

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

MMC Energy, Inc. )  
Complainant, )  
 )  
v. ) Docket No. EL08-46-\_\_\_\_  
 )  
California Independent System )  
Operator Corporation )  
Respondent. )

REQUEST FOR REHEARING OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

Pursuant to Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.713, the California Independent System Operator Corporation (“CAISO”) respectfully seeks rehearing of the Commission’s Order on Complaint (“Order”) issued in the captioned proceeding on June 6, 2008.<sup>1</sup> The Order correctly denied MMC’s request that its facilities (“MMC Facilities”), configured in the Host/CT Aggregation,<sup>2</sup> be allowed to participate in the CAISO’s Spinning Reserve market.<sup>3</sup> However, the Commission also directed the CAISO to pay to MMC the payments for Spinning Reserve capacity that the CAISO had rescinded through No Pay charges for Trading Days prior to and including September 18, 2006.<sup>4</sup> The CAISO seeks rehearing of that finding.

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<sup>1</sup> *MMC Energy, Inc. v. California Independent System Operator Corporation*, 123 FERC ¶ 61,251 (2008) (hereinafter, the “Order”).

<sup>2</sup> Host/CT Aggregation refers to the manner in which MMC has configured and operates its generating facilities. A Host/CT Aggregation is a combination of a small generator of less than 1 MW (Host Unit) and a larger gas-fired combustion turbine (CT unit). MMC’s Host/CT Aggregated Facilities are operated in a manner such that the smaller Host Unit remains spinning and synchronized to the CAISO-controlled transmission system while the larger unit is brought on-line if the facility is dispatched by the CAISO to provide supplemental energy. *See* Order at n.2.

<sup>3</sup> Capitalized terms not otherwise defined herein have the same meaning as set forth in the CAISO Tariff, Appendix A, Master Definitions.

<sup>4</sup> Order at PP 1, 92, and Ordering ¶ (B).

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MMC's Complaint requests that MMC be paid \$243,272 for Spinning Reserve that the CAISO rescinded through No Pay charges for nineteen Trading Dates during the period July 24, 2006 through August 23, 2006.<sup>5</sup> The CAISO applied the No Pay charges because MMC's Facilities failed to meet operational specifications for Spinning Reserve that are separate and apart from the configuration of those facilities in the Host/CT Aggregation. The CAISO requests rehearing of the Commission's finding that the CAISO should not enforce the No Pay charges for Spinning Reserve it assessed against MMC prior to and including September 18, 2006. As discussed below, that determination lacks evidentiary support and would grant MMC an undue advantage over other generators which have been assessed No Pay charges for the same reasons as MMC.

### **I. STATEMENT OF ISSUES AND SPECIFICATION OF ERROR**

Pursuant to Rule 713 of the Commission's Rules and Practice and Procedure, the CAISO provides the following statement of issues and specification of error:

1. The Commission's conclusion that the CAISO should not be permitted to enforce No Pay charges for Spinning Reserve on the MMC Facilities for the period prior to and including September 18, 2006 is arbitrary and capricious and not based upon the substantial evidence in the record in this case.<sup>6</sup>
2. The Commission's conclusion that the CAISO should not be permitted to enforce No Pay charges for Spinning Reserve on the MMC Facilities for the period prior to and including September 18, 2006, is unjust and unreasonable as it grants MMC an undue advantage over other generators.<sup>7</sup>

### **II. REQUEST FOR REHEARING**

#### **A. The Commission's Conclusion that the CAISO Should Not Be Permitted to Enforce No Pay Charges Against MMC for the Trading Days At Issue in**

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<sup>5</sup> See MMC Complaint at p. 40, n.83 and Attachment C, Affidavit of Alex Sokoletsky, Exhibit A.

<sup>6</sup> See *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (citation and quotation omitted) (a court must ensure that FERC has articulated a satisfactory explanation for its action including a rational connection between the facts found and the choice made).

<sup>7</sup> See 16 U.S.C. § 824d(b) (proscribing any undue preference or advantage to any person).

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**July and August 2006 is Arbitrary and Capricious and Not Based on the Substantial Evidence in the Record.**

The Commission's determination that the CAISO should not be permitted to enforce No Pay charges against MMC prior to and including September 18, 2006 appears to be based upon the incorrect assumption that the CAISO applied those No Pay charges to rescind Spinning Reserve capacity payments to MMC because it bid its facilities in a Host/CT Aggregation that did not meet the definition of Spinning Reserve in the CAISO Tariff.<sup>8</sup> In reaching this conclusion about the basis for the No Pay charges, the Commission failed to consider the record in this matter, which does not support that conclusion in the Order. Therefore, the Order on the July/August 2006 No Pay issue does not constitute reasoned decision-making.

The Commission "must be able to demonstrate that it has made a reasoned decision based upon substantial evidence in the record."<sup>9</sup> Moreover, the Commission must articulate a satisfactory explanation for its action, demonstrating a rational connection between the facts found and the choice made."<sup>10</sup> Here, there is no rational connection between the facts found and the Commission's denial of No Pay charges.

The basis for the Commission's conclusion in the Order that the CAISO should not enforce No Pay charges on the MMC Facilities prior to and including September 18, 2006 rests upon the Commission's finding in paragraph 91 of the Order that:

Although both the CAISO and MMC recognized the MMC Facilities as spinning reserve resources during the summer of 2006, this categorization was called into question in the September 18, 2006 Market Notice reminding participating generators of its spinning reserve requirements.

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<sup>8</sup> MMC's Facilities, when operated as a Host/CT Aggregation fail to provide Spinning Reserve because all of the capacity of the CT Units, which represents the vast majority of the Aggregations' capacity, is off-line and not spinning. See Order at P 79.

<sup>9</sup> *Pacific Gas and Electric Co. v. FERC*, 373 F.3d 1315, 1319 (D.C. Cir. 2004) (quoting *Northern States Power Co. v. FERC*, 30 F.3d 177, 180 (D.C. Cir. 1994)).

<sup>10</sup> *Id.* (quoting *Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43, 103 S.Ct. 2856, 2866-67 (1983)).

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The notice contained the Tariff definition of spinning reserve and also reminded generators that, among other things, the entire awarded spinning reserve capacity must be synchronized to the grid. We find that following the September 18, 2006 Market Notice, the CAISO correctly clarified and applied the requirements for providing spinning reserve service. As explained above, the MMC Facilities did not meet these requirements.<sup>11</sup>

The Commission concluded “based upon these facts”<sup>12</sup> that the CAISO may not enforce No Pay charges on the MMC Facilities prior to and including September 18, 2006. This conclusion ignores the record that the No Pay charges were assessed against MMC for reasons wholly unrelated to the configuration of MMC’s Facilities as Host/CT Aggregations which were not synchronized to the grid as required during the period of a Spinning Reserve award.

The record in this proceeding<sup>13</sup> shows that, on the specific Trading Days at issue in July and August 2006, the CAISO assessed No Pay charges because MMC’s Facilities failed to meet operational specifications for Spinning Reserve unrelated to their configuration as Host/CT Aggregations.<sup>14</sup> The CAISO levied these No Pay charges against MMC pursuant to CAISO Tariff Section 8.10.2.2, which is the same Tariff authority the CAISO applies to all other Generating Units awarded Spinning Reserve.

In accordance with CAISO Tariff Section 8.10.2.2, the CAISO determined that MMC’s Facilities failed to meet the required operational specifications for Spinning Reserve on the nineteen Trading Days in question because they exhibited undispachable energy, undelivered energy, unavailable capacity, and/or unconnected capacity during the period of an award. These operational deficiencies formed the basis on which the CAISO levied No Pay charges to rescind

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<sup>11</sup> Order at P 91.

<sup>12</sup> *Id.* at P 92.

<sup>13</sup> The record consists of MMC’s March 13, 2008 Complaint and the CAISO’s April 14, 2008 Answer.

<sup>14</sup> During the same time period, the CAISO also properly assessed No Pay charges related to Non-Spinning reserve. However, these Non-Spinning Reserve No Pay charges are not at issue in this proceeding.

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the associated payments to MMC for Spinning Reserve.<sup>15</sup> The configuration of the Host/CT Aggregation had nothing to do with the No Pay charges levied by the CAISO. It is important to note that these No Pay charges applied to only a portion of the Spinning Reserve payments made to MMC. In fact, these No Pay charges represent a small fraction of MMC's overall Spinning Reserve revenues. For comparison purposes, MMC's Complaint challenges the CAISO's rescission of a total of \$243,272<sup>16</sup> of Spinning Reserve capacity payments for the Trading Days in July and August 2006,<sup>17</sup> whereas MMC was paid approximately [REDACTED] for Spinning Reserve service from June through September 18, 2006.<sup>18</sup>

The vast majority of the No Pay charges at issue, approximately \$216,000 of the \$243,272 claimed by MMC,<sup>19</sup> were assessed as the result of undispachable energy and were the focus of both MMC's Complaint and the CAISO's Answer. The application of No Pay charges for undispachable energy is addressed in CAISO Tariff Section 8.10.2.2.3. Under this provision, the CAISO reviews specified operating parameters for all Generating Units that are awarded Spinning Reserve, Non-Spinning Reserve, or Replacement Reserve, regardless of the

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<sup>15</sup> The CAISO's argument focuses on the No Pay charges assessed for undispachable energy pursuant to CAISO Tariff Section 8.10.2.2.3 because they comprise almost all of the rescinded payments at issue. A brief explanation follows of the basis on which the CAISO levied each of the other categories of No Pay charges. For undelivered energy, the CAISO applies No Pay charges pursuant to Tariff Section 8.10.2.3 to rescind Spinning Reserve payments to the extent that any Generating Unit fails to deliver the full amount of Energy dispatched by the CAISO out of awarded Spinning Reserve capacity. Unavailable capacity, as detailed in CAISO Tariff Sections 8.10.2.2 and 8.10.2.2.1, requires the rescission of payments for Spinning Reserve to the extent that a Generating Unit in each Settlement Interval supplied Uninstructed Imbalance Energy from capacity that was subject to a Spinning Ancillary Service award. For the Generating Units with unconnected capacity, the CAISO applies No Pay charges in accordance with the provisions of CAISO Tariff Sections 8.10.2.2. and 8.10.2.2.3 to rescind Ancillary Service payments in each 10-minute Settlement Interval in which the unit was not connected to the grid. In the case of the Host/CT Aggregation used by MMC's Facilities, the CAISO assessed No Pay charges for unconnected capacity in Settlement Intervals when neither unit in the aggregation was connected to the grid.

<sup>16</sup> This amount is in dispute and is set for hearing by the Commission's Order.

<sup>17</sup> Complaint at 40 and Exhibit A to Affidavit of Mr. Alex Sokoletsky.

<sup>18</sup> MMC entered the Ancillary Services market in June 2006. MMC earned additional revenues during this time period for Non-Spinning Reserve service.

<sup>19</sup> CAISO Answer at pp. 27-28 and n.89.

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configuration of the facilities, in order to ensure that they have the requisite ability to deliver the full amount energy from the awarded capacity.<sup>20</sup>

Consistent with Section 8.10.2.2.3, the CAISO issued No Pay charges for certain Trading Days from July 24, 2006 through August 3, 2006 to rescind capacity payments related to the portion of MMC's capacity that could not load within ten minutes based upon the stated ramp rate for the generator.<sup>21</sup> On the dates in question, MMC bid its Facilities at a ramp rate value which was so slow that, applying the stated ramp rate, MMC's Facilities could not ramp up to the full capacity MMC bid within 10 minutes, as is required for both Spinning Reserve and Non-Spinning Reserve.<sup>22</sup> In accordance with the terms of CAISO Tariff Section 8.10.2.2.3, the portion of MMC's capacity that could not ramp up within ten minutes was deemed not dispatchable and was therefore unavailable to the CAISO as Spinning Reserve.<sup>23</sup> The capacity payments associated with MMC's capacity that would ramp up outside of the ten-minute mark were therefore rescinded through No Pay charges.<sup>24</sup>

Simply put, resources awarded Spinning Reserve are paid a capacity payment to compensate the Generating Unit for guaranteeing that the full amount of the awarded capacity is available to the grid under the specific operating characteristics required for the type of service. If the Generating Unit's operating characteristics differ from the requirements, it is not entitled to a capacity payment, and all or portion of that payment should be rescinded. That alone explains

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<sup>20</sup> See *Id.* at pp. 30-31 (quoting CAISO Tariff § 8.10.2.2.3). Specifically, Section 8.10.2.2.3 provides that: "The ISO shall calculate the real-time ability of each Generating Unit and System Unit to deliver Energy from Ancillary Services capacity awarded or self-provided for each Settlement Interval *based on its operational ramp rate as described in Section 30.4.6*, maximum operating capability, and actual telemetered output. If the Generating Unit or System Unit cannot deliver the full amount of Energy from the awarded or self-provided Spinning, Non-Spinning or Replacement Reserve for a Settlement Interval then Ancillary Services capacity payments for the amount of Energy that cannot be delivered for the particular Settlement Interval shall be rescinded." (emphasis added).

<sup>21</sup> See CAISO Answer at pp. 28-32 and Exhibit K, Declaration of Tiffany Borchardt.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at p. 31 and Borchardt Declaration at ¶ 9.

<sup>24</sup> MMC was paid for the portion of the capacity that was available and subject to dispatch.

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the No Pay charges at issue here. Thus, the No Pay charges are not the result of the Host/CT aggregation.

**B. The Commission’s Conclusion that the CAISO Should Not Be Permitted to Enforce No Pay Charges Against MMC for Trading Days At Issue in July and August 2006 Is Unjust and Unreasonable as it Grants MMC an Undue Advantage over Other Generating Units**

For the period prior to and including September 18, 2006, the CAISO did not rescind any payments to MMC for its failure to provide Spinning Reserve because of its operation of its facilities as Host/CT Aggregations.<sup>25</sup> Instead, the record shows that the CAISO applied No Pay charges in accordance with CAISO Tariff Section 8.10.2.2 based on the CAISO’s determination that MMC’s Facilities failed to meet the operational specifications for Spinning Reserve on the nineteen Trading Days in question.

CAISO Tariff Section 8.10.2.2 is the same Tariff authority the CAISO applies to all Generating Units, Curtailable Demand, System Units, and System Resources that are awarded Ancillary Services. Since this provision became effective,<sup>26</sup> the CAISO has applied its provisions routinely and uniformly to each of those types of resources in each Settlement Interval where an Ancillary Service obligation existed, and it has applied No Pay charges in each instance where the required operational specifications for that service were not met.

The Commission may not reach a conclusion that would contravene the Federal Power Act’s proscription against granting an undue preference or advantage.<sup>27</sup> The Commission’s finding that the CAISO may not enforce Section 8.10.2.2 of its Tariff and levy No Pay charges against MMC on or prior to September 18, 2006, is unjust and unreasonable in that it gives

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<sup>25</sup> MMC’s Facilities, when operated as a Host/CT Aggregation fail to provide Spinning Reserve because all of the capacity of the CT Units, which represents the vast majority of the Aggregations’ capacity, is off-line and not spinning. *See* Order at P 79.

<sup>26</sup> This provision was adopted in 1999 as CAISO Tariff Section 2.5.26, and was revised and renumbered as Section 8.10.2.2 through subsequent Tariff amendments.

<sup>27</sup> *See* 16 U.S.C. § 824d(b).

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MMC an undue preference over other generators participating in the ancillary services market. MMC gains an undue advantage because it will be paid in full for Spinning Reserve capacity that failed to meet operational specifications when other resources that failed to meet the requirements for the same reasons had their payments rescinded through No Pay charges. There is no factual basis in the record for paying MMC in full for deficient Spinning Reserve service. Further, there is no factual basis in the record for ignoring the failures of MMC's Facilities to meet operational specifications or treating those deficiencies differently than other resources. Accordingly, to avoid giving MMC an undue advantage, the CAISO must be permitted to assess No Pay charges against MMC as it has against other Ancillary Services market participants.

**III. CONCLUSION**

WHEREFORE, for the foregoing reasons, the CAISO requests that the Commission grant this Request for Rehearing and either determine that the CAISO properly assessed the No Pay Charges against MMC in July and August 2006 and deny MMC's claim for the amount associated with the July/August 2006 No Pay Charges or, alternatively, find that the parties raise issues of material fact regarding whether the CAISO validly assessed the July/August 2006 No Pay charges and set the issue for hearing.

Dated this 7<sup>th</sup> day of July, 2008

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served this day copies of the foregoing filing on the official service list compiled by the Office of Secretary in accordance with the Commission Rules of Practice and Procedure.

Dated at Washington, D.C. this 7<sup>th</sup> day of July, 2008.

/s/ Karin L. Larson

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