

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Wholesale Competition in Regions) Docket Nos. RM07-19-000
with Organized Electric Markets) AD07 -7 -000

**COMMENTS OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR**

April 21, 2008

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In response to the Notice of Proposed Rulemaking issued February 22, 2008, the California Independent System Operator Corporation – “CAISO” – respectfully submits the following comments.

I. INTRODUCTION

The CAISO applauds the Commission’s efforts to improve wholesale competition and organized power markets, a.k.a “ISOs,” including RTOs and power pools. The CAISO supports the proposed rules, and has only a few comments which are directed at clarifying the application of those rules.

The most significant clarification concerns whether the Commission intends to apply the proposed schedule for compliance, which is six months following adoption of a final rule, to market enhancements that are already forthcoming under a different timeline accepted by the Commission as part of the CAISO’s Market Redesign and Technology Upgrade (or “MRTU”). Among possible initiatives to enhance its markets, the CAISO’s highest priority is the successful implementation of MRTU and the Release 1A enhancements to be implemented 12 months later, which include convergence bidding and scarcity pricing. The NOPR’s default compliance schedule is inconsistent with the established schedule for MRTU. The CAISO assumes that the Commission will allow the CAISO to implement certain of the requirements in the NOPR – specifically, allowing demand response resources to supply ancillary services and implementing enhanced scarcity pricing – on a schedule that is consistent with the Commission-approved MRTU schedule.

The Commission's concurrence on this issue would eliminate any possible uncertainty for the CAISO and its market participants. In addition, the CAISO asks to wait until after the initial release of MRTU to implement the electronic bulletin board for long-term contracting in order to maintain the focus of stakeholders and staff on the primary effort.

The CAISO's remaining comments seek to clarify application of other proposed rules in possible extreme cases, and also to share the CAISO's plans for implementation of specific proposals.

II. COMMENTS

A. Demand Response and Scarcity Pricing

1. The CAISO Intends to Adhere to the Schedules Established by the Commission in the MRTU Docket

The CAISO supports the Commission's proposals for demand response and scarcity pricing, and will comply with the proposed rules in the Release 1A enhancements to MRTU. At that point, the CAISO will have the capability to accept bids from demand response resources on a basis comparable to any other resources,¹ and allow demand response resources to specify limitations on dispatch.² In the meantime, the CAISO is working with the ISO/RTO Council to "adopt reasonable standards necessary for system operators to call on demand response resources, and mechanisms to

¹ NOPR ¶ 56.

² NOPR ¶ 64.

measure, verify, and ensure compliance with any such standards.”³ The Release 1A enhancements to MRTU will also include more robust scarcity pricing, so that “the market price for energy accurately reflects the value of such energy during periods of scarcity (i.e., an operating reserve shortage).”⁴

These initiatives are proceeding on a schedule that was accepted by the Commission some time ago. The Commission conditionally accepted MRTU with the express understanding that certain features – including enhanced scarcity pricing – would be implemented within 12 months of the initial release.⁵ In addition, the Commission accepted a demand response capability for the initial release of MRTU that is less than the full capability proposed in the NOPR: *i.e.*, “recogniz[ing] existing demand response programs in RUC.”⁶

The CAISO has been proceeding in accordance with these orders for both demand response and scarcity pricing. The scarcity pricing proposal is on track for implementation within 12 months of the initial roll out, as ordered. The policy details recently completed stakeholder review, and are scheduled for submission to the CAISO’s Board of Governors. Assuming approval, the CAISO will employ a demand curve in accordance with the Commission’s order.⁷

³ NOPR ¶ 56.

⁴ NOPR ¶ 117.

⁵ See Order Conditionally Accepting the California Independent System Operator’s Electric Tariff Filing to Reflect MRTU, 116 FERC ¶ 61,274 (2006), ¶¶ 1076-79.

⁶ *California Independent System Operator Corp.*, 119 FERC ¶ 61,313 (2007).

⁷ 116 FERC ¶ 61,274 (2006), ¶¶ 1076-79. Information about the proposal and stakeholder process is available at <http://www.caiso.com/1bef/1bef12b9b420b0.html>

Demand response is on the same track for implementation. The current market design allows certain demand response resources to provide non-spinning reserve. The MRTU platform and Release 1A enhancements will build on this capability by providing load with the same capability and flexibility available to generators. As such, no additional software changes will be necessary after Release 1A to allow demand response resources to offer the full range of ancillary services. Accordingly, once the CAISO develops the technical standards and business processes for demand response, the CAISO will be in compliance with the core NOPR standard for demand response. As the CAISO has reported in the MRTU docket,⁸ it has established five working groups through which stakeholders are addressing issues necessary to integrate demand response resources into MRTU. This includes helping interested stakeholders to understand how demand response can participate directly in the CAISO's markets as well as ensuring that the CAISO can use utility demand response programs more effectively.

The CAISO requests that the Commission confirm it does not intend to replace the specific schedule that it has accepted for the CAISO's implementation of MRTU with the generic compliance schedule proposed in the NOPR for all ISOs.⁹ Although this issue ordinarily might be addressed in response to a compliance filing, a Commission ruling at this phase would be

⁸ Second Status Report of the California Independent System Operator Corporation, Docket No. ER06-615, filed September 17, 2007.

⁹ The NOPR would require that CAISO must "propose amendments to its tariff to comply with the proposed requirement" within six months of the date of the final rule, which would be early 2009. NOPR ¶ 63.

appropriate to avoid any possible uncertainty for the CAISO and its market participants.

Beyond the schedule for implementation, there are two loose ends to address. First, the CAISO notes that it is already in compliance with the proposal to eliminate a deviation charge.¹⁰ Both today and under MRTU, CAISO settlements credits a Scheduling Coordinator when its actual load is less than it scheduled the day ahead.¹¹ Consequently, unless the price of energy is negative, which should not be the case during a reserve shortage, load will be credited for energy not consumed.

Second, the Commission will have to direct the Electric Reliability Organization to effect a change to the existing Western Electricity Coordinating Council (“WECC”) regional reliability standard addressing operating reserve requirements.¹² Those standards currently allow demand response resources to provide only one ancillary service: non-spinning reserve. The existing WECC standard does not allow technically capable demand response resources to provide spinning reserves and other ancillary services,¹³ and does not yet comply with Order No. 693 which directs the “ERO to submit modifications to BAL-002-0 that includes a Requirement that explicitly provides that DSM [Demand-side Management] may be used as a

¹⁰ NOPR ¶ 72.

¹¹ In the MRTU Tariff, *see generally* Sections 11.5 (“Real-Time Market Settlements”), 11.5.1 (“Instructed Imbalance Energy Settlements”), and 11.5.2 (“Uninstructed Imbalance Energy Settlements”).

¹² Specifically, WECC Standard BAL-STD-002-0- Operating Reserves found at: <http://www.wecc.biz/documents/library/Standards/BAL-STD-002-0.pdf>.

¹³ NOPR ¶ 56.

resource for contingency reserves”¹⁴ Likewise, WECC’s standard is inconsistent with the Commission’s directive in Order No. 890 that a transmission provider must permit non-generation resources to provide ancillary services to the extent they are capable.¹⁵ The WECC is considering a contingency reserves’ reliability standard that would permanently replace the existing operating reserves’ reliability standard. It will be necessary, however, for WECC to adopt language that comports with FERC’s direction in the final rule, or else the WECC will be in conflict with the CAISO and, more importantly, the forthcoming order.

2. Aggregation of Retail Customers (or “ARC”)

The NOPR would “[r]equire RTOs and ISOs to amend their market rules as necessary to permit an aggregation of retail customers (“ARC”) to bid demand response on behalf of retail customers directly into the RTO’s or ISO’s organized markets” subject to compliance with state law.¹⁶ The CAISO already permits aggregation of pumping load in the Participating Load program,¹⁷ and has no objection to allowing aggregation in connection with its forthcoming opportunities for demand response resources described in § II.A.1, above. As the CAISO has reported to the Commission, it is working with stakeholders and the California Public Utilities Commission to address regulatory policy and state law concerning this issue and progress is being

¹⁴ Order No. 693, 118 FERC ¶ 61,218 (2007), ¶ 330.

¹⁵ Order No. 890, 118 FERC ¶ 61,119 (2007), ¶ 888.

¹⁶ NOPR ¶ 86.

¹⁷ Information about the Participating Load program can be found at <http://www.caiso.com/docs/2005/10/05/2005100520280423155.html>.

made.¹⁸ In fact, the Energy Division of the California Public Utilities Commission drafted a proposed set of Demand Response Goals that includes an express goal of “[e]xploring greater market participation by demand response providers and small aggregated load.”¹⁹

B. Forum for Affected Consumers

Responding to concerns that APPA and others raised about market design, the NOPR directs each “ISO to provide a forum for affected consumers to voice specific concerns (and to propose regional solutions).”²⁰

The CAISO is already providing such a forum in two ways. First, affected consumers can propose solutions through the CAISO’s stakeholder process, which welcomes perspectives from stakeholders on matters pertaining to market design, efficiency, and costs. Stakeholders may suggest issues for consideration within the context of the CAISO’s Market Initiatives Roadmap (the “Roadmap”). The Roadmap is a formal process for identifying, addressing, ranking and prioritizing future market enhancements.²¹ Stakeholders have been actively involved in this process by identifying and describing potential market enhancements and contributing to the development of transparent ranking criteria. The ranking criteria

¹⁸ Second Status Report of the California Independent System Operator Corporation, Docket No. ER06-615, filed September 17, 2007.

¹⁹ Assigned Commissioner’s and Administrative Law Judge’s Ruling Revising Phase 2 Activities and Schedule, R.07-01-041, October 1, 2007, p. A-18.

²⁰ NOPR ¶ 24.

²¹ The current list of potential market design enhancements, including those specific changes requested by individual stakeholders is maintained in the CAISO’s Market Initiatives Roadmap, which is located on the CAISO website at <http://caiso.com/1822/1822931f287d0.html>.

methodology that is utilized by the CAISO embodies a standardized and formal process to determine the relative importance of each potential market enhancement. The CAISO Board of Governors and market participants are able to see clearly how these decisions are made and understand the rationale of why the CAISO would be developing and implementing certain market design features and enhancements before others through the application of this high level cost/benefit analysis. The implementation of the ranking process enables the CAISO, in conjunction with stakeholders, to prioritize projects so that our collective resources can be used as effectively and efficiently as possible to implement projects determined to be the most beneficial to CAISO customers and the market as a whole.

Once an issue enters into the formal stakeholder process, stakeholders are encouraged to provide written and verbal inputs into the policy design. Those comments and other market design concepts are discussed in a series of stakeholder meetings, after which CAISO staff finalizes the design for consideration by the CAISO Board of Governors. Because the CAISO's Board of Governors holds open meetings, stakeholders have the opportunity to express their concerns directly to board members in the course of the board's deliberation on an issue. This has garnered positive feedback from stakeholders. Graphics summarizing the CAISO's stakeholder process have been posted on the CAISO website.²²

²² <http://www.aiso.com/1fa4/1fa4ed47d70.pdf>.

Second, in 2009, the CAISO will host its inaugural “Stakeholder Symposium,” which will bring together market participants, industry experts, CAISO staff, and management with the CAISO Board of Governors. Although the agenda has not yet been finalized for the 2009 Stakeholder Symposium, it will include panel discussions on key topics of concern to the CAISO and market participants including not only markets, but also infrastructure planning, environmental initiatives, and grid operations. Speakers will include market participants, as well as state and federal officials, CAISO staff and other representatives. The CAISO believes the 2009 Stakeholder Symposium will be an effective forum for issues raised by affected consumers, because it will occur after a few months’ experience with MRTU. Conducting the forum earlier than 2009 would distract from the focus and monumental effort of launching MRTU in 2008.

C. Stakeholder Responsiveness

The CAISO strongly supports the Commission’s “flexible approach” to ensuring that ISOs and RTOs are responsive to stakeholder concerns,²³ which is superior to mandating that ISOs adopt a particular governing structure. The CAISO believes that it already satisfies the criteria, given its independent board and open board meetings,²⁴ among other things.

²³ NOPR ¶ 277.

²⁴ As the CAISO detailed in its comments on the ANOPR, CAISO board meetings are open to the public; only discussions of litigation, personnel issues, and limited confidential matters are held in executive session. To facilitate stakeholder involvement, agenda are released to the public several days ahead of meetings. The agenda include a comment period for any member of the public, including those expressing “minority views.” Stakeholder access was recently enhanced

Nevertheless, the Commission should consider clarifying one of the four proposed criteria: namely, “fairness in balancing diverse interests,” which requires an ISO to show that “the interests of customers and other stakeholders are *equitably* considered.”²⁵ Although it is obvious what the Commission expects by way of showing that stakeholder interests are considered, it is less clear how an ISO or RTO is expected to establish generically that the consideration is equitable. This is especially challenging with a board of governors that is independent by law, and whose membership therefore cannot include representatives of different market sectors.²⁶ The CAISO intends to demonstrate compliance using evidence about the inputs to the decisional process – *e.g.*, the openness of its board meetings to stakeholders, stakeholders’ ability to address the board directly on decisional items, and the CAISO’s practice of providing its board with a chart showing stakeholder views on each decisional item along with either confirmation that it accommodated the stakeholder’s views or an explanation of why it did not. If the Commission contemplates that ISOs and RTOs should rely on different or additional evidence than this to show that stakeholder interests were equitably considered, the Commission should clarify exactly what type of supporting evidence it expects.

when the governing board meetings were restructured to enable stakeholders to speak on each decisional item after the management presentation and before the board’s decision. This opportunity is in addition to any written stakeholder comments, which are provided in summary form to board members in advance of the meeting along with the memoranda on each item.

²⁵ NOPR ¶ 279.

²⁶ See generally *California Independent Sys. Operator Corp. v. FERC*, 372 F.3d 395 (D.C. Cir. 2004).

The CAISO has no objection to the proposed requirement that each ISO post its mission statement or charter on the website. The CAISO does this currently.²⁷

D. Market Monitoring

1. Access to Data, Resources, and Personnel

The CAISO appreciates the Commission's willingness to modify its earlier proposal that would have required MMUs to report any concerns about inadequate access to data, resources, or personnel.²⁸ In the CAISO's view, the earlier proposal would have been unworkable. The proposed requirement to report "any" concerns about resources was overly broad, and would have interfered with a well-functioning relationship between an MMU and its ISO, in which expectations to produce greater results with the same resources appropriately play a role.²⁹

The Commission should consider clarifying one point in connection with the proposal that "[t]he tariff should also specify that any data created by the MMUs . . . be kept within the exclusive control of the MMU."³⁰ The CAISO assumes the term "exclusive control" means that the MMU would have the right but not the obligation to restrict access to such data. In other words, the MMU would have the option of sharing the data with other

²⁷ NOPR ¶ 280. The CAISO's mission statement, strategic business plan, and other corporate information can be found at <http://www.caiso.com/docs/2005/09/28/200509281333048821.html>.

²⁸ NOPR ¶ 182.

²⁹ See "Comments of the California ISO," filed September 14, 2007, §II.A.2.

³⁰ NOPR ¶ 180.

business units or – within the confines of applicable confidentiality requirements – outside entities. This seems implicit from other proposals in the NOPR that allow MMUs to respond to certain requests for information, but a specific statement would be helpful.

2. The Reporting Relationship of Internal MMUs

The NOPR requires that MMUs report directly to the board of directors of an ISO or RTO, but recognizes an exception for the CAISO and the NYISO, each of which has two monitoring bodies. While requiring each ISO’s external monitor to report to the board, the proposed rule would permit their internal monitors to “report to management with respect to both its market monitoring and administrative functions.”³¹ This would allow the CAISO’s internal monitor – its Department of Market Monitoring (or “DMM”) to continue its present reporting relationship.

The CAISO strongly supports this aspect of the proposed rule. Permitting DMM to continue reporting to the CAISO’s CEO will keep the CEO attuned to the needs of DMM, and also assure that the CAISO’s other business units are fully committed to supporting the functions of the independent monitor. At the same time, DMM will retain its unfettered direct access to CAISO’s Board of Governors. DMM’s report to the board about market issues is a standing agenda item, and management has no ability to change these reports, only supplement them. Under the proposed rule, both DMM and the CAISO’s external monitor will continue their

³¹ NOPR ¶ 187.

independent and candid reports to the board, and the CEO can continue to include DMM in efforts to promote overall organizational effectiveness.

3. The Functions of an MMU

The CAISO agrees with the NOPR's description of the key functions of an MMU, which are consistent with what DMM does now. One point, however, deserves further explanation: the proposed requirement that MMUs "evaluat[e] existing and proposed market rules."³² The CAISO assumes that the Commission would expect an MMU fulfilling this function to employ its best judgment about effective use of resources. In other words, the MMU should focus its efforts on those existing market rules that it believes in its professional judgment could materially affect market efficiency, and the Commission does not expect a formal evaluation for every existing market rule. If the Commission's expectations are otherwise, it should clarify them in the final rule, and appreciate that a comprehensive analysis of existing market rules would require additional personnel and resources.

The NOPR affirms the Commission's expectation that MMUs will refer possible tariff violations to the Office of Enforcement, including violations by the ISO itself. The Commission should confirm that an MMU should treat suspected violations by the ISO in the same manner that it would treat violations by a market participant. In particular, before formally referring the suspected violation to FERC staff, the CAISO's DMM ordinarily would

³² NOPR ¶ 198.

share its concerns with the subject of the investigation and request a response. Moreover, if the subject of the investigation proceeded to self-report the violation to the Commission, DMM would ask to review the self-report and, if it concluded that the report fairly explained the circumstances of the suspected violation, it would consider in consultation with the FERC Office of Enforcement, closing the matter without a report or formal referral of its own. Assuming that the same process would be acceptable to the Commission when the suspected violation is by the ISO itself, having the ISO self-report any violations to the Commission should help to alleviate any concerns that the MMU's working relationship with other business units might be harmed.

4. Mitigation and Operations

In order to enhance their independence from the ISO and “allow them to objectively monitor the markets, without the bias that might arise from their personal involvement,” the NOPR proposes “that MMUs be removed from tariff administration, including mitigation.”³³ The CAISO's DMM does not currently administer market power mitigation procedures. It does, however, administer section 37 of the CAISO tariff, the “Enforcement Protocol.”³⁴ Although the Enforcement Protocol prohibits market manipulation and requires certain other discretionary judgment calls, some of the rules and the great majority of the work involve administration of late

³³ NOPR ¶ 210.

³⁴ This section was adopted and modified as Amendment 55 in Docket No. ER03-1102.

fees – *e.g.*, untimely submission of outage reports and meter data.³⁵ In light of the proposed rule, the CAISO will be reviewing whether this work amounts to “tariff administration” that should be conducted by other business units, and may propose changes in its compliance filing.

At one time, however, the Commission indicated that the rules of the Enforcement Protocol must be enforced by DMM.³⁶ It is not clear to the CAISO whether or not that earlier order would be superseded by the proposed rule. Guidance from the Commission about its intent would be welcome.

5. Ethics

The CAISO has no objection to including in its tariff ethical provisions for MMU employees, and supports the proposal to leave development of particular ethical standards to individual ISOs in the first instance.³⁷

6. Tailored Requests for Information

The Commission should further clarify its proposal to limit the circumstances when an MMU may “entertain requests for information from state commissions.”³⁸ It is not clear from the NOPR whether the proposed rule is intended to govern only true “requests” that an MMU share information voluntarily, or whether it also applies to subpoenas issued to the

³⁵ See CAISO Tariff Section 37.4 (availability reporting requirements) and Section 37.6 (provide information required by ISO tariff).

³⁶ See California Independent System Operator Corp., 106 FERC ¶ 61,179 (2004), ¶ 154.

³⁷ NOPR ¶ 214.

³⁸ NOPR ¶ 234.

ISO. The final rule should clarify whether or not the Commission intends to preclude MMUs from responding to certain types of requests under any circumstances, and therefore from responding to subpoenas and court orders.

E. Long Term Contracting

While it has concerns about the deadline for implementation, the CAISO agrees with the Commission that an electronic bulletin board would help to facilitate long-term bilateral contracting opportunities, and recommends that the specific features, design details and implementation time frame be left to the individual ISOs and their participants to determine.³⁹ Each ISO must evaluate the tradeoff between additional design features and richness of content, on the one hand, versus implementation cost and difficulty, on the other hand, in light of its own circumstances and the preferences of its stakeholders. The approach adopted by each ISO should reflect the needs and priorities of its participants.

The CAISO's Market Initiatives Roadmap provides an ideal process whereby stakeholders can evaluate and indicate their needs and preferences with regard to such a bulletin board within the larger context of ongoing and future committed or potential market enhancements. The Market Initiatives Roadmap process allows stakeholders to rank and prioritize the numerous potential market enhancements that have been suggested to the CAISO.⁴⁰ Given the fact that the resources available to the CAISO and the participants

³⁹ NOPR ¶ 159.

⁴⁰ For additional information on the CAISO Market Initiatives Roadmap, see <http://www.caiso.com/1822/1822931f287d0.html>.

to work on new initiatives are always finite, the CAISO expects that the relative priority of the bulletin board and the proposed complexity of its design would depend to some extent on other the market enhancements that would need to be displaced or deferred. In other words, the potential “cost” of a feature-rich bulletin board versus an extremely simple one would likely include the other enhancements that such a project displaces.

The CAISO therefore believes it would be optimal to leave the choice of bulletin board design features to this stakeholder process, so that stakeholders could, for example, opt for a simple bulletin board design that has minimal impact on other desired market enhancements. Alternatively, if a feature-rich design is desired by stakeholders, they could provide comments and suggestions to this effect in full awareness of how such choices may impact other desired enhancements. This would be preferable to the Commission mandating that every ISO adopt a pre-defined set of features, as such a mandate could come into conflict over resource allocation with other market enhancements that have already been ordered by FERC or identified by stakeholders as needed.

Given the importance of stakeholder input on this initiative and the need for stakeholders to focus on the implementation of MRTU, the CAISO proposes that the work on the bulletin board begin only after the initial launch of MRTU, and then only based on the priority established through the Market Initiatives Roadmap. The CAISO would strongly prefer not to begin

a new stakeholder initiative shortly before the MRTU launch, which might be necessary if the final rule is adopted in late summer and includes the proposed six-month deadline.

The Commission seeks comment on its assumption that the costs of implementing the bulletin board would be minimal.⁴¹ To reiterate, the cost will obviously depend on the features desired. The CAISO believes that a simple bulletin board that satisfies the regulatory and legal requirements could be completed without extraordinary expense. The CAISO would recommend, however, that the Commission assign greater weight to comments from RTOs that have experience developing this type of bulletin board.⁴²

With respect to costs, the CAISO agrees with the Commission that they can be recovered in the same manner that costs of the CAISO web site in general are recovered, provided the bulletin board is a simple, low-cost design, both to implement and to maintain. If stakeholders opt for a feature-rich bulletin board design, however, an ISO may want to consider establishing a user charge to recover the costs, since the users of a feature-rich market enhancement would be the beneficiaries. The CAISO recommends that the Commission allow each ISO to make this decision in conjunction with its stakeholders.

⁴¹ NOPR ¶ 159.

⁴² *Cf.* NOPR ¶ 144.

Finally, the CAISO agrees with the concept that ISOs should not be held legally accountable for the content of postings on the bulletin board. Any such accountability would defeat the objective of “minimal burden” to implement, because it would require the ISO to implement, among other things, business processes to monitor the conformance of bulletin board postings to some set of pre-determined rules and criteria, and to take actions in response to any complaints raised by users of the bulletin board regarding the content of postings.

III. CONCLUSION

The CAISO requests that the Commission consider these comments in preparing its final rule.

Respectfully submitted,

April 21, 2008

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 21st day of April, 2008.

/s/ Susan L. Montana
Susan L. Montana