

121 FERC ¶ 61,281
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket Nos. ER06-615-003
ER06-615-005
ER06-615-012
ER07-1257-000

California Independent System Operator Corporation Docket Nos. ER02-1656-017
ER02-1656-018

Independent Energy Producers Association

v. Docket No. EL05-146-000

California Independent System Operator Corporation

California Independent System Operator Corporation Docket No. EL08-20-000

Not
Consolidated

ORDER INSTITUTING A SECTION 206 INVESTIGATION AND DENYING
MOTION
FOR RECONSIDERATION AND CLARIFICATION

(Issued December 20, 2007)

1. In this order, the Commission institutes a proceeding in Docket No. EL08-20-000 pursuant to section 206 of the Federal Power Act (FPA)¹ to investigate the justness and reasonableness of extending the California Independent System Operator Corporation's (CAISO) Reliability Capacity Services Tariff (RCST) until the earlier of the

¹ 16 U.S.C. § 824e (2000).

implementation of the Market Redesign and Technology Upgrade (MRTU) or the implementation of an alternative interim backstop capacity procurement mechanism. Pursuant to section 206, we are establishing a refund effective date of January 1, 2008, and seek comment on our proposal to extend the RCST beyond its original termination date. We find this action necessary to ensure that generators are adequately compensated for fulfilling their must-offer obligation (MOO), which requires most generators serving California markets to offer all of their capacity in real time during all hours if they are available and not already scheduled to run through bilateral agreements.

2. In addition, in light of this action, and for other reasons set forth below, we deny the Independent Energy Producers Association's (IEP) request for reconsideration and clarification of the Commission's notice granting the CAISO an extension of time to file Resource Adequacy provisions related to its Interim Capacity Procurement Mechanism (ICPM).

I. Background

3. On April 26, 2001, the Commission established a prospective mitigation and monitoring plan for the California wholesale electric markets.² One of the fundamental elements of the plan was the implementation of a must-offer obligation, or MOO. The CAISO implemented the MOO beginning July 20, 2001.

4. In an order issued on June 17, 2004,³ the Commission recognized the California Public Utilities Commission's (CPUC) plan to phase in resource adequacy requirements and suggested that, if the CAISO determines that the resource adequacy requirements are sufficient to meet its operational needs, the resource adequacy requirements and obligations could serve to replace the existing MOO.⁴ The Commission noted in that order that the MOO was "an appropriate tool given the absence of a resource adequacy requirement."⁵

² *San Diego Gas & Elec. Co.*, 95 FERC ¶ 61,115, at 61,355-57, *order on reh'g*, 95 FERC ¶ 61,418, *order on reh'g*, 97 FERC ¶ 61,275 (2001), *order on reh'g*, 99 FERC ¶ 61,160 (2002), *pet. granted in part and denied in part sub nom. Public Utils. Comm'n of the State of Cal. v. FERC*, 462 F.3d 1027 (9th Cir. 2006).

³ *Cal. Indep. Sys. Operator Corp.*, 107 FERC ¶ 61,274 (June 2004 Order), *order on reh'g*, 108 FERC ¶ 61,254 (2004).

⁴ *See* June 2004 Order, 107 FERC ¶ 61,274 at P 26-28.

⁵ *Id.* P 28.

5. Additionally, on July 8, 2004,⁶ the Commission advised that if IEP believed the current MOO to be unjust and unreasonable, it may seek to initiate a section 206 proceeding to challenge the justness and reasonableness of the current method and seek an alternative proposal.⁷ On August 26, 2005, IEP filed a complaint against the CAISO under section 206 of the FPA.⁸ The complaint alleged that the Commission-imposed MOO under the CAISO tariff was flawed and no longer just and reasonable. The complaint also requested that the Commission direct the CAISO to replace the MOO and related minimum load cost compensation tariff provisions⁹ with an interim set of tariff provisions that would remain in effect until the CAISO's market redesign goes into effect.¹⁰

6. On March 31, 2006, certain parties (the Settling Parties¹¹) filed an Offer of Settlement of the IEP complaint, which proposed the institution of an RCST. The RCST, which was initially proposed by IEP in its complaint, modified the Commission-imposed MOO under the CAISO tariff, as well as other market design elements. The RCST provided a backstop capacity procurement mechanism to the CAISO that includes provisions establishing: (1) must-offer capacity payment rates; (2) RCST rates due to designation resulting from a Significant Event; (3) RCST rates due to designation resulting from deficiency in resource adequacy showings; and (4) payments to frequently mitigated units.¹² In addition, the RCST established cost allocation methodologies and

⁶ *Cal. Indep. Sys. Operator Corp.*, 108 FERC ¶ 61,022 (July 2004 Order), *order on reh'g*, 109 FERC ¶ 61,097 (2004).

⁷ July 2004 Order, 108 FERC ¶ 61,022 at P 115.

⁸ 16 U.S.C. § 824e (2000).

⁹ For further information on minimum load cost compensation, *see generally* CAISO Tariff § 40.8 (Recovery of Minimum Load Costs by FERC Must-Offer Generators).

¹⁰ The CAISO's market redesign is currently planned to go into effect on April 1, 2008.

¹¹ The Settling Parties are: IEP; the CAISO; the CPUC; Pacific Gas and Electric Company (PG&E); San Diego Gas & Electric Company (SDG&E); and Southern California Edison Company (SoCal Edison).

¹² *See Indep. Energy Producers Ass'n v. Cal. Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,096 (2007) (Order on Paper Hearing) for an extensive discussion of the Offer of Settlements terms. *See generally* *Indep. Energy Producers Ass'n v. Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,069 (2006) (Settlement Order); *Indep. Energy*

(continued...)

governed the rules by which the CAISO can procure RCST capacity. The Settling Parties stated that the Offer of Settlement resolved the complaint.

7. In the Settlement Order, the Commission found that the compensation to generators under the MOO was no longer just and reasonable.¹³ Specifically, the Commission found that “under the current market design, the [MOO] does not adequately compensate generators for the reliability services they provide.”¹⁴ The Commission further held that it was “unduly discriminatory that units under the [MOO] would be required to operate for reliability purposes in a manner similar to units contracted for capacity under the resource adequacy program and not receive similar capacity payment.”¹⁵

8. However, the Commission was unable to find, without further factual support, that the rates and cost allocation mechanism under the Offer of Settlement were just and reasonable. Accordingly, the Settlement Order set forth three data requests and established paper hearing procedures to review evidence on whether the rates and cost allocation under the Offer of Settlement or some other rates and cost allocation would be just and reasonable with respect to the MOO.¹⁶

9. On February 13, 2007, in the Order on Paper Hearing, the Commission approved, with modifications, the Offer of Settlement as a just and reasonable outcome for this proceeding. Under the terms of the Settlement and as approved by the Commission, the

Producers Ass’n v. Cal. Indep. Sys. Operator Corp., 116 FERC ¶ 61,297 (2006) (Clarification Order); *Indep. Energy Producers Ass’n v. Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,266 (2007) (First Rehearing Order), *pet. for review pending sub nom. Cities of Anaheim v. FERC*, Case No. 07-1222, *et al.* (D.C. Cir., filed June 20, 2007); *Cal. Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,097 (2007) (Order on 2007 RCST), *on reh’g*, *Indep. Energy Producers Ass’n v. Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,276 (2007), in Docket No. EL05-146-004, issued concurrently with this order.

¹³ Settlement Order, 116 FERC ¶ 61,297, at P 38.

¹⁴ *Id.* P 35.

¹⁵ *Id.* P 36.

¹⁶ *Id.* P 38-39 and Appendix to Order.

RCST will expire on December 31, 2007 or on midnight of the date immediately before MRTU becomes effective, whichever is earlier.¹⁷

10. In the separate MRTU proceeding, the Commission issued an order that conditionally accepted the MRTU tariff filed by the CAISO, but also directed that significant changes be made to the tariff prior to implementation.¹⁸ On June 25, 2007, in that proceeding, the Commission accepted for filing, subject to further modifications, compliance filings submitted by the CAISO to implement the significant changes to the MRTU tariff.¹⁹ In particular, the First MRTU Compliance Order required the CAISO to work with stakeholders regarding backstop procurement of local capacity area resources.²⁰ The CAISO was directed to file any necessary MRTU tariff revisions by August 3, 2007.

11. Subsequent to beginning its work with the stakeholders as directed by paragraph 380 of the First MRTU Compliance Order, the CAISO concluded that the backstop capacity procurement issues discussed in those stakeholder meetings should be resolved in the context of its development of the Interim Capacity Procurement Mechanism (ICPM).²¹ The CAISO requested and received an extension of time, until October 31,

¹⁷ Order on Paper Hearing, 118 FERC ¶ 61,096 at P 13. On June 11, 2007, the Commission denied requests for rehearing of the Settlement Order and the Clarification Order. *Indep. Energy Producers Ass'n v. Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,266 (2007), *pet. for review pending sub nom. Cities of Anaheim v. FERC*, Case No. 07-1222, *et al.* (D.C. Cir., filed June 20, 2007) (First Rehearing Order).

¹⁸ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006) (MRTU Order), *order on reh'g*, 119 FERC ¶ 61,076 (2007). The CAISO filed its MRTU tariff on February 9, 2006 in Docket No. ER06-615-000.

¹⁹ *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,313 (2007) (First MRTU Compliance Order).

²⁰ *Id.* P 380.

²¹ CAISO's Sept. 19, 2007 Motion for Extension of Time, Docket No. ER06-615-003, at 6 (CAISO Motion for Extension). The ICPM is intended by the CAISO to be the next iteration of a mechanism to procure capacity as a reliability backstop. According to the CAISO, the ICPM is simply a part of MRTU, functioning as MRTU's backstop capacity procurement mechanism. *See* CAISO's Oct. 29, 2007 Answer to IEP Motion for Reconsideration and Clarification, Docket Nos. ER06-615-003, *et al.*, at 3, 14-15 (CAISO Answer).

2007, to comply with the First MRTU Compliance Order's requirements concerning backstop procurement of local capacity area resources.²²

12. On September 19, 2007, the CAISO filed a second request for an extension of time.²³ According to the CAISO, the extension would allow it to present the ICPM and any proposals related to compliance with paragraph 380 of the First MRTU Compliance Order to its Board of Governors at its December 2007 meeting.²⁴ The Commission granted this request on September 25, 2007.

II. Procedural Matters

13. On October 12, 2007, IEP filed a motion for reconsideration and clarification of the Commission's recently granted extension (IEP Motion). Answers to IEP's motion were filed by the Alliance for Retail Energy Markets (AREM), the CAISO, SoCal Edison, and the cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities).

14. On November 9, 2007, IEP filed an answer to the answers and its own answer. On November 26, 2007, Six Cities and the CAISO filed an answer to IEP's answer.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure generally prohibits answers to answers unless otherwise ordered by the decisional authority.²⁵ The Commission accepts the answers filed by all the parties because they have provided information that has assisted us in our decision-making process.

III. The Iep Motion

16. IEP objects to the Commission's granting of the CAISO's request to extend the time for filing its ICPM because, according to IEP, this extension creates a period of time during which the CAISO will be without a Commission-approved just and reasonable

²² CAISO's Aug. 3, 2007 Motion for Extension of Time, Docket Nos. ER06-615-003, *et al.*; Notice of Extension of Time, Docket Nos. ER06-615-003, *et al.* (Aug. 8, 2007).

²³ CAISO Motion for Extension.

²⁴ Paragraph 380 of the First MRTU Compliance Order pertains to procurement of local capacity area resources.

²⁵ 18 C.F.R. § 385.213(a)(2) (2007).

backstop capacity procurement methodology.²⁶ IEP contends that, not only does the RCST terminate on December 31, 2007, but the MOO itself also terminates on January 1, 2008.²⁷ IEP is concerned that prior to the effective date of the ICPM, the CAISO will need generators operating without capacity contracts to provide reliability services, and no backstop capacity procurement mechanism will exist to ensure just and reasonable compensation.

17. IEP opposes subjecting power suppliers to a MOO without providing just and reasonable compensation.²⁸ IEP also opposes any attempt to extend the term of the RCST.²⁹ IEP asserts that the manner in which the CAISO administers the RCST is discriminatory.³⁰ IEP also contends that it became a Settling Party to the RCST settlement because the RCST would terminate by December 31, 2007, thus providing the CAISO adequate time to develop a successor mechanism (i.e., during the 18-month duration of the RCST).³¹

18. IEP requests that the Commission direct the CAISO to file the ICPM tariff to be effective January 1, 2008, subject to refund.³² In the alternative, IEP requests that the Commission clarify that: (1) the RCST terminates on December 31, 2007; (2) the RCST tariff provisions will no longer be effective as of that date; and (3) generators cannot be required to provide backstop capacity service pursuant to the MOO without just and reasonable and non-discriminatory compensation.³³

²⁶ IEP Motion at 4. Currently, the RCST terminates December 31, 2007, and the new ICPM methodology is not expected to be filed for approval until January 18, 2008, and will not be accepted or effective until some time after the filing date.

²⁷ *Id.* at 4.

²⁸ IEP notes that the Commission previously determined that the MOO, in the absence of an RCST-type mechanism, did not provide just and reasonable compensation. IEP Motion at 5-6 (citing Settlement Order, 116 FERC ¶ 61,069 at P 35 and P 38).

²⁹ IEP Motion at 7.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.* at 8.

IV. Responsive Pleadings

19. The CAISO disagrees with IEP's contention that the MOO itself terminates on January 1, 2008. According to the CAISO, the Commission's MRTU Order authorizes the CAISO to terminate the MOO at the time MRTU goes into effect only if the CAISO determines that the resource adequacy requirements are sufficient.³⁴ The CAISO argues that in its February 9, 2006 MRTU tariff filing, the CAISO proposed to eliminate the existing MOO upon implementation of MRTU, and the Commission approved this proposal.³⁵ Thus, according to the CAISO, IEP's argument that the MOO terminates prior to the implementation of MRTU is simply incorrect.³⁶

20. The CAISO also argues that the termination of the RCST settlement does not eliminate the MOO. The CAISO claims that when the RCST settlement provisions lapse, the pre-settlement CAISO tariff provisions remain in effect until the Commission revises them.³⁷ The CAISO contends that the unjust and unreasonable MOO compensation rate remains in effect except as modified by the Commission.³⁸ Thus, in the absence of any action by the Commission, when the RCST terminates, the existing MOO and prior compensation provisions constitute the controlling filed rate.³⁹

21. All of the respondents object to IEP's proposal that the Commission order the CAISO to file the ICPM with an effective date of January 1, 2008. The CAISO contends that it does not have an obligation to file the ICPM and argues that IEP's motion is an impermissible effort to force the CAISO to exercise its rights under section 205 of the FPA.⁴⁰ The CAISO argues that IEP's basic premise, that the Commission granted the CAISO an extension of time to file the ICPM, is incorrect. Rather, according to the CAISO, it sought an extension of its obligation to work with stakeholders to develop a mechanism to address collective shortfalls in local resource adequacy procurement under

³⁴ CAISO Answer at 10 (citing MRTU Order, 116 FERC ¶ 61,274 at P 215 and P 274).

³⁵ MRTU Order, 116 FERC ¶ 61,274 at P 31.

³⁶ CAISO Answer at 11.

³⁷ *Id.* at 12.

³⁸ *Id.*

³⁹ *Id.* at 3.

⁴⁰ *Id.* at 14.

MRTU.⁴¹ The CAISO claims that the ICPM is unrelated to this request. The CAISO's claim is based upon its belief that it has no legal obligation to file the ICPM, thus there is no need to request an "extension" from the Commission regarding this filing.

22. The CAISO also contends that given the controversy surrounding the ICPM, the CAISO will not be able to complete its development by January 1, 2008. The CAISO further argues that because the ICPM is designed to work in conjunction with MRTU, it is not compatible with the pre-MRTU market design, so the CAISO would have to develop a new and different mechanism pre-MRTU implementation. The CAISO contends that it would be counterproductive to direct resources away from developing the ICPM to designing a new pricing model that would be in effect for only a few months.⁴² However, the CAISO commits to consider developing a new MOO compensation mechanism or pre-MRTU interim capacity program should the MRTU implementation date be delayed beyond March 31, 2008.⁴³ The CAISO anticipates that this new mechanism would have an effective date of May 31, 2008.⁴⁴

23. AReM similarly argues that the ICPM is controversial, has garnered no consensus, and is not nearly ready to be implemented. AReM contends that filing an as-yet-to-be written ICPM tariff when little consensus has been achieved is not an acceptable response to the termination of the RCST.⁴⁵ SoCal Edison notes that IEP's request fails to take into account that: (1) the tariff language is not complete; (2) the CAISO Board will not consider the ICPM until December; and (3) the ICPM is not structured to work with the current market; rather it is structured to work with MRTU.⁴⁶ Finally, Six Cities objects to the Commission prejudging the effective date for a tariff amendment that is not before it, and also objects to IEP's attempt to cut the stakeholder process short.⁴⁷

⁴¹ *Id.* at 13.

⁴² *Id.* at 14-15.

⁴³ *Id.* at 5 and 16. *See also* CAISO's Nov. 26, 2007 Answer to IEP's Answer, Docket Nos. ER06-615-003, *et al.*, at 6 and 8 (CAISO Nov. 26, 2007 Answer).

⁴⁴ *Id.*

⁴⁵ AReM's Oct. 29, 2007 Answer, Docket Nos. ER06-615-000, *et al.*, at 4.

⁴⁶ SoCal Edison's Oct. 29, 2007 Answer, Docket Nos. ER06-615-000, *et al.*, at 3 (SoCal Edison Answer). Six Cities also questions whether the ICPM can be implemented in advance of the MRTU. Six Cities' Oct. 29, 2007 Reply, Docket Nos. ER06-615-003, *et al.*, at 3 (Six Cities' Reply).

⁴⁷ Six Cities Reply at 2-3.

24. AReM further argues that in light of the CPUC's resource adequacy requirements for load serving entities and the CAISO's reliability must run contracts, the CAISO should rarely need the additional capacity resources authorized through the MOO. Six Cities similarly asserts that IEP's concerns may be overstated since the CAISO may not need to engage in backstop procurement prior to MRTU implementation.⁴⁸

25. SoCal Edison states that it does not oppose extending the RCST (with no modifications) until MRTU start-up.⁴⁹ Similarly, AReM requests that the Commission extend the current RCST until the filing and implementation of a successor arrangement. AReM asserts that this option allows stakeholders to continue their discussion regarding the RCST's replacement while ensuring that generators called upon for MOO service will be fairly compensated.⁵⁰ The CPUC also suggests that the current RCST, with perhaps a modified payment structure, would be the more appropriate choice.⁵¹ Finally, the CAISO argues that under section 206 of the FPA, the Commission can extend the RCST's must-offer capacity compensation⁵² until the implementation of MRTU, but the CAISO does not recommend the extension of any other provisions of the RCST settlement.⁵³

V. Iep's Answer

26. While IEP continues to oppose extension of the RCST in its current form, in its answer IEP offers an alternative to its original request that the CAISO be required to file the ICPM on January 1, 2008. Essentially, IEP states that it would not object to an extension of the RCST if certain "minor" modifications were ordered by the Commission.⁵⁴ IEP contends that if the RCST is to serve as a suitable solution, the Commission should direct the CAISO to make seven modifications to the RCST

⁴⁸ *Id.* at 4.

⁴⁹ SoCal Edison Answer at 3.

⁵⁰ *Id.* at 4.

⁵¹ CPUC Answer at 3, 5.

⁵² RCST Tariff § 40.14.

⁵³ CAISO Answer at 16-17.

⁵⁴ IEP Answer at 7-8.

provisions.⁵⁵ According to the IEP, the most significant change would relate to the “triggering” event for entitling the unit to receive compensation.⁵⁶

27. In addition, IEP reiterates its assertion that the CAISO has failed to administer the RCST in a just and reasonable manner by depriving generators denied a waiver of their must-offer obligation of their proper and full RCST compensation.⁵⁷ IEP disagrees with the CAISO’s contention that the Commission has discretion with regard to whether to address the issue of the compensation that generators are to receive after the RCST terminates. IEP contends that the Commission previously found that the MOO compensation is unjust and unreasonable.⁵⁸ Therefore, in IEP’s view, under section 205 of the FPA, that compensation is unlawful. Thus, IEP insists that either the CAISO must file to amend its tariff under section 205 to ensure that the compensation is just and reasonable, or the Commission must institute a proceeding under section 206.⁵⁹

⁵⁵ *Id.* at 7-8. These proposed modifications include: (1) eliminating the daily payment component of the RCST settlement; (2) establishing a single must offer waiver denial as the RCST designation trigger for a non-resource adequacy generator, and requiring such designation to last for a minimum term; (3) deleting the significant event references and its use in the RCST designation evaluation from the RCST altogether; (4) setting the minimum term for an RCST designation as the greater of three months or the duration of the event or circumstances that triggered the CAISO’s backstop procurement, and not allowing the designation to extend into the next resource adequacy compliance year, unless the RCST designated unit is not under resource adequacy contract for its capacity in the next resource adequacy compliance year; (5) basing the capacity payment price that will be paid to any unit that the CAISO designates under these modified RCST tariff provisions on a reference resource with an annual capacity payment of \$162.48/kW-yr, based on the California Energy Commission’s calculation of the value of capacity of an LM6000 simple cycle unit; (6) requiring posting of the circumstances that triggered the CAISO’s backstop procurement on the CAISO website within seven days of the designation; and (7) basing allocation of the costs of such procurement upon the current RCST allocation methodology.

⁵⁶ *Id.* at 9.

⁵⁷ *Id.* at 5-6.

⁵⁸ *See* Settlement Order, 116 FERC ¶ 61,069 at P 35 and P 38.

⁵⁹ IEP Answer at 5. IEP also states that the Commission could use the existing EL05-146 docket, which was instituted under section 206. *Id.*

28. IEP also disputes the CAISO's contention that the ICPM cannot work without MRTU. IEP relies upon the CAISO's October 31, 2007 Chief Executive Officer (CEO) report to its Governing Board, which states that the ICPM will be implemented by May 31, 2008, even if MRTU is delayed.⁶⁰

29. Finally, IEP alleges that the compensation in the RCST may be unjust and unreasonable. IEP advocates adjusting this compensation on a going forward basis. IEP claims that the RCST compensation was a negotiated figure to which the parties agreed only for settlement purposes.⁶¹

30. IEP reiterates its request that the CAISO file the ICPM to become effective on January 1, 2008. IEP contends that since the CAISO intends to file the ICPM on January 18, 2008, this request would shorten the filing deadline by only 17 days.⁶²

VI. Subsequent Answers

31. Both the CAISO and Six Cities filed answers to IEP's answer. Six Cities objects to IEP's alternative proposal, whereby the Commission would replace certain terms of the currently-effective RCST with IEP's suggested changes. Six Cities contends that there is no evidentiary basis for the Commission to conclude that the CAISO has implemented the RCST in a discriminatory manner.⁶³ According to Six Cities, the fact that the CAISO has not exercised its discretion in the manner IEP wanted does not mean that the RCST needs to be modified.⁶⁴ Six Cities also disagrees with IEP's characterization of the proposed modifications as "minimal," arguing that the changes "go to the very heart of the RCST."⁶⁵ Finally, Six Cities contends that the procedural approach taken by IEP is improper.⁶⁶

⁶⁰ *Id.* at 7.

⁶¹ *Id.*

⁶² IEP Answer at 10.

⁶³ Six Cities November 26, 2007 Answer at 3.

⁶⁴ *Id.* at 4.

⁶⁵ *Id.*

⁶⁶ *Id.* at 4-5.

32. The CAISO also objects to IEP's alternative proposal, claiming that it is not a continuation of the RCST Settlement but a rewrite of the MOO.⁶⁷ The CAISO contends that IEP's proposal constitutes significant changes not only to the RCST but also to those provisions of the MOO that the Commission has never found to be unjust and unreasonable.⁶⁸ The CAISO argues that IEP has offered no evidence supporting a finding that the MOO is unjust and unreasonable or why its proposal is just and reasonable.⁶⁹ The CAISO further argues that IEP's contention that the RCST compensation rate may be unjust and unreasonable constitutes a collateral attack on the Commission's determination in the Order on Paper Hearing.⁷⁰

33. The CAISO also claims that IEP's reliance on statements made in the CAISO's CEO report is misplaced. According to the CAISO, the CEO report relied upon by IEP stated that *an* ICPM would be implemented by May 31, 2008, if MRTU implementation date is delayed beyond March 31, 2008.⁷¹ The CEO report was not necessarily referring to the ICPM that the CAISO is developing for implementation with MRTU.⁷² Finally, the CAISO reiterates its contention that the Commission has no authority to impose a new rate under section 205 of the FPA, but must act under section 206.⁷³

VII. Commission Determination

34. For reasons explained below, we are initiating a section 206 proceeding⁷⁴ in Docket No. EL08-20-000 to investigate the justness and reasonableness of extending the RCST for a short period of time, until the earlier of the implementation of either MRTU or an alternative backstop capacity procurement mechanism. When the RCST expires on December 31, 2007, the MOO will continue until the implementation of MRTU.⁷⁵ We

⁶⁷ CAISO November 26, 2007 Answer at 5.

⁶⁸ *Id.* at 5, 10.

⁶⁹ *Id.* at 10-11.

⁷⁰ *Id.* at 12 (*citing* Order on Paper Hearing, 118 FERC ¶ 61,096 at P 72).

⁷¹ *Id.* at 6 (emphasis in original).

⁷² *Id.*

⁷³ *Id.* at 9.

⁷⁴ 16 U.S.C. § 824e.

⁷⁵ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 at P 31.

have previously found the MOO to be unjust and unreasonable without appropriate compensation to generators for the capacity and reliability services they provide.⁷⁶ In addition, concurrently with this order we are reaffirming the justness and reasonableness of the RCST,⁷⁷ which has been in place in California for the past 18 months, and explicitly provides generators dispatched under the MOO with a compensatory capacity payment. Having recently found that the RCST compensation mechanism will be just and reasonable through December 31, 2007, we find that the parties have not provided sufficient reasons to justify a determination that this mechanism would become unjust and unreasonable on January 1, 2008. Accordingly, we preliminarily conclude that the most efficient solution is simply to extend the RCST for a relatively brief period of time until implementation of the earlier of either MRTU or an alternative backstop capacity mechanism, so that all generators are compensated for the reliability and capacity that they provide through compliance with the MOO.⁷⁸

35. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b), as recently amended by section 1285 of the Energy Policy Act of 2005,⁷⁹ requires that the Commission establish a refund effective date that is no earlier than the date of the publication of the notice of the initiation of the Commission's investigation in the *Federal Register*, and no later than five months after the publication

⁷⁶ Settlement Order, 116 FERC ¶ 61,069 at PP 35-36 and P 38.

⁷⁷ *Indep. Energy Producers Ass'n v. Cal. Indep. Sys. Operator Corp.*, Order on Reh'g, 121 FERC ¶ 61,276 (2007), Docket No. EL05-146-004, issued concurrently with this order.

⁷⁸ We note that on November 30, 2007, Dynegy Moss Landing, LLC, Dynegy Morro Bay, LLC, El Segundo Power LLC and Reliant Energy, Inc. filed a complaint against the CAISO that similarly points out that, upon termination of the RCST, the MOO provisions in the existing CAISO tariff fail to provide generators subject to the must-offer obligation with just and reasonable compensation for providing reliability services. *Dynegy Moss Landing, et al. Complaint and Request for Fast-Track Processing*, Docket No. EL08-13-000 (Nov. 30, 2007). Complainants propose an alternative compensation mechanism modeled upon the structure of the RCST. Unfortunately, this complaint was filed too late to allow full and fair consideration by all parties prior to the expiration of the RCST; hence, the Commission will be considering the broader issues raised by that complaint in Docket No. EL08-13-000.

⁷⁹ Energy Policy Act of 2005, Pub. L. No. 109-58, § 1285, 119 Stat. 594, 980-81 (2005).

date. In order to give maximum protection to customers, consistent with precedent,⁸⁰ we will establish a refund effective date of January 1, 2008, the day after RCST expires, as the appropriate refund effective date for this proceeding. Furthermore, because expeditious resolution of this proceeding is critical, we establish a comment deadline of 15 days from the date of this order. Reply comments may be filed 15 days thereafter. Since the Commission is simply investigating the justness and reasonableness of extending the termination date of RCST until the earlier of the implementation of either MRTU or an alternative backstop capacity procurement mechanism, parties are requested to limit their comments to the issue of the justness and reasonableness of extending the termination date of the RCST,⁸¹ and not to repeat arguments previously considered by the Commission in its orders approving the RCST.⁸²

36. In addition, section 206 requires that, if no final decision has been rendered by the earlier of the refund effective date or the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it failed to do so and shall state its best estimate as to when it reasonably expects to make such a decision. Given the nature and complexity of the matters to be resolved, we expect that, assuming the case does not settle, we should be able to render a decision by March 30, 2008.

37. In addition, we find that extending the RCST as we preliminarily conclude herein, is the most efficient solution to ensure a capacity payment mechanism is in place until MRTU or another capacity payment mechanism becomes effective. First, the extension is for a limited duration given the CAISO's requirement, discussed below, to implement a new mechanism if MRTU is further delayed. Second, we believe that the CAISO, the parties and all market participants are better served if they focus their efforts on timely implementing MRTU and not on developing a temporary capacity payment mechanism.

⁸⁰ See, e.g., *Indiana Municipal Power Agency v. PSI Energy, Inc.*, 85 FERC ¶ 61,073 (1998); *Canal Electric Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

⁸¹ See *Colorado Office of Consumer Counsel v. FERC*, 490 F.3d 954, 956 (D.C.Cir. 2007) (noting that section 206 does not require the Commission to revisit all elements of a tariff when one aspect of the tariff is found to be unjust and unreasonable).

⁸² See Settlement Order, 116 FERC ¶ 61,069 (2006); Clarification Order, 116 FERC ¶ 61,297(2006); Order on Paper Hearing, 118 FERC ¶ 61,096 (2007); First Rehearing Order, 119 FERC ¶ 61,266 (2007); Order on 2007 RCST, 118 FERC ¶ 61,097 (2007); and *Indep. Energy Producers Ass'n v. Cal. Indep. Sys. Operator Corp.*, Order on Reh'g, 121 FERC ¶ 61,276 (2007), Docket No. EL05-146-004, issued concurrently with this order.

38. However, if MRTU implementation is postponed until after March 31, 2008, this would heighten concerns we may have regarding prolonged extension of the RCST. In its answer to IEP's motion, the CAISO commits to "consider developing" a new MOO compensation mechanism should MRTU implementation be delayed.⁸³ If MRTU is delayed beyond March 31, 2008, therefore, we expect the CAISO to follow through with its commitment to initiate a new stakeholder process and modify the RCST accordingly. While we recognize the CAISO is focused on achieving MRTU implementation, assuring sufficient resource adequacy, and adequately compensating those resources for their services, is important for maintaining reliability. We find that the approach we take today strikes an appropriate balance between the competing goals of preventing a short-term gap in the backstop capacity payment mechanism and providing a longer-term solution that has undergone a more complete stakeholder process in the event that MRTU implementation is delayed.

39. Finally, we clarify below certain issues related to this proceeding.

A. Duration of the MOO

40. Contrary to IEP's contention,⁸⁴ the MOO does not terminate on January 1, 2008. Rather, the MOO continues until MRTU begins and the CAISO has implemented an adequate replacement mechanism.⁸⁵ IEP's assertion that the MOO terminates January 1, 2008 is based on statements from two orders that date back to 2004.⁸⁶ These orders addressed the CAISO's Market Design 2002 (MD02) Proposal. Importantly, the CAISO withdrew the MD02 Proposal and subsequently filed a series of conceptual proposals concerning MRTU, on which the Commission issued guidance orders; and, in February 2006, the CAISO filed its proposed MRTU Tariff. Moreover, in the MRTU Order that conditionally accepted the MRTU Tariff, the Commission approved the CAISO's

⁸³ CAISO Answer at 5,16.

⁸⁴ Of course if the MOO did actually terminate on January 1, 2008, no generator would need to be concerned about the termination of the must-offer capacity compensation provisions in RCST or whether the creation of a substitute mechanism included such provisions.

⁸⁵ MRTU Order, 116 FERC ¶ 61,274 at P 215 and P 274.

⁸⁶ *Cal. Indep. Sys. Operator Corp.*, 107 FERC ¶ 61,274 at P 28 (2004), *order on reh'g*, 108 FERC ¶ 61,254, at P 11 (2004).

proposal to eliminate *the existing* MOO upon implementation of MRTU.⁸⁷ Thus, the statements IEP relies upon pertain to a proposal no longer under consideration, which has been superseded by the Commission's action on the CAISO's updated MRTU filing. Consequently, the statements IEP relies upon are moot. In sum, IEP's contention that the MOO terminates December 31, 2007, before MRTU begins, is incorrect.

B. MOO Compensation Provisions

41. While the MOO will be in effect after December 31, 2007, the Commission has already found that the pre-RCST MOO provisions do not provide sufficient compensation for capacity, and absent an explicit capacity payment such as was provided by the RCST, the MOO provisions standing alone violate the filed rate doctrine.⁸⁸ In its answer, the CAISO argues that the pre-settlement MOO compensation provisions will be in effect after the RCST compensation mechanism lapses. This contention appears to be based on a misinterpretation of the filed rate doctrine.

42. In the RCST proceeding, the Commission approved a contested settlement. We also expressly determined that the compensation to generators under the MOO was no longer just and reasonable.⁸⁹ Specifically, we found that the MOO's compensation method was "unduly discriminatory."⁹⁰

43. As the Supreme Court has explained, the "filed rate" is the rate fixed or merely accepted by the Commission.⁹¹ Under the filed rate doctrine, once a company's tariff is accepted or approved by the Commission, the terms of the tariff are considered to be "the

⁸⁷ MRTU Order, 116 FERC ¶ 61,274 at P 31 (2006). In its overview of MRTU, the Commission expressly noted that the CAISO proposed to end the MOO and transition to a capacity-based obligation.

⁸⁸ July 20 Order, 116 FERC ¶ 61,297, at P 36-38 (2006), *clarified*, 116 FERC ¶ 61,297 (2006), *on reh'g*, 119 FERC ¶ 61,266 (2007).

⁸⁹ Settlement Order, 116 FERC ¶ 61,069 at P 38.

⁹⁰ *Id.* P 35.

⁹¹ *Montana-Dakota Utis. Co. v. Northwestern Pub. Serv. Co.*, 341 U.S. 246, 251 (1951).

law” and the company may not charge rates other than those set out in the tariff.⁹² Similarly, once the Commission has expressly rejected a rate for non-compliance with the FPA, it is no longer the filed rate.⁹³ The Commission, having held a rate unjust or unreasonable and having approved a new rate in its place, may not carry forward the effect of the disapproved rate any more than it could simply leave an unjust or unreasonable rate in effect.⁹⁴ When the Commission determined that the pre-RCST compensation provisions of the MOO were unduly discriminatory and approved the RCST, which, among other things, included a just and reasonable compensation mechanism for the MOO, the Commission essentially replaced the unduly discriminatory MOO compensation mechanism with the RCST.⁹⁵ A rate that the Commission has declared unjust, unreasonable and unduly discriminatory cannot, without more, be revived upon the termination of its just and reasonable replacement. Accordingly, contrary to the CAISO’s contention, the MOO compensation mechanism will not be resurrected by the expiration of the RCST.⁹⁶

⁹² *See, e.g., Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 576 (1981) (The filed rate doctrine forbids a regulated entity from charging rates for its services other than those properly filed with the appropriate federal regulatory authority); *Keogh v. Chicago & Northwestern Railway*, 260 U.S.156, 162 (1922) (The regulatory agency determines the legal rate and the utility must collect that rate while it is in effect).

⁹³ *See, e.g., Brizendine v. Cotter & Co.*, 4 F.3d 457 (7th Cir. 1993), *vacated on other grounds*, 511 U.S. 1103 (1994). (The filed rate is not enforceable if the [regulatory agency] finds that it is unreasonable or discriminatory).

⁹⁴ *Louisiana Public Service Comm’n v. FERC*, 482 F.3d 510, 518-519 (DC Cir. 2007).

⁹⁵ *See, e.g., Nantahala Power & Light Co. v. Thornburg*, 471 U.S. 953, 971 (1986). We note that, since the RCST modified the MOO by essentially adding compensation provisions to the existing MOO provisions in the CAISO tariff, the Commission never required the CAISO to withdraw the original MOO provisions in its tariff. That does not mean, however, that the MOO provisions are just and reasonable by themselves, *i.e.*, without an additional capacity payment, such as the one we approved under RCST.

⁹⁶ We also note that under section 205 of the FPA, the CAISO can only institute a just and reasonable rate; any other rate is unlawful. 16 U.S.C. §824d(a). *See, e.g., City of Groton v. Connecticut Power & Light Co.*, 662 F2d 921,931 (2nd Cir. 1981) (stating that the filed rate doctrine does not immunize rates that have ultimately been disapproved).

C. The RCST

44. The Commission reviews the justness and reasonableness of existing rates under section 206 of the FPA. This is a two pronged review.⁹⁷ Under the first prong, the Commission ascertains the justness and reasonableness of an existing rate.⁹⁸ If it finds the existing rate to be unjust and unreasonable, then, under the second prong, it establishes a just and reasonable replacement rate.⁹⁹ The mere fact that a tariff provision implementing a particular rate was at one time found to be just and reasonable does not preclude the Commission from subsequently reexamining the tariff provision to determine whether it continues to be just and reasonable.¹⁰⁰

⁹⁷ This "bifurcated approach" has been upheld by the courts. *See, e.g., FPC v. Natural Gas Pipeline Co.*, 315 U.S. 575, 583-85 (1942) (permitting the Commission to separate different phases of a ratemaking procedure under section 5 of the Natural Gas Act (NGA)); *ChevronTexaco v. FERC*, 387 F.3d 892, 895 (D.C. Cir. 2004) (stating that in an NGA section 5 proceeding, "the Commission bears the burden of adducing substantial evidence to prove (1) the pipeline's existing rate is unjust and unreasonable and (2) the rate determined by the Commission is just and reasonable"); *Consolidated Edison Co. of New York, Inc. v. FERC*, 165 F.3d 992, 1001 (D.C. Cir. 1999) ("Under [NGA] section 5, the Commission must first establish that the proposed or existing rate is unjust and unreasonable. It is only after this antecedent showing has been made that the Commission properly can illustrate that its alternative rate proposal is both just and reasonable"). In this respect, the Supreme Court has held that the Natural Gas Act and the FPA are "in all material respects substantially identical," *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348, 353 (1956) and constructions for one are authoritative for the other. *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577 n.7 (1981).

⁹⁸ *See supra* note 97. *See also, Papago Tribal Utility Authority v. FERC*, 610 F.2d 914, 923 (D.C. Cir. 1979) ("The condition precedent to the exercise of [section 206] power is a finding that the existing rate is 'unjust, unreasonable, unduly discriminatory or preferential'").

⁹⁹ *See supra* note 97. *See also Tennessee Gas Pipeline Co. v. FERC*, 860 F.2d 449, 456 (D.C. Cir. 1988) (explaining that when existing rates are on file, both prongs of the analysis are triggered, including a determination that the alternative rate the Commission seeks to impose as a remedy is just and reasonable).

¹⁰⁰ *See, e.g., Louisiana Public Service Commission v. FERC*, 482 F.3d 510, 519 (DC Cir. 2007) (Congress amended section 206 to authorize the Commission to order a refund when the Commission finds that *an approved rate has become unjust and unreasonable*).

45. The Settlement Order found, under the first prong of the Commission's section 206 analysis, that the MOO tariff provisions were unjust and unreasonable because generators subject to the MOO were required to make their capacity available to the CAISO without explicitly being provided a mechanism to ensure sufficient recovery of the fixed costs of keeping generation needed for reliability purposes available to the CAISO.¹⁰¹ The Commission also found that "given the current compensation structure . . . generators under the [MOO] may not have sufficient opportunity to recover their fixed costs in the energy market."¹⁰²

46. Under the second prong of the section 206 analysis, the Commission instituted additional proceedings to determine the justness and reasonableness of the RCST service and rates proposed in the Offer of Settlement.¹⁰³ The Commission also allowed the Offer of Settlement to operate on an interim basis, pending the outcome of the paper hearing procedures. Ultimately, the Order on Paper Hearing found that the RCST provides just and reasonable compensation for generators subject to the MOO. The Commission also considered various requests for rehearing and, in an order issued concurrently with this order, determined that our initial decision regarding the MOO and the RCST was correct.¹⁰⁴

47. Applying the two-prong, section 206 analysis to the current facts, we remain convinced that, under the first prong, the MOO is unjust and unreasonable and unduly discriminatory without a mechanism to compensate generators that are not under resource adequacy contracts for the capacity they offer into the CAISO market. We are not aware of any change in circumstances that could justify permitting continuation of the MOO without compensating such generators for the capacity and reliability services they provide. Thus, we determine that it would be unjust and unreasonable to keep the MOO while allowing the RCST to expire prior to the commencement of MRTU or the implementation of an alternative appropriate backstop capacity procurement mechanism.

48. Furthermore, under the second prong of the section 206 analysis, we have recently reaffirmed the justness and reasonableness of the RCST compensation scheme.¹⁰⁵

¹⁰¹ Settlement Order, 116 FERC ¶ 61,069 at P 36.

¹⁰² *Id.* P 37.

¹⁰³ *Id.* P 41.

¹⁰⁴ *Indep. Energy Producers Ass'n v. Cal. Indep. Sys. Operator Corp.*, Order on Reh'g, 121 FERC ¶ 61,276 (2007), Docket No. EL05-146-004, issued concurrently with this decision.

¹⁰⁵ *Id.*

Because we are simply proposing to extend the RCST for a few months, we preliminarily conclude that the compensation mechanism established for the RCST remains just and reasonable.¹⁰⁶

49. In addition, we reject IEP's suggestion that we require the CAISO to file the ICPM with an effective date of January 1, 2008. First, as the CAISO points out, the Commission never directed the CAISO to file the ICPM. Rather, the June 25, 2006 MRTU Compliance Order required the CAISO to work with stakeholders to submit MRTU tariff provisions that afford load serving entities with an opportunity to cure a collective shortfall in local capacity area resource requirements, a subset of the larger ICPM issue.¹⁰⁷ The Commission's recent notice granted the CAISO an extension of time for submitting its compliance filing with the First MRTU Compliance Order.¹⁰⁸ Therefore, it would be inappropriate at this late date to short circuit and prematurely truncate the stakeholder process (in which IEP members are participating) and rush the CAISO to complete and submit its entire proposed ICPM. Finally, and significantly, the CAISO states that the ICPM is being designed for compatibility with MRTU, not the current CAISO market design. Since the MOO terminates with the implementation of MRTU, the design of the ICPM will not likely include provisions to compensate units dispatched under the MOO. Consequently, requiring pre-MRTU implementation of the ICPM would not achieve the objective IEP seeks.

50. Further, IEP implies in its motion that we cannot alter the RCST because that tariff was the product of a settlement.¹⁰⁹ IEP seems to have abandoned that position in its answer by suggesting ways in which it believes the Commission should alter the RCST.¹¹⁰ IEP also contends that the RCST compensation was a negotiated figure to which the parties agreed for settlement purposes only, and advocates adjusting this mechanism on a going-forward basis.¹¹¹

¹⁰⁶ While we merely propose to extend the effectiveness of the existing RCST for a limited period of time, commenters may inform us as to whether any provisions are wholly inappropriate for extension and thus should be stricken.

¹⁰⁷ First MRTU Compliance Order, 119 FERC ¶ 61,313 at P 390.

¹⁰⁸ Notice of Extension, Docket No. ER06-615-000, *et al.* (Sept. 25, 2007).

¹⁰⁹ IEP Motion at 7.

¹¹⁰ IEP Answer at 7-9.

¹¹¹ *Id.* at 7.

51. We do not agree with IEP. Contrary to IEP's assertions, the Commission did not simply approve a settlement in this proceeding. The RCST settlement was contested, and, prior to conditionally approving the settlement, the Commission conducted a paper hearing to evaluate the justness and reasonableness of the rates and cost allocation. Thus, this case was a contested proceeding that resulted in a merits determination by the Commission.¹¹² The RCST rate, therefore, is much more than simply a "negotiated figure."

52. With regard to IEP's allegation that the CAISO implements the RCST in a discriminatory manner, IEP raised this issue in its answer to other parties' answers to IEP's motion for reconsideration or clarification of a Notice of Extension of Time. The CAISO's original request for an extension of time did not even directly relate to the RCST. Accordingly, from a due process standpoint, IEP's answer is not the appropriate procedural vehicle, nor is this the proper forum, in which to consider such issues. Moreover, these issues have been raised in the complaint filed in Docket No. EL08-13-000, which is the more appropriate proceeding in which to address these allegations because interested parties will have a fair opportunity to comment on them.¹¹³ Similarly, IEP contends that the RCST compensation *may itself* be unjust and unreasonable and uses this assertion to justify altering the RCST. Given that we recently re-evaluated the RCST on rehearing and, as explained in the RCST Rehearing order issued today, find the RCST compensation to be just and reasonable, we will not reconsider that determination based upon IEP's bald assertion that there "may" be a problem with those rates.¹¹⁴

53. To summarize, the Commission is initiating a proceeding under section 206 in Docket No. EL08-20-000 of the FPA to investigate the justness and reasonableness of extending the effective date of the RCST until the earlier of the implementation of MRTU or the approval of an alternative backstop capacity procurement mechanism. We propose to extend the RCST so that units dispatched under the MOO will continue to receive a capacity payment that the Commission has already found to be just and reasonable. Without such a capacity payment, resources subject to the MOO may be

¹¹² Order on Paper Hearing, 118 FERC ¶ 61,096.

¹¹³ *See, e.g., Mobil Oil Exploration v. United Distrib. Cos.*, 498 U.S. 211, 239 (1991) ("An agency employs broad discretion in determining how to handle related, yet discrete, issues in terms of procedures . . . [such as] where a different proceeding would generate more appropriate information")

¹¹⁴ We note that the issue of the amount of capacity compensation has also been raised in the complaint filed in Docket No. EL08-13-000.

required to operate under a compensation structure that the Commission has previously found to be unduly discriminatory.¹¹⁵

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by section 206 of the FPA, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R., Chapter I), an investigation shall be held concerning the justness and reasonableness of extending the CAISO's RCST until the earlier of the implementation of MRTU or an alternative backstop capacity procurement mechanism.

(B) The CAISO is directed to file revised tariff pages amending the effective date of the RCST no later than December 28, 2007.

(C) Within 15 days from the date of this order, parties may submit comments on the limited issue of the justness and reasonableness of extending the RCST, consistent with the body of this order. Parties are not to raise issues previously considered in the RCST Orders. Reply comments may be filed 15 days thereafter.

(D) The Secretary shall promptly publish in the Federal Register a notice of the Commission's initiation of this proceeding under section 206 of the FPA in Docket No. EL08-20-000.

(E) The refund effective date in Docket No. EL08-20-000, established pursuant to section 206(b) of the FPA, shall be January 1, 2008.

¹¹⁵ As noted above, there are several features to the RCST. Staff considers the two most critical aspects for extension to be the capacity payment for uncontracted resources dispatched under the MOO, and the backstop capacity procurement mechanism. Staff nevertheless recommends extension of all features of the RCST since, as it originated as a settlement, it embodied compromises, and extending some features alone may be unfair.

(F) IEP's Motion is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.