

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

**Wholesale Competition in Regions with) Docket Nos. RM07-19-000 and
Organized Electric Markets) AD07-7-000**

**MOTION FOR LEAVE TO SUBMIT REPLY COMMENTS AND
REPLY COMMENTS ON BEHALF OF THE CALIFORNIA
INDEPENDENT SYSTEM OPERATOR CORPORATION AND
THE CITIES OF ANAHEIM, AZUSA, BANNING, COLTON, AND
RIVERSIDE, CALIFORNIA**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 CFR §§ 385.212 and 385.213, the California Independent System Operator Corporation (“CAISO”) and the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (“Southern Cal. Cities” or “Cities”) hereby move for leave to submit the Reply Comments set forth in Part II hereof, to the extent leave is necessary, in response to portions of the “Comments of the California Department of Water Resources State Water Project,” filed on April 21, 2008 in the proceedings referenced above (“SWP Comments”). Specifically, the CAISO and the Cities oppose the portions of the SWP Comments that urge the Commission to mandate use of a time-sensitive rate design by all ISOs and RTOs for “all appropriate areas of non-market costs.” *See* SWP Comments at 33. As described in greater detail below, the portion of SWP’s Comments urging the Commission to mandate universal application of time-sensitive rates for non-market ISO/RTO costs constitutes a collateral attack on Commission determinations in four previous proceedings relating to the CAISO and should be rejected.

I. MOTION FOR LEAVE TO SUBMIT REPLY COMMENTS

The Commission's February 22, 2008 Notice of Proposed Rulemaking ("NOPR") in these proceedings does not provide a date for submission of reply comments. Nevertheless, it appears that answers to comments submitted in response to the NOPR are permitted under Commission Rule 213, 18 C.F.R. § 385.213. To the extent necessary, however, the CAISO and Southern Cal. Cities request permission to submit the Reply Comments set forth in Part II below and demonstrate that good cause exists for acceptance by the Commission of the Reply Comments. As discussed in greater detail below, the portions of the SWP Comments to which the CAISO and the Cities seek leave to reply constitute a collateral attack on Commission determinations in prior proceedings concerning the CAISO area. The SWP Comments do not even acknowledge those prior Commission determinations, much less explain why the Commission should reverse its previous decisions by adopting a policy mandating universal application of a time-sensitive rate design as urged by SWP. Acceptance of the CAISO/Cities' Reply Comments is necessary and appropriate to provide a complete record with respect to the application of the policy proposed by SWP in the context of the CAISO markets and therefore consistent with Commission precedent allowing submission of responsive pleadings that will complete the record or assist the Commission in its decision.¹

¹ *E.g.*, *Entergy Services, Inc.*, 116 FERC ¶ 61,286 at P 6 (2006); *Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,124 at P 11 (2006); *High Island Offshore Sys., L.L.C.*, 113 FERC ¶ 61,202 at P 8 (2005); *Tenn. Gas Pipeline Co.*, 92 FERC ¶ 61,009, at 61,016 (2000).

II. REPLY COMMENTS: THE COMMISSION SHOULD REJECT SWP'S PROPOSAL TO MANDATE UNIVERSAL APPLICATION OF TIME-SENSITIVE RATE DESIGNS IN ISO/RTO MARKETS.

At pages 3, 21-36, and 38-39 of its Comments, SWP urges the Commission to require all ISOs and RTOs to adopt time-sensitive pricing for all “appropriate” non-market costs. SWP’s Comments make clear that it views such appropriate non-market costs as including transmission access charges (*see* page 26) and reliability costs (*see* pages 34-35). In support of its proposal, SWP relies upon generalized assertions that infrastructure investment is driven by peak period usage and that recognition of cost causation principles therefore requires universal application of time-sensitive rates. (*See, e.g.,* SWP Comments at pages 31-32). Although SWP’s Comments cite to various Commission policy statements that it claims support its proposal (*e.g.,* at pages 26 n.50, 30 n.56) and to orders approving time-sensitive rate designs in some ISO/RTO areas (*e.g.,* at page 33), SWP disingenuously fails to acknowledge that the Commission has previously rejected its arguments for mandatory time-sensitive pricing for CAISO services.

First, at the inception of the CAISO, the Commission accepted a two part rate design for the CAISO, consisting of a volumetric access charge payable by all users of the CAISO Controlled Grid and a congestion usage charge applicable for use of specific congested transmission paths. *Pac. Gas & Elec. Co.*, 80 FERC ¶ 61,128, at pp. 61,428-29 (1997). In doing so, the Commission approved the proposed rate design even though SWP argued that the access charge must be time-sensitive to properly reflect cost

causation on the CAISO Controlled Grid. *See* Comments of the Cal. Dep't of Water Res. at 24-33, *Pac. Gas & Elec. Co., et al.*, Docket Nos. EC96-19-003, *et al.* (June 6, 1997).

Subsequently, in Docket No. ER97-2355-000, SWP proposed that the Southern California Edison Company ("SCE"), a Participating Transmission Owner in the CAISO, be required to utilize a time-sensitive rate design for its TO Tariff charges. The Initial Decision in that case rejected that proposal, and the Commission summarily affirmed that aspect of the Initial Decision. *S. Cal. Edison Co.*, 86 FERC ¶63,014, at p. 65,154 (1999), *aff'd in pertinent part*, 92 FERC ¶61,070, at p. 61,253 (2000).

In 2000, the CAISO filed with the Commission Amendment No. 27 to the CAISO Tariff, which proposed various modifications to the transmission access charge and led to extended proceedings in Docket No. ER00-2019-000 (the "TAC Docket"). In the TAC Docket, SWP again insisted that the access charge should have a time-sensitive rate design, again based upon generalized contentions that transmission costs for the CAISO grid are driven by peak usage. The CAISO, the Southern Cal. Cities, and other CAISO participants opposed SWP's rate design proposals in the TAC docket, presenting evidence that off-peak usage also contributes to transmission costs on the CAISO grid and that the CAISO's two part rate design (volumetric access charge plus congestion usage charge for use of congested paths) properly recovers the CAISO's costs. Again, the Commission rejected SWP's generalized assertions that recognition of cost causation requires a time-sensitive rate design for all transmission rates. *Cal. Indep. Sys. Operator Corp.*, 111 FERC ¶ 61,337, at PP 72-88 (2005). Instead, the Commission expressly relied upon record evidence demonstrating that off-peak as well as peak usage contributes to the need for expansion on the CAISO grid (*Id.* at P 79), concluded that the CAISO's

congestion usage charge was adequate to provide appropriate price signals (*Id.* at PP 78, 80), observed that the record indicated that only SWP would benefit from a time-sensitive access charge (*Id.* at PP 81-83), and rejected SWP's contentions that the CAISO's volumetric access charge is inconsistent with relevant precedent on cost causation principles (*Id.* at PP 85-88). SWP's petition for review of the Commission's orders in the TAC Docket is presently pending before the United States Court of Appeals for the Ninth Circuit in its Case No. 06-74506, and oral argument has been scheduled for June 5, 2008.

In Docket No. ER04-835-000, the Commission addressed CAISO proposals for allocation of Minimum Load Cost Compensation ("MLCC") associated with Must-Offer dispatches by the CAISO. SWP argued in that docket that CAISO reliability costs are driven by peak usage and therefore should be allocated pursuant to a time-sensitive rate design. The CAISO, the Southern Cal. Cities, and other participants opposed SWP's contentions, presenting evidence that the CAISO incurs Must-Offer related costs during off-peak periods as well as during peak periods. The Commission rejected SWP's contentions that proper recognition of cost causation principles requires a time-sensitive rate design for recovery of costs associated with Must-Offer dispatches. In *California Independent System Operator Corporation*, the Commission stated:

99. Among other arguments, in the instant rehearing request, SWP contends that economic considerations support its position that the MLCC costs should be allocated to on-peak hours and that failure to do so thwarts price signals and demand response. We disagree. While SWP's stated goals through its proposed on-peak allocation of MLCC costs are laudable, they are misplaced in the instant proceeding. MLCC costs are incurred to support reliability, and the allocation of those costs should be consistent with that.

100. In addition, the record indicates that the CAISO incurs MLCC costs in off-peak periods because of minimum run time requirements for generators committed under the must-offer obligation. The record also indicates that the CAISO may incur MLCC costs in off-peak periods, such as Sundays, depending on whether a contingency develops that would require the incurrence of MLCC costs. Furthermore, the CAISO has stated that it needs must-offer generation in off-peak periods and that must-offer generation is valuable 24-hours a day. Therefore, we continue to find that the CAISO's flat, non-time sensitive rate design for MLCC costs is just and reasonable.

121 FERC ¶ 61,193, at PP 99-100 (2007) (Footnotes omitted).

It is self-evident that the Commission's four previous orders rejecting mandatory time-sensitive pricing for the CAISO's transmission access charge and Must-Offer costs are inconsistent with SWP's renewed assertions in its Comments in these proceedings that cost causation principles and policies to encourage demand response require compulsory and universal implementation of time-sensitive rate designs for all ISO/RTO services. The Commission should not accept SWP's transparent attempt to make an end run around previous decisions that are based solidly on record evidence specific to the CAISO. Consistent with those prior decisions, the Commission should reject SWP's suggestion for mandatory time-sensitive pricing for all ISO/RTO services.

CONCLUSION

Wherefore, for the foregoing reasons, the CAISO and the Southern Cal. Cities respectfully urge the Commission to accept these Reply Comments, to reject SWP's proposal for mandatory time-sensitive pricing for all ISO/RTO services, and to adhere to

its previous decisions evaluating the appropriateness of time-sensitive rate design based upon the facts applicable in specific ISO or RTO areas.

Respectfully submitted,

Daniel J. Shonkwiler
151 Blue Ravine Road
Folsom, California 95630
916-351-4400

Bonnie S. Blair
Thompson Coburn LLP
1909 K Street, N.W.
Suite 600
Washington, D.C. 20006-1167
202-585-6900

_____/s/
Daniel J. Shonkwiler

_____/s/
Bonnie S. Blair

Attorney for the California Independent
System Operator Corporation

Attorney for the Cities of Anaheim, Azusa,
Banning, Colton, and Riverside, California

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