

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

**California Independent System
Operator Corporation**) Docket No. ER08-760-001

**MOTION FOR LEAVE TO FILE ANSWER OUT OF TIME AND ANSWER OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213 (2008), the California Independent System Operator Corporation (“CAISO”)¹ submits this Motion for Leave to File Answer Out Of Time and Answer to the Request for Clarification and Rehearing of Dynegy Morro Bay, LLC, Dynegy Moss Landing, LLC, El Segundo Power LLC and Reliant Energy, Inc. (collectively “California Generators”)² of the Commission’s “Order Accepting Tariff Filing Subject to Modification,” issued in the above-referenced proceeding on May 30, 2008 (“May 30 Order”).³ The May 30 Order accepted the CAISO’s Transitional Capacity Procurement Mechanism (“TCPM”) subject to modification, effective June 1, 2008.⁴

¹ Capitalized terms not otherwise defined herein have the meaning set forth in the Master Definition Supplement, Appendix A to the ISO Tariff.

² Docket No. ER08-760-001, "Request for Clarification and Rehearing of Dynegy Morro Bay, LLC, Dynegy Moss Landing, LLC, El Segundo Power LLC and Reliant Energy, Inc.," at 4-6, June 30, 2008 ("California Generators' Rehearing/Clarification Request").

³ See, e.g., California Independent Regarding California Rulemaking, Cal. Indep. Transmission Sys. Operator, Inc., 123 FERC ¶ 61,229 (2008) (“May 30 Order”).

⁴ *Id.* at P 38.

The CAISO seeks only to respond to matters raised in the California Generators' Request for Clarification. The CAISO is not responding to any matters raised in the California Generators' Request for Rehearing. Specifically, the CAISO seeks to respond to highlight several critical issues in the California Generators' motion in which there appears to be general agreement between the California Generators and the CAISO.

First, the California Generators request clarification that a unit that has a resource adequacy commitment for part of its capacity (*i.e.* a "partial-RA unit") is eligible for a designation under the TCPM for the remaining portion of the capacity of that same unit, when the CAISO needs that additional capacity for reliability purposes. As explained herein, the CAISO has addressed this issue in its June 30, 2008 Compliance Filing⁵ and Request for Clarification, or in the Alternative, Rehearing of the May 30 Order.⁶ The CAISO agrees that *when needed for reliability purposes* the additional capacity of a partial-RA unit should be eligible for a TCPM designation.

Second, and as a corollary of the first issue, the California Generators state in their Rehearing/Clarification Request that they do not "expect the Commission to require the CAISO to pay for all of a unit's capacity when energy or other services are *dispatched* out of that unit."⁷ The CAISO agrees with the California Generators on this point which is consistent with the point that the

⁵ Docket No. ER08-760-000, "California Independent System Operator Corporation Compliance Filing," June 30, 2008 ("Compliance Filing").

⁶ Docket No. ER08-760-001, "Request for Clarification, or in the Alternative, Rehearing of the California Independent System Operator Corporation," June 30, 2008 ("CAISO Rehearing/Clarification Request").

⁷ California Generators Motion at 6 (emphasis added).

CAISO raised in its Rehearing/Clarification Request. In that regard, as the CAISO indicated in its Rehearing/Clarification Request, the non-RA capacity of a partial RA unit should not be eligible for a TCPM designation when it is dispatched for Energy by the CAISO's Real Time Dispatch ("RTD") software which dispatches capacity in merit order based on resources' Imbalance Energy bids. As the CAISO noted in its Rehearing/Clarification Request, due to current software limitations, the RTD will dispatch non-RA and RA resources in economic merit order in real-time irrespective of the unit's capacity commitment. RTD cannot "split" a unit between its RA capacity and its non-RA capacity for purposes of least cost economic energy dispatch. As such, the CAISO would be unable to reflect in the RTD optimization the additional cost, *i.e.*, the 30-day TCPM capacity payment that would result if the CAISO were to dispatch the non-RA capacity of a partial RA unit.

Third, the CAISO agrees with the California Generators that the monthly TCPM capacity payment should be a shaped percentage of the annual capacity price, as was proposed by the CAISO in its TCPM filing.

These issues are discussed in more detail below.

I. MOTION FOR LEAVE TO FILE ANSWER OUT OF TIME

The CAISO seeks to respond to the California Generators' request for clarification, or in the alternative, rehearing regarding designation of partial-RA units. While the CAISO may file an answer to a motion for clarification, the CAISO respectfully requests leave to file this answer in the event the

Commission addresses the California Generators' pleading as a rehearing request rather than a motion for clarification as to the partial-RA unit issue.

The CAISO recognizes that, unless authorized by the Commission, the Commission's Rules of Practice and Procedures preclude an answer to requests for rehearing. The CAISO hereby respectfully requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to make an answer to the rehearing request. Good cause for this waiver exists here because the Answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case.⁸

The CAISO also requests that the Commission grant leave and authorize the CAISO to file its Answer one-day out of time. The issue of the treatment of partial RA units under the TCPM raises many new and complex issues, and the CAISO required the input of a number of operational personnel and other subject matter experts to order to develop its Answer and a recommended solution to the problem. However, due to vacation schedules and non-availability of key personnel during the last couple of weeks, the CAISO was not able to finalize a response by July 15. Accordingly, the CAISO is submitting its Answer one day out of time. The CAISO submits that no party will be prejudiced by the CAISO submitting its answer one-day out of time. Indeed, by combining and further developing the thoughts in its Rehearing/Clarification Request and the California

⁸ See, e.g., *Entergy Services, Inc.*, 116 FERC ¶ 61,286 at P 6 (2006); *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,124 at P 11 (2006); *High Island Offshore System, L.L.C.*, 113 FERC ¶ 61,202 at P 8 (2005).

Generators Rehearing/Clarification Request, the CAISO believes that its Answer has identified a practical, workable and timely solution for the partial RA issue.

II. BACKGROUND

On March 28, 2008, the CAISO submitted its TCPM proposal which provides the CAISO with a tariff-based mechanism to permit the CAISO to engage in backstop capacity procurement under a defined set of circumstances when necessary to meet Reliability Criteria and maintain system operations.

The TCPM is designed to work with the must-offer obligation (“MOO”) that the Commission imposed as a mitigation measure during the 2000–2001 California Energy Crisis, as well as with the resource adequacy requirements adopted by the California Public Utilities Commission and other Local Regulatory Authorities. Under the ISO Tariff, the CAISO is to engage in backstop procurement under the TCPM only if it does not have capacity available to meet the reliability need from units that are Resource Adequacy Resources. The CAISO is authorized to grant and revoke waivers of both the Commission-imposed MOO, which applies to FERC Must Offer Generators, and the must-offer requirement for Resource Adequacy Resources. In the event additional capacity is needed, the CAISO is required to grant waivers to FERC Must Offer Generators first, before granting waivers to Resource Adequacy Resources.

On May 30, 2008, the Commission accepted the TCPM tariff filing subject to modification. The Commission directed the CAISO to modify its TCPM proposal by “providing units with a minimum 30-day capacity designation upon

the first commitment under the must-offer obligation.”⁹ In other words, the issuance of a MOWD to a FERC Must-Offer Generator would result in an automatic 30-day designation under the TCPM.¹⁰ As a result of this determination, the Commission concluded that the CAISO’s proposal to increase the level of the daily Must Offer Capacity payment from a factor of 1/17th pf the monthly capacity payment to 1/8th of the monthly capacity payment was moot.

The CAISO has submitted a request for clarification, or in the alternative, rehearing of the May 30 Order as well as a Compliance Filing to comply with the directives of the Commission in the May 30 Order. The CAISO noted in its Rehearing/Clarification Request that the determination in the May 30 Order that a single MOWD results in a 30-day designation of capacity under the TCPM raises certain implementation issues, including the issue of when the remaining Eligible Capacity of a partial-RA unit could be designated under the TCPM.¹¹

The California Generators requested clarification of a similar issue in their June 30 Request for Clarification and Rehearing. As explained herein, the CAISO believes that it is generally in accord with points raised in the California Generators Rehearing/Clarification Request regarding the partial-RA unit issue and urges the Commission to promptly issue an order clarifying this matter consistent with the discussion herein, so that CAISO grid operators will be able to

⁹ May 30 Order at P 32. The Commission stated, “we direct the CAISO to make a compliance filing within 30 days of the date of this order with revised tariff sheets that require the designation of a TCPM capacity resource for a (minimum) 30-day period upon the first commitment, i.e. must-offer waiver denial, of a resource under the must-offer obligation.” *Id.* at P 37.

¹⁰ *Id.* at P 37.

¹¹ CAISO Rehearing/Clarification Request at 9.

commit and dispatch resources this summer knowing *ex ante* what rules apply to their commitment/dispatch decisions and what the consequences of those decisions will be.

III. ANSWER

A. Implementation Of the TCPM For Partial-RA Units

1. Partial-RA Units Should Be Eligible For Designation Under the TCPM When Their Capacity Is Needed For Reliability Purposes But Not When Such Capacity Is Dispatched Through the RTD

As set forth in the ISO Tariff, the MOWD process is based on the commitment of units, not the dispatch of units that are already on-line. In that regard, the MOWD process was designed and has functioned in a manner such that the CAISO issues Must Offer Waivers to remove entire units from service. See Sections 40.6A.6 and 40.7.6. The Commission recognized that the MOWD process pertains to the commitment, not the dispatch, of units in its May 30 Order herein, when it stated that the CAISO must make a 30-day designation of capacity under the TCPM “upon the first *commitment* [of a unit], i.e., must offer waiver denial, of a resource under the must offer obligation.¹² Consistent with its tariff, the CAISO historically has granted and denied must-offer waivers under Sections 40.6 and 40.7 for the entire unit. Thus, if a resource does not have a RA contract it is treated as a FERC Must Offer Generator for purposes of the CAISO’s consideration and prioritization of its waiver request. If the resource has a RA contract, even if that contract is for less than the resource’s Net Qualifying Capacity, the unit is considered as a Resource Adequacy Resource for

¹² May 30 Order at PP 32, 37 (emphasis added).

commitment purposes. Consistent with this approach, under the Reliability Capacity Service Tariff (“RCST”) approved by the Commission, Resource Adequacy Resources were not eligible to receive a daily Must Offer Capacity payment. See Section 40.14. Thus, there was no daily capacity payment for dispatches of the non-RA capacity of a partial-RA unit. The CAISO did not propose to alter this approach under the TCPM.

In the May 30 Order, however, the Commission determined that a single MOWD should result in a 30-day TCPM designation. This decision mooted the Must Offer daily capacity payment tariff provisions, which include the tariff language that resources that are Resource Adequacy Resources are not entitled to receive a daily capacity payment. The May 30 Order raised new issues about how to implement the MOWD process with respect to partial-RA units, but did not specify any implementation details.

In their Rehearing/Clarification Request, the California Generators request that the Commission clarify that the un-contracted for capacity associated with partial RA units should be considered “Eligible Capacity” for purposes of potential TCPM designations.¹³ The California Generators state “if reliability services are required of a generator, that generators should be compensated consistent with the approved TCPM.”¹⁴ The California Generators also state that they do not “expect the Commission to require the CAISO to pay for all of a unit’s capacity when energy or other services are dispatched out of that unit.”¹⁵

¹³ California Generators’ Rehearing/Clarification Request at 4-6.

¹⁴ *Id.* at p. 6.

¹⁵ *Id.*

The CAISO agrees with the California Generators that *if needed for reliability purposes*, the remaining capacity of partial RA units should be eligible to receive a designation under the TCPM. The CAISO also agrees with the California generators that the merit order dispatch of energy out of the non-RA capacity should not result in a TCPM designation. The mere dispatch of energy is not indicative of whether the capacity of a unit is needed for reliability purposes, although, it could be indicative of a reliability need. Thus, automatic TCPM designations for the dispatch of energy are not appropriate. While normal economic dispatch would not imply a reliability service, out of sequence (“OOS”) dispatches, depending on the particular circumstances surrounding the dispatch, could suggest that the non-RA portion of the capacity is serving a reliability function and that additional capacity needs to be designated if procured RA capacity is not sufficient to meet the reliability need.

The CAISO proposed in its June 30 Compliance Filing in this docket to add language to Section 43.7.1 to address the situation where less than the full Net Qualifying Capacity of a resource has been procured and identified as a Resource Adequacy Resource in the Resource Adequacy Plans and Supply Plans provided to the CAISO under Section 40. In recognition that the CAISO may need to procure this additional non-resource adequacy capacity to meet reliability needs, the CAISO included the clarification that the capacity eligible for designation under the TCPM would be the difference between the total Net Qualifying Capacity of the resource and the amount that is already under contract as a Resource Adequacy Resource. This is necessary to ensure that the same

capacity is not double counted under both the resource adequacy and the TCPM programs.

2. Partial-RA Units Should Not Be Eligible For Designation Under the TCPM When Their Capacity Is Dispatched Through the RTD

In its June 30 Rehearing/Clarification Request, the CAISO requested that the Commission clarify that the non-RA Capacity of a partial RA resource should not receive a TCPM designation if such capacity is dispatched through the RTD process in merit order because such capacity had the lowest energy bid.¹⁶ The CAISO explained that its Real-Time Dispatch (“RTD”) software dispatches units looking out over a two hour period for system energy needs, and the dispatch decisions are based on economics (Energy bid costs). Most importantly, the CAISO explained that it could not distinguish between the RA component and the Non-RA component of a *single unit*.¹⁷ In that regard, the RTD is expected to dispatch non-RA capacity of a partial RA-unit if its Energy bid is lower, even though RA capacity is available. Because the RTD cannot “split” units between their RA capacity and their non-RA capacity, the CAISO is unable in the RTD optimization to add to the energy bid price of the non-RA capacity the 30-day capacity payment costs that would result if a RTD dispatch results in a TCPM designation

Thus, in the event the Commission were to modify the CAISO’s existing tariff and practice and find that dispatches of energy (as opposed to unit commitments) constitute MOWDs, absent the clarification requested by the

¹⁶ CAISO Request for Clarification/Rehearing at 6-13.

¹⁷ *Id.* at 11.

CAISO, the CAISO could be required to give a 30-day TCPM designation to the non-RA capacity of a partial RA unit that gets dispatched through the RTD process, even though the dispatch was a dispatch for energy in merit order based on Energy bids, not for reliability reasons, and even though the CAISO had no ability in its software or systems to account for the actual incremental cost (*i.e.*, the monthly TCPM capacity payment) of dispatching the non-RA capacity of the partial RA unit. Importantly, the RTD process does not resolve intra-zonal and local constraints. The CAISO will not be able to perform that function until MRTU. RTD is only designed to procure system and zonal energy on an economic basis; it is not intended to optimize day ahead capacity commitments.

The CAISO stated in its Rehearing/Clarification Request that this limitation should apply to dispatches of the non-RA capacity of partial RA units through the RTD process, but might not apply in instances where the CAISO must manually dispatch such capacity to meet reliability needs, *e.g.*, for local reliability reasons, and where the procured RA or RMR capacity is insufficient to address such reliability need. The CAISO indicated that in those instances it would be appropriate for the manual dispatch of the non-RA capacity of a partial RA unit to result in a TCPM designation.

Accordingly, the CAISO believes that its Clarification/Rehearing Request is consistent both with the California Generators' statement that the remaining capacity of a partial-RA unit should be eligible for designation under the TCPM if, and only if, that additional capacity is needed for reliability purposes and with the California Generators' statement that they do not "expect the Commission to

require the CAISO to pay for all of a unit's capacity when energy or other services are dispatched out of that unit."

3. California Generators Principles Of Clarification

In addition to stating that dispatches of Energy from the non-RA capacity of a partial RA unit should not result in a TCPM designation for such capacity, the California Generators asked the Commission to clarify three points regarding the treatment of partial RA units under the TCPM. These points -- which are reflected in the first three bullets below -- were not expressly discussed in the May 30 Order. However, the CAISO believes that these three principles, along with the California Generators stated position that Energy dispatches should not result in TCPM designations for the remaining non-RA capacity, can serve as the basis for a feasible and acceptable approach to resolving the partial RA issue which does not unduly impinge on the CAISO's Real-Time grid operations. In summary, the CAISO believes that it is in agreement with the California Generators on the following principles regarding the treatment of partial RA units under the TCPM and requests the Commission to accept such principles:

- A. The CAISO would not count the non-RA capacity of a partial RA unit as available supply in considering whether a collective deficiency exists pursuant to Section 42.3.1.4 of the Tariff. This decision is not a Real-Time matter and, as such, should not impinge on Real-Time grid operations.
- B. The CAISO would make a determination whether any non-RA capacity from the partial-RA unit is needed for reliability services at the time the

CAISO issues a MOWD to the partial RA unit. Specifically, at the time the CAISO commits the partial-RA unit, the CAISO would indicate whether or not it needs only the previously-identified resource adequacy capacity for reliability purposes or whether it also needs the non-RA capacity of the unit.¹⁸ Consistent with the nature of a day-ahead capacity commitment, it should not adversely impact Real-Time grid operations.

- C. If the CAISO determines at the time the CAISO issues the MOWD to the partial RA unit, that it needs any of the non-resource adequacy capacity of the partial-RA unit for reliability, the CAISO would proceed to designate the remaining capacity of the unit under the TCPM. Again, this would be a Day-Ahead task and would not impact Real-Time operations.
- D. Real-time merit order dispatches of partial unit RA units would not result in a TCPM designation. This is consistent with the CAISO's Rehearing/Clarification Request and the statements in the California Generators Rehearing/Clarification Request.
- E. As a check to assure that non-RA capacity is not required for reliability, the CAISO would undertake an after-the-fact review of manual out-of-sequence ("OOS") dispatch instructions issued for the non-RA capacity

¹⁸ Assume for example a situation where the CAISO determines that it needs to commit 100 MW of capacity in a local area in order to meet reliability needs. The only two units that are available for commitment that can satisfy that requirement are a 100 MW FERC Must Offer Generator and a 100 MW partial RA unit of which 50 MW is RA and the other 50 MW is non-RA. Under these circumstances, if the CAISO commits the partial RA unit, the CAISO shall designate the 50 MW of non-RA capacity as TCPM. TCPM is warranted under the example because the capacity is serving a reliability need that no RA capacity is available to meet.

of partial RA units. OOS dispatches are typically for local or zonal reasons and can be indicative of a reliability need depending on the particular circumstances surrounding the dispatch. The CAISO would conduct an after-the-fact review of such OOS dispatches to determine whether a TCPM designation is appropriate under the circumstances. If the CAISO were to determine that insufficient RA capacity has been procured that can address the specific reliability need that resulted in the OOS dispatch, then the CAISO would provide a TCPM designation to the non-RA capacity of the partial RA unit. On the other hand, if sufficient RA capacity has been procured that can meet a comparable reliability need, the CAISO would not make a TCPM designation.

Previous commitment and dispatch decisions affect what capacity is able to address a particular requirement in a particular five-minute settlement interval; so, the mere fact that the non-RA capacity of a partial RA unit received an OOS dispatch for energy in a particular five minute interval might not be indicative of whether the RA capacity that has been procured is insufficient for reliability purposes. Thus, an after the fact review to determine whether the CAISO relied on the non-RA capacity that received the manual OOS dispatch because “the resource adequacy program [was] not able to provide it with sufficient resources to operate the grid reliably”¹⁹ -- as opposed to some other reason -- is appropriate under these circumstances and would not add to the pressures of or further burden real-time grid operations.

¹⁹ May 30 Order at P 36.

Specifically, the CAISO will determine whether there is procured RA capacity that is available and effective at meeting the reliability need that led to the OOS dispatch. To the extent that on-line RA units had available RA capacity, but was capacity was not dispatched due to ramping constraints (or other limitations) etc. or because such capacity had a higher energy bid than the capacity that was “OOSED,” there would not be a TCPM designation. Likewise, if an RA unit is off-line, but such unit would have been effective in meeting the need had it been on-line, there would not be a capacity designation. In this latter situation, however, the CAISO will undertake a review as to why the unit commitment process did not commit such RA unit and will post the results of its review. Where the CAISO finds that there is no procured RA capacity that would be effective in meeting the reliability need that led to the OOS dispatch, the CAISO would designate the non-RA capacity as TCPM. The CAISO would implement this review process prospectively following issuance of a Commission clarification order.

The CAISO respectfully requests that the Commission find that these principles are appropriate for purposes of implementing the May 30 Order with respect to partial RA units.

B. Use of Monthly Shaping Factors

In their Rehearing/Clarification Request, the California Generators request the Commission to clarify that the monthly TCPM capacity price should be a shaped percentage of the annual capacity price.²⁰ The CAISO agrees, and that result is consistent with the TCPM proposal.

In its request for clarification of the May 30 Order, the CAISO noted the statement in footnote number 35 of the order that a unit designated for 30 days as the result of a MOWD should receive a payment equal to 1/12 of the appropriately adjusted annual target capacity price proposed in the ISO Tariff.²¹ The CAISO explained, however, that the May 30 Order did not expressly address -- let alone reject -- the monthly shaping factors previously approved for the RCST and which were retained by the CAISO in the TCPM tariff proposal in Appendix F, Schedule 6 of the ISO Tariff. The RCST and the TCPM intended that these shaping factors apply to all designations of capacity.

Thus, the CAISO agrees with the California Generators that the use of the shaping factors is consistent with the CAISO's TCPM proposal as approved by the Commission and that the request for clarification should be granted.

²⁰ California Generators Rehearing/Clarification Request at 3.

²¹ CAISO Request for Clarification/Rehearing at 16-17.

IV. CONCLUSION

For the reasons discussed above, the CAISO requests that the Commission accept, one day out of time, this answer to the California Generators request for clarification of the May 30 Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

Dated at Folsom, California, this 16th day of July, 2008.

/s/Susan L. Montana
Susan L. Montana