

123 FERC ¶ 61,280
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.

Dynegy Moss Landing, LLC
Dynegy Morro Bay, LLC
El Segundo Power, LLC
Reliant Energy, Inc.

Docket Nos. EL08-13-000

Complainants

v.

California Independent System Operator Corporation
Respondent

California Independent System Operator Corporation

EL08-20-000

Not
Consolidated

ORDER ON SECTION 206 INVESTIGATION AND DENYING COMPLAINT

(Issued June 19, 2008)

1. On November 30, 2007, Dynegy Moss Landing, LLC and Dynegy Morro Bay LLC, El Segundo Power, LLC, and Reliant Energy, Inc. (collectively California Generators) filed a complaint (complaint) pursuant to sections 206 and 306 of the Federal Power Act (FPA)¹ against the California Independent System Operator Corporation (CAISO).² The complaint, which was filed before the Commission initiated its

¹ 16 U.S.C. §§ 824e, 825e (2000 and Supp. V 2005).

² California Generators' November 30, 2007 Complaint, Docket No. EL08-13-000 (Complaint).

investigation into briefly extending the Reliability Capacity Services Tariff (RCST),³ alleges that as of January 1, 2008, the RCST expired, leaving resources that lack Reliability Must-Run (RMR) or resource adequacy contracts without compensation for the reliability services they provide under the CAISO's must-offer obligation.⁴ The complaint asks the Commission to adopt the California Generators' proposed Reliability Capacity Compensation Mechanism (RCCM), in order to compensate resources that are committed under the must-offer obligation. The California Generators ask the Commission to implement their proposed RCCM upon the expiration of the RCST.

2. Shortly after this complaint was filed, the Commission instituted a proceeding under section 206 of the FPA⁵ to investigate the justness and reasonableness of extending the RCST until the earlier of the implementation of the CAISO's Market Redesign Technology Upgrade (MRTU) or an alternative interim backstop capacity procurement mechanism.⁶ The Commission order established a refund effective date of January 1, 2008, and sought comments on the proposal to extend the RCST for a limited period of time.

3. For the reasons discussed below, the Commission finds that the RCST continues to be just and reasonable until June 1, 2008, the date the CAISO's successor interim backstop capacity procurement mechanism, the Transitional Capacity Procurement Mechanism (TCPM), became effective.⁷ Because we find that the RCST is just and reasonable and not unduly discriminatory, we deny the complaint. Moreover, since we recently found the TCPM, as modified by our May 30, 2008 TCPM Order, to be just and reasonable, we find the complaint moot for the period beginning June 1, 2008. This also terminates our section 206 investigation into the justness and reasonableness of extending the RCST until the earlier of the implementation of either MRTU or an alternative backstop capacity mechanism, namely implementation of the TCPM.

³ *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,281 (2007) (RCST Extension Order).

⁴ The must-offer obligation, which is currently in effect, requires most resources 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. For additional background on the must-offer obligation, *see text infra* at P 4.

⁵ 16 U.S.C. § 824e.

⁶ RCST Extension Order, 121 FERC ¶ 61,281.

⁷ *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,229 (2008) (TCPM Order).

I. Background

A. RCST

4. On April 26, 2001, the Commission established a prospective mitigation and monitoring plan for the California wholesale electric markets.⁸ One of the fundamental elements of the plan was the implementation of a must-offer obligation pursuant to which most resources serving California markets are required to offer all of their capacity in real time during all hours if it is available and not already scheduled to run through bilateral agreements. The CAISO implemented the must-offer obligation beginning July 20, 2001. The must-offer obligation is “designed to prevent withholding and thereby . . . ensure that the CAISO will be able to call upon available resources in the real-time market to the extent that energy is needed.”⁹ A generating unit may request a waiver of its must-offer obligation. If the CAISO denies a waiver request (must-offer waiver denial), the resource is required to remain available, i.e., is “committed.”

5. In an order issued on June 17, 2004,¹⁰ 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 must-offer obligation.¹¹ Additionally, on July 8, 2004,¹² the Commission advised that if Independent Energy Producers Association (IEP) believed the must-offer obligation to be unjust and unreasonable, it may seek to initiate a section 206 proceeding to challenge the current method and

⁸ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 95 FERC ¶ 61,115 (2001), *order on reh’g*, 95 FERC ¶ 61,418 (2001), *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).

⁹ *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,193, at P 2 (2007) (*citing San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Serv.*, 95 FERC ¶ 61,418, at 62,551 (2001)).

¹⁰ *Cal. Indep. Sys. Operator Corp.*, 107 FERC ¶ 61,274 (June 2004 Order), *order on reh’g*, 108 FERC ¶ 61,254 (2004).

¹¹ *See id.* P 26-28.

¹² *Cal. Indep. Sys. Operator Corp.*, 108 FERC ¶ 61,022 (2004) (July 2004 Order), *order on reh’g*, 108 FERC ¶ 61,097 (2004).

implement an alternative proposal.¹³ The Commission concluded that the must-offer obligation should remain temporary, and reiterated its suggestion that if resource adequacy requirements are sufficient to meet operational needs, the resource adequacy requirements can replace the existing must-offer obligation.¹⁴

6. On August 26, 2005, IEP filed a complaint against the CAISO under section 206 of the FPA.¹⁵ The complaint alleged that the Commission-imposed must-offer obligation 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 must-offer obligation and related minimum load cost compensation tariff provisions with an interim set of tariff provisions that would remain in effect until the CAISO's market redesign goes into effect.

7. On March 31, 2006, the Settling Parties¹⁶ filed an Offer of Settlement of the IEP complaint that proposed the institution of the RCST. In conjunction with the must-offer obligation, the RCST provided a backstop capacity procurement mechanism to the CAISO that included provisions establishing: (1) a daily must-offer capacity payment rate; (2) an RCST capacity payment that would result from a Significant Event designation; (3) a monthly RCST capacity payment due to a designation resulting from deficiency in resource adequacy demonstrations; and (4) monthly capacity payments to frequently mitigated units. In addition, the RCST established cost allocation methodologies and governed the rules by which the CAISO can procure RCST capacity.

8. In a July 20, 2006 Order on Complaint and Offer of Settlement, the Commission found that, under the then-current market design, the compensation to resources under the must-offer obligation was no longer just and reasonable.¹⁷ However, the Commission was unable to find that the rates and cost allocation mechanism under the contested Offer of Settlement were just and reasonable. Accordingly, the July 20, 2006 Order established

¹³ *Id.* P 116.

¹⁴ *Id.* P 114-15. The Commission subsequently reiterated its intent that the must-offer obligation should be temporary. *Indep. Energy Producers Ass'n v. Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,069 (2006) (July 20, 2006 Order).

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

¹⁶ The Settling Parties are: IEP; CAISO; CPUC; Pacific Gas and Electric Company (PG&E); San Diego Gas & Electric Company (SDG&E); and Southern California Edison Company (SoCal Edison).

¹⁷ July 20, 2006 Order, 116 FERC ¶ 61,069 at P 1.

paper hearing procedures to review evidence on the rates and cost allocation issues presented by the Offer of Settlement.

9. On February 13, 2007, in its Order on Paper Hearing, the Commission approved, with modifications, the Offer of Settlement as just and reasonable.¹⁸ Under the terms of the Offer of Settlement, the RCST would expire on the earlier of December 31, 2007 or MRTU implementation.¹⁹

10. On December 20, 2007, the Commission instituted a proceeding in Docket No. EL08-20-000 pursuant to section 206 of the FPA²⁰ to investigate the justness and reasonableness of extending the RCST until the earlier of the implementation of either MRTU or an alternative interim backstop capacity procurement mechanism. Pursuant to section 206, the RCST Extension Order established a refund effective date of January 1, 2008, and sought comments on the proposal to extend the RCST beyond its original termination date. In the RCST Extension Order, the Commission recognized the CAISO's commitment to develop an updated must-offer obligation compensation mechanism, if MRTU were delayed, and stated that it "expect[ed] the CAISO to follow through with its commitment to initiate a new stakeholder process and modify the RCST accordingly."²¹

11. In a second order issued on December 20, 2007, the Commission denied requests for rehearing and granted in part and denied in part the requests for clarification arising out of IEP's complaint in Docket No. EL05-146 concerning the must-offer obligation under the CAISO Tariff.²²

12. On December 28, 2007, the CAISO filed a motion for clarification of the RCST Extension Order. On February 4, 2008, the Commission granted the CAISO's request and clarified that, among other things: (1) the CAISO properly implemented the RCST

¹⁸ *Indep. Energy Producers Ass'n v. Cal. Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,096 (Order on Paper Hearing), *order on reh'g*, 121 FERC ¶ 61,276 (2007) (RCST Rehearing Order).

¹⁹ 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).

²⁰ 16 U.S.C. § 824e.

²¹ RCST Extension Order, 121 FERC ¶ 61,281 at P 38.

²² RCST Rehearing Order, 121 FERC ¶ 61,276 at P 1.

Extension Order in its amendment of section 43.3 of the CAISO Tariff; (2) the CAISO should use the 2008 Local Capacity Technical Study to determine if “Significant Event” designations are appropriate; and (3) all features of the RCST, including RCST designations, will expire upon implementation of either MRTU or an alternate backstop procurement program.²³

B. Relevant MRTU Orders

13. The CAISO filed the tariff implementing its market redesign, the MRTU Tariff, on February 9, 2006, in Docket No. ER06-615-000. Subsequently, on September 21, 2006, the Commission issued an order that conditionally accepted the filing, subject to modifications.²⁴ On June 25, 2007, the Commission conditionally accepted certain compliance filings made by the CAISO, subject to additional modifications.²⁵ The Commission also directed the CAISO to explore with stakeholders opportunities for load serving entities (LSEs) to avoid potential CAISO remedial procurement by curing a collective shortfall in Local Capacity Area Resource Requirements.²⁶ In a January 9, 2008 order, the Commission conditionally accepted, subject to modification, the proposed MRTU Tariff revisions related to resource adequacy, and deferred resolution of other MRTU compliance issues.²⁷

C. TCPM

14. On March 28, 2008, the CAISO filed its proposed TCPM in Docket No. ER08-760-000. The TCPM is intended to serve as a bridge between RCST and the backstop procurement mechanism under MRTU, the Interim Capacity Procurement Mechanism

²³ *Indep. Energy Producers Ass’n v. Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,091, at P 9, 10 (2008) (RCST Clarification Order).

²⁴ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006), *order on reh’g*, 119 FERC ¶ 61,076 (2007), *order on reh’g and denying motion to reopen record*, 120 FERC ¶ 61,271 (2007).

²⁵ *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,313, *order on reh’g*, 121 FERC ¶ 61,030 (2007).

²⁶ *Id.* P 380.

²⁷ *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,017, at P 1 (2008).

(ICPM).²⁸ The TCPM retains many of the components of the RCST, but adopts some of the changes proposed for the ICPM. Although the TCPM incorporates certain changes developed during the ICPM stakeholder process, the CAISO explains that the TCPM proposal is designed to work with the existing, pre-MRTU market structure. As mentioned above, on May 30, 2008, the Commission issued an order conditionally accepting the TCPM, effective June 1, 2008.²⁹

II. Notice, Intervention and Responsive Pleadings

A. Complaint

15. Notice of the complaint was published in the *Federal Register*, 72 Fed. Reg. 70,579 (2007), with motions to intervene, comments, and protests due on or before December 20, 2007. The following parties filed timely motions to intervene, comments and/or protests: California Electricity Oversight Board (CEOB);³⁰ California Municipal Utilities Association (CMUA); Metropolitan Water District of Southern California (Metropolitan); CPUC; PG&E; SoCal Edison; Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities); Northern California Power Agency (NCPA); Alliance for Retail Energy Markets (AReM); the California Large Energy Consumer's Association (CLECA); joint protest by the indicated parties;³¹ Mirant Energy Trading, LLC, Mirant California, LLC, and Mirant Delta, LLC, Mirant Potrero, LLC (Mirant Companies); Sacramento Municipal Utility District; California Department of Water Resources State Water Project (SWP); TURN; Modesto Irrigation District; and the City of Santa Clara, California and the M-S-R Public Power Agency; IEP; and Constellation Energy Commodities Group, Inc. and Constellation New Energy, Inc. (CEG Companies).

²⁸ The CAISO filed its ICPM proposal on February 28, 2008, in Docket Nos. ER08-556-000 and ER06-615-020, which is pending before the Commission. The proposed ICPM differs from the pre-MRTU backstop capacity mechanisms (RCST and TCPM) in that it is designed to work under the new MRTU market paradigm, without the must-offer obligation.

²⁹ TCPM Order, 123 FERC ¶ 61,229 at P 1.

³⁰ On January 28, 2008, CEOB filed a Notice of Termination of its participation in this matter. Therefore, it will not be considered a party and its comments will be not be addressed.

³¹ These protesters include: AReM; CLECA; California Manufacturers Technology Association (CMTA); CMUA; Energy Users Forum (EUF); and The Utility Reform Network (TURN) (collectively Joint Protesters).

16. On December 20, 2007, the CAISO filed an answer to the complaint.

B. Section 206 Investigation

17. Notice of the Section 206 Investigation was published in the *Federal Register*, 73 Fed. Reg. 1331 (2008). The following parties filed timely motions to intervene and/or comments: CMUA; CPUC; PG&E; California Generators; Six Cities; NCPA; AReM; TURN; SWP; SoCal Edison; IEP; CAISO; and CLECA. Timely motions to intervene were filed by a number of parties that took no position.³² The following entities submitted timely reply comments: (1) NCPA; (2) CAISO; (3) SoCal Edison; (4) PG&E; (5) Six Cities; and (6) SWP.

III. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. Pursuant to the RCST Extension Order, we hereby accept the timely reply comments from NCPA, CAISO, SoCal Edison, PG&E, Six Cities, and SWP.³³

B. Extending the RCST

20. In the RCST Extension Order, the Commission instituted an investigation into the justness and reasonableness of extending the RCST until the earlier of the implementation of either MRTU or an alternative interim backstop capacity procurement mechanism.³⁴ In the complaint filed before the issuance of the RCST Extension Order,

³² These intervenors include: Mirant Companies; Sacramento Municipal Utility District; Modesto Irrigation District; the City of Santa Clara, California and the M-S-R Public Power Agency; Department of Energy Western Area Power Administration; San Diego Gas and Electric Company; CEG Companies; NRG Power Marketing, Inc., Cabrillo Power I LLC, Cabrillo Power II LLC and Long Beach Generation LLC; the City and County of San Francisco; Metropolitan; and the CEOB, which filed a January 28, 2008 Notice of Termination of its participation and, therefore, will not be considered a party to this proceeding.

³³ RCST Extension Order, 121 FERC ¶ 61,281 at Ordering Paragraph (C).

³⁴ *Id.* P 1-2.

the California Generators opposed extension of the RCST beyond December 31, 2007, on the grounds that the RCST's target capacity price values are outdated and the monthly RCST capacity payment has been essentially eviscerated by the CAISO's failure to designate resources to receive this monthly payment.

1. Support for Extension of the RCST

21. PG&E notes that nearly all of the stakeholders supported or did not object to the justness and reasonableness of extending the RCST. Specifically, the following parties support the extension of the unmodified RCST until the implementation of MRTU or an alternative backstop procurement mechanism: AReM; TURN; SoCal Edison; CPUC; CLECA; Six Cities; NCPA; and the Joint Protesters. Many of these filings also raise concerns that creating an alternative interim backstop procurement mechanism would distract from the existing stakeholder process for developing the ICPM.

22. NCPA, CMUA, and Six Cities generally support the extension of the RCST, provided that the provisions permitting LSEs the opportunity to cure identified resource deficiencies prior to backstop procurement is extended. NCPA further hinges its support for limited extension of the RCST on all designations expiring when MRTU or an alternative backstop procurement mechanism takes effect.

23. In comments filed on January 9, 2008, the CAISO agrees that it is just and reasonable to extend the RCST, with modifications to several tariff sections, until the implementation of the earlier of either MRTU or an alternative backstop procurement mechanism. With regard to the tariff sections requiring modification, the CAISO asserts that the designation provisions include processes and criteria that are designed for 2006 and 2007 and are not applicable in 2008. Additionally, the CAISO provides that it is unclear how the multi-month designations would extend beyond the implementation of MRTU, due to the introduction of a new pricing scheme under MRTU that is based on locational marginal prices. For these reasons, the CAISO contends that if the Commission does not direct the tariff revisions the CAISO suggests are necessary to implement the RCST extension, then the Commission should only extend the must-offer obligation daily capacity payment.³⁵

³⁵ As described above, at P 12, on December 28, 2008, the CAISO filed both a Motion for Clarification and a compliance filing relating to the RCST Extension Order. The Commission issued an RCST Clarification Order on February 4, 2008 in response to the Motion for Clarification. *See* RCST Clarification Order, 122 FERC ¶ 61,091. Subsequently, on March 5, 2008, the CAISO filed a second compliance filing that relates to the RCST Clarification Order. Concurrent with this order, the Commission is issuing an order on both compliance filings implementing extension of the RCST.

24. With regard to the RCST designation provisions that rely on 2006 and 2007 studies, criteria, and timelines, the CAISO proposes that the Commission should authorize it to use the 2008 Local Capacity Technical Study and compliance provisions of section 40.7 of the RCST to ascertain when Significant Event and Local RCST designations are appropriate in 2008. Additionally, the CAISO contends that multi-month RCST designations made prior to the implementation of MRTU should terminate no later than MRTU's effective date.

2. Opposition to RCST Extension

a. RCST Designations

25. Citing concern that MRTU will be delayed beyond March 31, 2008 and the RCST will be extended, IEP asserts that the RCST should be modified starting January 1, 2008. IEP contends that the RCST designation provisions are unjust, unreasonable, and unduly discriminatory and that "the designation process must be modified in order to eliminate undue discrimination among [resources] providing the same reliability services, and for the RCST to justly and reasonably compensate those [resources]" providing service under the must-offer obligation.³⁶ IEP relies on the affidavit of its expert, Cavicchi, who recommends that the Commission direct the CAISO to designate a resource after the denial of a single must-offer waiver, and eliminate the current tariff language governing designations for a "Significant Event." In support of this contention, IEP provides that since June 1, 2006, the CAISO has issued approximately 525 must-offer waiver denials that have resulted in only one RCST designation.³⁷ Furthermore, IEP contends that "[c]onsistent with the goals of the RCST Settlement and fundamental economic principles, the ultimate reliability backstop should provide the clearest economic signal to the market of the need to invest in new supply."³⁸

26. The CAISO opposes IEP's proposed solution of issuing multi-month designations following the issuance of the first must-offer waiver denial because it would require the CAISO to contract for three-months of capacity when it may not be needed for that duration and thus imposes an unjust and unreasonable burden on ratepayers. The CAISO explains that the RCST Settlement and the tariff set forth specific requirements that must be satisfied in order for the CAISO to have the discretion to make a multi-month designation. According to the CAISO, the number of must-offer waivers denials does not establish that a "Significant Event" occurred. The CAISO also claims that, to some of

³⁶ IEP January 9, 2008 Comments, Docket Nos. ER06-615-003 *et al.*, at 9 (discussing IEP Aff. ¶¶ 13-14).

³⁷ *Id.* at 6 (discussing IEP Aff. Exh. AJC-1).

³⁸ *Id.* at 9.

the Settling Parties, restrictions on the CAISO's discretion to make "Significant Event" designations was just as important as the CAISO's authority to make such designations was to others. The CAISO states that IEP's only support for its contention that the parties to the RCST Settlement anticipated that must-offer waiver denials would not be regularly issued after the implementation of RCST is a self-serving affidavit.

27. Additionally, the CAISO reiterates that the Commission has previously found that neither the RCST Settlement nor the tariff allows designations for zonal reliability concerns, and points out that more than half of the must-offer waiver denials between June 1, 2006 and February 28, 2007 were due to zonal issues.³⁹ The CAISO asserts that IEP has not presented evidence demonstrating that the CAISO should have made designations under the tariff, nor has IEP identified a deficiency in the CAISO's analysis of whether events constituted a "Significant Event," nor has it explained why any particular units should have received designations. The CAISO contends that IEP's claim that the RCST designation procedures are unjust and unreasonable is flawed because it has not identified changed circumstances that would indicate that the RCST is no longer just and reasonable.

28. The CAISO further asserts that IEP's proposal would create gaming opportunities for large non-resource adequacy resources that are self-scheduled.⁴⁰ In these instances, the CAISO operators will count the self-schedules in its online generation calculations; however, when the resource ends its self-schedule, the CAISO will have a large gap to fill in a short amount of time. If resource adequacy resources cannot be started in time, the CAISO explains that its operators would be forced to deny the non-resource adequacy resource's request to shut down. The CAISO points out that under the IEP proposal these resources would receive a multi-month capacity payment. The CAISO claims that the current RCST avoids this situation.

29. SoCal Edison and the CAISO assert that many of IEP's objections to the designations made under the RCST relate to the implementation of the RCST and not the RCST itself. The CAISO asserts that its implementation of RCST has been consistent with both the tariff and the settlement, and IEP has not proven otherwise. PG&E states that it supports the CAISO's implementation of the RCST Settlement with respect to must-offer waiver denials and "Significant Event" designations.

³⁹ California consists of three zones that correspond to the three Investor Owned Utilities.

⁴⁰ Self-scheduled refers to "[t]he Bid component that indicates the quantities in MWhs with no specification of a price that the Scheduling Coordinator is submitting to the CAISO, which indicates that the Scheduling Coordinator is a Price Taker...." See MRTU Tariff Appendix A.

30. Six Cities and NCPA oppose IEP's proposal to require RCST designations after a single must-offer waiver denial. Six Cities note that the RCST was not intended to provide a monthly backstop capacity payment to resources as a matter of right. If this were the case, Six Cities assert that the RCST Settlement would not have provided the CAISO discretion in determining whether a "Significant Event" occurred and would instead have stated that resources are entitled to monthly capacity payments upon receiving a must-offer waiver denial. Six Cities also contend that the RCST capacity payment provides adequate compensation for the spot capacity provided, and that a multi-month capacity charge in response to a single must-offer waiver denial would create a windfall to resources.

31. IEP also asserts that the CAISO's use of Real-Time Commitment software to commit effective units in economic order violates the tariff provisions requiring that the CAISO exhaust resource adequacy, RMR, and RCST before issuing must-offer waiver denials to other units. Furthermore, IEP contends that the must-offer waiver denial process is discriminatory because it considers day-ahead must-offer waiver denials but does not consider real-time must-offer waiver denials made through the Real-Time Commitment software when performing "Significant Event" evaluations.

32. The CAISO disagrees with IEP's assertion that its use of Real-Time Commitment software to commit effective units in economic order violates the tariff, which specifically says "[t]o the extent conditions permit, the ISO will revoke the waivers of resource adequacy resources and RCST resources prior to revoking the waivers of other FERC Must-Offer Generators."⁴¹ The CAISO explains that, although conditions rarely interfere with its ability to follow this sequence in the day-ahead market, Real-Time Commitment software and procedures sometimes do not permit compliance. According to the CAISO, even if the Commission determines that the use of Real-Time Commitment software is not appropriate, the resources have sustained no harm as they have received the daily capacity payment for must-offer waiver denials.

33. The CAISO contends that IEP errs in its assertion that the must-offer waiver denial process is discriminatory because it does not consider must-offer waiver denials made in real-time through Real-Time Commitment when it performs "Significant Event" designations. The CAISO states that it performs a "Significant Event" evaluation whenever a resource receives a fourth must-offer waiver denial, including denials issued through the Real-Time Commitment application.

34. Finally, SoCal Edison asserts that IEP improperly expands the scope of the comments requested by the Commission when it proposes modifications to the RCST. According to SoCal Edison, IEP raises the same issues with respect to the compensation

⁴¹ CAISO January 24, 2008 Reply Comments, Docket No. EL08-20-000, at 15-16 (quoting section 40.7 of the RCST Tariff).

mechanism in these comments as it did in the RCST paper hearings. As such, SoCal Edison believes that the Commission has already addressed these arguments and that they should be rejected. Likewise, PG&E asserts that IEP's comments raise issues related to the implementation of RCST that the Commission previously rejected because it found that these issues would be more appropriately addressed during the consideration of the CAISO's RCST replacement mechanism.⁴² PG&E asserts that IEP's concerns about the RCST's impact on must-offer waiver denials and how it reflects the effectiveness of the RCST settlement is not appropriate for consideration. The CAISO also asserts that IEP's concerns about the RCST designation process and claims that the lack of RCST designations constitutes an abuse of discretion are beyond the scope of the section 206 investigation, which limited comments to the justness and reasonableness of extending the RCST.

b. RCST Capacity Price is Too Low

35. IEP claims that the level of compensation under the RCST is unjust and unreasonable because: (1) it is based on a five-year-old California Energy Commission (CEC) study; (2) recent data indicates that peaking plant additions and planned additions in California use aeroderivative gas turbine technology, which is more expensive than frame type units; and (3) the intention of the RCST Settlement was to base the target capacity price on cost of new entry, and the new data indicates that the current target capacity price is too low.

36. PG&E and the CAISO point out that the RCST was found on rehearing to be just and reasonable based on the zone of reasonableness and not on the cost of new entry, which only represents the upper limit of the zone of reasonableness. The CAISO asserts that IEP has not presented evidence that the current target capacity price is no longer within "the bookends," i.e., within the fixed costs of existing generation and the cost of new entry, which the Commission established as the zone of reasonableness in the RCST orders.

37. PG&E and SoCal Edison note that the RCST Settlement was a negotiated number and not based on the cost of new entry. PG&E further contends that the cost of new entry pricing is not dispositive for this issue. Likewise, Six Cities assert that the adequacy of RCST compensation has been addressed in previous orders and should be rejected.

38. Six Cities and the CAISO take issue with IEP's assertion that the RCST does not provide sufficient compensation to resources because IEP has not shown changed circumstances that would render the extension of the RCST compensation mechanism until the implementation of the earlier of either MRTU or an alternate backstop

⁴² PG&E, January 24, 2008 Reply Comments, Docket No. EL08-20-000, at 2 (discussing RCST Rehearing Order).

procurement mechanism unjust and unreasonable. Six Cities further claim that IEP has not demonstrated that the existing target capacity price is insufficient to cover going-forward costs plus a reasonable return.

39. Six Cities provides that IEP's reliance on the cost of new entry to support its proposed increase in RCST compensation is misplaced for the following reasons: (1) the short-term nature of RCST was not intended to encourage investment in new generation; (2) RCST is designed to be used only when existing resource adequacy and RMR contracts are not sufficient to provide required capacity; and (3) the Commission has expressly found that the target capacity price is not based exclusively on the cost of new entry.⁴³ Similarly, the CAISO opposes the use of the cost of new entry for these reasons: (1) it only represents the upper limit of the zone of reasonableness; (2) a temporary backstop procurement mechanism is not meant to encourage new generation; and (3) the use of the cost of new entry will only result in excessive revenues for existing resources. Additionally, the CAISO notes that the resources that have been receiving the daily compensation rate will be the group that continues receiving interim compensation between January 1, 2008 and MRTU startup.

40. The CAISO expresses concern that a uniform application of cost of new entry pricing could create competitive issues because resource adequacy requirements are currently set on a local area and system-wide basis. The CAISO states that many of the local areas are small relative to the total amount (MW) of the CAISO's capacity and have a concentration of ownership. According to the CAISO, were the backstop mechanism designed to send investment price signals, the cost of new entry should be considered as a possible backstop price only when there is a capacity deficiency in a local area or system zone and the intent of the mechanism is to encourage new generation. The CAISO asserts that only three out of 10 local capacity areas on the grid are deficient in their resource adequacy requirements. Because the capacity in these areas is owned by investor-owned utilities or under a multi-year resource adequacy contract, it is unlikely that there will be any near-term benefits to the California Generators if the cost of new entry is applied. In the remaining load pockets containing surplus capacity under concentrated ownership, additional investment does not appear needed in the short-term. For these reasons, the CAISO asserts that backstop pricing based on the cost of new entry may only serve to raise forward resource adequacy prices if there is insufficient competition and additional market power mitigation rules are not in place.

41. Six Cities assert that IEP's claim that RCST compensation should be increased to reduce reliance on the backstop capacity mechanism is unfounded because a significant increase in RCST compensation would create an incentive for resources to avoid long-term contracts in order to reap the higher RCST prices.

⁴³ The RCST target capacity price is \$73/kW-year.

42. The CAISO also opposes the use of cost of new entry as the price benchmark for backstop procurement for daily or real-time needs. Additionally, the CAISO asserts that it is not appropriate to base payments for unplanned, unanticipated, short-term procurement on the cost of new entry because the purpose of this type of procurement is to provide reliability and not to provide incentives to new generation.

43. NCPA notes that both the RCST and forthcoming ICPM are backstop procurement mechanisms that are not intended to be used often, and should not be used often if the CAISO's resource adequacy requirements work as expected. NCPA further contends that the resource adequacy program requirements are the vehicle that is intended to encourage investment in new generation. NCPA opposes IEP's claims that the capacity compensation for designated RCST units should be increased to reflect the cost of new entry for building an aeroderivative peaking power plant. SoCal Edison and PG&E agree that even if the cost of new entry were found to be the appropriate measure, the matter of selecting a reference unit is a contentious issue that may not be resolved by the affidavit of an interested party.

c. Price Discrimination

44. IEP contends that price discrimination exists between new and existing resources because the new units LSEs are constructing are guaranteed a specific level of compensation or receive compensation under longer-term contracts as opposed to being compensated based on the expectations of future market prices. In contrast, IEP asserts that existing resources are dependent on wholesale market levels and, therefore, are subject to price discrimination for providing the same reliability services as the new resources. IEP also expresses concern that as new capacity resources are added, the market prices available to existing resources will be under pressure to decline. For these reasons, IEP asserts that the Commission may rectify this situation by increasing the RCST target capacity price to reflect the more recent data and be more consistent with the compensation for new units.

45. According to the CAISO, IEP's price discrimination argument does not constitute discrimination as it is defined by the FPA or Commission precedent.⁴⁴ The CAISO further points out that the affidavit on which IEP relies provides its own definition of discrimination as an attempt to avoid this problem.

46. According to the CAISO, IEP's comparison of the compensation that new generation receives with the compensation that existing generation receives is not appropriate. The CAISO explains that RCST compensation is the same for all resources and that its obligation is limited to providing just and reasonable compensation in return for the services provided under its tariff. The CAISO asserts that the only required cost

⁴⁴ CAISO January 24, 2008 Reply Comments, Docket No. EL08-20-000, at 26.

recovery is for the services provided and that under the daily capacity payment, resources receiving must-offer waiver denials are paid 1/17 of the monthly target capacity payment for each day of service, nearly twice the proportional payment.

47. Six Cities take the position that IEP's claims that: (a) "there has been a considerable amount of new entry in the region;" and (b) "[t]wo years after the implementation of the RCST, California still is in need of investment in generation[.]" are inconsistent with each other.⁴⁵ Six Cities also contend that if the cost of new entry has increased, as IEP claims, it is the new resources that will be at a competitive disadvantage.

48. Six Cities take exception to IEP's claim that price discrimination exists because, in part, new resources often have longer-term contracts. Six Cities contend that the purpose of the resource adequacy requirements has been to encourage longer-term contracting rather than reliance on backstop procurement. Therefore, Six Cities views this pattern of longer-term contracting for newer resources as success for the resource adequacy requirements initiative. According to Six Cities, IEP does not identify any tariff provisions that discriminate between new and existing resources. Additionally, Six Cities explain that in a competitive market, new efficient units should be putting pressure on older less efficient units.

d. RCST Fails to Appropriately Allocate Costs Relating to Must-Offer Capacity Payments

49. SWP opposes the extension of RCST, stating that "[c]rucial to the approval of the Amendment 60 cost allocation methodology in the RCST proposal – which the Commission now proposes to extend yet again – was its allegedly temporary nature."⁴⁶ SWP states that neither the Commission nor any party has explained why it is just and reasonable and not unduly discriminatory to force SWP's pump-storage resources to pay the RCST capacity costs of the resources with which SWP's pump-storage units compete to serve peak demands.⁴⁷ SWP asks that the Commission exempt it from the allocation of RCST costs or a least deny IEP's request to increase these costs.

⁴⁵ Six Cities January 24, 2008 Reply Comments, Docket No. EL08-20-000, at 15 (citing IEP Comments at 9).

⁴⁶ SWP January 4, 2008 Comments, Docket No. EL08-20-000, at 2. In the Amendment 60 proceeding, we found that the CAISO's non-time sensitive rate design was just and reasonable. 121 FERC ¶ 61,276 at P 71 (citing *Cal. Indep. Sys. Operator Corp.* 121 FERC ¶ 61,193, at P 100 (2007)).

⁴⁷ SWP January 4, 2008 Comments, Docket No. EL08-20-000, at 3.

50. The CAISO claims that SWP raises the same arguments that the Commission addressed in the RCST Rehearing Order and that absent a showing of changed circumstances, these arguments constitute a collateral attack on the Commission's prior RCST order. The CAISO offers that the closest that SWP comes to demonstrating a changed circumstance is its contention that Amendment 60 cost allocation would last only into 2006. The CAISO states that upon examination, the tariff language does not provide a guarantee that Amendment 60 would not be extended and that it was clear that the determining factor for terminating the must-offer obligation is the implementation of MRTU. The CAISO states that, in its rejection of SWP's arguments, the Commission noted that the must-offer obligation would continue until the implementation of MRTU.⁴⁸ Accordingly, the CAISO asserts that a three-month delay in the effective date (of MRTU) does not constitute a changed circumstance that would render continuation of the cost allocation method unjust and unreasonable.

e. **Extending Only the Daily Capacity Payment**

51. CMUA supports the extension of only one RCST component, the daily must-offer capacity payment, until implementation of a successor backstop procurement mechanism. In support of this position, CMUA states that "[e]xtension of the [daily must-offer capacity] payments would result in capacity payments to [resources] pursuant to a rate already found to be just and reasonable by the Commission, while not interfering with the implementation of a successor such as the ICPM proposal."⁴⁹ Specifically, CMUA is opposed to allowing RCST designations made under the extension to continue after the sunset of the RCST out of concern that this could impose costs on LSEs due to overlap with the successor mechanism.⁵⁰

f. **Extension of RCST Until Either the Implementation of MRTU or an Alternate Backstop Procurement Mechanism**

52. The California Generators request that if the CAISO informs the Commission that MRTU will be delayed beyond March 31, 2008, the Commission should direct the CAISO to convene a stakeholder process to modify and replace the RCST and also submit a compliance filing modifying the RCST before March 31, 2008. The California Generators assert that any such compliance filing should change the designation rules and increase the capacity compensation rate to reflect escalation of equipment, construction, and capital costs.

⁴⁸ See *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,193, at P 101 (2007).

⁴⁹ CMUA January 9, 2008 Comments, Docket No. EL08-20-000, at 3.

⁵⁰ *Id.* at 4.

53. In their expressed willingness to accept extension of the RCST through March 31, 2008, the California Generators acknowledge that January through March are not historically peak demand months; however, they assert that “any extension of the unmodified RCST into the summer months of 2008 would result in discriminatory and unjust and unreasonable capacity compensation to Must-Offer Generators whose available capacity is continuously on call to the CAISO.”⁵¹ Due to the short time for implementing a successor interim mechanism before the summer months, the California Generators propose that the Commission designate a settlement judge to oversee the stakeholder process and to develop an interim capacity payment mechanism. Also, the California Generators state that their complaint should be held in abeyance unless MRTU is deferred beyond March 31, 2008. If MRTU is delayed, the California Generators contend that the RCST must be replaced or modified so that entitlement to the monthly RCST capacity payment is triggered by an objective event, specifically the denial of a must-offer obligation waiver, i.e., commitment of resource, and the term for capacity payments covers the entire summer period, and at least three-months during other seasons. The California Generators further assert that the studies on which the RCST target capacity price was established are outdated and that if MRTU is delayed, the RCST target annual capacity price should be updated to reflect current estimates of the cost of new entry, including the LM6000 aeroderivative technology that the California Generators contend more appropriately represents peaking units being built in California today, as opposed to the frame units used in the RCST Settlement calculations.

54. The CAISO opposes the California Generators’ request that the Commission not extend the RCST beyond March 31, 2008, and notes that a status report filed on January 14, 2008 announced that MRTU will be delayed beyond March 31, 2008. The CAISO acknowledges that if MRTU implementation is delayed until after the summer, it is appropriate to implement an interim backstop procurement mechanism, and reiterates its previous commitment to work with stakeholders on an expedited basis to design an alternative backstop capacity mechanism if MRTU is delayed beyond June 1, 2008.

55. The CAISO states that the California Generators’ assertion that RCST should not be extended beyond March 31, 2008 is unsupported as it has not identified changed circumstances that would demonstrate that the RCST is no longer just and reasonable between March 31, 2008 and the implementation of the earlier of either MRTU or an alternate backstop procurement mechanism.

56. PG&E supports the Commission’s proposal to extend the unmodified RCST for the brief period of time that it will be needed before the start of MRTU, and asserts that the RCST will continue to be just and reasonable for the limited extension period. PG&E further states that the efforts to develop the ICPM to coordinate with MRTU should take

⁵¹ California Generators January 9, 2008 Comments, Docket Nos. EL08-13-000 and EL08-20-000, at 11.

precedence over major changes to an interim, pre-MRTU mechanism; however, if MRTU is substantially delayed, PG&E notes that the ICPM has been the subject of a stakeholder process and, although it is designed for MRTU, it may be modified for implementation independent of MRTU. PG&E advocates that the ICPM could be adapted for the pre-MRTU period. Additionally, PG&E states that any substantive changes to the RCST should be deferred until the ICPM proceeding.

57. NCPA notes that the extension is for a very limited time and that the Commission has already held that if MRTU is extended beyond April 1, 2008, the CAISO would be required to file its alternate interim methodology. NCPA reasons that the new mechanism is likely to be accepted for filing before any proceeding to assess IEP's revisions could be completed.

58. Six Cities state that the existing stakeholder process would be undermined if resources are devoted to considering the California Generators' proposal to modify the RCST. Accordingly, Six Cities assert that all future modifications of the backstop procurement mechanism should be addressed in the ICPM proceeding.

Commission Determination

59. As explained below, we find that the brief extension of the RCST, from January 1, 2008 through May 31, 2008, is just and reasonable. We also recently found the TCPM, as modified, to be a just and reasonable replacement for the RCST effective June 1, 2008.⁵² Accordingly, we deny the California Generators' complaint and terminate our section 206 investigation in Docket No. ER08-20-000.

60. If the RCST mechanism were allowed to terminate on December 31, 2007, there would have been no compensation for the capacity and reliability services provided by must-offer resources. In the RCST Extension Order, we reiterated our earlier finding that the must-offer obligation is unjust and unreasonable without appropriate compensation to resources for the capacity and reliability services they provide.⁵³ Thus, the Commission instituted a section 206 investigation into the justness and reasonableness of extending

⁵² TCPM Order, 123 FERC ¶ 61,229 at P 1.

⁵³ RCST Extension Order, 121 FERC ¶ 61,281 at P 34 (citing July 20, 2006 Order, 116 FERC ¶ 61,069 at P 35-36, 38).

the RCST for a limited period.⁵⁴ We find the RCST to be a just and reasonable replacement rate.⁵⁵

61. The RCST was recently reaffirmed as just and reasonable on December 20, 2007.⁵⁶ Since this time, there has been no demonstrable change in circumstances that would render the RCST unjust and unreasonable during this five-month period. In addition, parties have noted that the Spring season generally does not coincide with peak CAISO demand, and, therefore, the CAISO would not likely rely significantly on the RCST backstop capacity mechanism during the Spring.⁵⁷ Accordingly we find that, consistent with the RCST Extension Order, the most efficient solution is to continue the RCST for the brief period between January 1, 2008 and May 31, 2008.⁵⁸

62. In addition, we note that, while the assumptions underlying the RCST rate would become increasingly dated, and the RCST would accordingly cease to be just and reasonable,⁵⁹ the recently conditionally-approved TCPM has alleviated these concerns. In the RCST Extension Order, we encouraged the CAISO to file, in the event that MRTU was delayed, an interim backstop capacity procurement mechanism effective at the inception of the CAISO's high demand summer months.⁶⁰ In response, the CAISO filed the TCPM, which we conditionally approved to replace the RCST effective June 1, 2008,

⁵⁴ *Id.* P 1.

⁵⁵ Under section 206, we have the discretion to pick a just and reasonable replacement for the filed rate. *See American Elec. Power Serv. Corp. v. Midwest Indep. Trans. Sys. Operator*, 122 FERC ¶ 61,083, at P 88, 113 (2008); *PJM Interconnection, LLC*. 122 FERC ¶ 61,082, at P 67 and n. 87 (2008). We further note that the CAISO essentially acquiesced to the extension of the RCST when it argued that the Commission should continue RCST until the earlier of the implementation of MRTU or an alternative backstop capacity mechanism. CAISO January 24, 2008 Reply Comments, Docket No. EL08-20-000, at 30.

⁵⁶ RCST Rehearing Order, 121 FERC ¶ 61,276.

⁵⁷ California Generators' January 9, 2008 Comments, Docket Nos. EL08-13-000 and EL08-20-000, at 3.

⁵⁸ RCST Extension Order, 121 FERC ¶ 61,281 at P 37-38.

⁵⁹ *See id.* P 38.

⁶⁰ *Id.* If the backstop capacity procurement payment fails to cover the generator's fixed costs, the generator may have incentive to shutdown. Shutdowns could potentially jeopardize reliability, and this concern is particularly acute during summer months in California, when demand reaches its peak.

until MRTU implementation.⁶¹ In the TCPM Order, the Commission reaffirmed the CAISO backstop capacity construct that had originated with the RCST precedent, namely that the reasonable range for pricing CAISO backstop capacity lies between the fixed cost of existing generation and the cost of new entry.⁶² In the TCPM Order, we found that an increase in the target capacity price based on the passage of time and application of the Consumer Price Index-Urban to the RCST target capacity price, fell within this reasonable range for backstop capacity under the TCPM, and, therefore, is just and reasonable.⁶³ Additionally, we take notice that evidence filed in the TCPM proceeding suggests that, pre-summer, the original RCST price continues to lie within the reasonable range, i.e., between the fixed costs of existing generation and the cost of new entry.⁶⁴ We further find that the short duration of the RCST extension for the period between January 1, 2008 and May 31, 2008 has not created a mismatch between the RCST target capacity price and the assumptions underlying this price that is sufficient to render this price unjust and unreasonable before the effective date of the TCPM.⁶⁵

63. With regard to the Significant Event designation provisions, we find that no entity has demonstrated that the continuation of the RCST designation provisions for the brief period between January 1, 2008 and May 31, 2008 is unjust and unreasonable or unduly discriminatory. We note that the RCST attempted to balance the varied interests of the parties to the settlement. Continuation of the RCST provisions for this limited period provides the CAISO with a tool to ensure grid reliability with a compensation mechanism that has recently been found to be just and reasonable. To disrupt the RCST at this late date, and for this limited period, would prove inefficient and constitute an unreasonable use of resources needed to focus on forward-looking capacity procurement mechanisms, such as the ICPM.

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

⁶² *Id.* P 75 (citing Order on Paper Hearing, 118 FERC ¶ 61,096 at P 72).

⁶³ *Id.* P 75-78.

⁶⁴ *See id.* n.75. Currently, the CAISO provides estimates of the fixed costs of existing units at approximately \$32.44/kW-year, and the cost of new entry, based on a CEC cost study that finds the average cost of new entry of a Conventional Simple Cycle CT (100 MW) unit -- averaging the costs of merchant generator, investor owned utility and publicly owned utility construction -- at approximately \$145.54/kW-year. *See* CAISO TCPM Transmittal at 23-24 (citing CEC Cost Study at Appendix E).

⁶⁵ Regarding PG&E's assertion that a modified ICPM should replace the RCST if MRTU implementation is substantially delayed, we find that the TCPM, which incorporates components of both the RCST and ICPM, accomplishes the aim behind PG&E's request.

64. We find it reasonable, under the circumstances, to extend the RCST rather than implement the RCCM. While the complainants state that the RCCM is “modeled on” the RCST,⁶⁶ in fact, the RCCM significantly alters the RCST. As explained by California Generators, the RCCM rate of \$145.54/kW-year is based on the cost of new entry, and the Commission has repeatedly found that “it is not reasonable to base backstop capacity pricing on the cost of new entry.”⁶⁷ We further highlight the fact that complainants acquiesced to a three-month extension of the RCST, and find that it would be inefficient and a waste of valuable resources to require the CAISO to modify its backstop capacity mechanisms for the remaining two months of the extension period.⁶⁸ This is particularly the case now that the TCPM is in place, and the focus has shifted to the proper backstop capacity mechanism to utilize under MRTU.

65. Regarding the concerns raised by CMUA, Six Cities and NCPA that LSEs should continue to have the ability to cure deficiencies prior to the CAISO procuring capacity under the RCST, we note that our action in this proceeding does not modify or in any way limit the existing ability of LSEs to cure deficiencies relating to resource adequacy requirements.

66. We note that the majority of parties in this proceeding, including both the California Generators and the CAISO, do not oppose a limited extension of the RCST.⁶⁹ Further, since the Commission has already conditionally approved the TCPM, effective June 1, 2008, the RCST extension is brief, as contemplated by the RCST Extension Order.⁷⁰ For these reasons, we reaffirm that the RCST is a just and reasonable and not

⁶⁶ Complaint at 11.

⁶⁷ *See also* RCST Rehearing Order, 121 FERC ¶ 61,276 at P 23-26; Complaint at 12, 19.

⁶⁸ California Generators January 9, 2008 Comments, Docket Nos. EL08-13-000 and EL08-20-000, at 3.

⁶⁹ In the RCST Clarification Order, the Commission accepted the CAISO’s proposed tariff language updating the relevant sections of the tariff so that they will be applicable in 2008 and clarified that all RCST designations will expire upon the implementation of MRTU or an alternative backstop procurement mechanism. *See* RCST Clarification Order, 122 FERC ¶ 61,091 at P 9-10. Accordingly, the Commission has resolved, as the CAISO requested, the concerns it identified as necessary in order for extension of the RCST to be just and reasonable. We also note that the California Generators do not oppose a limited extension of the RCST through March 31, 2008, but argue the RCST should be replaced before the peak demand summer months. *See supra* P 53 and n. 51.

⁷⁰ RCST Extension Order, 121 FERC ¶ 61,281 at P 38.

unduly discriminatory backstop capacity procurement mechanism until the implementation of TCPM; accordingly, the Commission reaffirms its preliminary conclusion that extension of the RCST for this five-month period is just and reasonable.

Opposition to RCST Extension

RCST Designations

67. Contrary to IEP's assertions, we find that the commitment of resources through Real-Time Commitment does not violate the RCST Tariff. In particular, we find that the tariff language "[t]o the extent conditions permit, the [CAISO] will revoke the waivers of resource adequacy resources and RCST resources prior to revoking the waivers of other FERC Must-Offer Generators,"⁷¹ permits the commitment of non-resource adequacy resources through the Real-Time Commitment software.⁷² Therefore, we will not direct the CAISO to modify the RCST software for this limited extension of the RCST.⁷³

RCST Capacity Price is Too Low

68. The Commission rejects IEP's argument that the target capacity price is too low. In the RCST Rehearing Order, the Commission clearly stated that it did not approve the target capacity price based on the cost of new entry, but rather found that a just and reasonable target capacity price should "be no less than the fixed costs of existing generation but no more than the cost of new entry."⁷⁴ The RCST Rehearing Order reaffirmed that the RCST's target capacity price of \$73/kW-year falls within this range and that it provides resources with just and reasonable compensation for the services they provide.⁷⁵ Additionally, the Commission stated that "this transitional price for capacity serves as a bridge to help ensure that existing resources remain available and are

⁷¹ See section 40.7.6 of the CAISO Tariff.

⁷² Moreover, we note that the CAISO states it will still conduct "Significant Event" evaluations for must-offer waiver denials resulting from Real-Time Commitments and that non-resource adequacy units committed by the Real-Time Commitment software will remain eligible for designation as capacity resources under the RCST.

⁷³ We also note that requiring the CAISO to make changes to the Real-Time Commitment software would be an inefficient use of time and resources for a mechanism that has already been superseded by the TCPM.

⁷⁴ RCST Rehearing Order, 121 FERC ¶ 61,276 at P 23.

⁷⁵ *Id.* at 26; see also TCPM Order, 123 FERC ¶ 61,229 at P 75 (again affirming that it is just and reasonable for the target capacity payment to fall between the fixed costs of existing generation and the cost of new entry).

adequately compensated until new resources can be built in conjunction with the market-oriented mechanisms and incentives of the CAISO's MRTU."⁷⁶ There is no evidence on record that indicates this target capacity price has become unjust and unreasonable by falling below the fixed costs of existing generation since the issuance of the Commission's RCST Rehearing Order, or during the limited five-month RCST extension period. While there may be more than one reasonable capacity price, we find that the RCST target capacity price remains a reasonable rate because evidence indicates that it falls between resources' fixed costs and the cost of new entry during the RCST extension.⁷⁷

Price Discrimination

69. We disagree with IEP's assertion that the RCST pricing provisions discriminate between new and existing resources. Just as we recently found in the context of evaluating the TCPM, we also find that the RCST pricing provisions, i.e. the target capacity price and daily must-offer capacity payment, apply uniformly to all generating units operating without a capacity contract.⁷⁸ IEP has not provided any empirical evidence supporting its claim that impermissible price discrimination is present under the RCST. Based upon the facts presented, we do not find that the RCST could be discriminatory towards existing resources.⁷⁹

RCST's Allocation of Costs Relating to Must-Offer Capacity Payments

70. The Commission has previously rejected SWP's arguments that it should not have to pay must-offer capacity costs.⁸⁰ As explained by the Commission in earlier orders, the RCST merely adopts the cost allocation methodologies established in the Amendment 60 proceeding⁸¹ for allocating RCST costs relating to the must-offer obligation. Previously, the Commission has explained that it is reasonable to use cost allocation methodologies established in the Amendment 60 proceeding because the same reasons that give rise to

⁷⁶ RCST Rehearing Order, 121 FERC ¶ 61,276 at 23.

⁷⁷ See *supra* footnote 66.

⁷⁸ See TCPM Order, 123 FERC ¶ 61,229 at P 93.

⁷⁹ Furthermore, it is worth noting that this proceeding was not intended to address any potential disparity between new and existing resources with respect to long-term contracting.

⁸⁰ RCST Rehearing Order, 121 FERC ¶ 61,276 at P 69.

⁸¹ See *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,193 at P 89, 100 (2007).

the costs considered in the Amendment 60 proceeding also give rise to the incurrence of RCST must-offer capacity costs.⁸² Since SWP does not introduce any new arguments in this proceeding, we are not persuaded by its contentions that the RCST should not be extended.

Extending Only the Daily Capacity Payments

71. The Commission disagrees with CMUA's assertion that only the RCST provisions relating to the daily must-offer capacity payment should be extended. While the RCST extension period expired, without the need for longer term designations, if system conditions had arisen that warranted longer-term RCST designations under the "Significant Event" provisions, the CAISO should have had the flexibility to designate for longer periods. Also, resources should have had the assurance that they would be appropriately compensated.⁸³ Moreover, in the RCST Clarification Order, the Commission resolved the specific concern raised by the CMUA, notably that any designations made under the RCST should sunset when RCST terminates.⁸⁴ We also reiterate that, insofar as the RCST originated as a settlement, it embodies compromises, and, consequently, it would be inappropriate to extend the daily capacity payment provisions but not the RCST's other provisions.

C. The Complaint

72. The California Generators seek to have the Commission direct the CAISO to implement their proposed RCCM as an interim capacity procurement mechanism (in lieu of the RCST) to compensate resources that are committed under the CAISO's must-offer obligation, after December 31, 2007, the date RCST was originally scheduled to expire. Similar to the RCST, the RCCM would provide a capacity payment for resources that are needed for reliability services and not operating under a capacity contract. Specifically, under the RCCM, the California Generators propose a minimum designation term of three-months or other period specified by the CAISO. Additionally, the California Generators propose that the target capacity price should be updated from \$73/kW-year to \$145.54/kW-year based on a 2007 CEC study, the use of a LM6000 aeroderivative combustion turbine as a reference unit, and the cost of new entry. Finally, the RCCM

⁸² RCST Rehearing Order, 121 FERC ¶ 61,276 at P 69.

⁸³ *Cf.* TCPM Order, 123 FERC ¶ 61,229 at P 53 and n.56.

⁸⁴ In the RCST Clarification Order, the Commission clarified that RCST designations will expire upon the implementation of a successor mechanism and accepted the CAISO's proposed tariff language updating the relevant sections of the tariff so that they will be applicable in 2008. *See* RCST Clarification Order, 122 FERC ¶ 61,091 at P 10.

proposes that resources that are denied a must-offer waiver or committed for reliability reasons would receive a capacity payment for all of the resource's capacity that is eligible for commitment.

Comments

73. IEP filed comments in support of the RCCM. CEG Companies filed comments generally supporting the RCCM with two modifications relating to the CAISO's authority to designate RCCM units for terms. First, the CEG Companies argue that when "there are any RCCM designations by the CAISO to make up for a specific shortfall in a specific LSE's [resource adequacy] showing, the RCCM designation should extend only for the period for which the LSE showing is deficient."⁸⁵ Second, CEG Companies assert that any other RCCM designations made by the CAISO should have a minimum term of one-month.

74. The following entities submitted protests opposing the adoption of the RCCM: the CAISO; Six Cities; CMUA; CPUC; PG&E; SoCal Edison; CLECA; Metropolitan; the Joint Protesters; NCPA; and ARem. Many of these comments suggested that hearing and settlement judge procedures are needed if the Commission does not reject the RCCM.

Commission Determination

75. Under section 206,⁸⁶ we have the authority to establish a just and reasonable replacement rate, and, as described above, we have found that extension of the RCST from January 1, 2008 until May 31, 2008 is just and reasonable.⁸⁷ For the reasons set forth in paragraph 64 of this order, and based upon our determination that the RCST is a just and reasonable replacement rate, the Commission need not further address the California Generators' proposed replacement for the RCST rate, the RCCM. Also, we note our recent acceptance, subject to modification, of the CAISO's TCPM filing, which

⁸⁵ CEG December 20, 2007 Comments, Docket No. EL08-13-000, at 6.

⁸⁶ 16 U.S.C. § 824e.

⁸⁷ See *PJM Interconnection, LLC*, 122 FERC ¶ 61,082 at P 67 and n. 8 (citing *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007) (Commission is not required to choose the best solution, only a reasonable one)); *Wisconsin Public Power, Inc. v. FERC*, 493 F.3d 239, 266 (D.C. Cir. 2007) (merely because petitioners can conceive of a refund allocation method that they believe would be superior to the one the Commission approved does not mean that Commission erred in concluding the latter was just and reasonable); *ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945, 955 (D.C. Cir. 2007) (Commission need not adopt the best possible policy as long as the agency has acted within the scope of its discretion and reasonably explained its actions).

will be effective from June 1, 2008 until MRTU implementation.⁸⁸ For the period subsequent to June 1, 2008, therefore, the RCCM is now moot. Since we find the RCST to be just and reasonable through May 31, 2008, and we have conditionally accepted the TCPM backstop capacity mechanism effective from June 1, 2008 until MRTU start-up, we deny the complaint.

The Commission orders:

(A) The RCST is hereby extended from January 1, 2008 through May 31, 2008, as discussed in the body of this order.

(B) The investigation in Docket No. ER08-20-000 is hereby terminated, as discussed in the body of this order.

(C) The California Generators' complaint filed in Docket No. ER08-13-000 is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁸⁸ TCPM Order, 123 FERC ¶ 61,229.

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