

131 FERC ¶ 61,149
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 No. ER09-1064-001

ORDER ON REHEARING

(Issued May 20, 2010)

1. In this order, the Commission denies requests for rehearing of the order issued on June 26, 2009 that accepted in part, subject to modification, and rejected in part a proposal by the California Independent System Operator Corporation (CAISO) to establish a resource adequacy Standard Capacity Product (SCP) and Ancillary Services Must-Offer Obligation (A/S Must-Offer Obligation).¹

I. Background

2. On April 28, 2009, the CAISO filed its SCP and A/S Must-Offer Obligation proposal, explaining that the proposed tariff provisions were intended to enhance the CAISO's resource adequacy program and grid reliability.² In the June 26, 2009 Order, the Commission found that the SCP satisfies this objective through the following: (1) establishing standards for measuring the availability of resource adequacy capacity for most resources; (2) setting up a system of availability penalties for resources that fall short of their requirements; and (3) providing incentives for availability by distributing the penalty payments to those resources that exceed their requirements.³ The Commission further found that implementing the A/S Must-Offer Obligation would enable the CAISO to more efficiently co-optimize the capability of resource adequacy

¹ *Cal. Indep. Sys. Operator Corp.*, 127 FERC ¶ 61,298 (2009) (June 26, 2009 Order).

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

³ See June 26, 2009 Order, 127 FERC ¶ 61,298 at P 2, 8.

capacity by ensuring that sufficient capacity is available to the CAISO in all hours to meet operating requirements, thereby enhancing grid reliability and market efficiency.⁴

3. The City of Santa Clara (SVP) and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities) filed timely requests for rehearing of the June 26, 2009 Order. The CAISO filed an answer.

II. Discussion

A. Procedural Matters

4. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2009), prohibits answers to requests for rehearing. Accordingly, we reject the CAISO's answer.

B. Energy Bid Requirement for Resource Adequacy Resources that Self-Provide Ancillary Services

5. In the June 26, 2009 Order, the Commission found that the self-provision of ancillary services should not satisfy a resource adequacy resource's obligation to offer energy into the CAISO's markets.⁵ The Commission explained that this would be contrary to the purpose of the must-offer obligation, as it could have the effect of limiting participation in the CAISO's energy markets. Further, the Commission rationalized that resources "supplying resource adequacy capacity have the obligation to offer energy into CAISO markets to ensure that resource adequacy capacity is available and that markets will be sufficiently liquid."⁶

1. Six Cities Request for Rehearing

6. Six Cities request rehearing of the Commission's finding that the self-provision of ancillary services by a resource should not fulfill its resource adequacy must-offer obligation and the Commission's direction to the CAISO to make the necessary tariff revisions to implement this change.⁷ Six Cities argue that the Commission's action is procedurally flawed because the Commission failed to make a finding, based on

⁴ *Id.* P 100-103.

⁵ June 26, 2009 Order, 127 FERC ¶ 61,298 at P 126.

⁶ *Id.*

⁷ Six Cities Rehearing Request at 1 (citing June 26, 2009 Order, 127 FERC ¶ 61,298 at P 126).

substantial evidence, that the existing tariff provisions were unjust and unreasonable before directing the CAISO to submit the specified tariff revisions. Six Cities assert that the CAISO did not propose any modifications to the existing tariff provisions pertaining to the bidding obligations of resources that self-provide ancillary services.⁸

Consequently, Six Cities argue that before the Commission can require modification of existing tariff provisions, it must find those provisions to be unjust and unreasonable. Six Cities submit that in the absence of such a finding, the Commission lacks authority to require this modification, thereby rendering the determination invalid.

7. In addition, Six Cities contend that the Commission's directive is inconsistent with other CAISO Tariff provisions that allow scheduling coordinators to attach contingency flags to ancillary services bids. Six Cities cite to the provision of the MRTU Tariff that defines a contingency flag as a bid component that enables a scheduling coordinator to indicate that a resource's ancillary service capacity should be dispatched for energy only in the event of certain, tariff-defined contingencies.⁹ Six Cities argue that a requirement to submit an energy bid in conjunction with a submission to self-provide ancillary services is incompatible with the scheduling coordinators' authority to attach contingency flags to bids for spinning and non-spinning reserves.¹⁰ Thus, Six Cities assert that the Commission has failed in its duty to articulate a rational connection between the facts found and the policy choices made.¹¹

8. Six Cities assert that the Commission's determination appears to be inconsistent with the requirements applicable to use-limited and hydroelectric resources. Specifically, Six Cities argue that the Commission's determination creates a requirement for a use-limited or hydroelectric resource adequacy resource that makes a submission to self-provide ancillary services to simultaneously submit an energy bid. Six Cities argue that such a requirement is internally inconsistent with the Commission's approval of the CAISO's proposal to exempt use-limited and hydroelectric resources from the A/S Must-Offer Obligation, based on the Commission's finding that the CAISO currently lacks the

⁸ *Id.* at 6 (citing SCP Proposal at n.42, explaining that under the MRTU Tariff, as well as the pre-MRTU Tariff, resource adequacy resources have been able to satisfy their must-offer obligation through submissions to self-provide an ancillary service).

⁹ *Id.* at 7 (citing CAISO Tariff § 30.5.2.2, 30.5.2.6.2, and 30.5.2.6.3).

¹⁰ *Id.* at 7-8.

¹¹ *Id.*

ability to effectively co-optimize the use of energy and capacity from these types of resources.¹²

Commission Determination

9. We deny rehearing. First, Six Cities' assertion that the Commission directed the CAISO to revise previously existing tariff provisions is without merit. As the CAISO indicated in the SCP Proposal, the existing tariff language was silent on the issue of whether submissions to self-provide ancillary services satisfy the resource adequacy must-offer obligation.¹³ To eliminate ambiguity on the issue, the CAISO proposed new language in the SCP Proposal to create an exemption from the energy must-offer obligation for resource adequacy capacity that is covered by a submission to self-provide ancillary services.¹⁴ Prior to the SCP, although not expressly addressed in the tariff, the effective operational practice permitted resource adequacy resources to satisfy their must-offer obligations by offering either energy or ancillary services into the CAISO markets.¹⁵ Thus, the self-provision of ancillary services could be used to satisfy the resource adequacy obligation. The A/S Must-Offer Obligation that was introduced as part of the SCP, however, requires resource adequacy resources to offer both energy and ancillary services. In connection with this change to resource adequacy resource requirements, the CAISO proposed the exemption from the energy must-offer for resources self-providing ancillary services as a new feature of the SCP.

10. Because the proposed exemption constituted a new tariff provision that supersedes the previously existing tariff language, as the filing party, the CAISO had the burden, under section 205 of the Federal Power Act (FPA),¹⁶ of justifying the proposed change.¹⁷ In the June 26 Order, the Commission agreed with NRG that the CAISO had not adequately supported its proposal to add this new tariff provision and found that

¹² *Id.* at 8 (citing June 26, 2009 Order, 127 FERC ¶ 61,298 at P 122-24).

¹³ *See* SCP Proposal at n.42.

¹⁴ *See id.* at Appendix B, proposed § 40.6.1(1).

¹⁵ Prior to SCP, Section 40.6.1(1) of the tariff stated that resource adequacy resources were required to submit "Economic Bids or Self Schedules" for all of their resource adequacy capacity. The term "Bid" was defined, in part, as "an offer of Energy or Ancillary Services" in Appendix A of the tariff.

¹⁶ 16 U.S.C. § 824d (2006).

¹⁷ *See, e.g., ISO New England Inc.*, 113 FERC ¶ 61,055, at P 22 (2005) (*ISO New England*).

exempting resources that self-provide ancillary services from their energy offer obligations could adversely impact the California energy markets.¹⁸ Therefore, the Commission's determination that the newly-proposed exemption was not just and reasonable, as well as its directive to modify the provision, came within its statutory authority under section 205 of the FPA.¹⁹ Accordingly, we conclude that the Commission correctly evaluated the new SCP Proposal under section 205 of the FPA and, therefore, contrary to Six Cities' contention, the Commission was not required to find the existing tariff provisions unjust and unreasonable under section 206 of the FPA before requiring the tariff modification.²⁰

11. Next, Six Cities' contention that the Commission's directive in the June 26, 2009 Order is inconsistent with existing tariff provisions that permit market participants to restrict the dispatch of ancillary service capacity to certain, tariff-defined contingencies by attaching a contingency flag to ancillary service bids is also in error. The provisions relied on by Six Cities, which pertain to the use of contingency flags, set forth general bidding requirements that apply to all market participants that bid into the CAISO markets and are not specific to the resource adequacy program. In contrast, the new A/S Must-Offer Obligation rules merely affect the obligations an entity must fulfill if it wishes to participate in the resource adequacy program.

12. We also note that resource adequacy capacity is governed by its own rules and requirements in addition to the general tariff provisions cited by Six Cities. Under the general tariff provisions, a non-resource adequacy resource does not have the same obligation to bid into the CAISO's markets that a resource adequacy resource has; only if a non-resource adequacy resource chooses to participate in the CAISO's markets must it follow the general bidding requirements set forth in the tariff. In contrast, resource adequacy capacity is subject to the energy and ancillary services must-offer obligation. The CAISO Tariff states that "[r]esource [a]dequacy [r]esources must be available" in the day-ahead market, but notes exceptions for certain pre-approved limitations, legal or regulatory prohibitions, or as otherwise required by the tariff or good utility practice.²¹ The contingency flag option does not trump resource adequacy obligations. Therefore,

¹⁸ June 26, 2009 Order, 127 FERC ¶ 61,298 at 126.

¹⁹ *ISO New England*, 113 FERC ¶ 61,055 at P 20-27 (explaining that "the Commission, upon finding that a utility has failed to meet its burden to justify a proposed new rate, can accept an alternative rate by finding that alternative rate to be just and reasonable.").

²⁰ 16 U.S.C. § 824e (2006).

²¹ CAISO Tariff § 40.6.1(3).

there is no inconsistency between a resource adequacy resource's obligation to submit an energy bid, even if that same capacity is covered by a submission to self-provide ancillary services, and the general bidding practice that permits use of a contingency flag. Furthermore, our determination on this issue supports the primary goal of the resource adequacy program, which is to ensure that sufficient capacity is available and that the CAISO markets will be sufficiently liquid.

13. Finally, the Commission rejects Six Cities' argument that the Commission's refusal to allow an exemption from the energy must-offer obligation for entities that self-provide ancillary services is internally inconsistent with the decision to allow an exemption from the A/S Must-Offer Obligation for use-limited and hydroelectric resources. Use-limited and hydroelectric resources are not subject to the must-offer obligation in section 40.6.1, but, rather, are subject to the special availability requirements of section 40.6.4. The Commission's determination on the self provision of ancillary services impacts only those resources that are subject to the must-offer obligation in section 40.6.1. Because use-limited resources are not subject to that must-offer obligation, the question of whether a submission to self-provide ancillary services fulfills that obligation is irrelevant with respect to those resources. Thus, the Commission's finding regarding the self-provision of ancillary services is not internally inconsistent with the exemption from the A/S Must-Offer Obligation for use-limited resources.

14. We also note that, as explained in the June 26, 2009 Order, use-limited resources and hydroelectric facilities are unique in that they have certain restrictions on their ability to offer energy and ancillary services into the CAISO markets. Use limited resources are constrained by environmental restrictions or other factors and are therefore not able to operate continuously on a daily basis. Ancillary services are also difficult to incorporate into the use plans for use-limited resources, since the CAISO software currently lacks the capability of co-optimizing energy and ancillary services for use-limited resources. Hydroelectric facilities are constrained by responsibilities beyond electric generation, such as water management and other environmental objectives, which may prevent them from offering ancillary service bids even when they are able to offer energy bids. Therefore, we continue to find that it is reasonable to apply different requirements to the use-limited and hydroelectric resources. Accordingly we deny Six Cities' request for rehearing.

C. Outage Reporting Requirement for Small Generators

15. In the SCP Proposal, the CAISO proposed the following: (1) to require outage reporting by resource specific imports that are resource adequacy resources similar to the reporting required of internal resource adequacy resources; and (2) to require resources with a maximum output capability of 1 megawatt or more, but which are not subject to

the existing outage reporting requirements, to provide monthly information on forced outages.²² The CAISO explained that this information would help develop the availability standards and administer the SCP program by providing appropriate information on outages and de-rates of resource adequacy resources.

16. In the June 26, 2009 Order, the Commission found that the CAISO's proposal to require 1 to 10 megawatt units to report outages to be just and reasonable. The Commission elaborated that it has generally rejected the argument that a market participant's small size should exempt it from reporting requirements designed to assist the CAISO in ensuring the reliability of the grid.²³ The Commission explained that "while these units comprise a relatively small portion of total system capacity, it would be imprudent to simply ignore this capacity without a compelling reason."²⁴ The Commission did not agree with commenters that this requirement was overly burdensome for 1 to 10 megawatt units that are supplying resource adequacy capacity, particularly because of the voluntary nature of the resource adequacy program and the benefits derived from participation.

1. SVP Request for Rehearing

17. SVP argues that the Commission erred by approving the CAISO's proposal to require outage reporting by resources with maximum output capability between 1 and 10 megawatts. SVP claims that the Commission failed to support its approval of the reporting requirement for small generators with record facts and findings. According to SVP, the CAISO offered no explanation or justification for the imposition of this requirement on small generators in its SCP Proposal. In addition, SVP complains that the Commission did not address SVP's concern regarding the CAISO's failure to provide the relevant business practice manuals governing the reporting of monthly outage information. SVP alleges that without the relevant business practice manuals, it is impossible to determine the level of burden this requirement will impose on small generators.²⁵

18. SVP further contends that the Commission's approval of this requirement runs counter to what SVP characterizes as "the overwhelming and un rebutted evidence in

²² SCP Proposal at 29.

²³ June 26, 2009 Order, 127 FERC ¶ 61,298 at P 93 (citing *Cal. Indep. Sys. Operator Corp.*, 113 FERC ¶ 61,187, at P 39 (2005)).

²⁴ *Id.*

²⁵ SVP Rehearing Request at 8.

support of an exemption.”²⁶ Moreover, SVP asserts that the Commission erred by failing to respond to or otherwise acknowledge the issues raised in SVP’s protest, such as the likely increased costs of compliance, the fact that the costs of compliance may force small generators to cease providing resource adequacy services, and the fact that the requirements are not consistent with existing (resource adequacy) contracts.²⁷

19. Finally, SVP argues that in making its determination, the Commission misapplied precedent that supports an exemption from the outage reporting requirements for small units. According to SVP, the order approving Amendment No. 72 to the CAISO Tariff²⁸ does not support the Commission’s finding that a market participant’s small size does not, in itself, justify an exemption from reporting requirements. Rather, SVP claims that the Amendment No. 72 Order stands for the proposition that “the Commission will look at the impact of an entire class, as opposed to the impact of one individual in that class, when determining whether smaller entities should be exempt from reporting requirements.”²⁹ Based on this interpretation of the Amendment No. 72 Order, SVP concludes that precedent favors creating an exemption from the reporting requirement because there is no evidence that exempting the small generators, in the aggregate, would have a significant impact on reliability.³⁰ Thus, SVP asserts that the Commission’s approval of the reporting requirement is arbitrary and capricious and otherwise unlawful because it is not supported by substantial record evidence and is inconsistent with Commission precedent.

2. Commission Determination

20. The Commission denies SVP’s request for rehearing, as discussed below. We reject SVP’s assertions that the record contains “overwhelming and un rebutted evidence in support of an exemption.”³¹ Rather, we find that support offered for the requested exemption consists primarily of unsubstantiated claims of administrative burden and

²⁶ *Id.* at 3.

²⁷ *Id.* at 3, 8-9, 11.

²⁸ *Id.* at 10 (citing *Cal. Indep. Sys. Operator Corp.*, 113 FERC ¶ 61,187, at P 39 (2005) (Amendment No. 72 Order)).

²⁹ *Id.* at 9.

³⁰ *Id.* at 9-10.

³¹ *Id.* at 3.

speculative statements regarding the possible impact on the resource adequacy program.³² While the burden of persuasion regarding the justness and reasonableness of a proposed tariff revision remains with the filing party, the Commission requires a protesting party to make an adequate proffer of evidence to call into question the reasonableness of the challenged revision.³³ Mere speculation does not amount to a showing that the CAISO's proposal to require outage reporting by small generators is unjust or unreasonable, or even raise a question of material fact that cannot be resolved on the basis of the written record that would warrant a hearing on the issue. Nor has SVP presented compelling policy reasons for exempting 1-10 megawatt resource adequacy resources from the SCP program and availability standards. Given the absence of evidence demonstrating any undue burden on 1-10 megawatt generators, we continue to find that it would be imprudent to simply ignore the availability of these generators, despite their relatively small size, while allowing them to enjoy the benefits of participation in the resource adequacy program. Furthermore, because the Commission was able to determine, based on the evidence in the record, that the CAISO's proposal to require outage reporting was just and reasonable, we did not find it necessary to require additional details regarding the reporting template and process from the CAISO's business practice manuals to support our finding.³⁴ Finally, if the CAISO ultimately applies the outage reporting requirements in a manner that is unjust, unreasonable, or unduly discriminatory as applied to 1-10 megawatt generators, SVP retains the right to file a complaint under section 206 of the FPA.³⁵

21. Similarly, we disagree with SVP's contention that it raised facially-legitimate concerns regarding the impact of outage reporting on the existing resource contracts of smaller generators. In its protest, SVP stated only that, "[t]he requirements may also require modification of existing resource contracts."³⁶ SVP failed to identify specific contract provisions that may be affected or provide evidence of how potential contract modifications may impact small generators. As discussed above, mere speculation cannot satisfy a protestor's burden in raising a question about the reasonableness of the

³² See SVP May 19, 2009 Protest in Docket No. ER09-1064-000 at 17-18 (SVP Protest).

³³ See, e.g., *New Dominion Energy Cooperative*, 122 FERC ¶ 61,174, at P 61-66 (2008).

³⁴ We note that the relevant provisions of the business practice manuals had not been developed when the CAISO submitted the SCP Proposal.

³⁵ 16 U.S.C. § 824e (2006).

³⁶ SVP Protest at 17.

challenged provision. Moreover, the SCP tariff includes a provision that exempts from the SCP capacity under contracts executed prior to June 28, 2009 for the remainder of the current contract period.³⁷ SVP failed to demonstrate how this grandfathering provision was insufficient to insulate their eligible existing contracts from potential inconsistencies.

22. Based on the evidence in the record, the Commission accepted the CAISO's proposal to apply the availability standards to particular resource adequacy resources, while exempting others.³⁸ The CAISO did not propose a deferral of or exemption from the availability standards for resources with maximum output greater than 1 megawatt. Moreover, the CAISO stated in the SCP Proposal that it will need "appropriate information on [o]utages and derates of [resource adequacy] [r]esources"³⁹ in order to develop the availability standards and administer the SCP Program. Thus, we continue to find that the reporting requirement is needed to collect outage information in order to ensure that the SCP achieves the goal of enhancing the resource adequacy program.⁴⁰ Moreover, we reiterate that because participation in the resource adequacy program is voluntary, our approval of the outage reporting requirement does not impose new administrative burdens on any market participant that has not elected to participate in and benefit from the resource adequacy program, which includes enjoying the benefit of a guaranteed capacity payment and eligibility to earn further incentive payments through the SCP program. Accordingly, we find that it is just and reasonable to expect such resources to fulfill the attendant obligations, including the provision of required outage information.

23. Finally, SVP's reliance on the Amendment No. 72 Order is in error. In the Amendment No. 72 Order the Commission found that the small size of a load serving entity was not a valid basis for exempting it from a proposed reporting requirement. Specifically, the Commission explained that the actions of a group of small load serving entities can have a significant impact on CAISO operations if they engage in similar

³⁷ June 26, 2009 Order, 127 FERC ¶ 61,298 at P 65-67.

³⁸ See SCP Proposal at 3-8, 14-21.

³⁹ SCP Proposal at 28.

⁴⁰ We note that our finding on this issue, within the context of the SCP proceeding, should not impact the outage reporting requirements currently being considered in Docket No. ER10-319-000 because intermittent resources are temporarily exempt from the SCP program. See June 26, 2009 Order, 127 FERC ¶ 61,298 at P 56. To the extent that subsequent CAISO proposals for the expansion of the SCP to include intermittent resources may require us to re-evaluate our position, we will reserve judgment on the matter until an appropriate filing is before the Commission.

scheduling behavior.⁴¹ In the case at hand, small generators are not providing the CAISO with regular availability information, meaning that the CAISO may over-procure backstop capacity to meet its reliability needs. Thus, exempting the 1-10 megawatt generators from the outage reporting requirements, while allowing them to participate in the SCP program, could create a situation in which the small, unavailable generators would be permitted to lean on other resource adequacy resources without penalty. The CAISO expressly stated that one of the goals of the SCP program was to discourage load serving entities and poor-performing resources from “leaning on others to the detriment of supply sufficiency.”⁴² We agree with the CAISO that excluding the 1-10 megawatt generators from the outage reporting requirement could potentially undermine this goal. Thus, we find that in this instance, as in the Amendment No. 72 Order, a particular class of market participants has the ability to adversely impact CAISO operations, in this case by failing to make their resource adequacy available and neglecting to report outage information to the CAISO. Our approval of the outage reporting requirement in the June 26, 2009 Order is, therefore, consistent with Commission precedent. Accordingly, we continue to find that our denial of request for an exemption from the outage reporting requirement, on the basis of size alone, is justified.

The Commission orders:

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴¹ Amendment No. 72 Order, 113 FERC ¶ 61,187 at P 39.

⁴² SCP Proposal at 1 (internal quotes omitted).