAISO's revised proposal.¹⁴

15. Powerex also argues that the CAISO has not yet justified its requirement that resources report when they are prevented from bidding by a transmission outage or derate. Powerex states that the CAISO's explanation only "illustrates the absurdity" of the CAISO's reporting requirement.¹⁵ Powerex states that a requirement that resources monitor transmission paths, refrain from bidding when those paths are out of service, and inform the CAISO when those paths are out of service is an unnecessary burden to place on market participants. Powerex argues that the true problem lies in the fact that the CAISO's software does not automatically reject bids on transmission paths that are out of service. Powerex notes that the CAISO has committed to updating its software to automatically reject schedules on zero rated transmission paths. Powerex argues that making this update would avoid the unnecessary burden of a reporting requirement.¹⁶

Commission Determination

16. We accept the CAISO's proposal to temporarily hold non-resource specific system imports to the same availability standard as in-area resources. We find that this represents an acceptable interim solution in the absence of adequate data on non-resource specific imports. This interim provision also ensures that imports will not be held to the perfect standard that we found objectionable in the SCP Order,¹⁷ since the 2.5 percent tolerance band will provide some leeway for marginal deficiencies in availability for even

¹⁴ September 25, 2009 Powerex Motion for Leave to Answer and Answer in Docket Nos. ER09-1064-003 and ER09-1064-004 at 6 (Powerex Answer).

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 6-8.

¹⁷ *See* SCP Order, 127 FERC ¶ 61,298 at P 26-27.

the highest of availability standards. In addition, we find that the CAISO's proposal accommodates the specific characteristics of this class of resources, which would otherwise render their availability levels incomparable to those of internal resources. Specifically, we accept the CAISO's proposal to: (1) allow imports to substitute internal resources to provide energy at a given scheduling point; (2) exclude resource adequacy capacity offered into the CAISO's market, but not accepted by the CAISO, from a resource's availability calculation; and (3) exclude hours in which a resource is prohibited from bidding across an out-of-service transmission path from that resource's availability calculation. Accordingly, we find that the CAISO's proposal to apply the internal resource adequacy availability standard is just and reasonable on a temporary basis until the CAISO has collected and evaluated sufficient data to determine a more appropriate availability standard for these resources. However, to help ensure that this temporary measure does not become permanent, we direct the CAISO to report on its progress on this issue and/or file a revised proposal no later than 60 days prior to the start of the 2011 compliance year.

17. We reject Powerex's argument that the CAISO's proposal unreasonably holds resources to an availability standard they are not able to achieve. To the extent that Powerex's argument applies to internal resource adequacy resources, we find Powerex's protest to be an impermissible collateral attack on the SCP Order. The incentive payment mechanism for internal resources, including the 2.5 percent tolerance band, was the subject of the original SCP Proposal, approved in the SCP Order. It is not a new feature of the Compliance Filing. Thus, the proper forum for challenging the Commission's approval of the tolerance band was on rehearing of the SCP Order. Powerex did not avail itself of this opportunity. The current proceeding, which is limited to the issue of whether the CAISO has complied with the directives of the SCP Order, is not the appropriate forum for challenging this feature of the SCP program.

18. To the extent that Powerex is claiming that the application of the tolerance band to the non-resource specific imports is unduly discriminatory, we find that Powerex has failed to demonstrate that the CAISO's proposal is unjust and unreasonable. As Powerex observes, both internal resource adequacy and non-resource specific imports would be required to achieve greater than 100 percent availability to be eligible for incentive payments under the CAISO's revised proposal. However, Powerex claims that exceeding 100 percent availability "may be theoretically possible for some internal [resource adequacy] resources."¹⁸ Powerex does not explain which resources may be able to do this or how it may be possible. Indeed, the CAISO tariff itself, which specifies that the result of the availability calculation will be a "number between zero percent (0%) and one

¹⁸ Powerex Comments at 3.

hundred percent (100%),”¹⁹ appears to preclude the possibility of a resource achieving greater than 100 percent availability. Without a more persuasive demonstration, we cannot find that the CAISO’s proposal places the non-resource specific imports at any type of economic or competitive disadvantage, vis à vis the internal resources, that would render the CAISO’s proposal unjust or unreasonable.

19. Moreover, the Commission agrees with the CAISO that only those resources that have availability percentages exceeding the tolerance band should receive availability incentive payments. Incentive payments are intended to reward exceptional performers whose availability is significantly above the average availability. The CAISO determined through a stakeholder process that if a resource has exceeded average performance by 2.5 percent, it has achieved significantly higher than normal availability that will qualify the resource for availability incentive payments.

20. Finally, we disagree with Powerex’s assertion that the CAISO’s proposed intertie outage reporting requirement is unnecessary and unduly burdensome. As the CAISO notes, it has access to transmission outage information, but currently needs additional information to determine whether a resource was prevented from bidding by an outage. Furthermore, providing this information to the CAISO benefits the non-resource specific imports by ensuring that such outages do not count against the resources’ availability calculations. A monthly report, with limited scope, that potentially benefits the party reporting the information does not appear to constitute an undue burden. Therefore, we find that it is reasonable for the CAISO to require scheduling coordinators to report the availability information under the SCP.

21. We note, however, that Powerex correctly states that the CAISO has committed to updating its software to automatically reject bids over interties with outages. We agree with Powerex that that managing outage information automatically through the software would be a more efficient way to determine whether scheduling coordinators have been prevented from bidding due to transmission outages at the interties. The Commission has previously addressed this issue. In an order issued in 2004, the Commission first accepted a proposal by the CAISO to prohibit bidding across out-of-service transmission lines, but set the effective date as the date when the CAISO was able to implement a software upgrade that would automatically reject such bids.²⁰ This provision has been incorporated at section 30.8 of the MRTU Tariff, which became effective March 31, 2009. However, the planned software update has not been implemented. Accordingly,

¹⁹ CAISO Tariff § 40.9.4.

²⁰ *California Indep. Sys. Operator Corp.*, 106 FERC ¶ 61,179, at P 121 (2004).

we direct the CAISO to report to the Commission on the status of this software update within 30 days of the date of this order.²¹

Non-Availability Charges

22. As part of its plan to establish financial disincentives to discourage poor performance, the SCP Proposal provided for non-availability charges to be assessed each month against resources that fail to achieve a level of availability equal to the applicable availability standard less the 2.5 percent tolerance band. If a resource's availability was calculated at less than 50 percent for a given month, the CAISO had proposed to subject the resource's entire resource adequacy capacity to the non-availability charge.²² In the SCP Order, the Commission found that the 50 percent availability threshold, as proposed by the CAISO, was not just and reasonable because it would have distorted performance incentives and could have had an adverse impact on reliability. The Commission explained that the assessment of non-availability charges should more accurately reflect the actual value of the capacity being provided. The Commission determined that a graduated approach that establishes incremental non-availability charges throughout the entire dispatchable range of resource adequacy capacity above a resource's minimum operating level would more properly align with the CAISO's stated goals for the SCP program. Accordingly, we directed the CAISO to submit a revised proposal for the assessment of non-availability charges that takes a graduated approach.²³

Compliance Filing

23. In the Compliance Filing, the CAISO proposes to assess the availability charge on a resource's entire resource adequacy capacity only when the resources' monthly calculated availability is zero megawatts (MW). Otherwise, the non-availability charge assessed will correspond inversely with the MW available. As total MW available for a resource increases, the total MW of resource adequacy capacity subject to the non-availability charge decreases.²⁴

24. To accomplish this, the CAISO proposes two formulas. According to the CAISO, the first formula would apply in instances where a resource's total availability for a given

²¹ We note that this report is for informational purposes only and does not require Commission action.

²² SCP Proposal at 30.

²³ SCP Order, 127 FERC ¶ 61,298 at P 41.

²⁴ CAISO Compliance Filing at 4-5.

month is greater than the resource's minimum operating value. Under this formula, the non-availability charge assessed would be equal to the resource's resource adequacy capacity, multiplied by the applicable monthly availability standard minus the 2.5 percent tolerance band, minus the resource's actual monthly availability. The second, more complex formula would apply in instances where the resource's monthly availability is less than that resource's minimum operating value.²⁵ The CAISO states that under the revised methodology, there is a direct linear relationship between availability and non-availability charges.²⁶

Comments and Protests

25. Dynegy questions the necessity of the CAISO's proposed two-formula approach, as well as its consistency with the directives of the SCP Order. Dynegy argues that the first formula, with one minor modification, accomplishes the Commission's objectives. However, Dynegy objects to the CAISO's second proposed formula. First, Dynegy argues that the second formula produces unexpected results that were not contemplated by the SCP Order. In addition, Dynegy objects to the second formula's dependence upon a resource's minimum operating level and states that it does not understand why a resource's minimum operating level should have any bearing on the amount of capacity subject to the non-availability charge. Therefore, Dynegy requests that the Commission delete the second formula and modify the first formula to apply in all circumstances. Further, Dynegy requests the Commission to direct the CAISO to add a rule stating that if a resource's monthly availability is zero, that resource's entire resource adequacy capacity will be subject to the non-availability charge.²⁷

26. State Water Project states that the CAISO's proposal for calculating the MW capacity subject to the non-availability charge should be modified and further explained. State Water Project notes that the CAISO's formula states that one of its terms is a MW quantity while the term's definition references a tariff provision that produces a percentage result. State Water Project requests the Commission to direct the CAISO to either modify the formula to use a percentage, or instead use a measure that yields the MW value needed for the formula. State Water Project also states that while it does not

²⁵ The second formula is: $P = RA - (X/PMin)[RA(1 - (S - .025)) + PMin]$; where: P = the resource adequacy capacity subject to non-availability charge; S the monthly availability standard; RA = the resource's total resource adequacy capacity; and X = the resource's monthly calculated availability. CAISO Compliance Filing at 5.

²⁶ *Id.*

²⁷ September 1, 2009 Dynegy Protest in Docket Nos. ER09-1064-003 and ER09-1064-004 at 2-4.

oppose the CAISO's proposal in principle, greater clarity in the derivation and operation of the second formula is required to ensure that it will operate as intended and that the parties understand the formula's inputs and result.²⁸

Answers

27. The CAISO states that Dynegy's argument is flawed. The CAISO maintains that using a two formula approach is much more consistent with the Commission's directive to implement a graduated approach to the non-availability charge than having the capacity subject to the charge suddenly jump up to the full resource adequacy capacity when availability is exactly zero, but remain substantially less than the full resource adequacy value when availability is infinitesimally close to zero. The CAISO states that it chose each resource's minimum operating value as the break between the two formulas because it represented a reasonable range across which the second formula would apply.²⁹

28. The CAISO notes that SWP has correctly identified an inconsistency in the measurement terms of the availability calculations and states it will include a correction in a future compliance filing that converts the product of the formula to a percentage. In response to State Water Project's request for additional explanation regarding the derivation and operation of the formula, the CAISO asserts that this level of detail is more appropriate for inclusion in the business practice manual. The CAISO encourages SWP to participate in the change management proceeding it initiated on September 4, 2009 and to provide its comments and suggestions in that forum.³⁰

Commission Determination

29. The Commission finds that as a result of the CAISO's two formula approach, the amount of a resource's capacity subject to the non-availability charge will increase at a faster rate once the resource's availability falls below its minimum operating value than under the formula applicable when availability is greater than the minimum operating value. Thus, a resource with a high minimum operating value would have greater levels of its capacity subject to the non-availability charge than a similarly situated resource with a lower minimum operating value for all scenarios where availability is less than the minimum operating value.

²⁸ August 31, 2009 SWP Comments in Docket Nos. ER09-1064-003 and ER09-1064-004 at 1-5 (SWP Comments).

²⁹ CAISO Answer at 9-11.

³⁰ *Id.* at 12-13.

30. The Commission finds that this result is unjust, unreasonable, and unduly discriminatory. The CAISO has not identified any reason why entities with higher minimum operating values should have a larger percentage of their capacity subject to non-availability charges. The CAISO merely states in its answer that the minimum operating value represents a convenient threshold to switch between formulas.³¹ This explanation is not sufficient to justify one class of resources being systematically disadvantaged by having higher percentages of their capacity subject to non-availability charges.

31. The Commission finds that instead of using a separate formula when available capacity falls below a resource's minimum operating value, the CAISO should use a single formula across all levels of availability, including zero. If the CAISO uses only this formula, the megawatt capacity subject to the non-availability charge will increase across all levels of availability at a one-to-one ratio in inverse relation to capacity available, and no resource will be unduly discriminated against by the structure of the formula.

32. The CAISO is correct that the formula will not subject a resource's entire resource adequacy capacity to the non-availability charge when availability equals zero, but the Commission finds that this result is reasonable. When availability equals zero under the single formula, the non-availability charge will be assessed against the percentage of resource adequacy capacity below the tolerance band. This is reasonable because the charge is only assessed once a resource's availability falls below the tolerance band. We therefore find it unnecessary to implement the rule suggested by Dynegy that would subject a resource's entire resource adequacy capacity to the non-availability charge when that resource's monthly availability equals zero. Accordingly, the Commission directs the CAISO to revise its tariff to eliminate its second proposed formula, and retain only the first formula. The Commission also directs the CAISO to correct the remaining formula so that it properly references a megawatt value rather than a percentage value for the availability level, as requested by State Water Project. We direct the CAISO to include these changes in a compliance filing no later than 30 days from the date of this order.

The Commission orders:

(A) The CAISO's Compliance Filing is hereby accepted, as modified and discussed in the body of this order.

³¹ *Id.* at 11.

(B) The CAISO is hereby directed to submit a compliance filing within 30 days of the date of this order that includes the tariff modifications discussed in the body of this order.

(C) The CAISO is hereby directed to submit an informational report on the status of its planned software update within 30 days of the date of this order, as discussed in the body of this order.

(D) The CAISO is hereby directed to submit an informational report and/or file a revised proposal regarding the availability standard applicable to non-resource specific imports within 60 days of the start of the 2011 compliance year.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.