

123 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.

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| California Independent System Operator Corporation | Docket Nos. | ER06-615-017 ER06-615-021 ER07-1257-001 ER07-1257-003 |
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| California Independent System Operator Corporation | Docket Nos. | ER02-1656-035 ER02-1656-036 |
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| Independent Energy Producers Association | Docket Nos. | EL05-146-006 EL05-146-007 |
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v.

California Independent System Operator Corporation

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| California Independent System Operator Corporation | Docket No. | EL08-20-000 |
| | | Not Consolidated |

ORDER ON COMPLIANCE

(Issued June 19, 2008)

1. On December 28, 2007, the California Independent System Operator Corporation (CAISO) submitted a filing containing proposed revisions to the Reliability Capacity Services Tariff (RCST),¹ in compliance with the Commission's December 20, 2007

¹ CAISO December 28, 2007 RCST Compliance Filing, Docket Nos. ER06-615-017, *et al.* (December 28 Compliance Filing).

“Order Instituting a Section 206 Investigation and Denying Motion for Reconsideration and Clarification.”² On March 5, 2008, the CAISO submitted additional proposed RCST modifications,³ in compliance with the Commission’s February 4, 2008 “Order on Clarification.”⁴ In this order, we accept for filing the proposed RCST revisions contained in the December 28 Compliance Filing, as amended by the CAISO’s March 5 Compliance Filing. We note that in a separate order issued contemporaneously with this order, the Commission concluded that it is just and reasonable to extend the RCST from January 1, 2008 until implementation of the CAISO’s replacement interim backstop capacity mechanism, the Transitional Capacity Procurement Mechanism (TCPM), which became effective June 1, 2008.⁵ The compliance filings we accept today implement the brief extension of the RCST for the period January 1, 2008 through May 31, 2008.

I. Background

2. On April 26, 2001, the Commission established a prospective mitigation and monitoring plan for the California wholesale electric markets.⁶ One of the fundamental elements of the plan was the implementation of a must-offer obligation, which requires that most generators serving the California markets offer all of their capacity in real time during all hours if they are available and not already scheduled to run through bilateral agreements.⁷ The CAISO implemented the must-offer obligation beginning July 20, 2001.

3. On August 26, 2005, the Independent Energy Producers Association (IEP) filed a complaint against the CAISO under section 206 of the FPA, alleging that the

² *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,281 (2007) (RCST Extension Order).

³ CAISO March 5, 2008 RCST Compliance Filing, Docket No. ER06-615-021, *et al.* (March 5 Compliance Filing).

⁴ *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,091 (2008) (RCST Clarification Order).

⁵ *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,280 (2008).

⁶ *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).

⁷ See RCST Extension Order, 121 FERC ¶ 61,281 at P 1 and P 34.

Commission-imposed must-offer obligation under the CAISO Tariff was flawed and no longer just and reasonable.

4. On March 31, 2006, certain parties (the Settling Parties)⁸ filed an Offer of Settlement of the IEP complaint, which proposed the institution of an RCST. The RCST, initially proposed by IEP in its complaint, modified the Commission-imposed must-offer obligation under the CAISO Tariff. The RCST provided the CAISO with a backstop capacity procurement mechanism that includes four main components: (1) daily must-offer capacity payments; (2) capacity payments for resources receiving an RCST designation resulting from a Significant Event; (3) monthly capacity payments for resources receiving RCST designations as a result of a deficiency in Resource Adequacy showings; and (4) monthly capacity payments to frequently mitigated units.⁹

5. In the RCST Settlement Order, the Commission found that the compensation resources received under the must-offer obligation was no longer just and reasonable.¹⁰ 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 RCST 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 must-offer obligation.¹¹

6. 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 the proceeding. Under the terms of the settlement approved by the Commission, the RCST was scheduled to expire on the earlier of December 31, 2007, or midnight of the date

⁸ 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).

⁹ See *Indep. Energy Producers Ass'n v. Cal. Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,096 (2007) (Order on Paper Hearing).

¹⁰ *Indep. Energy Producers Ass'n. v. Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,297, at P 38 (2006) (RSCT Settlement Order).

¹¹ *Id.* P 38-39 and Appendix.

immediately before the CAISO's Market Redesign Technology Upgrade (MRTU) Tariff becomes effective.¹²

7. On October 12, 2007, IEP filed a motion asking the Commission to reconsider its grant to the CAISO of an extension of time, until January 18, 2008, to work with stakeholders to devise and file a method load serving entities could use to cure a collective shortfall in local capacity area deficiencies.¹³ IEP asked the Commission to require the CAISO to expedite filing this method, along with its proposed Interim Capacity Procurement Mechanism (ICPM),¹⁴ to be effective January 1, 2008.

8. On December 20, 2007, the Commission denied IEP's motion but initiated a proceeding under section 206 of the FPA¹⁵ to investigate the justness and reasonableness of extending the RCST until the earlier of the implementation of MRTU or an alternative backstop capacity procurement mechanism.¹⁶ Among other things, the Commission preliminarily concluded that the most efficient solution would be to extend the RCST for this brief period so that all generators are compensated for the reliability and capacity that they provide through compliance with the must-offer obligation.¹⁷ The Commission expressly stated that it expected the CAISO to file a new backstop capacity procurement

¹² 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).

¹³ This requirement was included in the Commission's June 25, 2007 Order on MRTU compliance. *Cal. Indep. Sys Operator Corp.*, 119 FERC ¶ 61,313, at P 380 (2007).

¹⁴ The CAISO filed the ICPM on February 8, 2008, in Docket Nos. ER08-556-000 and ER06-615-020, which is pending before the Commission. The CAISO proposes that the ICPM become effective simultaneously with MRTU implementation. The ICPM is a backstop capacity procurement mechanism designed for the new MRTU market paradigm, which does not have a must-offer obligation. *See* CAISO February 8, 2008 Transmittal Letter for ICPM filing, Docket Nos. ER08-556-000 and ER06-615-020, at 1-2.

¹⁵ 16 U.S.C. § 824e (2000 and Supp. V 2005).

¹⁶ RCST Extension Order, 121 FERC ¶ 61,281 at P 1.

¹⁷ *Id.* P 34.

mechanism if MRTU is delayed beyond March 31, 2008.¹⁸ The Commission established a refund effective date of January 1, 2008, and asked parties to comment whether it would be inappropriate to extend any specific RCST provision.¹⁹ Finally, the Commission directed the CAISO to file revised tariff sheets by December 28, 2007, amending the effective date of the RSCT.²⁰

9. On December 28, 2007, the CAISO submitted for filing proposed revisions to the RCST in compliance with the RCST Extension Order. In conjunction with its compliance filing, the CAISO also filed a motion for clarification of the RCST Extension Order. In the clarification motion, the CAISO alleged that certain provisions of the RCST were specific to 2006 and 2007 and, by their terms, not applicable to 2008.²¹ Among other things, the CAISO asked the Commission to clarify that the CAISO can base local and significant event RCST designations on the 2008 Local Capacity Technical Study and the compliance provisions of section 40.7 of the current CAISO Tariff.²² The CAISO also asked the Commission to clarify that the RCST designations will terminate with the earlier of implementation of MRTU or an alternative backstop capacity procurement mechanism. On February 4, 2008, the Commission granted the CAISO's request for clarification and expressly authorized the use of the 2008 Local Capacity Technical Study and the compliance provisions of section 40.7 of the CAISO Tariff.²³

10. On March 5, 2008, the CAISO submitted tariff revisions in compliance with the RCST Clarification Order. In its March 5 Compliance Filing, the CAISO updated the tariff for extension into 2008, to reflect proper terminology, adjust the deadline for termination of System RCST designations, allocate RCST costs appropriately, and delete surplus tariff language that could cause confusion.

¹⁸ *Id.* P 38. We note that MRTU has been delayed, and the CAISO filed a modified backstop capacity mechanism, the TCPM, which the Commission conditionally approved May 30, 2008. *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,229, at P 1 (2008) (TCPM Order).

¹⁹ *Id.* P 48 and n.106.

²⁰ *Id.* at Ordering Paragraph (B).

²¹ CAISO December 28, 2007 Motion for Clarification, Docket Nos. ER06-615-003, *et al.*, at 2.

²² *Id.*

²³ RCST Clarification Order, 122 FERC ¶ 61,091 at P 9.

11. Consistent with the Commission's directive in the RCST Extension Order, on March 28, 2008, in Docket No. ER08-760-000, the CAISO filed the TCPM to bridge the period from June 1, 2008 until MRTU implementation, when the next backstop reliability mechanism, the ICPM, is supposed to become effective. The Commission recently conditionally approved the TCPM effective June 1, 2008.

II. Notice and Responsive Filings

12. Notice of the December 28 Compliance Filing was published in the *Federal Register*, 73 Fed. Reg. 4204 (2008), with comments or protests due on January 18, 2008. Timely comments or protests were filed by the Alliance for Retail Energy Markets (AREM), the California Municipal Utilities Association (CMUA), and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California (Six Cities). The CAISO filed an answer to the comments and protest on February 4, 2008.

13. Notice of the March 5 Compliance Filing was published in the *Federal Register*, 73 Fed. Reg. 14,464 (2008), with comments or protests due on March 26, 2008. None were filed.

III. Responsive Pleadings

14. Six Cities contend that the modifications submitted by the CAISO in its December 28 Compliance Filing do not fully modify the terms to reflect the fact that the RCST has been extended only on an alternative, contingent basis.²⁴ More specifically, Six Cities assert that the CAISO should revise section 43.3.1 of the CAISO Tariff (titled, Annual System Reliability Capacity Services Designations) to provide that any designations shall expire when either MRTU becomes effective or an alternative backstop capacity procurement method is implemented.²⁵

15. Six Cities also notes that the RCST states that designations shall be for a minimum term of three months, not to exceed four summer months during 2006 and five summer months in 2007.²⁶ Six Cities asks the Commission to direct the CAISO to implement a similar provision for 2008 that limits the duration of designations. Six Cities recommends a five-month summer limitation period for 2008 designations.²⁷

²⁴ Six Cities January 18, 2008 Protest, Docket Nos. ER06-615-017, *et al.*, at 2.

²⁵ *Id.* at 3.

²⁶ *Id.* at 2.

²⁷ *Id.* at 3.

16. CMUA contends that the Commission must clarify that load serving entities are allowed to cure alleged resource adequacy deficiencies prior to any RCST designations by the CAISO.²⁸ CMUA also asserts that several sections include temporal references that should be modified. According to CMUA these sections include: 43.2.1, 43.2.1.1, 43.2.1.2, 43.2.1.3, 43.3, 43.3.1, 43.4, and 43.8 (3) and (5), as well as Definitions, Appendix A of the CAISO Tariff.²⁹

17. AReM states that it has identified additional changes that are needed to ensure accuracy, and notes that it has provided these other modifications in Attachment A to its pleading.³⁰ AReM also claims to have identified additional tariff sections and definitions that require modification to ensure that the revised tariff reflects the RCST Extension Order. AReM provides these additional modifications in Attachment B to its pleading.³¹ Both of AReM's attachments also contain corrections of typographical errors. Finally, in light of the delays in implementing MRTU, AReM recommends that the Commission adopt tariff modifications that avoid reference to specific timelines. These changes also are shown in Attachments A and B to AReM's pleading.³²

IV. The CAISO's Answer

18. The CAISO contends that AReM, CMUA and Six Cities propose changes to the RCST that go beyond the scope of changes that the Commission directed in the RCST Extension Order.³³ Nevertheless, the CAISO points out that, when it made its December 28 Compliance Filing, it also recognized that additional changes beyond those reflected in the compliance filing were necessary to implement effectively any RCST extension in 2008. Consequently, the CAISO states that, except for certain specific suggestions, it generally does not object to many of the changes these parties propose.

19. The CAISO does, however, object to AReM's proposal to modify the RCST to refer to "each year thereafter," rather than to 2008. The CAISO argues that this change is

²⁸ CMUA January 18, 2008 Comments, Docket Nos. ER06-615-017, *et al.*, at 3.

²⁹ *Id.* at 4-5.

³⁰ AReM January 18, 2007 Comments, Docket Nos. EL08-20-000, *et al.*, at 2 and Attachment A.

³¹ *Id.* at 2 and Attachment B.

³² *Id.* at 3 and Attachments A and B.

³³ CAISO February 4, 2008 Answer at 4.

inappropriate because the RCST will not be extended beyond 2008.³⁴ Next, the CAISO also objects to AReM's proposal to change the reference from "local capacity area" to "local reliability area." According to the CAISO, local capacity area is the term used in the CAISO's 2008 Local Capacity Technical Study.³⁵ The CAISO also objects to AReM's proposed new definition for "resource adequacy requirement." The CAISO contends that this change exceeds the scope of compliance with the RCST Extension Order.³⁶ We further note that, while the CAISO originally objected to Six Cities' request to modify section 43.3.1 of the CAISO Tariff (pertaining to annual system designations) to provide that any resources designated under that section cannot have a term that extends past the expiration of RCST, the CAISO appears to have adopted this suggestion when revising the RCST for its March 5 Compliance Filing.

20. Finally, the CAISO agrees with CMUA that an opportunity to cure local capacity deficiencies should be carried through any extension of the RCST.³⁷

V. Procedural Matters

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure generally prohibits answers unless otherwise ordered by the decisional authority.³⁸ The Commission accepts the CAISO's February 5, 2008 answer because it provides information that has assisted us in our decision-making process.

VI. Commission Determination

22. We accept the December 28 Compliance Filing, as modified by the March 5 Compliance Filing, effective for the period beginning January 1, 2008 through May 31, 2008. As of June 1, 2008, these provisions are superceded by the tariff provisions implementing the CAISO's successor interim backstop procurement mechanism, the TCPM.

23. In the RCST Extension Order, we preliminarily concluded that the most efficient solution to the problem created by expiration of the RCST would be to extend the RCST

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 7. However, the CAISO states that it will consider whether any definition changes are necessary after the Commission acts on the motion for clarification.

³⁷ *Id.*

³⁸ 18 C.F.R. § 385.213(a)(2) (2007).

for a relatively brief period of time, so that all generators would be compensated for the reliability and capacity services they provide in compliance with the must-offer obligation.³⁹ We stated that this extension would cease upon the earlier of the implementation of MRTU or an alternative backstop capacity procurement mechanism.⁴⁰

24. In the RCST Extension Order, the Commission emphasized that this extension would be “brief.”⁴¹ The Commission also noted in the RCST Extension Order that it expected the CAISO to file a replacement mechanism if MRTU were delayed beyond March 31, 2008.⁴² MRTU has been delayed, and the CAISO has already filed a replacement backstop capacity procurement mechanism, the TCPM, which the Commission conditionally accepted effective June 1, 2008.⁴³ Consequently, the RCST will not be extended indefinitely; indeed, it has already terminated. Second, while the order initially approving the RCST specifically evaluated the justness and reasonableness of the RCST rate, the Commission also emphasized that the RCST originated as a settlement and, as such, it embodies stakeholder compromises.⁴⁴ Thus, in the RCST Extension Order, the Commission concluded that the fairest approach would be to extend the entire RCST without altering specific terms, except for updating dates.⁴⁵

25. Some of commenters’ suggested modifications to the CAISO’s December 28 Compliance Filing disregard these timing considerations. For example, AReM recommended that the Commission adopt tariff modifications that avoid reference to specific timelines.⁴⁶ Given that the RCST terminates before the end of 2008 and has already terminated, this suggestion is now moot. AReM also suggested the addition of a new definition, “resource adequacy requirement.” We decline to accept this proposal because AReM has not persuaded us that the new definition is necessary, nor would such

³⁹ RCST Extension Order, 121 FERC ¶ 61,281 at P 34.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* P 38.

⁴³ TCPM Order, 123 FERC FERC ¶ 61,229 at P 1.

⁴⁴ Order on Paper Hearing, 118 FERC ¶ 61,096, at P 34.

⁴⁵ RCST Extension Order, 121 FERC ¶ 61,281 at P 51 and n.115.

⁴⁶ AReM recommends referring to “each year thereafter” rather than to 2008. *See* AReM January 18, 2008 Comments, Docket Nos. EL08-20-000, *et al.*, at Attachment A, section 43.3.

alteration be consistent with our aim to retain the original settlement and its terms as a package, wherever possible, until implementation of an alternative backstop capacity mechanism, i.e., the TCPM.⁴⁷

26. Next, we deny AReM's proposal to change the reference in the RCST from "local capacity area" to "local reliability area." In the RCST Clarification Order, we granted the CAISO's request to use the 2008 Local Capacity Technical Study in assessing whether local and Significant Event RCST designations are appropriate in 2008.⁴⁸ Since "local capacity area" is the term used in the 2008 Local Capacity Technical Study, we find it more appropriate to retain that term in the extended RCST.

27. Both CMUA and AReM also propose a number of other modifications. However, we find it unnecessary to act on these proposals, as the CAISO has already made what we find to be the appropriate tariff modifications in its uncontested March 5 Compliance Filing. Two provisions warrant particular attention in this regard. First, Six Cities noted that section 43.3.1 of the CAISO Tariff states that designations shall not exceed four summer months in 2006 and five summer months during 2007. Six Cities proposed a similar five-month summer limitation period for 2008. Six Cities also suggested revising section 43.3.1 of the CAISO Tariff to provide that any designations shall expire at the earlier of the implementation of MRTU or an alternative backstop capacity procurement mechanism. We find that the CAISO has already made this modification to section 43.3.1 in its March 5 Compliance Filing, which we accept as consistent with the RCST Extension Order and the RCST Clarification Order.

28. Second, the CMUA argued that any extension of the RCST must include provisions that allow LSEs an opportunity to procure additional capacity resources in response to a resource adequacy deficiency identified by the CAISO, prior to any RCST designations by the CAISO. The CAISO agreed that the opportunity to cure local capacity deficiencies, included in the original RCST, should be continued in any RCST extension. In the transmittal letter accompanying its March 5 Compliance Filing, the CAISO explains that it has modified section 43.2.1.3 of the CAISO Tariff (titled, Local RCST Designations for Deficiencies) to incorporate by reference the opportunity to make up for deficiencies.⁴⁹ Consistent with our intent to extend all provisions of the RCST as a

⁴⁷ RCST Extension Order, 121 FERC ¶ 61,281 at P 53 and n.115 (expressing concern that since the RCST originated as a settlement, it embodies compromises, which makes extending some features but not others potentially unfair).

⁴⁸ RCST Clarification Order, 122 FERC ¶ 61,091 at P 9.

⁴⁹ CAISO March 5, 2008 Transmittal Letter, Docket Nos. ER06-615-021, *et al.*, at 5; proposed section 43.2.1 of RCST.

package reflecting the bargain struck in the original settlement, we find it just and reasonable to extend the opportunity to cure local capacity deficiencies. Accordingly, we accept modified section 43.2.1.3.

The Commission orders:

The CAISO's RCST compliance filings submitted on December 28, 2007 and March 5, 2008 are hereby accepted, effective January 1, 2008, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.