UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	**)** **)**	**Docket No. ER12-2669-001**

REQUEST FOR REHEARING OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

The California Independent System Operator Corporation ("ISO") respectfully submits this request for rehearing of the Commission's November 19, 2012 order in this proceeding.[1] The ISO seeks rehearing solely with regard to the Commission's rejection of proposed tariff modifications to allow the ISO to procure resource adequacy maintenance outage backstop capacity as a new form of backstop procurement.

In the November 19 Order, rather than accepting the proposed backstop provisions, the Commission directed the ISO to use its existing capacity procurement mechanism ("CPM") authority to issue a significant event designation to procure the capacity needed to address a load serving entity's failure to meet its replacement requirement. The ISO submits that this would not be just and reasonable. As FERC would have the ISO apply the CPM significant event authority in this instance, the cost allocation of the designation would not follow cost causation principles and would not provide the appropriate incentives

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[1] *Cal. Indep. Sys. Operator Corp.*, 141 FERC ¶ 61,135 (2012) ("November 19 Order"). The ISO is sometimes referred to as the CAISO. Capitalized terms not otherwise defined herein have the meanings given in the Master Definitions Supplement, Appendix A to the ISO tariff.

to load serving entities that have a replacement requirement. In addition, to the extent that existing CPM authority provides a basis for the ISO to procure the capacity needed to address a load serving entity's failure to meet its replacement requirement, that authority is more appropriately found in the ISO's authority to address an insufficiency in a load-serving entity's monthly resource adequacy plan through a CPM designation under section 43.1.2(3) of the ISO tariff. The Commission should, therefore, grant rehearing of the November 19 Order and either revise the cost allocation for the CPM significant event designation to allocate the costs of the designation to the responsible load serving entity in the case of a failure to meet resource adequacy replacement requirements, or direct the ISO to treat a failure to meet a replacement requirement as equivalent to an insufficiency in a load-serving entity's monthly resource adequacy.

I. Background

On September 20, 2012, the ISO filed in this proceeding proposed tariff modifications to implement a replacement requirement as a new resource adequacy and outage management procedure, to become effective November 20, 2012. The purpose of the tariff modifications was to establish a replacement requirement that would allow the ISO to better coordinate maintenance outages at resource adequacy resources, while ensuring that sufficient resource adequacy capacity is available each day to meet forecasted load and maintain grid reliability. Under the proposal, a resource adequacy replacement obligation arises for a load serving entity if the ISO determines, under specified criteria, that resource adequacy capacity listed in the load serving entity's monthly resource

adequacy plan will not be operationally available to the ISO because of an approved maintenance outage during the month and the amount of resource adequacy capacity available for the ISO system during that outage is below 115% of the monthly forecast system peak. The tariff provisions establish a replacement requirement for resources that increases the likelihood that a request to schedule a maintenance outage during the month that the resource is providing resource adequacy capacity will be approved if the request includes equivalent replacement capacity; otherwise, a requested outage without replacement capacity may be accommodated during off-peak hours or upon short notice.

The September 20 tariff amendment additionally included provisions to permit the ISO to procure resource adequacy maintenance outage backstop capacity as a new form of backstop procurement that may be used for those days on which a resource adequacy resource will be off line for a maintenance outage for which the replacement need was not met. The ISO explained that the proposed backstop provisions were markedly different from the ISO's existing capacity procurement mechanism, were reasonable and appropriate, and were consistent with the settlement approved by the Commission in an earlier, separate proceeding to resolve all issues regarding the capacity procurement mechanism and the exceptional dispatch mitigation provisions of the ISO tariff.[2]

A number of parties filed comments and protests regarding the September 20 tariff amendment. The ISO filed an answer to the comments and protests on

[2] Transmittal letter for September 20 tariff amendment at 40-45.

October 22, 2012.

In the November 19 Order, the Commission accepted all of the ISO's proposed replacement requirement tariff modifications other than the backstop provisions. The Commission found that the ISO had not demonstrated that its proposed backstop procurement product was just and reasonable and not unduly discriminatory.[3] Specifically, the Commission concluded that the ISO had not shown that the proposed backstop procurement mechanism, which covers maintenance outages and provides designations for as little as one day, is a mechanism separate and distinct from the minimum designation term of 30 days under the ISO's existing capacity procurement mechanism authority.[4] Further, the November 19 Order found that the ISO had not demonstrated that a minimum designation term of one day provides just and reasonable compensation for backstop capacity procurement.[5]

II. Specification of Errors

In accordance with Rule 713(c)(1) of the Commission's Rules of Practice and Procedure,[6] the ISO respectfully submits that the November 19 Order erred in the following respects:

- The Commission erred in concluding that, given the cost allocation for the ISO's existing CPM significant event authority, using that authority to procure capacity as a backstop to address a load serving entity's failure to

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3 November 19 Order at P 70.

4 *Id.* at PP 70-72.

5 *Id.* at PP 70, 73.

6 18 C.F.R. § 385.713(c)(1) (2012).

meet its replacement requirement is just and reasonable.

- The Commission erred in concluding that the ISO's authority to procure capacity as a backstop to address an entity's failure to meet its replacement requirement derives from the ISO's existing CPM significant event authority rather than from the ISO's authority to address an insufficiency in a load-serving entity's monthly resource adequacy plan through a CPM designation under section 43.1.2(3) of the ISO tariff.

III. Statement of Issues for Rehearing Request

In accordance with Rule 713(c)(2) of the Commission's Rules of Practice and Procedure,[7] the ISO states that this request for rehearing raises the following issues:

- Whether the ISO's existing CPM significant event authority is a just and reasonable mechanism for addressing a load serving entity's failure to meet its replacement requirements, in light of the cost allocation of CPM significant event designations. *See, e.g.*, *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 528 (D.C. Cir. 2010); *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,229 (2008); *Cal. Indep. Sys. Operator Corp.,* 117 FERC ¶ 61,348 at PP 17-18 (2006).
- To the extent that existing CPM authority provides a basis for the ISO to procure the capacity needed to address a load serving entity's failure to meet its replacement requirement, that authority is more appropriately found in the ISO's authority to address an insufficiency in a load-serving

[7] 18 C.F.R. § 385.713(c)(2) (2012).

entity's monthly resource adequacy plan through a CPM designation. *See* ISO Tariff § 43.1.2(3).

IV. Request for Rehearing

A. Using the ISO's CPM Significant Event Authority to Address the Failure of a Load Serving Entity to Meet Its Resource Adequacy Replacement Requirement Would Result in an Unjust and Unreasonable Allocation of the Cost of the Designation.

In the November 19 Order, the Commission concluded that the ISO has not identified a distinction between its proposed resource adequacy backstop procurement mechanism and the backstop mechanism covered by the CPM except in the length of term it has proposed, and that the ISO should delete the backstop procurement mechanism from the proposed tariff provisions. In doing so, the Commission failed to recognize the distinct nature of the circumstances that give rise to the need for resource adequacy maintenance outage backstop procurement and the resulting fact that addressing that need through a CPM significant event designation, because of the cost allocation for that designation, would be unjust and unreasonable.

The use of the ISO's CPM significant event authority to address the failure of a load-serving entity to fulfill its replacement requirement would be unjust and unreasonable absent revision of the allocation of costs incurred under the ISO's CPM significant event authority. The ISO tariff allocates the costs of a CPM significant event designation to the TAC area on a load-ratio basis. Under the circumstances present here, such an allocation is inconsistent with a logical application of cost-causation principles. A specific load serving entity causes the need for replacement capacity by failing to meet a specific requirement under the

ISO tariff. The current CPM significant event cost allocation will force other load-serving entities in the affected TAC area, that have not failed in their tariff obligations and have played no part in creating the need, to share the costs. In light of these factors, a just and reasonable application of cost-causation principles requires the allocation of the costs to the specific load serving entity that caused the need for the for the CPM significant event designation.

The ISO recognizes that under cost-causation principles, it is permissible to allocate costs either to the entities that caused the cost incurrence or to the entities that benefit from the expenditure.[8] The ISO submits, however, that the applicability of these principles varies according to the circumstance. Allocating costs to beneficiaries is appropriate when it is not easy to determine the entities responsible for the cost incurrence or when allocating the costs to the entity that caused their incurrence would not provide a significant incentive to avoid the behavior that occasioned the cost.[9] Conversely, allocating costs to those that cause the incurrence of the costs is more appropriate when the cause can easily be traced to a specific entity and the allocation is necessary in order to discourage the behavior.[10]

Here, the basis for the ISO's proposed amendment is to discourage load-serving entities from disregarding their replacement requirement. That need is

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[8] *See, e.g., Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004); *Cal. Indep. Sys. Operator Corp.,* 103 FERC ¶ 61,114 at P 26 (2003).

[9] *See, e.g.*, *Midwest ISO Transmission Owners v. FERC*, 373 F.3d at 1368-71 (D.C. Cir. 2004); *Western Massachusetts Elec. Co. v. FERC*, 165 F.3d 922, 923, 927 (D.C. Cir. 1999).

[10] *See, e.g.*, *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 528 (D.C. Cir. 2010); *Cal. Indep. Sys. Operator Corp.,* 117 FERC ¶ 61,348 at PP 17-18 (2006).

not less when the ISO makes a designation under the ISO's CPM authority based on a load serving entity's failure to fulfill its replacement requirement. The proposed allocation of the resource adequacy maintenance outage backstop procurement mechanism served that purpose by allocating the costs of the backstop procurement to the load serving entity that failed to fulfill its replacement requirement. The current cost allocation of CPM significant event authority is wholly contrary to that purpose. Use of the ISO's CPM significant event authority to procure the needed capacity would provide incorrect incentives which would differ depending on the relative size the load serving entity. Under Tariff Section 43.8.5, the costs of a significant event CPM designation are allocated as follows:

> to all Scheduling Coordinators for LSEs that serve load in the TAC Area(s) in which the CPM Significant Event caused or threatened to cause a failure to meet Reliability Criteria based on the percentage of actual load of each LSE represented by the Scheduling Coordinator in the TAC Area(s) to total load in the TAC Area(s) as recorded in the CAISO Settlement system for the actual days during any Settlement month period over which the designation occurred.

Thus, under the significant event CPM cost allocation, if a load serving entity provides no replacement capacity for a resource adequacy resource scheduled to take a maintenance outage during the resource adequacy month and the ISO determines that there is a replacement need for that capacity, the load serving entity will cause the ISO to backstop the required replacement, which will allow the load serving entity to be able to impose a proportionate share of the replacement costs on other load-serving entities in the TAC area that did not in any manner contribute to the replacement need. Under these

circumstances, the only reasonable application of cost-causation principles dictates the allocation of costs to the entity that causes the incurrence of the costs by its failure to meet its obligations.

B. The Extent that Existing CPM Authority Provides a Basis for the ISO To Procure the Capacity Needed To Address a Load Serving Entity's Failure To Meet Its Replacement Requirement, that Authority Is More Appropriately Found in the ISO's Authority To Address an Insufficiency in a Load-Serving Entity's Monthly Resource Adequacy Plan.

Although the definition of significant event may include outages, as the Commission noted, the ISO submits that its CPM significant event authority is not the best source of its existing authority to make a CPM designation to address the failure of an entity to meet its replacement requirement. In the case of resource adequacy maintenance outage backstop procurement, it is not the outage that is the cause of the need for procurement, but rather the failure of the load-serving entity to replace the capacity that is in its monthly resource adequacy plan but that will be unavailable during the resource adequacy month due to an approved maintenance outage. Section 43.1.2 of the ISO tariff provides the authority to make a CPM designation to address insufficient resources in a load-serving entity's monthly resource adequacy plan. Under sections 43.8.2 and 43.8.4, the costs of such designations are allocated pro rata to each scheduling coordinator for a load-serving entity based on the ratio of the deficiency to the sum of the deficiencies in the TAC area or in the aggregate, according the nature of the shortage. Making the CPM designation under section 43.1.2 is thus both more logical and more consistent with cost-causation.

V. Requested Relief

The ISO submits that, for the reasons above, the Commission should grant rehearing and address the cost allocation concerns described above by approving one of the two options for relief suggested by the ISO, both of which effectively address the cost causation issue.

First, the Commission could direct the ISO to revise the cost allocation for the CPM significant event designation to allocate the costs to the responsible load serving entity in the case of a failure to meet resource adequacy replacement requirements. This is the ISO's preferred approach. If the Commission accepts this course, the ISO would waive any objection based on the fact that it did not propose a change to this cost allocation.

Alternatively, the Commission could direct the ISO to treat a failure to meet a replacement requirement as equivalent to the provision of insufficient resource adequacy resources in a load-serving entity's monthly resource adequacy plan and to make the CPM designation under section 43.1.2(3) of the ISO tariff, which permits CPM designations to address such insufficiencies. The ISO tariff allocates the costs of such designations to the relevant load-serving entity.

VI. Conclusion

For the reasons discussed herein, the ISO respectfully requests that the Commission grant rehearing of the November 19 Order and either revise the cost allocation for the CPM significant event designation to allocate the costs to the responsible load serving entity in the case of a failure to meet resource adequacy

replacement requirements, or direct the ISO to treat a failure to meet a replacement requirement as equivalent to an insufficiency in a load-serving entity's monthly resource adequacy plan and to make the CPM designation under section 43.1.2(3) of the ISO tariff.

Respectfully submitted,

By: *<u>/s/Beth Ann Burns</u>*

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Dated: December 19, 2012

CERTIFICATE OF SERVICE

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

Dated at Washington, D.C., this 19th day of December, 2012.

/s/ Michael E. Ward

Michael E. Ward