

132 FERC ¶ 61,045
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris and Cheryl A. LaFleur

California Independent System Operator
Corporation.

Docket No. ER10-765-000

ORDER CONDITIONALLY ACCEPTING TARIFF CHANGES
AND DIRECTING COMPLIANCE FILING

(Issued July 15, 2010)

1. In this order, the Commission conditionally accepts proposed tariff revisions submitted by the California Independent System Operator Corporation (CAISO) to implement its Proxy Demand Resource proposal.¹ The tariff revisions are conditionally accepted with a July 19, 2010 effective date for the *pro forma* agreement and an August 10, 2010 effective date for the remaining tariff provisions. The Proxy Demand Resource proposal is intended to satisfy the Commission's directives in Order No. 719,² directing Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs) to permit an aggregation of retail customers to bid demand response directly into the market consistent with applicable laws and regulations.

I. Background

2. The Proxy Demand Resource proposal is the result of a series of demand response technical design sessions and a demand resource stakeholder process that began in 2008. The CAISO states that the stakeholder process included over fifteen meetings and conference calls and eight opportunities for written stakeholder comments. Following the stakeholder initiative, the final proposal, implementing the Proxy Demand Resource

¹ CAISO, February 16, 2010 Proxy Demand Resource Filing, Docket No. ER10-765-000 (Proxy Demand Resource Filing).

² *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh'g*, Order No. 719-A, 74 Fed. Reg. 37,776 (Jul. 29, 2009), FERC Stats. & Regs. ¶ 31,292, *order on reh'g and clarification*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

product, was presented to and approved by the CAISO's governing board at its September 2009 meeting. An additional component concerning local market power mitigation was approved at its February 2010 meeting.

3. Order No. 719 set out certain requirements that the CAISO attempts to address with the Proxy Demand Resource proposal. Specifically, the Commission directed the ISOs and RTOs to amend their market rules to permit aggregators of retail customers (Demand Response Providers)³ to bid demand response on behalf of retail customers into the organized electricity markets operated by ISOs and RTOs, unless prohibited by the laws or regulations of the relevant electric retail regulatory authority. Order No. 719 allowed flexibility so each ISO and RTO could design its own provisions accounting for differences in their market designs.

II. The Proxy Demand Resource Proposal

4. Under the proposal, a Proxy Demand Resource is defined as a load or an aggregation of loads capable of measurably and verifiably reducing their electric demand in response to CAISO dispatch instructions. According to the CAISO, a Proxy Demand Resource is represented by a Demand Response Provider and participates in the CAISO market through a CAISO-certified scheduling coordinator. The CAISO proposes to compensate market participants for responding to price signals by reducing retail customers' electricity use.

5. For a Proxy Demand Resource to participate in the CAISO market, the resource must be registered with the CAISO by its representative Demand Response Provider. Under the proposal, to register a resource, the Demand Response Provider must receive approval from the resource's load serving entity⁴ and identify the certified scheduling coordinator (or act as its own scheduling coordinator) and the load serving entity that serves the underlying retail customer(s) that make up the resource. Each load serving entity is also represented by a certified scheduling coordinator (or acts as its own scheduling coordinator) in the CAISO market.

³ The CAISO and stakeholders agreed to use the term "Demand Response Provider" to describe the entities in the CAISO's market that Order No. 719 refers to as "Aggregator of Retail Customers" or "ARCs." Proxy Demand Resource Filing, Transmittal Letter at 9.

⁴ The terms "load serving entities" and "utility distribution companies" are used interchangeably throughout this order.

6. Demand Response Providers are authorized to take part in the CAISO's day-ahead and real-time energy markets and certain ancillary services markets, once they have executed a *pro forma* Proxy Demand Resource agreement with the CAISO and satisfied other applicable requirements, including any local regulatory authority requirements. As discussed below, the *pro forma* Proxy Demand Resource agreement was included as part of the Proxy Demand Resource Filing.

7. The CAISO proposes to provide payment based on the verified performance of Proxy Demand Resources as compared with historical metered-demand customer baselines. The proposal requires Demand Response Providers to submit information that allows the CAISO to establish customer baselines, based on historical load meter data. The customer baseline represents an estimate of metered demand that normally would be expected for a particular Proxy Demand Resource in the absence of a demand response bid.

8. The customer baseline methodology that the CAISO proposes to use is based on an evaluation of the CAISO market and features of the customer baseline methodologies employed by other ISOs and RTOs that have demand response products. Such ISOs and RTOs include PJM Interconnection, L.L.C. (PJM), the New York Independent System Operator, Inc. (NYISO), and ISO New England Inc. (ISO-NE).⁵ The CAISO states that several working group meetings with stakeholders were spent discussing baseline methodologies and reviewing related information.

9. The CAISO states that, because other ISOs and RTOs have made numerous refinements and enhancements to their own customer baseline methodologies, the CAISO has chosen to implement a simple core methodology for establishing customer baselines that it expects will be reexamined and refined based on the CAISO's initial experience with the Proxy Demand Resource proposal. The CAISO states that publishing the baseline methodology in the Business Practice Manuals rather than its tariff gives it flexibility to refine the methodology once it is in place.

10. The scheduling coordinator representing the load serving entity will continue to schedule forecasted load, while the scheduling coordinator representing the Demand Response Provider will schedule and bid its Proxy Demand Resources into the CAISO market to curtail load (although a single scheduling coordinator could represent both a load serving entity and a Demand Response Provider). According to the CAISO, this design allows the settlement for energy curtailment to be paid to the Demand Response Provider's scheduling coordinator just as though energy generation was delivered.

⁵ Proxy Demand Resource Filing, Transmittal Letter at 14.

11. For settlement purposes, the CAISO states that load serving entities will continue to schedule load and pay at the default load aggregation point (Default LAP). The CAISO proposes to settle with Proxy Demand Resource scheduling coordinators by paying the locational marginal price (LMP) at sub-load aggregation points (Sub-LAPs) for Proxy Demand Resources whose bids are economic and clear the market. Sub-LAPs, which are CAISO-defined subsets of pricing nodes within a Default LAP, are more granular than Default LAPs.

12. The CAISO introduces the term “Proxy Demand Resource Energy Measurement,” which is the energy quantity calculated by comparing the customer baseline of a Proxy Demand Resource against its actual underlying load for a demand response event. The CAISO states that, consistent with the existing settlement provisions in its tariff, the amount of energy provided by a Proxy Demand Resource – the Proxy Demand Resource Energy Measurement – will be multiplied by the applicable LMPs at the Sub-LAPs for the Proxy Demand Resources.

13. The CAISO proposes to allow Proxy Demand Resources to participate in both day-ahead and real-time markets. The CAISO states that at the time the Proxy Demand Resource is first implemented, the non-spinning reserve market will be the only ancillary services market for which Proxy Demand Resources will be certified. The CAISO notes that it is undertaking a separate stakeholder initiative⁶ to modify its operating and technical requirements for ancillary services in order to facilitate further participation by non-generator resources in the CAISO’s ancillary services markets.

III. Notice of Filing and Responsive Pleadings

14. Notice of the CAISO’s filing was published in the *Federal Register*, 75 Fed. Reg. 8,691 (2010), with comments, protests, or interventions due on or before March 9, 2010. Notices of intervention, timely motions to intervene, and protests and comments were filed by Golden State Water Company, Modesto Irrigation District, NRG Companies,⁷ the cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California (Six Cities), Wal-Mart Stores, Inc. (Wal-Mart), California Department of Water Resources State Water Project (SWP), Northern California Power Agency (NCPA), California Municipal Utilities Association (CMUA), City of Santa Clara, California, M-

⁶ Information regarding the CAISO’s stakeholder initiative on non-generation participation in its ancillary services markets is *available at*: <http://www.caiso.com/2415/24157662689a0.html>.

⁷ NRG Companies include NRG Power Marketing, LLC, Cabrillo Power I, LLC, Cabrillo Power II, LLC, El Segundo Power, LLC, and Long Beach Generation, LLC.

S-R Public Power Agency (Santa Clara/M-S-R), Pacific Gas and Electric Company, Sacramento Municipal Utility District, and the California Public Utilities Commission (CPUC). An out-of-time motion to intervene was filed by EnerNOC, Inc.

15. On March 24, 2010, the CAISO filed an answer responding to the comments and protests.

16. On April 16, 2010, Commission staff issued a deficiency letter identifying specific issues that required additional information. Notice of the CAISO's May 17, 2010 response was published in the *Federal Register*, 75 Fed. Reg. 36,379 (2010), with comments due on or before June 28, 2010. On June 7, 2010, SWP filed comments in response to the CAISO's response letter.

IV. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

18. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2010), the Commission will grant EnerNOC, Inc.'s late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept answers filed in this proceeding because they provide information that assisted us in our decision-making process.

B. Compliance with Order No. 719

20. In Order No. 719, the Commission directed ISOs and RTOs to revise their existing market rules to reduce barriers to demand response participation in their markets. Among other things, the Commission required ISOs and RTOs to permit an ARC to bid demand response on behalf of retail customers directly into the organized energy market, unless prohibited.⁸ In its Order No. 719 compliance filing, the CAISO explained that its existing tariff, market design, and software could not accommodate the provision of demand response through an ARC, but it expected to resolve the complex issues

⁸ See *infra* note 33.

associated with this directive. The Commission accepted the CAISO's filing "insofar as the CAISO has provided us with an adequate roadmap to full compliance," but also stated that the development and implementation of ARCs in the CAISO markets should be fully addressed by the CAISO in its planned future filings.⁹

21. The CAISO claims that the Proxy Demand Resource proposal fulfills the requirements of Order No. 719 related to ARC participation in the CAISO markets. In support, the CAISO explains that the proposal would treat Demand Response Providers¹⁰ the same, whether the provider is a load serving entity, a retail customer representing its own load, or an aggregator of other entities' loads. Additionally, the CAISO states that a Demand Response Provider would have an opportunity to bid into the CAISO's market and, similar to other resources, would not be guaranteed that its bid would be accepted. The CAISO notes that a Proxy Demand Resource may consist of a single retail customer or multiple, aggregated retail customers. Also, a Demand Response Provider can operate multiple Proxy Demand Resources within its portfolio.

22. Further, the CAISO states that the Proxy Demand Resource proposal would not place prohibitions on who may become a Demand Response Provider, so long as entities satisfy tariff requirements applicable to all such providers, such as registering with the CAISO and meeting CAISO creditworthiness requirements. Finally, the CAISO argues that the Proxy Demand Resource proposal is compliant with Order No. 719's requirement that ISO and RTO market rules allow bids from an ARC unless not permitted under the laws or regulations of the relevant electric retail regulatory authority, pointing to the CPUC's "Direct Participation Phase" of its demand response proceeding.¹¹

⁹ *Cal. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,157, at P 56 (2009), *reh'g pending* (November 19 Order).

¹⁰ *See supra* note 3. "Demand Response Provider" is the CAISO's term for ARC.

¹¹ Proxy Demand Resource Filing, Transmittal Letter at 27-28 (citing Cal. Pub. Utils. Comm'n, *Assigned Commissioner And Administrative Law Judges' Ruling Amending Scoping Memo, Establishing A Direct Participation Phase Of This Proceeding, And Requesting Comment On Direct Participation Of Retail Demand Response In CAISO Electricity Markets*, 07-01-41 (Nov. 9, 2009), available at <http://docs.cpuc.ca.gov/efile/RULINGS/109611.pdf>); *see also* Cal. Pub. Utils. Comm'n, *Decision on Phase Four Direct Participation Issues*, 07-01-041 (June 4, 2010), available at http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/118962.pdf.

Commission Determination

23. We accept the CAISO proposal as compliant with Order No. 719, as related to ARC participation in the CAISO markets, subject to the compliance filing directed below. As noted above, Order No. 719 was intended to remove barriers to participation by demand response resources in organized markets. We find that the Proxy Demand Resource proposal reduces barriers to participation by allowing Demand Response Providers to submit bids on behalf of retail customers, subject to the CAISO's reasonable restrictions. The Proxy Demand Resource proposal satisfies the general requirements that we set forth in Order No. 719 regarding the ability of ARCs to bid directly in the CAISO-administered markets on behalf of retail customers.

C. Costs and Settlement

24. Under the proposal, a Proxy Demand Resource is treated like generation, paid the full LMP at its Pricing Node, or Sub-LAP, during all hours that its bid clears. A load serving entity pays for load scheduled, including any load curtailment, at a Default-LAP price just like it would for generation.¹²

25. The CAISO claims there is a potential double payment issue when a payment is made for a demand response provider's load curtailment and a payment is made for uninstructed imbalance energy (energy scheduled but not consumed because the demand response provider curtailed load). In order to prevent the uninstructed imbalance energy payment and eliminate the double payment discrepancy, the CAISO proposes to add the Proxy Demand Resource Energy Measurement to the meter quantity of the load serving entity in the CAISO's uninstructed imbalance energy pre-calculation, resulting in an "adjusted" meter demand value.

26. The CAISO contends that the proposed adjustment of the load serving entity's meter quantity is not a cost that is being shifted to the load serving entity nor is it being spread to other market participants.¹³ The CAISO adds that its design does not expressly add, subtract or spread costs any differently than a supply-side resource does. The CAISO explains that, since a Proxy Demand Resource is modeled as a generator in the CAISO's system, it is paid the full LMP at its Pricing Node, or Sub-LAP.¹⁴ The CAISO

¹² CAISO May 17, 2010 Deficiency Letter Response at 4.

¹³ *Id.* at 7.

¹⁴ The CAISO notes that for a Proxy Demand Resource that is made up of aggregated loads, the Proxy Demand Resource is paid the weighted average of the LMPs of each Pricing Node where the underlying aggregate loads reside.

notes that this is the same payment that is afforded Participating Loads in the CAISO market. The CAISO continues that the underlying load of the Proxy Demand Resource's load curtailment is scheduled by the load serving entity's scheduling coordinator and is settled at the Default LAP like all other demand. Thus, the CAISO asserts that the Proxy Demand Resource design does not alter the respective settlement granularity of loads and resources in the CAISO market.

27. The CAISO maintains that it makes no special adjustments or uplifts to the CAISO's settlement system to accommodate Proxy Demand Resources, apart from the Proxy Demand Resource Energy Measurement add back to address the uninstructed imbalance energy calculation.¹⁵ The CAISO claims that the Proxy Demand Resource design upholds cost causation principles and ensures that neither the load serving entity nor the demand response provider is harmed by, nor does it benefit from, the actions of the other. The CAISO continues that the Proxy Demand Resource design does not contain a potential for revenue shortfall because it treats Proxy Demand Resources as generators, and the market and settlement rules are already established and approved in the CAISO market for generators.

28. As mentioned above, a Proxy Demand Resource is paid as though it is generation, therefore, according to the CAISO, compensation issues between the Proxy Demand Resource and the load serving entity may develop. The CAISO states that the compensation issues would be handled through bilateral arrangements, between the Demand Response Provider and the load serving entity, which would occur outside of the CAISO's settlement process.¹⁶ Alternatively, the CAISO states the compensation issues could be addressed directly by the local regulatory authority.¹⁷ The CAISO states that its tariff will not indicate if and how revenues will be shared between the load serving entity and the Demand Response Provider.

29. The CAISO adds that its proposal does not address the "missing money" concern, i.e. that the load serving entity paid for energy but was provided load curtailment, which it could not sell in the real-time market.¹⁸ The CAISO states that it views this issue as a retail concern and, therefore, claims that compensatory measures or methodologies are

¹⁵ CAISO May 17, 2010 Deficiency Letter Response at 10-11.

¹⁶ Proxy Demand Resource Filing, Transmittal Letter at 3.

¹⁷ *Id.*

¹⁸ CAISO May 17, 2010 Deficiency Letter Response at 4 n.9.

appropriately considered and resolved, as necessary, by the relevant electric retail regulatory authority.

Protests and Comments

30. SWP argues that paying Proxy Demand Resources at Sub-LAP prices while charging the underlying demand Default LAP prices unduly discriminates against load in low LMP areas. SWP states that, if eligible load in a low-LMP area was to participate under the Proxy Demand Resource proposal, it would be in the position of buying at high Default LAP prices and selling demand response to the CAISO at low Sub-LAP prices. SWP claims that requiring potential demand response to buy high and sell low creates undue barriers to demand response. SWP also contends that the Proxy Demand Resource proposal's pricing methods will lead to net shortfalls, which will exacerbate the subsidy provided by loads in low-LMP areas to those in constrained regions.

CAISO Answer

31. The CAISO argues that the Commission should not require it to modify the pricing and payment requirements set forth in the proposal, as requested by SWP, noting that it has a work plan in place to address the Commission's directive that it increases the granularity of pricing to account for locational variation in a future market enhancement. The CAISO points out that SWP raised this issue in another proceeding, and the Commission rejected its concerns and approved the CAISO's work plan.¹⁹ The CAISO contends that SWP has not identified any changed circumstances warranting a different conclusion. The CAISO argues that, once there is increased granularity of pricing, the resulting improvement in price signals will extend to Proxy Demand Resources. Until that time, the CAISO argues that the Proxy Demand Resource proposal's pricing and payment requirements should apply. The CAISO notes that stakeholders reached a general consensus that the benefits of a more flexible demand response product offset the minimal financial impacts of potential arbitrage between Default LAPs and Sub-LAPs.

Commission Determination

32. We accept the CAISO's cost and settlement provisions, subject to the conditions discussed below, as in compliance with the requirements of Order No. 719.²⁰ We note,

¹⁹ CAISO Answer at 13 (citing *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,147, at P 103 (2009)).

²⁰ With regard to the potential for an agreement between a load serving entity and Demand Response Provider regarding commercial arrangements outside of the CAISO's settlement process, the terms of such an agreement are not presently before the

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however, that, at this preliminary stage, it is unclear whether the CAISO's Proxy Demand Resource proposal fully recognizes the potential market-wide impacts that Proxy Demand Resource participation may have. When a Proxy Demand Resource clears the CAISO market, it will displace more expensive supply options and have the effect of lowering market clearing prices. Proxy Demand Resources that clear the market will receive a Sub-LAP price for the reduction provided and its load serving entity pays Default-LAP prices, which is similar to existing settlement practices for generation.²¹ However, unlike the settlement practices for generation, the load serving entity in which the Proxy Demand Resource is located will also be charged for its full schedule (metered load plus any load reduction provided by the Proxy Demand Resource). This settlement practice distinguishes the way the CAISO allocates the cost of load reduction provided by the Proxy Demand Resource from the way it allocates the cost of purchasing generation, despite potentially similar market-wide impacts. Under the CAISO's proposal, the cost of the Proxy Demand Resource program is borne largely by the load serving entity in which the Proxy Demand Resource is located. Although this method ensures that the Proxy Demand Resource cost is recovered and minimizes any potential wholesale revenue shortfall, it does not consider potential system-wide impacts of Proxy Demand Resources.

33. Indeed, in its filing, the CAISO cited the system-wide demand response impacts the Commission noted in its 2006 order to develop additional opportunities for demand response resources to participate in the CAISO, in which it stated:

Price-responsive demand moderates price increases and price volatility for *all* customers...and it also helps to check potential market power because it provides a countervailing willingness to reduce demand in the face of high

Commission, and the Commission does not address here such a potential agreement between a Demand Response Provider and a load serving entity. Nor does the Commission address here the on-going process before the CPUC regarding demand response participation in the CAISO market by aggregators of retail load.

²¹ The Commission notes that related issues have been raised in a Commission rulemaking. *See Demand Response Compensation in Organized Wholesale Energy Markets*, Notice of Proposed Rulemaking, 75 Fed. Reg. 15,362 (Mar. 29, 2010), FERC Stats. & Regs. ¶ 32,656 (2010).

prices. Further, demand response contributes to reliability by shaving peak demand and providing reserves.^[22]

34. In light of the potential market-wide impacts of demand response, we direct the CAISO to undertake a study to determine if the effects of demand response apply more broadly than to the individual load-serving entity in which the Proxy Demand Resource is located. The study should include an analysis of 12 months of actual market data of Proxy Demand Resource participation in the CAISO's markets. The 12 month study period shall commence at the time the CPUC implements the ratepayer protections and other relevant rules and protocols that it contemplates developing.²³ The CAISO should determine if Proxy Demand Resource participation impacts market prices outside of the load-serving entity's footprint in which the Proxy Demand Resource is located, i.e., other Default LAP locational marginal prices. We direct the CAISO to file this study for informational purposes with the Commission 14 months after new Proxy Demand Resources begin participating in the CAISO markets.²⁴

35. Finally, we turn to SWP's claim that the Proxy Demand Resource proposal's pricing methods will lead to net shortfalls that will require loads in low-LMP areas to subsidize loads in constrained regions. As the CAISO explained, its proposal settles payments consistent with its method for settling generation. Thus, there should not be a revenue shortfall. Further, we do not agree with SWP regarding its argument that loads in low-LMP areas subsidize loads in high-LMP areas. SWP's argument is based on its

²² Proxy Demand Resource Filing, Transmittal Letter at 3 (citing *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 10, 689 (2006) (emphasis added) (September 2006 MRTU Order).

²³ It appears that much of the potential new Proxy Demand Resource participation is contingent on an upcoming California Public Utilities Commission's decision. *See* Cal. Pub. Utils. Comm'n, *Decision on Phase Four Direct Participation Issues*, 07-01-041 (June 4, 2010), *available at* http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/118962.pdf. (prohibiting retail customers from bidding into the wholesale market until the California Public Utilities Commission develops ratepayer protections and other relevant rules and protocols). Thus, the 12 month study period shall commence at the time that the CPUC implements these protections, rules and protocols, and will not include the period in which the current "pilot program" is in place.

²⁴ We note that this study is for informational purposes only. The Commission will not notice the filing, nor accept comment on it, and the filing does not require Commission action.

concerns with the CAISO's entire LMP system and is not unique to the Proxy Demand Resource proposal and represents a collateral attack on that pricing system. Further, the Commission notes that it directed the CAISO to develop a system to increase price granularity.²⁵

D. Pro Forma Proxy Demand Resource Agreement

36. The CAISO includes a *pro forma* Proxy Demand Resource agreement as part of its filing. The CAISO proposes to add the agreement to its tariff to establish the terms and conditions pursuant to which the CAISO and each Demand Response Provider agree to discharge their responsibilities. The agreement requires that the Demand Response Provider certify to the CAISO that its participation is authorized by the local regulatory authority and that it has satisfied all applicable rules and regulations established by the local regulatory authority. The Demand Response Provider must also certify that any required bilateral agreement between the Demand Response Provider and the load serving entity, or other agreements required by the local regulatory authority, are fully executed. The CAISO notes that the agreement is modeled largely after the existing *pro forma* Participating Load agreement, which the Commission has accepted.

37. As discussed above, the CAISO states that it will not ensure the existence of, or monitor, the commercial arrangements associated with Proxy Demand Resources, such as the exchange of settlement data and revenues between a Demand Response Provider and the load serving entity for the Proxy Demand Resource. These commercial arrangements would take place outside of the CAISO processes. Further, the CAISO states that any retail rules applicable to the commercial arrangements should be established by the local regulatory authority rather than by the CAISO.

Protests and Comments

38. CMUA, NCPA, Santa Clara/M-S-R, and Six Cities (Municipal Parties) contend that language in the certification provisions of the *pro forma* Proxy Demand Resource agreement is inconsistent with Commission orders. Municipal Parties contend that in Order No. 719-A, the Commission determined that the local regulatory authority must specifically authorize third-party aggregation of demand bids through Demand Response Providers within the service territory governed by the local regulatory authorities if the size of the load serving entity is at or below the annual four million MWh threshold. Municipal Parties assert that one section of the *pro forma* Proxy Demand Resource agreement (section 4.3) properly reflects the Commission's direction, but another section (section 8.3) does not capture the same presumption.

²⁵ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 at P 611 (2006).

39. Municipal Parties explain that Order No. 719-A directed RTOs and ISOs not to accept demand response bids from aggregating entities if they aggregated the customers of utilities: (1) that distributed *more* than four million MWh in the previous fiscal year and the relevant local regulatory authority **prohibited** such customers' demand response to be bid into the market by an aggregator, or (2) that distributed four million MWh or less in the previous fiscal year, unless the local regulatory authority **permits** such customers' demand response to be bid into the market by an aggregator.²⁶

40. Municipal Parties note that section 4.3 of the *pro forma* Proxy Demand Resource agreement states:

The Demand Response Provider must register with the CAISO through the Demand Response System and comply with all terms of the CAISO Tariff and certify to the CAISO that its *participation is authorized by the local regulatory authority* applicable to Demand Response Providers and that it has satisfied all applicable rules and regulations of the local regulatory authority.

41. At the same time, Municipal Parties note that section 8.3 of the *pro forma* Proxy Demand Resource agreement states:

The Demand Response Provider represents and warrants that, with respect to any and all Proxy Demand Resources for which it shall submit Bids or otherwise act under this Agreement, the applicable local regulatory authority which regulated the Proxy Demand Resources *does not prohibit* the participation by the Proxy Demand Resource as contemplated in this Agreement or in the CAISO Tariff.

42. Municipal Parties claim that, without modification, the tendered section 8.3 could be read to require specific action by a local regulatory authority concerning a load serving entity that distributes four million MWhs or less in order to prohibit a Demand Response Provider from bidding into CAISO markets. Therefore, Municipal Parties suggest revisions to section 8.3 that read:

The Demand Response Provider represents and warrants that, ~~with respect to~~ any and all Proxy Demand Resources for which it shall submit Bids or otherwise act under this Agreement, are authorized by the applicable local regulatory authority which regulated the Proxy Demand Resources to

²⁶ Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 60.

participate ~~does not prohibit~~ the participation by the Proxy Demand Resource as contemplated in this Agreement or in the CAISO Tariff.

43. Municipal Parties maintain that the proposed modification would be accurate for entities above and below the four million MWh threshold because the lack of specific disapproval by the relevant local regulatory authority would also constitute “authorization.”

CAISO Answer

44. The CAISO acknowledges that making a revision to section 8.3 of the *pro forma* Proxy Demand Resource Agreement would be appropriate and proposes to do so in a compliance filing.²⁷ Specifically, the CAISO suggests the following revision to section 8.3:

The Demand Response Provider represents and warrants that, with respect to any and all Proxy Demand Resources for which it shall submit Bids or otherwise act under this Agreement, the applicable local regulatory authority which regulated the Proxy Demand Resources ~~does not prohibit~~ has authorized the participation by the Proxy Demand Resource as contemplated in this Agreement or in the CAISO Tariff.

Commission Determination

45. The Commission finds the CAISO’s proposed *pro forma* Proxy Demand Resource agreement to be just and reasonable, subject to the compliance filing directed below. Further, the Commission accepts, subject to the compliance filing directed below, the provision in the *pro forma* Proxy Demand Resource agreement requiring a Demand Response Provider to certify that: (1) any required bilateral agreements between the Demand Response Provider and the load serving entities or other agreements required by the local regulatory authority have been fully executed, (2) its participation has been authorized by the local regulatory authority, and (3) it has satisfied all of the applicable rules and regulations of the local regulatory authority.²⁸

²⁷ The CAISO’s answer also proposes an additional modification to be made in a compliance filing. The CAISO explains that the definition of “Ancillary Service Provider” inadvertently referenced a Proxy Demand Response rather than a Proxy Demand Resource.

²⁸ Based on the CAISO’s Answer, we view the certification as a “check box”-type provision in which a demand response provider would not be obligated to obtain

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46. In response to the concerns raised by Municipal Parties, the Commission agrees that section 8.3 of the proposed *pro forma* Proxy Demand Resource agreement does not clearly state the different requirements for aggregated retail demand response participation in the CAISO market as specified in Order No. 719-A. If the aggregated demand response was the product of customers from a load serving entity with an annual distribution greater than four million MWh, participation is permitted unless prohibited by a local regulatory authority. However, if the aggregated demand response was the product of customers from a utility with an annual distribution of four million MWh or less, participation is only permitted to the extent that it has been authorized by a local regulatory authority.

47. In its answer, the CAISO agrees to introduce a clarification to section 8.3 of the *pro forma* Proxy Demand Resource agreement by deleting the phrase “does not prohibit,” and replacing it with “has authorized.”²⁹ The CAISO’s proposal is similar to what Municipal Parties have proposed as an alternative to the existing language. However, we find that neither the CAISO’s proposed revision nor the Municipal Parties’ proposal accurately capture the distinction made in Order No. 719-A.³⁰ Therefore, within 60 days of the date of this order, we direct the CAISO to submit revisions to sections 4.3 and 8.3 of the proposed *pro forma* Proxy Demand Resource agreement.³¹ Specifically, to align with Order No. 719-A, the CAISO’s revisions to sections 4.3 and 8.3 should make clear that a Demand Response Provider that aggregates the demand response of customers for utilities that distribute: (1) over four million MWh in the previous fiscal year must certify (in the case of section 4.3) and represent and warrant (in the case of section 8.3) to the CAISO that its participation is not **prohibited** by the local regulatory authority; or

authorization each time it sought to execute a Proxy Demand Resource agreement. *See* CAISO Answer at 8.

²⁹ CAISO Answer at 22.

³⁰ In Order No. 719-A, the Commission explained that “RTOs and ISOs may not accept bids from ARCs that aggregate the demand response of: (1) the customers of utilities that distributed more than 4 million MWh in the previous fiscal year, where the relevant electric retail regulatory authority prohibits such customers’ demand response to be bid into organized markets by an ARC, or (2) the customers of utilities that distributed 4 million MWh or less in the previous fiscal year, unless the relevant electric retail regulatory authority permits such customers’ demand response to be bid into organized markets by an ARC.” Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 51 (2009).

³¹ We also direct the CAISO to make the change to the definition of “Ancillary Service Provider” that it proposed in its answer within 60 days of the date of this order.

(2) four million MWh or less in the previous fiscal year must certify (in the case of section 4.3) and represent and warrant (in the case of section 8.3) to the CAISO that its participation is **permitted** by the local regulatory authority.

E. Proxy Demand Resource Registration

48. The CAISO's proposed tariff section 4.13.2 requires that Proxy Demand Resources be approved by the retail customers' load serving entity in order to be registered with the CAISO. The CAISO adds that disputes regarding the rejection of a Proxy Demand Resource registration would be undertaken with the applicable local regulatory authority and not be arbitrated or resolved through the CAISO.³²

Protests and Comments

49. The CPUC notes that a load serving entity may deny a Proxy Demand Resource registration if there is no settlement agreement addressing power purchased by the load serving entity to fulfill anticipated load that was ultimately not required due to the demand response service provided. According to the CPUC, the CAISO has indicated that it will defer to the CPUC to address the nature of these settlement agreements, including the question of whether the CPUC must approve such agreements, and establish the criteria for approval of these agreements.

50. NCPA contends that the Proxy Demand Resource registration process would better protect small utilities if the CAISO provided notice to the load serving entities or the local regulatory authority if a Demand Response Provider seeks to register the retail load of such entities.³³ NCPA claims that such a notification would reflect the Commission's intent to not require small utilities to take affirmative actions to protect their status and would protect the orderly administration of the markets by allowing time to protest a certification.

51. NCPA adds that the Midwest Independent Transmission System Operator Inc. (Midwest ISO) recently submitted its Order No. 719 compliance filing to the Commission in Docket No. ER09-1049-000, which included notifications to the load serving entity and the local regulatory authority when the Proxy Demand Resource sought to register retail customers of such an entity.

³² Proxy Demand Resource Filing, Transmittal Letter at 16.

³³ NCPA Comments at 4-5.

52. Conversely, Wal-Mart contends that retail customers should not be required to seek approval from their respective load serving entities in order to participate in the CAISO Proxy Demand Resource program. Instead, Wal-Mart argues, it should be the customer's sole election as to whether it wishes to participate in the programs offered by the CAISO or the utility.³⁴

CAISO Answer

53. In response to NCPA's concerns about the protection of smaller utilities, the CAISO explains that its "Demand Response System" and corresponding business practice do not permit the registration process to be completed until the small utility is notified and provides its approval to the CAISO. The CAISO further explains that a small utility must be contacted by the CAISO in order to arrange for access to the Demand Response System and, without this access, the registration process cannot continue. The CAISO notes that its Order No. 719-A compliance filing, which was submitted in January 2010, detailed how the CAISO will comply with notification requirements, such as adding a task list feature to its Demand Response System.³⁵ With respect to the Midwest ISO filing that NCPA references, the CAISO points out that Order No. 719-A did not prescribe any specific mechanism that each ISO and RTO must apply.

54. The CAISO contends that Wal-Mart may misunderstand the proposed approval obligations. The CAISO notes that it does not propose to require that retail customers themselves seek approval from their load serving entities to have their demand qualify as a Proxy Demand Resource. Rather, according to the CAISO, the proposal only requires the Demand Response Provider that represents the retail customer to obtain the necessary approval from the load serving entity. Thus, unless the retail customer is acting as its own Demand Response Provider, it will not be obligated to obtain the required approval.

Commission Determination

55. While we recognize the importance of load serving entities and Demand Response Providers coordinating in a manner that results in efficient and reliable load reductions, we find that the proposed language in tariff section 4.13.2 requiring that Proxy Demand Resources receive load serving entity approval is inconsistent with Order Nos. 719 and 719-A and therefore direct the CAISO to remove this registration requirement. We find that the proposed tariff language affords load serving entities authority that Order No.

³⁴ Wal-Mart Comments at 5.

³⁵ CAISO January 12, 2010 Order No. 719-A Filing, Docket No. RM07-19-001.

719 vests with the local regulatory authorities and may present an unnecessary barrier to demand response.

56. In Order No. 719, the Commission “require[d] RTOs and ISOs to amend their market rules as necessary to permit an ARC to bid demand response on behalf of retail customers directly into the RTO’s or ISO’s organized markets, *unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate.*”³⁶ In Order No. 719-A, we reaffirmed that we would “leave it to the relevant retail authority to decide the eligibility of retail customers,” subject to the exception discussed above regarding the 4 million MWh threshold.³⁷ Order No. 719 thus does not give load serving entities discretion to accept or reject the participation of demand response providers. This inconsistency is not cured by the inclusion of proposed tariff language providing that disputes will be addressed by the local regulatory authority.

57. Order No. 719 does not allow load serving entities to make registration decisions in the first instance that the local regulatory authority could later reverse. Rather, Order No. 719 requires that *all* retail customers be permitted to participate in ISO and RTO markets through an ARC *unless* such participation was contrary to local laws and regulations. Therefore, even though CAISO proposes the local regulatory authority will have final authority to decide whether a retail customer is allowed to participate in the Proxy Demand Resource program (via the proposed dispute resolution provision), providing the load serving entity authority in the first instance is beyond the direction of Orders Nos. 719 and 719-A. Accordingly, we direct the CAISO to submit a compliance filing within 60 days of the date of this order that removes the ability of load serving entities to determine whether a Proxy Demand Resource may participate in the CAISO’s program.

58. With respect to NCPA’s notification concern, the process described by the CAISO includes a notification to the load serving entity under which the Proxy Demand Resource resides in order to complete the registration process.³⁸ Thus, NCPA’s notification concerns are satisfied.

³⁶ Order No. 719, FERC Stats. & Regs. 31,281 at P 154 (emphasis added).

³⁷ Order No. 719-A, FERC Stats. & Regs. 31,292 at P 50.

³⁸ See CAISO Answer at 6-8 (explaining notification process).

F. Mitigation Measures

59. The CAISO claims that it will implement measures to prevent manipulating load schedules³⁹ and manipulating customer baselines. In order to address these concerns, the CAISO proposes to include in the Proxy Demand Resource software the ability to monitor certain metrics once the Proxy Demand Resource proposal goes into effect. The CAISO states that these metrics would include, but not be limited to, statistically high adjustment factors, statistically high revenues, statistically low bids, and statistically poor baseline model fits. The CAISO continues that should a Proxy Demand Resource repeatedly fall outside of identified ranges, or fail multiple metrics, the CAISO would perform a study to determine if there is a likelihood that the Proxy Demand Resource has been compensated for demand response that was not really provided.

60. Additionally, the CAISO proposes new tariff language to clarify that all bids for energy on behalf of Proxy Demand Resources must represent actual adjustments of Proxy Demand Resources taken in response to a dispatch instruction, and if the CAISO requests it, the Demand Response Provider must provide data to support proof of performance of the Proxy Demand Resource. Then, if the CAISO determines that a bid for energy from a Proxy Demand Resource does not represent an actual adjustment of the Proxy Demand Resource taken in response to a dispatch instruction and resulted or will result in a payment for demand response services not actually provided, the CAISO may rescind the payment.

³⁹ The CAISO notes that LECG, LLC raised concerns about load schedule manipulation in its “Comments on the California ISO MRTU LMP Market Design”, which stated:

Since demand response buys power at the zonal/[Default LAP] price in the [day-ahead market] and sells power back at the nodal [Sub-LAP] price, demand response at nodes within constrained regions have a money machine whenever their actual load is less than their allowed maximum demand response offer. The [load serving entity] providing demand response would merely buy power equal to its demonstrated dispatch capability at the [Default LAP] price in the [day-ahead market] and bid demand response at a low enough price to ensure it is dispatched nodally [at the Sub-LAP] down to its planned consumption in [realtime], earning the difference between the nodal [Sub-LAP] price and the zonal [Default LAP] price for doing nothing.

61. Finally, the CAISO also proposes tariff language that would allow it to immediately suspend the ability of the Proxy Demand Resource to provide demand response services based on evaluation of the proof of performance. If the CAISO decides a suspension is warranted, it will submit to the Commission supporting documentation, including any information provided by the affected scheduling coordinator and Demand Response Provider, within ten days after any suspension. The suspension, which would become effective immediately upon CAISO action, would last 90 days, with two possible exceptions. First, upon notification of a suspension by the CAISO, the Commission can direct the CAISO to shorten or end the suspension. Second, after initiating a suspension, the CAISO can determine that the suspension should last fewer than 90 days. After the 90-day period, the suspension would remain in effect only if required by the Commission.⁴⁰

Protests and Comments

62. The CPUC seeks additional provisions to help prevent anti-competitive activities. The CPUC contends that a minimum bid price would be a valuable tool to ensure that demand response resources will be high-value resources without having a negative effect on the resources. The CPUC asserts that if the Proxy Demand Resources are high-value resources, then placing a reasonably high minimum bid on Proxy Demand Resource bids would not have a negative effect on such resources. The CPUC recommends that the Commission order the CAISO to impose a minimum bid price for Proxy Demand Resources for at least one year in order to reduce the probability of gaming opportunities and/or paying for demand reductions that do not actually occur while the Proxy Demand Resource market lacks maturity. After the first year, the CPUC recommends that the CAISO and stakeholders reevaluate the need for the minimum bid price.

63. SWP claims that failing to schedule and settle demand response at the same level invites gaming and excessive payment to demand response because loads have incentive to overstate their relatively less costly forecast or baseline load in order to recoup higher demand response revenues. SWP also contends that the Proxy Demand Resource proposal's pricing component sends inaccurate signals to market participants.⁴¹ SWP states that the solution is to require demand response to buy and sell at a consistent nodal or Sub-LAP price.

⁴⁰ The CAISO contends that its suspension and rescission elements are comparable to provisions in the PJM tariff. Proxy Demand Resource Filing, Transmittal Letter at 25 (citing PJM Tariff, Attachment K – Appendix, Section 3.3A.6).

⁴¹ SWP Comments at 2-3.

CAISO Answer

64. The CAISO argues that there should not be a minimum bid price upon implementation of the Proxy Demand Resource proposal. The CAISO explains that applying this limit would not prevent potential gaming opportunities. Thus, the CAISO proposed to address these concerns through a combination of other measures included in the proposal. The CAISO also argues that such a floor could limit demand response participation and could result in market participants paying more for demand response than might be warranted. The CAISO states that it and its Department of Market Monitoring (DMM) will monitor the operation of the markets once the Proxy Demand Resource proposal is implemented and, if it is determined that additional anti-gaming measures are necessary, it will discuss options for addressing the issue with stakeholders.

Commission Determination

65. We find that the CAISO has proposed adequate proactive and reactive mitigation measures to address misuse of Proxy Demand Resources and has submitted a proposal that will send correct price signals to create incentives for Proxy Demand Resources to enter the market where they are most needed.

66. Manipulation concerns in the Proxy Demand Resource proposal center on two areas. The first involves baseline manipulation by scheduling coordinators.⁴² The second involves manipulating load schedules and Proxy Demand Resource bids to take advantage of price differences between the Default LAP and the Sub-LAP and not providing any demand reduction. We find that the CAISO has proposed reasonable market mitigation tools to address these concerns in the form of accurate customer baseline calculation, monitoring and verification measures and certain deterrent provisions, subject to a compliance filing discussed below.

67. The CAISO provided monitoring and verification measures to address possible customer baseline manipulation and manipulation of load schedules. We find that the CAISO's proposal to monitor key metrics for manipulation is reasonable. The proposed metrics that the CAISO will monitor, including statistically high adjustment factors, statistically high revenues, statistically low bids, and statistically poor baseline model fits, should provide the CAISO with adequate information to identify potential manipulation. Finally, subject to a compliance filing discussed below, the CAISO provides an additional safeguard for the market and an additional deterrent to customer baseline

⁴² Customer baseline manipulation is a concern because market operators rely on demand response output estimates in clearing bids, which places a premium on establishing accurate parameters for measuring actual reductions of demand resources.

manipulation and manipulation of load schedules. Also, the CAISO appropriately added “good faith” language that provides that all bids of Proxy Demand Resources must represent actual energy reductions.

68. As explained above, in establishing its customer baseline calculation methodology, the CAISO has conducted many hours of stakeholder proceedings, learned from the experiences of other ISOs and RTOs, and relied on expert consultants to determine the most appropriate customer baseline calculations. However, the CAISO’s proposal to include the customer baseline calculations in the Business Practice Manuals and not in the tariff is not acceptable. If rules, standards, and practices significantly affect the rates, terms, and conditions of jurisdictional service, such provisions must be filed pursuant to section 205 of the Federal Power Act,⁴³ accepted by the Commission, and included in the Participating Transmission Owner’s tariff. We conclude that the customer baseline methodologies significantly affect the rates, terms, and conditions of jurisdictional service, and, accordingly, these methodologies must be filed as part of the CAISO Tariff.⁴⁴ Therefore, we direct the CAISO to submit a compliance filing making this change within 60 days of the date of this order.

69. We find that the CAISO’s tariff language proposing to be able to rescind payment for a proxy demand resource, suspend a proxy demand resource and to submit the matter to the Commission for review is inconsistent with the procedures outlined in the Commission’s November 19 Order concerning Order No. 719 and the existing CAISO Tariff. The proposed tariff language in sections 4.13.4 and 11.6.2 describe rescission of payments and suspension of a market participant for a “Bid for Energy from the Proxy Demand Resource Provider dispatched by the CAISO [that] (i) does not represent an actual adjustment of the Proxy Demand Resource taken in response to a Dispatch Instruction and (ii) has resulted or will result in payment for Demand Response Services not actually provided by the Proxy Demand Resource Provider...” However, the proposal does not fit within the parameters of the existing CAISO Tariff or the November 19 Order.

70. The CAISO Tariff and November 19 Order provide one method for the CAISO to administer sanctions and a second method for referring matters to the Office of Enforcement. The CAISO’s rescission and suspension proposal appears to combine and

⁴³ 16 U.S.C. § 824d (2006).

⁴⁴ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,265, at P 46, n.52 (2009), *order on reh’g and compliance*, 130 FERC ¶ 61,034 (2010) (directing the CAISO to file a “key parameter” of its settlement process in its tariff because it significantly affected the rates, terms, and conditions of service under the rule of reason).

modify the existing procedures for imposing sanctions and for referring a matter to the Commission's Office of Enforcement, resulting in a proposal that is inconsistent with the CAISO Tariff and the November 19 Order.

71. The CAISO may propose to impose its own sanction for a violation, in which case no referral to the Commission would be made absent other evidence of referable activity. The Commission laid out the requirements for such provisions, which are designated Rules of Conduct in the CAISO Tariff,⁴⁵ in the November 19 Order:

In order for an RTO or ISO to impose its own sanction for a given activity, three qualifications must be met:

- (1) The activity must be expressly set forth in the tariff,
- (2) The activity must involve objectively identifiable behavior, and
- (3) The activity does not subject the actor to sanctions or consequences other than those expressly approved by the Commission and set forth in the tariff, with the right of appeal to the Commission.⁴⁶

72. While the CAISO proposal may meet certain of the qualifications for ISO-imposed sanctions, it fails to meet all of them. For instance, the CAISO's proposed tariff language in sections 4.13.4 and 11.6.2 describe actions that the CAISO **may** take to rescind payments or suspend a market participant. Such tariff language provides the CAISO too much discretion.⁴⁷ Therefore, the requirement of objectivity is not met.

73. Alternatively, the existing CAISO Tariff, Section 11 of Appendix P, in conformity with Order No. 719, addresses the process for the CAISO's DMM to refer matters to the Commission's Office of Enforcement. The CAISO Tariff's referral process does not allow for the CAISO to condition its suspension activities upon Commission action, nor to seek a Commission determination on its suspensions. The CAISO Tariff states:

⁴⁵ See CAISO Tariff § 37.

⁴⁶ *Cal. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,157 (2009) (citing Policy Statement on Market Monitoring Units, *Market Monitoring Units in Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,267, at P 5 (2005)).

⁴⁷ See Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 379.

DMM shall make a non-public referral to the Commission in all instances where DMM has reason to believe that a Market Violation has occurred. DMM's non-public referral shall provide sufficient credible information to warrant further investigation by the Commission. Once DMM has obtained sufficient credible information to warrant referral to the Commission, DMM shall immediately refer the matter to the Commission and desist from independent action related to the alleged Market Violation.^[48]

74. Therefore, for a violation to be referred to the Commission, the proposal should provide that the activity in question is a Market Violation and should indicate that the DMM is to make a referral to the Commission for suspected violations of the tariff provision.

75. The Commission directs the CAISO to revise its proposed tariff language to be consistent with the different processes outlined in the applicable tariff provisions and orders discussed above. The Commission directs the CAISO to make the necessary tariff revisions within 60 days of the date of this order.

76. The CPUC's proposal to include a minimum bid floor in an effort to reduce potential manipulation is unnecessary at this time because of the adequacy of the CAISO's proposal monitoring system. Further, we note that a bid floor could act as a barrier to entry for low-cost Proxy Demand Resources that offer low bids. We also note the CAISO has committed to monitor the operation of the markets once the proposal is implemented and, if issues are discovered, it will work with stakeholders to address them. Thus, we deny the CPUC's request to require the CAISO and its DMM to implement a minimum bid floor for Proxy Demand Resources as it is unnecessary.

77. We deny SWP's request to require the CAISO to pay Proxy Demand Resources at the same nodal or Sub-LAP LMP as the underlying retail customer load is charged. We recognize SWP's concern regarding the level of granularity inherent in Default LAPs. As mentioned above, we have already directed the CAISO to introduce more granular load aggregation points.⁴⁹ We have also noted that the timeline contained in that directive, requiring more granular load aggregation points to be introduced in time for MRTU Release 2, which is to be implemented within three years of the MRTU go-live⁵⁰ date of

⁴⁸ Appendix P, § 11.1.

⁴⁹ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 611 (2006).

⁵⁰ *Id.* P 1394.

April 1, 2009 remains sufficient to address SWP's concerns.⁵¹ We are not persuaded that the timeline should be revised here. At such time, SWP's concerns regarding this pricing proposal will be resolved.

G. Proxy Demand Resource Measurement for Ancillary Services

78. The CPUC claims that the CAISO anticipates and captures daily load variations from Proxy Demand Resources that offer load curtailment as an energy service but not for load curtailment offered as an ancillary service. Thus, the CPUC recommends further refinements of the ancillary services performance and payment mechanism so that Proxy Demand Resources that provide load curtailment as an ancillary service are not inadvertently financially penalized.

79. The CPUC supports the use of the "meter-before-meter-after" measurement method for measuring load curtailment as ancillary services from a Proxy Demand Resource for short durations, such as for a dispatch for an hour or less. According to the CPUC, in short time intervals, the meter-before-meter-after method would be an accurate measurement of Proxy Demand Resource's performance and superior to a baseline measurement method. The CPUC notes that the meter-before-meter-after method may be less accurate for longer dispatches.

80. As an example, the CPUC states that, if an ancillary services Proxy Demand Resource provides one megawatt of load curtailment for one hour, dropping from five MWh to four MWh, then the meter-before-meter-after measurement will provide an accurate measurement of the dispatch for the short term. However, the CPUC notes that the resource may, as part of usual daily energy use cycle, ordinarily increase in load from five megawatts to six megawatts over the next hour. The CPUC claims that the proposal seems to require the resource to stay at four MWh for the duration of the hour or be subject to penalty.

81. The CPUC requests that the Commission order the development of a more refined measurement and payment system for ancillary services dispatched lasting an hour or longer because the current proposal risks underpaying and/or overburdening Proxy Demand Resources that provide load curtailment as an ancillary service.

CAISO Answer

82. The CAISO notes that meter-before-meter-after measurement is not used to determine energy settlements, as the CPUC alleges. The meter-before-meter-after

⁵¹ *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,147, at P 103 (2009).

measurement will only be used to determine if the awarded ancillary service capacity was actually available and/or delivered. The CAISO contends that the CPUC may not appreciate that the CAISO would not use the meter-before-meter-after methodology to determine how much the resource is paid for the energy delivered. Moreover, the CAISO argues that the CPUC's concern about longer-duration dispatches is unlikely to be an issue because the ancillary services dispatches for Proxy Demand Resources are expected to be for short durations only.

Commission Determination

83. The Commission understands that the CAISO plans to employ a meter-before-meter-after measurement⁵² to verify that a Proxy Demand Resource provided load curtailment as ancillary services *capacity*. In its answer, the CAISO attempts to address the CPUC's concerns regarding the meter-before-meter-after methodology by noting that it will not use the meter-before-meter-after measurement to determine the *energy* payment to a Proxy Demand Resource, that any load curtailment provided after a dispatch instruction will be settled pursuant to a traditional baseline calculation, that dispatches are expected to be of short duration, and that the CPUC supports meter-before-meter-after measurement for short duration dispatches.⁵³ However, the CAISO does not directly address the CPUC's concerns regarding ancillary services requirements lasting longer than one hour, suggesting there may be instances where load curtailment offered as an ancillary service is indistinguishable from daily load variations.

84. Therefore, consistent with the Commission's above direction requiring customer baseline calculation methodologies to be included in the CAISO Tariff, the Commission directs the CAISO to include its proposed methodology for verifying that a Proxy Demand Resource provided ancillary service capacity in its tariff. Also, the filing must include provisions that account for ancillary services requirements lasting longer than one hour. The Commission directs the CAISO to make such a compliance filing within 60 days of the date of this order.

⁵² The North American Electric Reliability Corporation defines meter-before-meter-after measurement as a performance evaluation method where electricity demand over a prescribed period of time prior to deployment is compared to similar readings during the sustained response period. See No. Am. Elec. Reliability Corp., *Final Report Demand Response Data Availability System, Phase I & II* 47 (Mar. 5, 2010), available at http://www.nerc.com/docs/pc/drdrtdf/DADS_PhaseI&II_Final_030510clean.pdf.

⁵³ CPUC Comments at 6.

H. Discrimination Claim

85. The CAISO currently provides for demand response resources to participate in the CAISO's markets, primarily in its Participating Load⁵⁴ program, which enables certain resources to provide curtailable demand in the CAISO market.⁵⁵ The CAISO states that it is developing refinements to allow Participating Load to participate more fully in the CAISO market in its upcoming "Markets and Performance" initiative. The CAISO asserts that the Proxy Demand Resource proposal offers an alternative mechanism for participation in the CAISO market by demand response resources that do not satisfy the criteria to be Participating Load.

Protests and Comments

86. SWP argues that the Proxy Demand Resource proposal is unduly discriminatory claiming that Participating Load does not receive comparable rights or encouragement to participate as Proxy Demand Resource. SWP contends that providing favorable and discriminatory treatment to Proxy Demand Resources, while denying or deferring MRTU fixes ordered in 2006 for Participating Load does not, overall, improve demand response in the CAISO system.⁵⁶

87. SWP asserts that Participating Load pays and is paid at nodal levels and does not produce the discrepancies that it alleges will develop due to the Proxy Demand Resource proposal's pricing methodology. Thus, SWP claims the cost imbalances or insufficiencies caused by the Proxy Demand Resource proposal should not be allocated to

⁵⁴ "Participating Load" is defined in the CAISO Tariff as "[a]n entity, including an entity with Pumping Load or Aggregated Participating Load, providing Curtailable Demand, which has undertaken in writing by execution of a Participating Load Agreement to comply with all applicable provisions of the CAISO Tariff." CAISO Tariff, App. A (Master Definitions Supplement). Thus, Participating Load encompasses a discrete subset of entities that participate in the CAISO markets.

⁵⁵ "Curtailable Demand" is defined in the CAISO Tariff as "demand from a Participating Load or Aggregated Participating Load that can be curtailed at the direction of the CAISO in the Real-Time Dispatch of the CAISO Controlled Grid. Scheduling Coordinators with Curtailable Demand may offer it to the CAISO to meet Non-Spinning Reserve or Imbalance Energy." CAISO Tariff, App. A (Master Definitions Supplement).

⁵⁶ SWP Comments at 3 (citing *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 700 (2006)).

Participating Load. SWP contends that it is not just and reasonable to require Participating Load to subsidize the Proxy Demand Resource proposal.

88. In addition, SWP maintains that Participating Loads should be permitted to bid in real time and Residual Unit Commitment markets at the same time that Proxy Demand Resources are given that option. SWP claims that the CAISO is not intending to provide Participating Load comparable bidding options until 2011.⁵⁷

89. SWP contends that the Proxy Demand Resource proposal allows Proxy Demand Resources to operate without a contract directly with the CAISO and not be directly subject to CAISO Tariff requirements. However, SWP notes that Participating Load is subject to contract requirements that treat these loads as though they are generation. SWP adds that the proposed CAISO Tariff definitions recognize Proxy Demand Resources as a source of demand response on the CAISO system but Participating Load is omitted from the category of demand response in the proposed definitions under the CAISO Tariff.

CAISO Answer

90. The CAISO argues that its proposal is not unduly discriminatory, pointing out that once the product is implemented, SWP will be free to switch any of its resources from a Participating Load to a Proxy Demand Resource, provided it can satisfy applicable tariff and contractual requirements. The CAISO also urges the Commission not to take any of the actions that SWP requests.

Commission Determination

91. As noted above, SWP alleges preferential or unduly discriminatory treatment to Proxy Demand Resource when compared to Participating Load. However, we note that SWP seemingly assigns a linkage between the Proxy Demand Resource product's implementation and the status of the Participating Load program. Implementation of the Proxy Demand Resource proposal is not contingent on the state of the Participating Load program. As the Commission noted in the September 2006 MRTU Order, we recognize the importance of demand response in the effective operation of electricity markets.⁵⁸

⁵⁷ *Id.* at 6-7 (citing *Cal. Indep. Sys. Operator Corp.*, Docket No. ER10-774-000, Pilot Participating Load Report at 10 (Feb. 18, 2010)).

⁵⁸ *Cal. Indep. Sys. Operator*, 116 FERC ¶ 61,274 at P 10.

92. Proxy Demand Resource is a new option through which demand resources can participate in the CAISO markets. The presence of Proxy Demand Resource does not cause undue harm to Participating Load. In fact, any aggregation of load can participate as a Proxy Demand Resource, including load that is currently participating in the CAISO markets as Participating Load, to the extent that the load is able to meet the technical requirements of the CAISO Tariff. We also deny SWP's request that Participating Load should be exempt from any costs associated with Proxy Demand Resource participation in the CAISO markets. Participating Load, when functioning as demand, is also a customer of the CAISO, just like the rest of the CAISO's load customers, and thus will be required to fulfill its settlement obligations with the CAISO. Any potential impacts on the markets caused by the CAISO's Proxy Demand Resource proposal are expected to be outweighed by the substantial benefits accompanying enhanced demand response participation via the Proxy Demand Resource proposal.

93. Further, any deficiencies in the existing Participating Load program are being addressed, as the CAISO points out, and we will not delay the benefits of implementing the Proxy Demand Resource proposal while enhancements to the Participating Load program are being developed. The Commission has already recognized the CAISO's intention to achieve fully the objectives of Order No. 719 when its Markets and Performance initiative is implemented.⁵⁹ Contrary to SWP's arguments, the CAISO has not deferred or denied the consideration of Participating Load modifications ordered in the MRTU proceeding and continues to address and consider modifications to Participating Load independent of Proxy Demand Resource. We note that the CAISO continues in its efforts to resolve issues regarding Participating Load in its stakeholder process.⁶⁰ The arguments raised by SWP regarding Participating Load, including pricing differences, bidding parameters, operational characteristics, and tariff definitions are outside the scope of this proceeding, and will be better addressed when the CAISO files tariff language to amend its Participating Load program.

The Commission orders:

(A) The CAISO's tariff revisions for its Proxy Demand Resource proposal are conditionally accepted, effective as requested, as discussed in the body of this order.

⁵⁹ November 19 Order, 129 FERC ¶ 61,157 at P 35.

⁶⁰ A summary of the CAISO stakeholder process addressing the enhancements to the Participating Load program is *available at* <http://www.caiso.com/23bc/23bc8a516fa20.html>.

(B) The CAISO is hereby directed to submit a compliance filing within 60 days of the date of this order, as discussed in the body of this order.

(C) Within 14 months after Proxy Demand Resources begin participating in the CAISO market, the CAISO is hereby directed to file a study based on market data, as discussed in the body of this order.

By the Commission. Commissioner LaFleur voting present.

(S E A L)

Kimberly D. Bose,
Secretary.