

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

California Independent System) Docket No. ER08-1508-____
Operator Corporation)

**MOTION TO FILE ANSWER AND ANSWER TO PROTESTS AND COMMENTS OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

On September 8, 2008, the California Independent System Operator Corporation (CAISO) submitted in the above-referenced proceeding before the Federal Energy Regulatory Commission (Commission) a filing (September 8 CRR Filing) to amend the current CAISO Tariff (CAISO Tariff) to modify provisions in its tariff relating to Congestion Revenue Rights (CRRs). The proposed tariff changes would enable the CAISO to implement the revised CRR allocation and process in time for a February 1, 2009, Market Redesign and Technology Upgrade (MRTU) *go live*. Parties submitted motions to intervene and comments. Only one party submitted a protest.¹

The CAISO does not object to any party's motion to intervene, and notes that several parties state their support of or lack of opposition to the September 8 CRR Filing in full or in part.² However, pursuant to Rule 213 of the Commission's Rules of Practice and Procedure,

¹ Motions to intervene were submitted by the following parties: the Alliance for Retail Energy Markets (AReM); City of Santa Clara, California d/b/a Silicon Valley Power (SVP); Modesto Irrigation District (MID); the California Department of Water Resources (CDWR); Pacific Gas and Electric Company (PG&E); Powerex Corp. (Powerex); Sacramento Municipal Utility District (SMUD); and Southern California Edison Company (SCE). In addition, SCE and CDWR filed comments and SMUD filed a protest, request for rehearing and suspension and motion to consolidate. The California Public Utilities Commission (CPUC) filed a motion to intervene out of time.

² Few parties actually found it necessary to intervene. AReM, SVP, MID, PG&E, and Powerex only filed interventions, with no comments or protests in opposition to the filing. SCE stated its overall approval of

18 C.F.R. § 385.213, the CAISO files its answer to the comments, and pursuant to Rules 212 and 213 of the Commission's Rules, 18 C.F.R. §§ 385.212, 385.213, the CAISO respectfully requests leave to file an answer, and files its answer, to the protests.³ CAISO also respectfully requests waiver of the fifteen day requirement under 18 C.F.R. § 385.213(d) and permit this answer to comments and protest one day after the fifteenth day after the last comment was filed. For the reasons explained below, the Commission should accept the September 8 CRR Filing without modification.

I. ANSWER

A. **The Change in Sequencing of the Tiers Does not Adversely Impact the Market and Enables CAISO and Market Participants to Meet a February 1, 2009 MRTU *Go Live* Date.**

In its September 8 CRR Filing the CAISO proposed a change in the sequencing of the tiers for the CRR allocation for 2009. The change is due to the application of both CRR Year One and CRR Year Two rules to the release of CRRs to be effective in 2009⁴ caused by the fact that the initial CRR process for 2008 did not release CRRs starting at the beginning of the year. Basically, the decision last year to release 2008 CRRs only for seasons two through four requires that CRRs for the first season of 2009 occur under CRR Year One rules, while that for seasons two through four will occur under the CRR Year Two rules. The proposed changes result in the implementation of the tier sequence as Tier 1, Tier 2, Tier LT and Tier 3,

the proposed changes. *See SCE Intervention and Comments* at p. 2. CDWR submitted comments requesting modifications to the process. SMUD is the only entity that protested the filing.

³ The CAISO requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to make an answer to the protests. 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. *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).

⁴ *See* the Transmittal Letter to the September 8, 2008 Filing at 8-10.

instead of the CRR Year Two type sequence that would otherwise apply to seasons two through four, *i.e.*, - Tier 1 (the Priority Nomination Tier (PNT)), Tier LT, Tier 2 and Tier 3. This change is necessary so that CAISO can conduct the entire allocation process in four discrete nominations submissions, simultaneous feasibility tests, and allocation rounds, rather than five. Under the circumstances, this proposed order is the most logical and least time-consuming option. Further, the change does not alter in any meaningful way the important aspects of the allocation rules, namely that the determination of which CRRs are eligible for nomination as Long-Term CRRs. For Season 1, which is being conducted under CRR Year One rules that require a source verified tier, participants may nominate Long-Term CRRs from among CRRs awarded in Tiers 1 and 2. In Seasons 2 through 4, which are being conducted under CRR Year Two rules that do not require a source verified tier and instead applies the PNT, Long-Term CRRs may only be nominated from the CRRs allocated in Tier 1 (PNT). Therefore, the change in sequence does not change the fact that for Season 1 participants can still nominate the CRRs obtained in Tiers 1 and 2 into Tier LT and in Seasons 2 through 4 only CRRs awarded in Tier 1 (the PNT) could be nominated into Tier LT, and in Seasons 2 through 4 only CRRs in Tier 1 (the PNT) could be nominated into Tier LT.

CDWR comments that the “re-sequencing and skipping some of the allocation process necessarily reduces key information and opportunities to market participants.”⁵ CDWR fails to show any such adverse impacts and mischaracterizes both the factual elements of the proposed changes in the sequencing and the impact of such changes. Contrary to CDWRs statements, the CAISO’s proposal does not skip any steps. All of the steps in Season 1 under the CRR Year One rules will be conducted as will all of the steps in the Season 2 through 4 under the CRR Year Two rules. CDWR also states that it is concerned over the change in the

⁵ CDWR Comments at p. 3.

tier sequence because “the reason behind running Tier LT immediately following Tier 1 in CRR Year Two (and beyond) is so Market Participants will know what they have received in Tier LT before they must formulate and submit nominations for Tier 2 and later Tier 3 of the annual process.” CDWR’s statement is not correct. First, under the proposed changes, CDWR will know its Tier LT awards prior to the running of Tier 3. Second, the logic behind the original specific sequences of tiers was to perform Tier LT immediately after the running the tier(s) that determine which CRRs are eligible for nomination in Tier LT,⁶ not that market participants would know what they received in Tier LT before submitting nominations for Tier 2 and Tier 3 of the annual process.⁷ In addition, while CDWR is correct that Tier 2 will run before Tier LT under the CAISO’s proposal, it is also true that participants already know that Tier LT nominations can only come from those CRRs allocated in Tier 1 (the PNT). In other words, for Seasons 2 through 4, once the first tier is allocated, Load Serving Entities will know the upper limit of what they can nominate into the Tier LT, even though the Tier LT does not come until after Tier 2 is conducted. Clearly, participants can and will adjust their nominations into the second and third tiers to obtain as many annual CRRs as may be necessary to cover their load given what they can anticipate to obtain in Tier LT.

⁶ See the Transmittal Letter to the September 8, 2008 Filing at 8.

⁷ The CAISO also notes that the original design issue with Long Term CRRs was whether to allocate Long Term CRRs in an entirely separate process or to embed the allocation of Long Term CRRs into the allocation process conditionally-approved by the Commission for short term CRRs. See, e.g., the testimony of Dr. Kristov filed on January 29, 2007 in Docket No. ER07-475-000, Exh. No. ISO-1 at pp 22-23. The CAISO considered having Tier LT be the first tier in both the CRR Year One and CRR Year Two allocation processes, but decided to place Tier LT after Tiers 1 and 2 in the CRR Year One process and after the PNT in Tier 1 for years subsequent to CRR Year One. The CASIO’s decision was per the Commission’s guidance that: (i) there might be advantages to harmonizing the rules for short-term and long-term rights to ensure that the rules encourage efficient nominations and equitable allocations, and (ii) to avoid the potential discriminatory treatment between load-serving entities (LSEs) that prefer short-term rights (i.e., Seasonal and Monthly CRRs) and load serving entities that prefer long-term transmission rights (i.e., Long Term CRRs). See the Transmittal Letter to the January 29, 2007 filing by the CAISO in Docket No. ER07-475-000 at 10.

The change in sequencing was introduced back in March of 2008 when the CAISO posted its paper to address CRR rule changes to accommodate the prior delay in MRTU implementation.⁸ In its May 30, 2008, filing, CAISO did not propose a tariff change because it did not believe the change in sequence materially changed the rights and obligations of market participants as evidenced by the complete lack of objection to this sequencing to accommodate the same issue at that time. Since the March timeframe, the change in sequencing was integrated in the CAISO CRR work plan and shared with stakeholders in each posting of the CRR timeline. Only when the new tariff changes to address the additional MRTU delay were stakeholdered in late summer did PG&E and CDWR even raise this issue.

Indeed, by the time this request was raised, the CAISO was dealing with the dilemma of trying to ensure that CRRs were released in time to for an early 2009 start of MRTU, while trying to address some of the challenges posed by the delay in MRTU implementation. The CAISO responded that even if it were to accommodate the change in sequence at that late stage, such action would unnecessarily put additional pressure on the allocation schedule, thereby threatening CAISO's ability to ensure that CRRs were allocated by early 2009. Contrary to CDWRs comments, this was not an attempt by CAISO to disregard concerns raised by participants; rather, CAISO was attempting to clearly stipulate the trade-offs of trying to accommodate the request at an extremely late date in the process. In any event, CAISO notes that although PG&E previously raised a concern regarding the sequencing, PG&E has not raised that issue in this proceeding. CDWR seems therefore to be raising this issue on behalf of another party who no longer is concerned about it.

⁸ <http://www.caiso.com/1fc9/1fc9dfbe2c470.pdf>
<http://www.caiso.com/1b8c/1b8cdf25138a0.html#1fc612d2713da0>

Finally, CAISO has gone to great lengths to vet issues with stakeholders and meticulously address all the various implications the MRTU implementation delay has on the CRR allocation process. CAISO recognizes that the stated stakeholder goals cannot always be fully satisfied. CAISO's decision making process has attempted to weigh *pros* and *cons* of each proposal in an attempt to provide the Commission and market participants with the most just and reasonable proposal in light of circumstances. CDWR has simply failed to demonstrate that it has been substantially harmed by this change and, more importantly, has failed to show that completely halting the CRR allocation and MRTU implementation schedule at this time in order to accommodate CDWR's re-sequencing request is a more reasonable approach. The Commission should accept the change in sequencing as filed and allow CAISO and its market participants to proceed with more certainty toward a February 1, 2009 MRTU *go live*.

B. Firm Transmission Rights Auction

SCE comments that, based on prior FTR auctions, it expects that it will take about four-months to implement another FTR auction. SCE requests that if the CAISO has not filed its 60 day MRTU readiness certification by December 1, 2008, the Commission should direct the CAISO to hold a stakeholder process to determine whether there is a need for an additional FTR auction. SCE also comments that the CAISO should consider the possibility of having to hold an FTR auction as part of a "contingency plan" in the event that the CAISO reverts back to the current market design after MRTU *go live*.

In the unlikely event that an MRTU readiness certification is not filed by December 1, 2008, the CAISO will consider the need for a new FTR auction and will coordinate with

stakeholders to finalize its conclusions. Any such stakeholder process the CAISO would conduct will by necessity be a short process.

Finally, pursuant to its MRTU reversion policy, within the first month after MRTU *go live* the CAISO has the ability to revert to operations under the existing CAISO Tariff if necessary. Therefore, the CAISO believes it is appropriate to assume that FTRs can continue to be in effect for up to one month after the expected MRTU *go live* date. This will be the case when MRTU begins on February 1, 2009, because FTRs were previously released for up to the end of March 2009.

C. Load Migration Dispute Resolution Process

SCE requests that the CAISO include in its Business Practice Manual (BPM) for CRRs a dispute resolution process in case Market Participants do not agree with the CAISO's determination of Load Migration accounts. The CAISO believes that its current dispute resolution mechanism process as reflected in Section 13 of its Tariff appropriately applies to all disputes. However, the CAISO has discussed with stakeholders the possibility of adopting more defined timing and procedural requirements to assist the parties in raising any such load migration disputes and ensuring resolution of such issues in a timely manner. The CAISO intends to develop such dispute procedures for load migration with its stakeholders and will include such procedures in its BPM for CRRs.

D. Request for Rehearing, Suspension and Motion to Consolidate.

The Commission must reject SMUD's misplaced request for rehearing, suspension and motion to consolidate the September 8 CRR Filing and the Integrated Balancing Authority Area filing in Docket No. ER08-1113. While it is not clear from its September 30 pleading which Commission order SMUD is requesting rehearing, it appears that SMUD is

requesting rehearing of the September 19, 2008, order issued in Docket ER08-1113. Notably, SMUD fails to even specify what specific errors the Commission may have committed in its September 19 order and the grounds on which rehearing should be granted.

In addition, SMUD requests that the Commission suspend this subject proceeding and consolidate it with the proceeding in Docket No. ER08-1113 because “the CAISO Still Has No Stable Model Either for Load Migration or CRR Nominations” and “Instead Its Tariff Proposals are Based on an Inflexible Determination to Have Tariff in Place Sufficiently before Feb. 1 to Allow Feb 1 MRTU Start Up Date, Notwithstanding the Lack of Assurance that Feb 1 Is Realistic Date.”

SMUD’s arguments regarding the load migration tool constitute speculative third party observations regarding the potential impacts that the proposed delay of implementing the load migration adjustments may have on other parties because, *as an out-of-balancing authority area load serving entity, SMUD itself is not subject to or affected by the application of the load migration adjustments* in any way, regardless of when such adjustments are made. Indeed SMUD has not participated in the working group that the CAISO and stakeholders formed to work on load migration issues. Seemingly their first involvement and interest in Load Migration is in this filing. Moreover, while SMUD has cited PG&E’s comments on the proposed delay that were made during the stakeholder process, PG&E itself has not raised these concerns with the Commission. In the CAISO’s opinion, the Commission cannot therefore conclude that PG&E still has these concerns nor does the CAISO believe that the Commission should consider them as part of the record in this proceeding. As is the case in all stakeholder processes, numerous issues are raised that are resolved or addressed by the time a proposal is filed with the Commission. It is appropriate and necessary that the

Commission rely on representations made by intervenors themselves and not pay “lip service” to second hand reports regarding some other party’s prior comments in the stakeholder process, given that the concerns previously raised during the stakeholder process may have been addressed to their satisfaction during the stakeholder process. PG&E is perfectly capable of stating their present concerns, if any, to the Commission. The Commission should not countenance SMUD’s claims as to what PG&E’s present position might be.

While SMUD is requesting consolidation of the CRR and IBAA proceedings, there is no need to do so because in its September 8 CRR Filing the CAISO did not propose any changes to tariff that impact IBAA provisions in any way. In addition, in the IBAA proceeding, CAISO addressed the issue of reconfiguring CRRs in the event of that an IBAA definition changes after the CRRs are allocated and the Commission has already approved that proposal, which the CAISO has since applied appropriately and consistent with the Tariff provisions. So there is no CRR/IBAA related issues that the Commission needs to address, thereby requiring consolidation of these two proceedings.

Lacking good reason to consolidate the two proceedings, SMUD attempts to create the impression that CAISO intentionally misinformed market participants regarding how the CRR sources and sinks were defined during the October 2007 CRR release process, to persuade the Commission that the CRR process must be halted and the IBAA decision must be reversed because of CAISO’s wrongdoings. CAISO did no such thing and took all reasonable measures to ensure that parties were fully informed of the CRR source and sink definitions during the October 2007 release process. In fact, the CAISO included in the CRR FNM that applied to the 2007 CRR release process the detailed model of the SMUD-TID network facilities and the pricing points for the multiple hub IBAA proposal. The model was made

available to all Market Participants that executed a Non-Disclosure Agreement through the CRR process in the July 2007 timeframe.

Subsequently, as fully documented in the IBAA proceeding, and in the Commission order issued on September 19, the CAISO proposed through its IBAA stakeholder process, a mechanism to allow parties to re-define their previously released CRRs in the event that the definition of the IBAA changed through the FERC-approval process. CAISO has since provided all market participants that had obtained CRRs at the affected CRR sources and sinks the opportunity to redefine their CRRs based on the now FERC-approved IBAA definition.

Equally important, because SMUD was actually privy to bilateral negotiations throughout the summer of 2007 regarding CAISO's then "Embedded and Adjacent Control Area" modeling and was actively involved in the IBAA proceeding at the Commission, SMUD's attempt to get an exclusive "bite at the apple" based on its claims that it had no knowledge that CAISO intended to implement the IBAA proposal strains credulity. Indeed, after bilateral discussions regarding the development of a modeling approach of embedded and adjacent control areas between SMUD and CAISO broke down, the CAISO specifically advised SMUD that the CAISO was going to proceed with the development of a modeling and pricing approach for embedded and adjacent control areas, and the CAISO specifically advised SMUD that regardless of how the CRRs were defined in the 2007 release process, it could be assured that settlement of market transactions would be consistent with settlement of the CRRs. Moreover, in a September 13, 2007 letter, CAISO again specifically assured SMUD that settlement of CRRs and the market would be consistent.⁹ SMUD's refusal to

⁹ Excerpt of September 13 Letter from CAISO to SMUD:

inform itself should not be the basis for a complete reversal of the policy approved in the IBAA proceeding or the CRR rules put in place over the past several years.

Nevertheless, SMUD asserts that it should retain the CRRs allocated at “Rancho” and “Lake” as if CRRs were actually released, and transactions in the market will be scheduled and settled at those locations. The simple fact is that, while the IBAA proposal evolved from the initial multiple-hub modeling approach to a single-hub modeling approach, the definition of CRR sinks at Rancho and Lake continued to be defined as sinking at the SMUD hub, regardless of the modeling approach. Thus, in SMUD’s case, reconfiguration does not make a difference. SMUD fails to recognize this fact and insists that it is being unfairly prohibited from retaining CRRs at “Rancho” and “Lake” – failing to mention that no such CRRs were ever released by CAISO in 2007. CAISO has repeatedly attempted to communicate this to SMUD as evidenced by the email by the CAISO representative to the SMUD representative as reported in footnote 4 of SMUD’s pleading.

SMUD erroneously implies that under the approved reconfiguration policy it should have been allowed to keep the settlement of CRRs at the Rancho and Lake points specifically and not the SMUD hub. SMUD misstates the reconfiguration policy adopted in the IBAA

Regardless of what pricing approach is determined to be appropriate under the ACA construct, the CAISO will ensure that the settlement of any CRRs obtained by SMUD through the CRR Allocation as a Qualified OCALSE as defined in the CAISO Tariff will be based on the final pricing and settlement solution for the SMUD ACA. For example, *if SMUD obtains a CRR with a CRR Sink at Tracy (Le., an export through Tracy) and the CAISO ultimately settles Tracy exports at the Tracy Intertie PNode, then the CRR would settle the CRR based on the Tracy Intertie PNode as the CRR Sink. On the other hand, if in resolving the ACA issue the CAISO finds that an export at Tracy is priced and settled based on the pricing location(s) (Le., the Aggregated Pricing Node) based on where Tracy schedules have been modeled at within the SMUD network model, then the export CRR obtained by SMUD with a CRR Sink as Tracy will also be settled at that same Aggregated Pricing Node.* Therefore, SMUD may be assured that *it has certainty its pricing settlement option ultimately adopted through the resolution of the ACA issue will not be inconsistent with its CRR settlement.* The CAISO notes that *as reflected in the CRR FNM when modeling: 1) nominations at the SMUD-CAISO Scheduling Point in the CRR nomination process; and 2) schedules at the same SMUD-CAISO Scheduling Point in the Day Ahead Market, the nominations/schedules will be mapped and distributed within the network model in a similar manner.*

proceeding. Section 36.14.2 as approved by the Commission specifically provides in relevant parts that:

To the extent an IBAA change, including the establishment of a new IBAA or a change to an existing IBAA, modifies the pricing for Settlement purposes of IFM scheduled transactions between the CAISO Balancing Authority Area and the IBAA, the Settlement of certain Previously-Released CRRs may no longer be consistent with the modified IFM Settlement. A CRR Holder of a Previously-Released CRR whose CRR Source or CRR Sink is affected by an IBAA change may make a one-time election either to *(a) modify the Settlement of the affected CRR Source or CRR Sink to conform to the revised IFM pricing associated with the IBAA change, or (b) retain the original CRR Source or CRR Sink specification of the Previously-Released CRR.* [emphasis added]

SMUD was provided to the opportunity to redefine its CRRs obtained in the October 2007 release process and it turns out that the “original ... CRR Sink specification of the Previously-Released CRR” is precisely the same definition as the SMUD hub.

Simply put, SMUD’s refusal to accept the Commission-approved IBAA proposal is in essence SMUD’s complaint in this CRR proceeding. As discussed above, there is simply no basis at this time to require that the CAISO halt its CRR release process in its efforts to launch the FERC-approved MRTU in February of 2009. Rather, SMUD and any other party not satisfied with the Commission’s September 19 IBAA order can safely avail themselves to the appeal process still open in that proceeding, without unnecessarily preventing CAISO to proceed with its implementation of MRTU.

E. Waiver of Sixty Day Notice Requirement

SMUD requests that the Commission deny CAISO’s request for waiver of the sixty day notice requirement because CAISO’s sole justification for the waiver is that it is working towards an MRTU go-live date of early 2009 and that it must commence its CRR allocation process in September 2008. CDWR similarly questions the appropriateness of such a waiver.

The Commission has previously articulated that it will “generally grant waiver of the 60-day prior notice requirement” where the filing will “reduce rates and charges -- such as rate decreases or new services that provide the customer of a utility with an opportunity to reduce its purchases of other, more expensive service from the same utility.”¹⁰ Contrary to SMUD’s assertions, good cause exists to grant the waiver because the proposed tariff changes will enable the ISO to implement the CRR release process in a timely manner to meet its stated goal of a MRTU *go live date* of February 1, 2009, thereby avoiding the increased costs to CAISO and its market participants associated with any unnecessary further delay of MRTU. Moreover, as evidenced by the virtually uncontested nature of this proceeding, *i.e.*, protests were limited to the single protest by SMUD, and as described in the September 8 CRR Filing and further described herein, the proposed tariff changes do not adversely impact market participants.

¹⁰ *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

II. CONCLUSION

For the reasons explained above, the Commission should accept the CAISO's September 8 CRR Filing without modification.

Respectfully submitted,

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Dated: October 16, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service list in the above-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 October, 2008.

/s/ Susan L. Montana
Susan L. Montana