

124 FERC ¶ 61,043
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket No. ER06-615-013

ORDER CONDITIONALLY ACCEPTING, SUBJECT TO MODIFICATION, MRTU
COMPLIANCE FILINGS

(Issued July 17 2008)

1. In this order, the Commission conditionally accepts, subject to modification, the California Independent System Operator Corporation's (CAISO) September 28, 2007 proposed revisions to its Market Redesign and Technology Upgrade (MRTU) Tariff submitted in compliance with the Commission's order conditionally accepting the MRTU Tariff¹ (CAISO Filing). The revised tariff sheets implement interim measures that mitigate potential economic incentives of Load Serving Entities (LSEs) to underschedule in the day-ahead market. These interim measures, as modified, will be effective coincident with the effectiveness of MRTU, and will remain effective until superseded by the implementation of convergence bidding, which the Commission has required within 12 months of MRTU start-up.² Additionally, the CAISO Filing addresses how it will ensure that capacity sold on a firm basis to a hub and is resold to a party external to the CAISO grid has the same scheduling priority as CAISO demand. These revisions are in response to the Commission's June 25, 2007 order on MRTU Tariff compliance filings.³

¹ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 452 (2006) (September 2006 MRTU Order).

² *Id.*

³ *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,313, at P 59 (2007) (June 2007 MRTU Compliance Order).

I. BACKGROUND

2. In the September 2006 MRTU Order, the Commission directed the CAISO to implement convergence bidding within 12 months of the effective date of MRTU, rather than postpone MRTU until the development and approval of a convergence bidding plan. Nevertheless, the Commission directed the CAISO to develop and file interim measures to mitigate the potential economic incentives for LSEs to underschedule in the day-ahead market, which would remain in effect until superseded by the implementation of an approved convergence bidding proposal.⁴

3. The CAISO Filing consists of the following features: (1) a bright line test to define persistent underscheduling; (2) an interim scheduling charge for LSEs that persistently underschedule; and (3) confidential weekly reports to disclose scheduling performances.⁵ The CAISO claims that this approach strikes a reasonable balance of interests that will not jeopardize the integrity and benefits of the MRTU markets.⁶ The CAISO further contends that the proposal is simple and predictable, can be implemented under the current MRTU design, and will not delay MRTU.⁷ The CAISO adds that the interim plan was designed in a manner that would allow reconfiguration if any concerns arise after monitoring market behaviors under MRTU.⁸

4. Also, the CAISO responds to the Commission's June 2007 MRTU Rehearing Order directing the CAISO to work with the Sacramento Municipal Utility District (SMUD) to ensure that SMUD's concern regarding the manner in which the CAISO will ensure that capacity sold on a firm basis to a hub and then resold to a third party external to the CAISO grid has the same scheduling priority as CAISO demand.⁹ The CAISO

⁴ *Id.* P 452. We also note that in the April 2007 order on rehearing of the September 2006 MRTU Order, the Commission reiterated the need for interim measures to address the potential incentive for underscheduling in the day-ahead market until implementation of convergence bidding. *See Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076, at P 118-19 (2007) (April 2007 MRTU Rehearing Order).

⁵ According to the CAISO, the interim measures represent a balance of stakeholder interests that were examined through five months of stakeholder process meetings. CAISO Filing at 6.

⁶ *Id.* at 6, 13.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 14.

asserts that all of the validations necessary to determine which exports should receive export priority equal to internal CAISO demand and which exports should not will be performed according to the Scheduling Infrastructure and Business Rules (SIBR).¹⁰

II. NOTICE OF FILING AND RESPONSIVE PLEADINGS

5. Notice of the September 28, 2007 compliance filing was published in the *Federal Register*, 72 Fed. Reg. 57,548 (2007), with comments, protests, or interventions due on October 19, 2007.

6. Timely comments and protests were filed by the California Department of Water Resources State Water Project (SWP), the Western Power Trading Forum (WPTF), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), Golden State Water Company (GSW), Alliance for Retail Energy Markets (AReM), Imperial Irrigation District (Imperial), Williams Power Company (Williams), Constellation Energy Commodities Group, Inc., and Constellation NewEnergy, Inc. (collectively, Constellation), Epic Merchant Energy, LP and Sesco Enterprises LLC (collectively, Financial Marketers).

7. On November 13, 2007, SCE filed a motion for leave to answer and an answer. On November 26, 2007, Financial Marketers filed a motion for leave to answer in response to SCE's motion for leave to answer and an answer.

III. DISCUSSION

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest and an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept either SCE's or Financial Marketers' answers and will, therefore, reject them.

¹⁰ *Id.* at 15. See also *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,285, at P 281 (2008) ("SIBR is the interface that accepts, validates, and modifies bids and trades for energy and then enters these bids and trades into a database for processing by other components of CAISO's management system.").

B. Interim Underscheduling Proposal

10. In an effort to comply with the Commission's directives concerning underscheduling prior to the implementation of convergence bidding, the CAISO proposes an interim plan consisting of a bright line test, interim scheduling charges and confidential weekly reports.¹¹

1. Bright Line Test

11. The CAISO proposes to implement a bright line test to identify and penalize persistent underscheduling. Under the proposed plan, persistent underscheduling occurs when, in any given month, a scheduling coordinator's Net Negative CAISO Demand Deviation¹² in its applicable Load Aggregation Point (LAP) exceeds 15 percent of the scheduling coordinator's cleared total CAISO demand as represented in its day-ahead schedule in its applicable LAP for five percent or more of the total trading hours for that given month.¹³ As explained by the CAISO, its proposal would not penalize scheduling coordinators for amounts below the bright line test threshold in order to allow the day-ahead market to function economically.¹⁴ The CAISO asserts that the 15 percent threshold ensures that market participants are not required to take on significant risk in order to comply with the interim measures.¹⁵ Once a scheduling coordinator triggers the bright line test, the CAISO would impose an interim scheduling charge from the time the scheduling coordinator exceeds the threshold limits until the end of the month, subject to certain exceptions discussed below.

¹¹ CAISO Filing at 6.

¹² See CAISO MRTU Tariff, Fourth Replacement Tariff Volume No. II, Original Sheet No. 903 (defining Net Negative CAISO Demand Deviation as "the difference between metered CAISO demand and the total CAISO demand scheduled in the day-ahead schedule if positive").

¹³ CAISO Filing at 7.

¹⁴ *Id.* at 10.

¹⁵ The CAISO states it considered lower thresholds, but believes that lower thresholds would be unnecessarily excessive and would not allow LSEs latitude to account for occasional load forecast errors by LSEs or supply deviations due to derates or outages. *Id.*

2. Interim Scheduling Charges

12. The CAISO proposes to assess each scheduling coordinator an interim scheduling charge when the scheduling coordinator triggers the bright line test. The CAISO plan assigns a charge for the remainder of the month for which the interim scheduling charge would apply in the amount of \$150/MWh when metered load is between 15 percent and 20 percent greater than its cleared day-ahead schedule, and \$250/MWh for trading hours where a scheduling coordinator's metered load is 20 percent or more than its cleared day-ahead schedule.¹⁶ The CAISO also proposes to exempt scheduling coordinators from these charges under the following circumstances:¹⁷

1. The CAISO's day-ahead peak daily demand forecast is 95 percent or less of actual CAISO metered demand;
2. An LSE has demands of 500 MW or less at a LAP;
3. The resource is Participating Load;¹⁸
4. The resource is MSS Load-Following Demand;¹⁹ and
5. The CAISO's real-time price is less than the day-ahead price.²⁰

¹⁶ *Id.* at 7-9.

¹⁷ *Id.* at 8. The CAISO contends that these exemptions are necessary to ensure that LSEs are not unfairly penalized, to address certain stakeholder concerns and to tailor the charge to meet the Commission's directive.

¹⁸ Participating Load is an entity that provides demand that can be curtailed at the direction of the CAISO in the Real-Time Dispatch of the CAISO Controlled Grid, which has undertaken in writing by execution of a Participating Load Agreement to comply with all applicable provisions of the CAISO Tariff. *See* CAISO MRTU Tariff Fourth Replacement Tariff Volume No. II Original Sheet Nos. 854, 911.

¹⁹ Load Following MSS is not defined in the MRTU Tariff. Generally, a Metered Subsystem (MSS) is a geographically contiguous system located within a single zone, subsumed within the CAISO Control Area, that has been operating as an electric utility for a number of years prior to the CAISO operations date as a municipal utility, water district, irrigation district, state agency or federal power administration. September 2006 MRTU Order, 116 FERC ¶ 61,274 at P 619 n.293. Load following is typically defined as the use of generation to meet the hour-to-hour and daily variations in system load. *Id.* P 620 n.295. Load Following MSS use their generation to meet load in real time.

13. The CAISO states it designed the exemptions to address economic concerns. For instance, the CAISO proposes to except those times when its day-ahead peak daily demand forecast is 95 percent or less of actual CAISO metered demand to avoid penalizing scheduling coordinators as a result of a load forecast error and not a purposeful underscheduling in the day-ahead market.²¹ Also, the CAISO contends that the small LSEs are exempted because an LSE with demands of 500 MW or less at a LAP does not have the ability to impact prices through its scheduling practices, and such small facilities are likely to have more volatile loads and could more easily exceed the 15 percent threshold for reasons other than economic behavior.²² Finally, the CAISO contends that it is unnecessary to provide a disincentive for underscheduling in those circumstances where the real-time price is less than the day-ahead price, thus such a case should be exempted from interim scheduling charges.²³

14. The CAISO proposes that any revenues collected with the assessment of the interim scheduling charge will be treated as “Other Revenue” as indicated in the CAISO Tariff, and will be used to offset the revenue requirement associated with the market usage charge, which is a component of the CAISO’s Grid Management Charge.²⁴

3. Interim Scheduling Report

15. The CAISO proposes to generate a report of each scheduling coordinator’s performance based on the metered demand received by the CAISO. The CAISO will distribute the report to each scheduling coordinator on a weekly and confidential basis. The report will reflect the scheduling thresholds and trigger any applicable scheduling charges.²⁵

²⁰ CAISO Filing at 11.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 9. The CAISO allocates the market usage charge to buyers and sellers of ancillary services, supplemental energy and imbalance energy. *See* CAISO, FERC Electric Tariff, Third Replacement Tariff Volume No. II, Schedule 1, Part A at Item 7 Original Sheet No. 727. We anticipate that the application of “Other Revenue” as described under the CAISO Tariff will be largely similar to the application under the MRTU Tariff.

²⁵ *Id.* at 7.

Comments on CAISO's Proposal

16. AReM, SWP and PG&E filed comments supporting without modification all of the CAISO's proposals concerning underscheduling. Although PG&E maintains that underscheduling penalties in the day-ahead market are unnecessary under MRTU and economic factors provide disincentives against underscheduling in the day-ahead markets, PG&E states that the CAISO proposal properly balances penalties for persistent load underscheduling in the day-ahead market against the need to provide some limited flexibility to LSEs to protect against penalties due to the fact that LSEs cannot predict load with absolute accuracy.²⁶

Comments on the Bright Line Test

17. WPTF opposes the bright line test, claiming it would create perverse incentives for LSEs to underschedule in the day-ahead market.²⁷ First, WPTF argues that under the CAISO's proposal, LSEs would have a "free pass" to underschedule more than 15 percent of their day-ahead demand without penalty.²⁸ Second, WPTF contends that the CAISO fails to justify the 15 percent threshold, or even describe why the value is the "right" size offering only vague concerns about the integrity of its markets and the possibility of overscheduling.²⁹ Third, WPTF argues that if all resource adequacy resources are required to bid into the day-ahead market, yet buyers can withhold up to 15 percent of their demand from the day-ahead market without penalty, the day-ahead market could not function "economically," contending that buyers would have an unfair advantage over sellers.³⁰ For these reasons, WPTF urges the Commission to reject the bright line test.

²⁶ PG&E October 19, 2007 Comments at 2, 4.

²⁷ Williams filed comments in support of the pleading submitted by the WPTF. *See* Williams October 19, 2007 Comments.

²⁸ WPTF October 16, 2007 Protests and Comments at 4-5 (WPTF Protests and Comments).

²⁹ WPTF Protests and Comments at 6-9.

³⁰ *Id.* at 7. WPTF states that the CAISO's typical winter and summer peak hourly demand is approximately 32,000 MW and 45,000 MW, respectively. It notes that 15 percent of peak hourly demand for three of the largest LSEs would likely exceed 4,000 MW and 6,000 MW. WPTF contends that this level of underscheduling would impact the day-ahead price.

18. Alternatively, WPTF requests that the Commission require the CAISO to lower the proposed threshold from 15 percent to six percent.³¹ WPTF alleges that market data and analysis support lower threshold protection against deliberate underscheduling, claiming that the data demonstrates that actual demand seldom differs from forecasted demand by more than six percent.³²

19. Further, WPTF claims that when an LSE exceeds its quota of free pass hours in any month, its liability for interim scheduling charges would only apply to the balance of the current month. Thus, the LSE would then be provided with a new and unencumbered free pass for the following month. Therefore, WPTF claims that this system allows for repeated underscheduling.³³

20. SCE supports the proposed 15 percent threshold and the five percent “free pass.”³⁴ SCE argues that the proposal would allow LSEs to have greater flexibility to make portfolio-purchasing decisions that reflect market uncertainties without being assessed a scheduling charge.³⁵ As a result, SCE urges the Commission to accept the bright line test without modifications.

Commission Determination on the Bright Line Test

21. As explained below, we conditionally accept the CAISO’s interim solution as just and reasonable until implementation of convergence bidding. Our review of the CAISO’s proposed “bright line” test for assessing charges for underscheduling demand in the day-ahead market finds that it generally addresses the Commission’s concern

³¹ Financial Marketers and Constellation raise similar arguments regarding a lower threshold. Financial Marketers seek a six percent threshold, and Constellation seeks a five percent threshold. *See* Financial Marketers October 19, 2007 Protest at 5 (Financial Marketers Protest); and Constellation October 18, 2007 Comments at 2-5 (Constellation Comments).

³² Based on 2005 and 2006 CAISO day-ahead demand forecast data, the WPTF contends that a positive six percent threshold should be expected to cover 99 percent of all CAISO day-ahead demand forecast errors. WPTF Protest and Comments at 8-11.

³³ *Id.* at 5.

³⁴ SWP and AReM also support the bright line test. *See* SWP October 19, 2007 Comments at 2; AReM October 19, 2007 Comments at 2 (AReM Comments).

³⁵ SCE October 19, 2007 Comments at 3 (indicating that market uncertainties may include, but are not limited to, specific unit availability, transmission availability and load uncertainty) (SCE Comments).

regarding LSEs' potential economic incentives to underschedule in the day-ahead market. As the Commission stated on rehearing of its September 2006 MRTU Order, "these interim measures are not intended to prevent LSEs from taking steps to reduce the costs of serving their load. Instead, these interim measures should be designed to prevent uneconomic behavior."³⁶ We recognize that LSEs need flexibility to make portfolio-purchasing decisions. Accordingly, we find that the CAISO's proposal to allow LSEs to underschedule up to 15 percent of demand in the day-ahead market provides a reasonable amount of flexibility until convergence bidding is implemented. We find that this threshold strikes a reasonable balance between creating incentives for LSEs to forward schedule the majority of demand in the day-ahead market and allowing LSEs the flexibility to address market uncertainties in real-time, and we find this threshold just and reasonable.

22. Also, we accept as just and reasonable the CAISO's proposed graduated interim scheduling charges for larger instances of underscheduling. The interim scheduling charges are designed to prevent the potential exercise of market power but not discourage appropriate market behavior when market power is not being exercised.³⁷ The higher penalty charge for deviations greater than 20 percent is reasonable because the higher volume of underscheduling indicates an increased risk that market power is being exercised, and we find the proportionate charge increase (from \$150/MWh to \$250/MWh) is appropriately tailored to help curb strategic underscheduling and artificial suppression of day-ahead energy prices.

23. Notwithstanding this acceptance, we share WPTF's concern regarding giving LSEs a "free pass" to underschedule more than 15 percent of demand for five percent of the trading hours each month without penalty. Therefore, we direct the CAISO to eliminate the five percent "free pass" provision. This "free pass" could provide the LSEs an economic incentive, during peak hours, to strategically exceed the 15 percent threshold in order to artificially reduce the day-ahead price without penalty. In the event that an LSE exceeds the 15 percent threshold of variability between the day-ahead and real-time market, the CAISO should impose a penalty because the proposed threshold provides LSEs with a reasonable amount of flexibility to address unavoidable forecasting errors and market uncertainties. We therefore find that the CAISO has failed to demonstrate the reasonableness of this aspect of its filing, and direct it to eliminate the five percent "free pass" and submit a compliance filing reflecting this modification within 30 days of issuance of this order.

³⁶April 2007 MRTU Rehearing Order, 119 FERC ¶ 61,076 at P 119.

³⁷ See CAISO Filing at 10.

24. Last, we deny WPTF's argument concerning the application of charges only to the balance of the current month. Because we deny the proposed monthly "free pass" hours, as described above, LSEs will be penalized each time they underschedule by more than 15 percent, regardless of the month, subject to certain exceptions.

Comments on Exemptions from Interim Scheduling Charges

25. WPTF and Financial Marketers oppose the CAISO's proposal to exempt LSEs from scheduling charges when the real-time price is less than the day-ahead price. WPTF states that while the exemption appears to address the Commission's directive that the interim measures should not prevent an LSE from reducing the cost of serving its load, this exemption can only be granted based on an *ex post* assessment rather than an *ex ante* assessment, which is inconsistent with the Commission's directive to prevent *potential* abuses.³⁸ WPTF also contends that under the proposed exemption, a scheduling coordinator could intentionally underschedule demand in the day-ahead market and depress the price in that market, and still have its behavior declared exempt from penalty if the real-time prices were lower than the day-ahead price for reasons other than strategic market participant behavior.³⁹ Financial Marketers echo WPTF's concerns.⁴⁰ Thus, WPTF and Financial Marketers request that the Commission reject this exemption because it provides for the potential exercise of demand-side market power.⁴¹

26. SCE supports the CAISO proposed exemption when the real-time prices are more attractive than day-ahead prices.⁴² However, SCE opposes the exemption for LSEs that serve less than 500 MW of load per LAP, claiming it inappropriately discriminates against those LSEs that serve more than 500 MW of load. SCE claims that this exemption forces larger scheduling coordinators to schedule in the day-ahead market, while unreasonably permitting smaller scheduling coordinators to have the choice of whether to serve their load, without restriction or penalty, in either the day-ahead or real-time market.⁴³ SCE contends that any scheduling requirement should apply to all market

³⁸ WPTF Protest and Comments at 12 (referring to April 2007 MRTU Rehearing Order, 119 FERC ¶ 61,076 at P 118).

³⁹ *Id.* at 12.

⁴⁰ Financial Marketers Protest at 5.

⁴¹ WPTF Protest and Comments at 11-13.

⁴² SCE Comments at 2.

⁴³ *Id.* at 4.

participants equally and that the CAISO offers no compelling reasons to adopt a non-uniform policy.⁴⁴

27. WPTF and GSW support the exemption for LSEs that serve less than 500 MW of demand or less. Without the exemption, GSW contends that small LSEs would incur charges for small megawatt disparities under the percentage-based trigger because they are more susceptible to relatively large percentage fluctuations in demand due to the actions of fewer consumers.⁴⁵ As a result, GSW contends that small LSEs would face the unintended result of either consistently facing penalties or persistently overscheduling demand in the day-ahead market, which is not the intent of the underscheduling program. WPTF states that small LSEs' demand scheduling practices are not likely to have a significant effect on day-ahead prices.⁴⁶ Thus, WPTF and GSW urge the Commission to accept the proposed exemption for LSEs that serve 500 MW or less per LAP.

28. AReM supports the CAISO's exemptions as an equitable means of preventing charges to LSEs when it would be unreasonable to do so, particularly the CAISO's proposed exemption for LSEs smaller than 500 MW per LAP.⁴⁷

29. Constellation states that it concurs with or does not oppose the CAISO's proposed level and allocation of interim scheduling charges and the proposed exemptions from the interim scheduling charges.⁴⁸

Commission Determination on Exemptions from Interim Scheduling Charges

30. We accept as just and reasonable the exemptions to interim scheduling charges that the CAISO proposes. First, we find that, on balance, the exemption for instances when real-time prices are lower than day-ahead prices is not likely to permit the exercise of demand side market power. Rather, it is designed to avoid interfering with LSEs' ability to reduce costs of serving load. Indeed, a scheduling coordinator's decision to increase real-time load over its day-ahead schedule when it expects the real-time price to be lower than the day-ahead price could very well represent an efficient response to the lower price. Such behavior should not be penalized. We recognize that an LSE could intentionally underschedule demand in the day-ahead market and not be penalized if the

⁴⁴ SCE Comments at 3-5.

⁴⁵ Golden State Water Company October 19, 2007 Comments at 6-8.

⁴⁶ WPTF Protest and Comments at 14.

⁴⁷ AReM Comments at 4.

⁴⁸ Constellation Comments at 2-3.

real-time price is lower than the day-ahead price. We also understand that this exemption may allow an LSE to exceed the threshold. However, because we direct the elimination of the so-called “free pass” or five percent threshold, this concern should be reduced. Also, as stated above, the elimination of the five percent “free pass” provision provides further incentive to LSEs to schedule properly to avoid penalty. Therefore, we find this proposed exception just and reasonable.

31. Next, we are not persuaded by WPTF’s position that, since the exemption for cases when real-time prices are lower than day-ahead prices is based on *ex post* assessment, it would not help prevent *potential* abuses. We do not agree with WPTF’s narrow reading of our directive in the MRTU Orders,⁴⁹ and we find that the CAISO’s use of *ex post* information is designed to help prevent potential abuses. Therefore, we find this proposed exception just and reasonable.

32. We reject SCE’s argument against exempting LSEs that serve 500 MW or less. We find the CAISO adequately demonstrates that small LSEs have a minimal impact on day-ahead prices when compared to LSEs with more than 500 MW of demand. Under these circumstances, we find the exemption for small LSEs is necessary because the interim plan was not intended to penalize small LSEs that experience significant deviations based on relatively small changes in demand that cannot affect prices in the day-ahead market. We note that SCE does not dispute this finding or provide convincing arguments that an exemption is unwarranted. We also note that the Commission directed the CAISO to develop this measure to address the potential economic incentive for LSEs to underschedule in the day-ahead market and thereby depress real-time prices. The Commission does not believe that such an opportunity exists for small LSEs. As a result, we deny SCE’s request on this issue.

Allocation of Funds Collected Via Interim Scheduling Charges

33. To reiterate, the CAISO proposes that any revenues collected with the assessment of the interim scheduling charge will be treated as “Other Revenue” per the CAISO Tariff, and will be used to offset the revenue requirement associated with the market usage charge, which is a component of the CAISO’s Grid Management Charge.

34. WPTF opposes the CAISO’s proposal to use any revenues collected from the interim scheduling charges to offset the revenue requirement associated with the market usage charge. WPTF claims this methodology is unreasonable because parties that persistently underschedule demand would receive the benefit of a market usage charge

⁴⁹ See April 2007 MRTU Rehearing Order, 119 FERC ¶ 61,076 at P 118; September 2006 MRTU Order, 116 FERC ¶ 61,274 at P 452.

reduction.⁵⁰ WPTF argues that it is unjust and unreasonable to return to offending market participants the amounts they are assessed for violating market rules. WPTF urges the Commission to require the CAISO to allocate the interim scheduling charge incurred in any hour *pro rata* based on the quantities of energy sold to parties selling energy in the day-ahead market in the same hour, excluding those scheduling coordinators who were assessed the interim scheduling charge.⁵¹

Commission Determination

35. We accept as just and reasonable the CAISO's proposed allocation methodology for the revenue it collects from levying interim scheduling charges because we find it broadly distributes revenue to market participants. While Commission policy generally requires penalty revenues to be flowed through to non-offending market participants, it has shown some flexibility in this regard.⁵² Here, we disagree with challenges to the proposed allocation methodology because we find that the allocation will not put offending market participants in a better situation than market participants that comply with the underscheduling provisions. Because the allocation will be spread over a large pool of MRTU market participants, the charge levied against offending market participants will be greater than their individual reduction in market usage charges. Further, the credit to this usage charge will be less burdensome for the CAISO, particularly given the fact that this penalty is scheduled to sunset in a year. Accordingly, we deny WPTF's argument on this issue and find the CAISO's proposed tariff changes just and reasonable.

Comments on Interim Scheduling Report

36. Constellation concurs with or does not oppose the CAISO's proposal concerning the preparation of confidential weekly reports on scheduling performance for each scheduling coordinator based on available metered data.⁵³

⁵⁰ WPTF at 13.

⁵¹ *Id.* at 14.

⁵² See, e.g., *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,315, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom.* (giving pipelines discretion in allocation of penalty revenue, notwithstanding general preference that penalized customers not receive such funds).

⁵³ Constellation Comments at 2.

Commission Determination on Interim Scheduling Report

37. The Commission accepts the tariff changes concerning interim scheduling reports provided by the CAISO. Such reports will allow scheduling coordinators to understand any interim scheduling charges they are assessed. Also, just as the CAISO assesses other fees under the MRTU Tariff, the CAISO should be allowed to issue statements that may now include Commission-approved interim scheduling charges, and to collect and distribute these charges. These activities do not constitute a delegation of the Commission's authority because they are carried out in accordance with MRTU Tariff provisions that the Commission has considered and approved.⁵⁴ In addition, we direct the CAISO to include aggregate information from such interim scheduling reports in the previously-directed reports on MRTU performance.⁵⁵ Also, consistent with section 38.2 of the MRTU Tariff we expect the CAISO market monitors will monitor this issue.⁵⁶

C. Convergence Bidding

38. Financial Marketers urge the Commission to require the CAISO to describe its plan for moving from the interim plan to a full convergence bidding market through periodic status reports.⁵⁷ Financial Marketers assert that this requirement will allow the Commission to track the development of the convergence bidding plan.

Commission Determination

39. We will not require the CAISO to submit periodic status reports regarding its initiative to incorporate convergence bidding into the MRTU market design because the CAISO and market participants should focus their efforts on the stakeholder process and developing a workable scheme. We have no basis at this point to believe that the existing stakeholder processes and procedures will be insufficient to bring a proposal before the Commission in a timely manner. However, parties are free to raise these issues with us in

⁵⁴ See *Cal. Indep. Sys. Operator Corp.*, 110 FERC ¶ 61,333, at P 56 (2005) (finding that the assessment of fees, including Commission-approved penalties, by the CAISO does not constitute a delegation of Commission authority). See also *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,079, at P 164 (2006) (finding PJM's ability to implement emergency procedure charges was not an improper delegation of Commission authority and was just and reasonable under the FPA).

⁵⁵ September 2006 MRTU Order, 116 FERC ¶ 61,274 at P 1417.

⁵⁶ See CAISO MRTU Tariff Fourth Replacement Tariff Volume No. II Original Sheet No. 738.

⁵⁷ Financial Marketers Protest at 6-7.

the future as the stakeholder process plays out. Further, we do not want to delay the CAISO's efforts to collaboratively design the convergence bidding plan by requiring additional reports. As the CAISO itself recognized, the implementation of an effective convergence bidding plan is the best measure to deal with the relevant economic incentives and market power concerns. Thus we agree with the CAISO that it is more prudent to expend any additional resources to develop the convergence bidding features.⁵⁸

D. Reports Concerning Capacity Resale

40. In the June 2007 MRTU Compliance Order, the Commission acknowledged that SMUD's concern regarding capacity sold on a firm basis to a hub and then resold to a third party external to the CAISO grid raises the issue of visibility within the CAISO's software system. The Commission concluded that to the extent that capacity resold to a third party external to the CAISO grid is non-Resource Adequacy (RA) capacity, that capacity will have the same priority as internal demand.⁵⁹ However, the Commission indicated that this treatment is dependent upon the CAISO's ability to identify the capacity as non-RA capacity.⁶⁰ The Commission, therefore, directed the CAISO to work with SMUD to resolve its concern and submit a report in a subsequent compliance filing.⁶¹

41. On compliance, the CAISO reports that it has actively coordinated with SMUD and other entities in a region-wide effort to address a spectrum of issues associated with export transactions from both RA capacity and non-RA capacity.⁶² In addition, as part of its broader communication with market participants regarding MRTU implementation efforts, the CAISO noted successful testing of its SIBR, which helps to identify the scheduling priority of non-RA capacity exports.⁶³

42. The CAISO explains that the scheduling coordinator submitting the export self-schedule triggers the priority by "flagging" the source as non-RA capacity.⁶⁴ The CAISO

⁵⁸ CAISO Filing at 13.

⁵⁹ June 2007 MRTU Compliance Order, 119 FERC ¶ 61,313 at P 59.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² CAISO Filing at 15.

⁶³ *Id.*

⁶⁴ *Id.*

contends that this functionality is sufficient to permit tracking of the explicit non-RA capacity from a firm sale to a hub that is subsequently resold to a third party external to the CAISO.⁶⁵ To the extent SMUD or any other entity continues to have concerns regarding the CAISO's treatment of exports under MRTU, the CAISO commits to work with these parties through broader implementation activities and monthly workshops.⁶⁶ The CAISO continues that, if required, it will continue to document its discussion with SMUD on this matter in the "Joint Quarterly Seams Reports" pursuant to the Commission's September 2006 MRTU Order.⁶⁷

Comments

43. Imperial supports the CAISO's goal of incorporating rules that will help track non-RA capacity for purposes of assigning export priority.⁶⁸ However, Imperial seeks clarification about how the CAISO will implement the SIBR to track non-RA capacity. Imperial states that the CAISO recognized completion of the SIBR, but does not provide any further detail on where the information can be obtained.⁶⁹ It further notes that the existing SIBR guide and the Business Practice Manual (BPM) for Market Instruments and Market Operations have not been updated to provide further details on "flagging" the source as non-RA capacity.⁷⁰ Imperial requests that the Commission require the CAISO to conduct further market simulation tests and to detail how it plans to "flag" non-RA capacity to ensure that its export receives the proper scheduling priority.⁷¹

Commission Determination

44. We find that the CAISO's filing adequately responds to the Commission's concern about how it plans to track non-RA capacity exports. Further, we fully expect the CAISO and all other parties, including Imperial, to work together on implementation details. Also, as to the updates to the BPM, we will not direct the CAISO to update these manuals with the Commission, as they are not required under section 205 of the FPA.

⁶⁵ *Id.* at 14, 15.

⁶⁶ *Id.* at 15.

⁶⁷ *Id.*

⁶⁸ Imperial October 19, 2007 Comment at 1.

⁶⁹ *Id.* at 3.

⁷⁰ *Id.* at 2.

⁷¹ *Id.* at 3.

Notwithstanding, we urge the CAISO to update these manuals in a timely manner in order to ensure the market participants are well informed.

E. Waiver Request

45. We also note that the CAISO's filing requests waiver of the requirements of Order No. 614.⁷² Order No. 614 requires accurate tariff sheet designation, including the effective date. The CAISO notes that the clean MRTU Tariff sheets it provided with the filing do contain header and footer information as required by Order No. 614 but requests a waiver to the extent that the information does not fully comport with the requirements of Order No. 614.⁷³ The CAISO claims that a waiver is justified because the portions of the currently effective tariff that serve as the basis of the MRTU Tariff are likely to be amended in the normal course of business between the filing date and the proposed MRTU implementation date.⁷⁴ The CAISO contends that in light of the recent change in the MRTU implementation date, the CAISO will need to make a filing to correct the effective date of the MRTU tariff sheets filed previously. Therefore, prior to implementation of the MRTU, the CAISO proposes it will submit tariff sheets containing the MRTU Tariff provisions approved by the Commission that fully comply with Order No. 614. Considering the recent change in the MRTU implementation date, further modifications to the MRTU Tariff, and the CAISO's proposed filing to comply with Order No. 614, we will grant waiver of the requirements of Order No. 614 for this filing.

The Commission orders:

(A) The CAISO's compliance filing is hereby accepted, as modified, to become effective as of the date of MRTU implementation, subject to required modifications and additional filings, as discussed in the body of this order.

⁷² *Designation of Electric Rate Schedule Sheets*, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000, P 31,096 (2000) (Order No. 614).

⁷³ See CAISO Filing at 15.

⁷⁴ *Id.* at 15-16.

(B) The CAISO is hereby directed to submit a compliance filing, within 30 days from the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.