

121 FERC ¶ 61,258
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator
Corporation

Docket No. ER08-64-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING, SUBJECT TO
MODIFICATIONS, TARIFF REVISIONS AND DIRECTING COMPLIANCE FILING

(Issued December 14, 2007)

1. In this order, we conditionally accept, suspend for a nominal period and make effective, subject to refund, modification, the outcome of another proceeding identified below and further order, the California Independent System Operator Corporation's (CAISO) proposed tariff revisions to incorporate certain resource adequacy (RA)-related provisions related to the Market Redesign and Technology Upgrade (MRTU) into the currently effective CAISO Tariff, effective December 17, 2007, as requested. We also direct the CAISO to submit compliance filings as discussed herein.

Background

2. On February 9, 2006, the CAISO filed its MRTU Tariff. On September 21, 2006, the Commission issued an order conditionally accepting the MRTU Tariff, subject to modifications, and directed the CAISO to make compliance filings with the Commission.¹ In response to the Commission's directive, on November 20, 2006 and August 3, 2007, the CAISO submitted revised tariff language related to RA provisions.²

¹ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006) (September 2006 MRTU Order), *order on reh'g*, 119 FERC ¶ 61,076 (April 2007 MRTU Order), *order on reh'g*, 120 FERC ¶ 61,271 (2007) (September 2007 MRTU Order).

² *See Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,313 (2007) (June 2007 MRTU Order) (among other things, accepting for filing, subject to further modifications, the CAISO's November 20, 2006 compliance filing).

3. The conditionally accepted MRTU Tariff will implement a market design that includes RA requirements intended to ensure the reliable operation of the CAISO grid. The CAISO expects to implement MRTU on March 31, 2008.

Filing

4. On October 16, 2007, pursuant to section 205 of the Federal Power Act (FPA), the CAISO submitted the instant filing to implement RA provisions prior to MRTU start-up. The CAISO has included the RA tariff revisions in a new Appendix CC to the currently effective CAISO Tariff. The CAISO states that these RA tariff revisions will be superseded by the MRTU Tariff provisions upon the effective date of the new market design.

5. The CAISO explains that the RA provisions of the MRTU Tariff complement state-imposed RA requirements on load serving entities (LSEs) to establish an integrated process designed to ensure that sufficient capacity will be available when and where needed to reliably operate the power system. The CAISO adds that the RA requirements are intended to serve as the primary vehicle under MRTU to replace the Commission's must-offer obligation by which resources, including those required for local reliability, must be made available to the CAISO markets.

6. The CAISO notes that there are material changes between the MRTU Tariff and the current CAISO Tariff on RA. The CAISO explains that, prior to the start of MRTU market operations, the CAISO must perform certain RA-related information gathering activities in order to accommodate and enforce RA resources availability requirements in 2008. In addition, the CAISO explains that it is necessary to implement the MRTU Tariff provisions related to local capacity area resource (local capacity) prior to MRTU implementation to provide LSEs with a reasonable time prior to start-up to procure necessary resources. Therefore, the CAISO requests that these RA tariff provisions (consisting of RA-related information gathering provisions and the local capacity-related provisions of the MRTU Tariff) be made effective on December 17, 2007.

7. The CAISO states that these RA tariff revisions constitute in large part language conditionally accepted by the Commission in prior MRTU orders.³ However, the CAISO notes that these tariff revisions also reflect language submitted in the CAISO's August 3, 2007 compliance filing in Docket Nos. ER06-615-011 and ER07-1257-000 (August 3, 2007 Compliance Filing), which the Commission has not acted upon yet. The CAISO states that, to the extent that Commission orders further changes to the MRTU

³ CAISO Transmittal Letter at 5 (citing September 2006 MRTU Order, 116 FERC ¶ 61,274; April 2007 MRTU Order, 119 FERC ¶ 61,076; June 2007 MRTU Order, 119 FERC ¶ 61,313).

Tariff language in Docket Nos. ER06-615 and ER07-1257, the CAISO will reflect those changes in the currently effective CAISO Tariff on compliance in the instant proceeding.

8. The CAISO explains that, from the foundations of the RA-related provisions of the August 3, 2007 Compliance Filing, these RA tariff revisions make four categories of modifications:

- Cross references: language has been included in Appendix CC to specify whether a reference to another tariff section refers to another provision of Appendix CC or to a tariff section within the main body of the CAISO Tariff.
- Dates upon which the CAISO or market participants must perform tasks: while the CAISO requests an effective date of December 17, 2007, it states that certain forward activities, whether directed at the CAISO or market participants, are triggered at different times. The CAISO explains that this difference exists because the dates in the MRTU Tariff are governed by the schedules set forth in the Business Practice Manual for Reliability Requirements, while the dates in the instant filing are determined by the transition to MRTU.
- Modifications proposed in the CAISO's October 5, 2007 reply to protests and comments related to the August 3, 2007 Compliance Filing: the CAISO indicates that it has included specific proposed revisions to address issues raised by stakeholders in that proceeding.
- Explicit reference to the CAISO's 2008 Local Capacity Technical Study: the CAISO states that, for the 2008 RA compliance year, the CAISO will assign responsibility for local capacity based on the results of the 2008 Local Capacity Technical Study completed in April 2007.

9. With respect to the last category of modifications, the CAISO notes that the Commission directed the CAISO to specify in the MRTU Tariff the set of reliability criteria the CAISO will employ in establishing local capacity needs.⁴ The CAISO explains that, as part of the August 3, 2007 Compliance Filing, the CAISO submitted its reliability criteria, which were used to conduct the 2008 Local Capacity Technical Study. The CAISO argues that, assuming that the Commission accepts the CAISO's reliability criteria in the August 3, 2007 Compliance Filing, the Commission should accept the use of the 2008 Local Capacity Technical Study because the Commission has explicitly accepted the primary inputs that drive the local capacity requirements and has given the

⁴ *Id.* at 6 (citing September 2006 MRTU Order, 116 FERC ¶ 61,274 at P 1167).

CAISO flexibility in this area.⁵ The CAISO states that the 2008 Local Capacity Technical Study was developed through an extensive CAISO stakeholder process and an open and transparent proceeding before the California Public Utilities Commission (CPUC). The CAISO adds that CPUC and non-CPUC jurisdictional LSEs participated in both fora.⁶

Notice of Filing and Responsive Pleadings

10. Notice of the CAISO's filing was published in the *Federal Register*, 72 Fed. Reg. 60,340 (2007), with comments, protests and interventions due on or before November 6, 2007. The CPUC filed a notice of intervention. The California Department of Water Resources State Water Project (SWP); the California Electricity Oversight Board; the California Municipal Utilities Association (CMUA); the Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California (Six Cities); the City and County of San Francisco (San Francisco); the City of Santa Clara, California, individually; the City of Santa Clara, California, the City of Palo Alto, California and the City of Alameda, California; the Metropolitan Water District of Southern California (Metropolitan); the Modesto Irrigation District; NRG Power Marketing Inc., Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Power LLC and Long Beach Generation LLC (collectively, NRG Companies); the Northern California Power Agency (NCPA); Pacific Gas and Electric Company (PG&E); Powerex Corp.; Southern California Edison Company (SoCal Edison); and the Western Area Power Administration filed timely motions to intervene. CMUA; Metropolitan; NCPA; NRG Companies; PG&E; San Francisco; Six Cities; SoCal Edison; and SWP filed comments and/or protests. The CAISO and SoCal Edison filed answers.

Discussion

A. Procedural Matters

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

⁵ *Id.* at 6.

⁶ The CAISO notes that, in the CPUC's RA proceeding in CPUC Docket No. Rulemaking 05-12-013, the CPUC adopted the results of the 2008 Local Capacity Technical Study as the basis for local capacity obligations imposed on CPUC jurisdictional LSEs for 2008. *See id.* (citing Opinion on Phase 2 – Track 1 Issues, CPUC Decision 07-06-029 (June 21, 2007)).

12. 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. We will accept the CAISO's answer because it has provided information that assisted us in our decision-making process. We are not persuaded to accept SoCal Edison's answer and will, therefore, reject it.

B. Justification for Filing

Comments

13. Metropolitan and CMUA contend that the CAISO has not provided sufficient justification for this interim filing. Metropolitan challenges the CAISO's assertion that it needs the instant RA tariff revisions in order to reallocate resources from a substantial software configuration for the modified reserve sharing LSE option⁷ to other MRTU launch activities and to obtain information that has not been forthcoming from LSEs. Metropolitan points to the CAISO's monthly progress reports that do not identify a software problem related to RA implementation or the need for more resources to resolve other problems. Metropolitan claims that the CAISO could have included a calendar of required inputs in its Business Practice Manuals instead.

14. CMUA argues that the CAISO should have foreseen the juxtaposition of forward RA reporting requirements and the effective date of the MRTU. Therefore, CMUA concludes that this juxtaposition alone cannot justify the proposed piecemeal approach to MRTU RA effectiveness. CMUA also challenges the CAISO's assertion that it has not been able to obtain accurate information on LSE elections to become modified reserve sharing LSEs under the MRTU Tariff. CMUA claims that none of its representatives, which could speak for its members that comprise most of the potential modified reserve sharing LSEs, was contacted to determine possible member elections.

15. In its answer, the CAISO responds that it has discretion to file these tariff revisions in a time frame that is consistent with the requirements of the FPA. The CAISO believes that these tariff revisions serve as a bridge between the currently effective CAISO Tariff and the MRTU Tariff and are both necessary and appropriate. The CAISO argues that it would be nonsensical for the Commission to reject them and have no transitional tariff language. As for the CAISO's attempts to gather information, it states that it sent three emails to various non-CPUC jurisdictional LSEs on July 10 and 11, 2007, with an accompanying explanation of the modified reserve sharing LSE option and a request that such LSEs provide a preliminary and non-binding designation of their

⁷ Under the MRTU Tariff, availability obligations for RA resources differ slightly according to whether the scheduling coordinator (SC) representing an LSE elects to be a reserve sharing LSE or a modified reserve sharing LSE. See September 2006 MRTU Order, 116 FERC ¶ 61,274 at P 1239-1240.

preferred option by July 31, 2007. The CAISO states that thus far it has not received any responses. While the CAISO appreciates CMUA's offer to facilitate this communication, the CAISO contends that its decisions to contact LSEs directly and proceed with this filing absent responses was reasonable.

Commission Determination

16. We disagree that the CAISO has not provided sufficient justification for this interim filing. We find that the need for information and the desire that LSEs have a reasonable amount of time to procure local capacity prior to MRTU start-up are reasonable bases for the instant filing. The fact that the CAISO may not previously have pointed out its difficulties gathering information regarding modified reserve sharing LSEs in its monthly progress reports is irrelevant. In this filing, the CAISO has given notice of issues and proposed tariff solutions. In response to the CMUA's comments, the CAISO has explained that it attempted to gather this information from LSEs directly but without success. Finally, the inclusion of a timeline for submission of the required information in the Business Practice Manuals is not practicable at this time given the advanced stage of development of the Business Practice Manuals. For these reasons, we find that it is reasonable for the CAISO to seek to gather this information through this means at this time. Accordingly, we reject the commenters' arguments.

C. Overlap with MRTU Provisions Proposed in August 3, 2007 Compliance Filing

Comments

17. SoCal Edison argues that, prior to ruling on the instant filing, the Commission should make its final determination on the MRTU Tariff provisions related to local capacity requirements proposed in the August 3, 2007 Compliance Filing. SoCal Edison asserts that doing so will eliminate any potential conflict between the tariff revisions proposed here and the proposed MRTU Tariff provisions.

Commission Determination

18. We find that the proposed local capacity provisions submitted here depend upon the provisions proposed in the August 3, 2007 Compliance Filing. Therefore, we agree with SoCal Edison that the Commission cannot unconditionally accept the CAISO's instant filing without first making a determination on the proposed local capacity MRTU Tariff provisions submitted in the August 3, 2007 Compliance Filing. Similarly, we find that some of the RA-related information gathering provisions in this filing depend on tariff language proposed in the August 3, 2007 Compliance Filing. Accordingly, to the extent that we accept the proposed RA tariff revisions herein, we accept them conditionally, suspend them for a nominal period, and make them effective, subject to

refund, modification, the outcome of the August 3, 2007 Compliance Filing proceeding and further order.

D. Information Gathering Activities

1. Duplicative Filing Requirements

Comments

19. SoCal Edison argues that proposed tariff sections 40.2.1.1 and 40.4.7 should be modified because they require certain LSEs to provide duplicative RA compliance submissions to the CAISO. SoCal Edison contends that, while the CPUC's mandated RA filings for LSEs will provide the CAISO with RA-related data (e.g., reserve margins and criteria for qualifying capacity) through the CPUC's mandated annual and monthly RA compliance filings, proposed tariff section 40.2.1.1 requires LSEs to provide this data to the CAISO within five days of the CAISO's filing of its market readiness certification.⁸ SoCal Edison contends that there is no reason to impose this duplicative filing requirement upon CPUC-jurisdictional LSEs and their SCs. SoCal Edison requests that the Commission direct the CAISO to strike the five business-day requirement from proposed tariff section 40.2.1.1.

20. In its answer, the CAISO agrees that the five business-day requirement will result in duplicate submissions and should be deleted. The CAISO states that the same concern regarding duplicate submissions applies to proposed tariff sections 40.2.2.1, 40.2.2.2, 40.2.2.3, 40.2.3.1 and 40.2.3.2, which dictate the information that non-CPUC LSEs must submit. The CAISO offers to eliminate the need for submission of redundant information through market notice instructions by altering these tariff sections as follows:

The information required by [Section] of this appendix shall be provided to the CAISO pursuant to the instructions set forth in an CAISO Market Notice within five (5) Business Days of the CAISO filing its statement certifying market readiness in accordance with Paragraph 1414 of 116 FERC ¶ 61,274 (2006).⁹

⁸ The Commission has directed the CAISO to file, at least 60 days prior to the effective date of MRTU, a statement certifying market readiness. *See id.* at P 1414.

⁹ In its answer, the CAISO disagrees that tariff section 4.4.7 should be modified because it is necessary to continue to require SCs for RA resources to update their annual supply plans pursuant to proposed tariff section 4.4.7. *See CAISO Answer* at 17 n.13. We do not find a reference to this tariff section in SoCal Edison's comments. Based upon SoCal Edison's comments, we believe that the CAISO may have meant to refer to tariff section 40.4.7, which is discussed below.

21. SoCal Edison also contends that proposed tariff section 40.4.7 results in the duplicative submission of annual supply plans by many SCs. SoCal Edison claims that it and other SCs representing RA resources have already submitted their 2008 annual supply plan to the CAISO in response to the CAISO's September 11, 2007 Market Notice. Therefore, SoCal Edison recommends revising tariff section 40.4.7 as follows:

For 2008 [RA] Compliance Year, the annual Supply Plan shall be submitted to the CAISO on January 31, 2008 in the form set forth on the CAISO Website by those [SCs] (representing [RA] Resources) that have not already submitted such Supply Plans to the CAISO

22. In its answer, the CAISO responds that SoCal Edison's proposed revision is overbroad because, while all SCs for RA resources may have submitted annual supply plans, those plans may not be complete. The CAISO suggests revising tariff section 40.4.7 so that SCs whose supply plans have not changed can meet their filing obligation by certifying to that effect. The CAISO proposes the following revision to implement this change:

For 2008 [RA] Compliance Year, an annual Supply Plan or certification that a previously submitted annual Supply Plan for 2008 [RA] Compliance Year has not changed shall be submitted to the CAISO on January 31, 2008 in the form set forth on the CAISO Website

Commission Determination

23. We find that the CAISO's proposed modifications adequately respond to SoCal Edison's concerns. Accordingly, we direct the CAISO to make a compliance filing within 30 days of the date of this order with these modifications.

2. Use-Limited Resource Registration Form

Comments

24. SoCal Edison is concerned with the requirement under proposed tariff section 40.6.4.1 that SCs provide the CAISO by January 7, 2008 with a form registering specifically identified resources as a Use-Limited Resources. Although tariff section 40.6.4.1 states that the form to be submitted is available on the CAISO website, SoCal Edison claims that the CAISO has not posted the final version of this form or even released a draft. To allow for the appropriate development of the form, SoCal Edison requests that the CAISO post a draft on its website and allow stakeholder comments. Because SoCal Edison estimates that the stakeholder process will take at least 20-30 days, it does not believe the form will be available in time for SCs to meet the January 7, 2008 deadline. Therefore, SoCal Edison requests that the CAISO change the submission

deadline to February 7, 2008 or 30 days after the CAISO posts the final form on its website, whichever is later.

25. In its answer, the CAISO states that it intends to post a draft form, will accept stakeholder comments and anticipates a final form by the end of the year. However, the CAISO does not believe that the deadline for submitting the form should be modified. The CAISO explains that tariff section 40.6.4.1 already details the information that SCs will need to submit. The CAISO states that the draft notice and stakeholder process will merely give information on how the information must be submitted. The CAISO does not believe that SCs will have difficulty assembling the necessary information by the time the form is formalized. The CAISO adds that delaying the submittal of this form may substantially interfere with the CAISO's ability to determine whether resources qualify as use-limited resources consistent with the schedule for evaluating RA plans.

Commission Determination

26. In response to SoCal Edison's concerns with respect to the CAISO's failure to date to post a draft form and commence the stakeholder review process, the CAISO has committed to post the draft on its website and accept stakeholder comments. We direct the CAISO to post the draft form and complete the stakeholder process as it has committed to within 15 days of the date of this order. CAISO will, at that time, post the final exam. With this condition, we accept the proposed January 7, 2008 submission deadline for completion of the final form, subject to possible changes that may be required due to the outcome of the August 3, 2007 Compliance Filing proceeding.

E. Local Capacity-Related Provisions

1. General Concerns

Comments

27. PG&E argues that the process used to develop the 2008 Local Capacity Technical Study does not meet the Commission's standard for review and approval of the CAISO's tariff mechanism that set the quantity term for capacity procurement.¹⁰ According to PG&E, while the 2008 Local Capacity Technical Study could set the rates and terms of service for all LSEs within the CAISO Control Area, the CAISO has not provided an adequate stakeholder process to review the establishment of the local capacity

¹⁰ PG&E Comments at 2, 5, 6-8 (citing *ISO New England, Inc.*, 118 FERC ¶ 61,157, at P 5, 7, 19; *reh'g denied*, 120 FERC ¶ 61,234 (2007); *ISO New England, Inc.*, 121 FERC ¶ 61,125 (2007)).

responsibility requirements proposed in its RA tariff revisions. PG&E contends that the methodologies and assumptions of the 2008 Local Capacity Technical Study should be incorporated within tariff language, or at the very least, included within a Business Practice Manual that is subject to stakeholder review and CAISO Governing Board approval.

28. In its answer, the CAISO notes that tariff section 40.3.1, which was proposed in the August 3, 2007 Compliance Filing and is included in this filing, is consistent with PG&E's request. The CAISO explains that it is required to engage in a collaborative process with the CPUC, local regulatory authorities, federal agencies and market participants to ensure that the local capacity technical study conforms to the tariff. The CAISO states that it also must establish for inclusion in the Business Practice Manual other parameters and assumptions that apply to the local capacity technical study and a schedule that provides for specific procedural safeguards. The CAISO adds that, although the Commission directed it to include more detail in the MRTU Tariff on the methodology used to perform the local capacity technical study, the Commission found that it was not necessary for the CAISO to include a detailed description of the study in the MRTU Tariff.¹¹ The CAISO states that, therefore, upon Commission acceptance of proposed tariff section 40.3.1, the CAISO will be bound to engage in a process that is consistent with PG&E's request. The CAISO notes that the only potential discrepancy will be that the Business Practice Manuals are not subject to the CAISO's Governing Board review.¹²

29. San Francisco reiterates its objections to the methodology used to determine its local capacity responsibility for 2008.¹³ Specifically, San Francisco argues that the full amount of generation capacity that it is able to access using its transmission ownership rights (TORs) and its existing transmission contract (ETC) rights with PG&E should be credited towards San Francisco's assessed capacity responsibility.¹⁴ San Francisco also disagrees that the CAISO has the authority to establish these requirements.¹⁵

¹¹ CAISO Answer at 15-16 (citing September 2006 MRTU Order, 116 FERC ¶ 61,274 at P 1166).

¹² *Id.* at 16 n.12 (citing MRTU Tariff sections 22.4.3 and 22.11).

¹³ San Francisco Comments at 3 (citing *City and County of San Francisco, California v. Federal Energy Regulatory Commission*, 07-1216 (D.C. Cir. Filed 2007)).

¹⁴ *Id.*

¹⁵ *Id.*

30. San Francisco and NCPA argue that it does not make sense to compel LSEs to purchase capacity for times when they will not need it and cannot use it. They contend that such a result leads to over-procurement and forces ratepayers to shoulder the costs of a “belt-and-suspenders” reliability formula in excess of what is actually needed. If the Commission accepts the instant tariff revisions, San Francisco and NCPA request that the Commission permit parties to challenge either individual allocations or an allocation mechanism based on them. San Francisco and NCPA argue that the Commission should not use the 2008 Local Capacity Technical Study, methodology or criteria as precedent for application in future years.

31. In its answer, the CAISO notes that the Commission has already accepted the use of a single peak value to establish local capacity requirements as set forth in tariff sections 40.3.1 and 40.3.2.¹⁶ Therefore, the CAISO states that the request to reconsider an annual assessment is a collateral attack on past Commission decisions. The CAISO adds that the purported efficiencies of a seasonal local assessment are speculative and, if they do exist, are overstated.¹⁷

32. Six Cities, CMUA and Metropolitan claim that it is premature for the Commission to accept the 2008 Local Capacity Technical Study because the CAISO has yet to file with the Commission proposed MRTU Tariff provisions setting forth the mechanism by which the CAISO would engage in backstop procurement of local capacity or the criteria for implementing such backstop procurement authority. Metropolitan submits that the cost allocation of local capacity requirements should be determined in accordance with existing tariff provisions or at the same time the CAISO seeks additional procurement authority. These commenters recommend that the Commission reject the CAISO’s request for early implementation of these tariff provisions.

33. NRG is also concerned with the lack of MRTU Tariff backstop procurement provisions. NRG requests that the Commission condition acceptance of the instant tariff revisions on an express recognition that the CAISO must procure capacity, including local capacity, wherever and whenever needed for reliability at a price that is just and reasonable. NRG maintains that the CAISO cannot rely on must-offer compensation to pay capacity deemed needed to meet local capacity requirements but not procured by LSEs under RA contracts.

34. In its answer, the CAISO disagrees that, unless the full cost exposure for CAISO backstop procurement is fully defined up-front, the Commission should be foreclosed from assessing the engineering quality of the 2008 Local Capacity Technical Study and

¹⁶ CAISO Answer at 10 (citing September 2006 MRTU Order, 116 FERC ¶ 61,247 at P 1166-1170 and 1191-1199).

¹⁷ See *id.* at 11-12.

the fairness of the CAISO's proposed formula for allocating responsibility for local capacity on an LSE basis. The CAISO argues that this argument is overbroad and ignores State policy and prior Commission rulings. The CAISO explains that it only seeks (1) authority to identify the minimum amount of capacity needed within local capacity areas to maintain reliability per pre-established reliability criteria and (2) to use that outcome with demand forecast information from the California Energy Commission (CEC) to assign each LSE its proportionate responsibility for local capacity. The CAISO states that the first task relies upon the 2008 Local Capacity Technical Study, which is an engineering assessment performed without regard to any LSE procurement responsibility or CAISO backstop procurement mechanism or cost allocation.¹⁸ Because the backstop procurement mechanism has no bearing on and is unrelated to the appropriate engineering standards applied in the local capacity technical study, the CAISO argues that the Commission's determination regarding the 2008 Local Capacity Technical Study should not be contingent upon the backstop mechanism.

35. The CAISO states that the second task provides LSEs with information to prevent or hedge against potential CAISO backstop costs. While the CAISO does not seek to determine backstop cost allocation through the instant tariff revisions, the CAISO acknowledges that the formula for allocating local capacity responsibility overlaps with two backstop procurement issues. The CAISO states that one issue is whether LSEs or Participating Transmission Owners (PTOs) should bear the cost of any CAISO backstop procurement of capacity for local reliability reasons. The CAISO states that the second issue is whether the CAISO's procurement role should be secondary and only triggered upon a failure of LSEs to secure the capacity needed to reliably serve their customers.

36. The CAISO claims that the Commission has already addressed both of these issues. First, the CAISO points to the Commission's rejection of arguments that backstop procurement of local capacity should be allocated to PTOs.¹⁹ The CAISO claims that the only change to MRTU Tariff section 40.3.2 involves shifting the basis of the peak demand calculation from historic load data to CEC forecast data, which is consistent with recent Commission precedent.²⁰ Second, the CAISO notes that, pursuant to state law and the Commission's acceptance of the MRTU Tariff, LSEs cannot elect solely on a cost basis whether to rely on their own procurement or that of the CAISO to meet local capacity needs. To the contrary, the CAISO states that LSEs have an affirmative

¹⁸ *Id.* at 6 (citing tariff sections 40.3.1, 40.3.1.1 and 40.3.1.2).

¹⁹ *Id.* at 7 (citing September 2006 MRTU Order, 116 FERC ¶ 61,274 at P 1190, 1193).

²⁰ *Id.* at 8 (citing April 2007 MRTU Order, 119 FERC ¶ 61,076 at P 638).

obligation to secure adequate local capacity.²¹ The CAISO adds that each LSE will have the opportunity to protest the cost allocation when the CAISO proposes an allocation methodology with its request for authority for backstop procurement. Therefore, the CAISO argues that neither task should pose a barrier to acceptance of the instant tariff revisions.

37. CMUA contends that the three months that the CAISO proposes to allow LSEs to procure local capacity is not enough time to modify procurement choices in a substantial manner.

38. In its answer, the CAISO disagrees. The CAISO argues that the amount of time between the formal identification of each LSE's proportionate responsibility for local capacity and the procurement target dates is reasonable. The CAISO adds that there is nothing substantially new or different in this filing that would impose any surprises on LSEs' obligations. The CAISO notes that, based upon stakeholder input, in its August 3, 2007 Compliance Filing, it proposed to revise MRTU Tariff section 40.3.1 to provide that future local capacity technical studies would be released no later than 120 days prior to the date of submission of the annual RA plans. The CAISO states that no party objected to that procurement period and that the instant tariff revisions truncate that period by only approximately two weeks. The CAISO adds that CMUA has not explained why the time provided is insufficient, why the two week reduction is material or what alternative time period would be appropriate. Therefore, the CAISO concludes that CMUA has not provided a basis for finding that the CAISO's filing is unjust or unreasonable.

Commission Determination

39. Although the Commission has directed the CAISO to include in the MRTU Tariff more detail on the methodology used to perform the local capacity technical study, the Commission has determined that it is not necessary for the CAISO to include a detailed description of the local capacity technical study in the MRTU Tariff.²² Therefore, we find that PG&E's argument that the methodologies and assumptions for the local capacity technical study should be incorporated in tariff language is a collateral attack on a prior Commission order. Accordingly, we reject PG&E's request. Furthermore, in the August 3, 2007 Compliance Filing, the CAISO set forth a stakeholder process in proposed MRTU Tariff section 40.3.1 to ensure that the local capacity technical study is performed pursuant to the MRTU Tariff and to include other parameters and assumptions in the Business Practice Manual. We agree with the CAISO that this proposed provision addresses the concern raised by PG&E. Furthermore, the appropriate forum in which to

²¹ *Id.* at 8-9 (citing California Public Utilities Code section 9620).

²² *See* September 2006 MRTU Order, 116 FERC ¶ 61,274 at P 1166.

raise PG&E's concern with MRTU Tariff section 40.3.1 was the August 3, 2007 Compliance Filing proceeding where that language was originally proposed. For these reasons, we reject PG&E's arguments.

40. The concerns raised by San Francisco and NCPA relate to the local capacity criteria and methodology proposed in the August 3, 2007 Compliance filing and, therefore, should have been raised in that proceeding, rather than here. Furthermore, the Commission has addressed San Francisco's arguments regarding the CAISO's authority to establish RA requirements and San Francisco's TORs and ETC rights.²³ Therefore, San Francisco's arguments are a collateral attack on prior Commission orders. For these reasons, we reject these arguments.

41. Contrary to the assertions of Six Cities, CMUA and Metropolitan, we find that the results of the 2008 Local Capacity Study and the methodology to allocate the results of the 2008 Local Capacity Study can be determined and accepted independent of the backstop procurement mechanism that is ultimately developed. As the CAISO notes, the 2008 Local Capacity Study is an engineering study used to determine the minimum amount of local capacity required to maintain reliability, which is not impacted by any backstop mechanism. While the allocation methodology ultimately impacts backstop procurement, we find it reasonable to expect that the allocation of local capacity backstop procurement costs by the CAISO will closely follow LSEs' allocation of local capacity responsibility, as proposed in the August 3, 2007 Compliance Filing. This conclusion is consistent with our finding that the allocation of local capacity backstop procurement costs should provide adequate incentives for LSEs to meet their share of local capacity requirements.²⁴ Accordingly, consistent with our determination above on the need for the CAISO's instant filing,²⁵ we reject Six Cities, CMUA and Metropolitan's arguments.

42. Because the CAISO has not proposed a backstop mechanism in this proceeding, NRG's argument that the CAISO should procure capacity under the backstop mechanism at a price that is just and reasonable is outside the scope of this proceeding. Accordingly, we reject NRG's argument. We note that NRG can seek to raise these concerns at the

²³ *Id.* at P 1112-1120, 1168; April 2007 MRTU Order, 119 FERC ¶ 61,076 at P 540-564, 601-602.

²⁴ September 2006 MRTU Order, 116 FERC ¶ 61,274 at P 1191, 1193. *See also Indep. Energy Producers Ass'n v. Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,069, *clarified by*, 116 FERC ¶ 61,297 (2006), *reh'g denied*, 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); *order on paper hearing*, 118 FERC ¶ 61,096 (2007), *reh'g pending*.

²⁵ *See supra* P 16.

time the CAISO makes an FPA section 205 filing to implement a new backstop procurement mechanism.²⁶

43. CMUA raises concerns that there may not be sufficient time to make substantial changes in LSEs' procurement choices but provides no evidence to demonstrate that the amount of time provided is insufficient for LSEs to procure their allocated responsibility of local capacity. For these reasons, we reject CMUA's comment.

2. Concerns Related to Specific Tariff Provisions

a. Tariff section 40.3.1.1(1)

Comments

44. PG&E contends that, contrary to a statement by the CAISO, proposed tariff section 40.3.1.1(1) does not mirror the original language proposed in tariff section 40.3.1.2 in the August 3, 2007 Compliance Filing. The new language states as follows:

Time Allowed for Manual Readjustment. This is the amount of time required for the operator to take all actions necessary to prepare the system for the next contingency. This time should be less than 30 minutes.

According to PG&E, the new language omits an explanatory note that was attached to proposed tariff section 40.3.1.2. PG&E argues that, without the explanatory note, the language is vague and ambiguous because it does not explain whether manual adjustments by the operator may take more or less than the prescribed thirty minutes when running the local capacity technical study. PG&E claims that, while manual adjustments can be achieved through remote switching or Supervisory Control and Data Acquisition methods that can happen within minutes, other adjustments may require transportation time to physical switches. PG&E contends that the time allowed for manual adjustment to ensure reliability should be based on equipment ratings, not on an arbitrary and capricious time limit. PG&E is concerned that eliminating the consideration of otherwise-approved operating practices when conducting the local capacity technical study could result in an unnecessary and unjustified increase in the amount of capacity that LSEs would be required to procure. PG&E requests that the Commission direct the CAISO to strike tariff section 40.3.1.1(1).

45. In its answer, the CAISO argues that the requirement in tariff section 40.3.1.1(1) is not new. The CAISO states that the requirement has been part of the CAISO Planning

²⁶ See Notice of Extension of Time, Docket No. ER06-615-003, *et al.* (Sept. 25, 2007).

Standards that were approved by stakeholders in 2002.²⁷ The CAISO adds that it included this requirement as part of the reliability criteria in its August 3, 2007 Compliance Filing, which the Commission directed it to submit.²⁸ As for the omission of the explanatory note, the CAISO notes that, as explained in its answer in the August 3, 2007 Compliance Filing proceeding, it did not delete the notes completely. The CAISO explains that it transferred the criterion from the CAISO Grid Planning Standards relating to manual readjustment to tariff section 40.3.1.1. The CAISO states that it used the CAISO Grid Planning Standards language that states that the time for the manual adjustment “should” be less than 30 minutes, rather than “must” be less than 30 minutes as originally phrased in the notes. The CAISO explains that the change in language acknowledges that, as previously stated in the notes, certain circumstances may warrant allowing manual adjustments that require greater than 30 minutes. The CAISO states that the appropriate place to include any further details on interpretation of the standard is the Business Practice Manuals.

Commission Determination

46. Because these issues related to proposed MRTU Tariff section 40.3.1.1(1) are before the Commission in the August 3, 2007 Compliance Filing proceeding, we will not address them in this proceeding. Instead, as with the other tariff provisions accepted herein,²⁹ we will conditionally accept this provision, suspend it for a nominal period and make it effective, subject to refund, the outcome of the August 3, 2007 Compliance Filing proceeding and further order.

b. Tariff section 40.7

Comments

47. SWP requests clarification of the proposed language in section 40.7 of these tariff revisions related to the opportunity to cure deficiencies in local capacity adequacy plans submitted by LSEs. SWP contends that the provision could be read as providing only modified reserve sharing LSEs with the opportunity to cure plan deficiencies because it only refers to tariff section 40.2.3.4 (which describes annual RA plans for modified reserve sharing LSEs). SWP requests that the Commission direct the CAISO to clarify the tariff language to provide comparable treatment for reserve sharing LSEs, which are subject to similar RA plans under tariff section 40.2.2.4.

²⁷ CAISO Answer at 13 n.10.

²⁸ *Id.* at 13 (citing September 2006 MRTU Order, 116 FERC ¶ 61,274 at P 1167).

²⁹ *See supra* P 18.

48. In its answer, the CAISO agrees that the sections applicable to reserve sharing LSEs were inadvertently omitted. The CAISO states that it intended reserve sharing LSEs to have the same opportunity as modified reserve sharing LSEs. The CAISO, therefore, agrees that tariff section 40.7 should be modified to provide comparable treatment.

Commission Determination

49. Given the CAISO's agreement to provide comparable treatment, we direct the CAISO to make a compliance filing within 30 days of the date of this order with proposed revisions to tariff section 40.7.

The Commission orders:

(A) The CAISO's revised tariff sheets are hereby conditionally accepted, suspended for a nominal period and made effective, subject to refund, modification, the outcome of the August 3, 2007 Compliance Filing proceeding in Docket Nos. ER06-615-011 and ER07-1257-000 and further order, as discussed in the body of this order.

(B) The CAISO is hereby directed to make the compliance filings specified in the body of this order, within 30 days of the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.