118 FERC ¶ 61,045
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation	Docket Nos. ER06-723-001, ER06-723-002 and ER06-723-003

ORDER ON REHEARING, CLARIFICATION AND COMPLIANCE FILING

(Issued January 22, 2007)

1. On May 12, 2006, the Commission issued an order in this proceeding (May 12 Order), accepting with modifications proposed tariff revisions filed by the California Independent System Operator Corporation (CAISO) to establish the Interim Reliability Requirements Program (IRRP). The purpose of the tariff revisions is to implement the resource adequacy programs being established by the California Public Utilities Commission (CPUC) and other Local Regulatory Authorities (LRAs) pursuant to Assembly Bill (AB) 380. The IRRP is intended to remain effective until implementation of the Market Redesign and Technology Upgrade program (MRTU).

2. Golden State Water Company (GSW), the Sacramento Municipal Utility District (SMUD), Imperial Irrigation District (Imperial), the California Department of Water Resources State Water Project (CDWR) filed timely requests for rehearing. Williams Power Company, Inc. (Williams), NRG Energy, Inc. (NRG), Reliant Energy, Inc. (Reliant) and Alliance for Retail Energy Markets (AReM) (collectively, Joint Movants) filed a timely joint request for rehearing, motion for clarification and motion for expedited action. The Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities) filed a timely motion for clarification and request for rehearing. This order grants clarification and denies rehearing, as discussed more fully below.

3. In addition, on June 12, 2006, as amended July 13, 2006 and July 20, 2006, the CAISO filed revised tariff sheets to comply with the May 12 Order (Compliance Filing).

The Commission accepts the Compliance Filing, subject to modification, as discussed herein.

Background

4. On March 13, 2006, the CAISO filed proposed revisions to its tariff to implement the IRRP. The IRRP adjusts the CAISO's existing operations to incorporate resource adequacy programs developed by the CPUC and other LRAs in accordance with state mandates. The IRRP proposal, among other things:

(1) Requires load serving entities (LSEs) and resource suppliers through their respective Scheduling Coordinators to provide information demonstrating compliance with resource adequacy requirements imposed by the CPUC or LRA, as applicable. The CAISO uses the information provided by the LSEs to make procurement decisions under its existing tariff authority.[1]

(2) Revises the current Commission-approved must-offer waiver denial (MOWD) process to establish a commitment priority for identified resource adequacy resources.

(3) Modifies the minimum load cost compensation (MLCC) for resource adequacy resources committed pursuant to a MOWD in recognition of the opportunity of those resources to receive revenue under bilaterally negotiated resource adequacy arrangements.

(4) Establishes deliverability tests for internal and imported resource adequacy resources.

5. The Commission accepted the IRRP tariff revisions, with modifications, in the May 12 Order. Among other things, the May 12 Order found that the proposed IRRP reporting requirements provided monthly and annual data needed to ensure the reliable operation of the CAISO grid, and did not raise jurisdictional regulatory concerns by interfering with the resource adequacy decisions and programs of the CPUC or other LRAs. The Commission also found the CAISO's use of a default planning reserve margin of 15 percent as input for assessing system-wide adequacy to be reasonable and

[1] Under the Reliability Capacity Services Tariff (RCST), as proposed in Docket No. EL05-146-000, the CAISO will make RCST designations on behalf of LSEs that are short of meeting either local or system requirements established by either the CPUC or other LRAs.

necessary to ensure the reliable supply of energy at reasonable prices. The May 12 Order required the CAISO to make a compliance filing within thirty (30) days of the date of the order.

6. Notice of the Compliance Filing was published in the *Federal Register*, 71 Fed. Reg. 36,331 (2006), with protests and interventions due on or before June 26, 2006. Six Cities and GSW filed timely responsive pleadings.

Discussion

A. Requests for Rehearing of the May 12 Order

1. Applicability of the IRRP to CDWR and GSW

7. With respect to the nature and applicability of IRRP requirements, the CAISO proposed to require that CDWR develop, in cooperation with the CAISO, a program that ensured it will not unduly rely on the resource procurement practices of electric utilities serving retail loads. The May 12 Order rejected the proposal on the ground that there is no basis for exempting CDWR from the IRRP.

8. With respect to GSW, the CAISO proposed to exempt GSW from the requirements of the IRRP until the CPUC promulgates requirements for smaller investor owned utilities (IOUs) such as GSW. The May 12 Order rejected the CAISO's proposal to exempt GSW, finding no basis for such exemption.

Rehearing Requests

9. CDWR argues that the May 12 Order improperly imposes resource adequacy power purchasing requirements upon CDWR. According to CDWR, because California statutory law exempts CDWR from resource adequacy requirements, the Commission should accept the CAISO's proposal to exempt CDWR from the definition of LSE and allow CDWR to develop, in cooperation with the CAISO, a program that ensures it will not unduly rely on the resource procurement practices of LSEs.

10. CDWR further asserts that it does not fall within the legal definition of "Load Serving Entity" because it is not an electric utility serving retail end users, but rather is a multi-purpose water project with distinct operations. CDWR contends that the Commission fails to follow or reconcile Federal and State law regarding treatment of CDWR for purposes of the LSE definition and resource adequacy. According to CDWR, under AB 380, which the May 12 Order and this CAISO tariff reference as authority for CAISO resource adequacy, CDWR and behind-the-meter load are exempted, and just as the May 12 Order found it appropriate to accept the CAISO's proposal to accord different

IRRP treatment for metered subsystems (MSS) and behind-the-meter load, so too should it have accepted the CAISO's proposal to afford different IRRP treatment for CDWR. CDWR states that the May 12 Order's selective acknowledgement of AB 380, ignoring that statute's exemption for CDWR, cannot be reconciled with Energy Policy Act directives requiring deference to State law in matters of "adequacy and reliability of electric service within that State."

11. CDWR also argues that state law specifically exempts it from resource adequacy requirements. It claims that its pump loads are to pump water and not to serve retail load; thus it is not an LSE for resource adequacy purposes. CDWR further argues that the May 12 Order fails to address CDWR's explanation that including CDWR in this definition makes no sense whatsoever. As explained above, CDWR is not an electric utility, does not serve retail load, and thus is not among "(1) any entity serving retail load under the jurisdiction of the California Public Utilities Commission . . . ; and (2) all entities serving retail load. . . . not within the jurisdiction of the CPUC. . ." specified in the § 40.1 definition. Moreover, with respect to CDWR, the definition selectively fails to apply the express language of AB 380 referenced throughout § 40.1. Finally, CDWR claims that it is not regulated as a power purchaser under the FPA, and is generally exempted from FPA regulation under FPA section 201(f).

12. CDWR contends that Commission precedent supports the treatment of CDWR loads as proposed by the CAISO. CDWR states that the New England ISO tariff provides that "Loads associated with pumping of pumped hydro generators, if the resource was pumping," are "exempt from the Unforced Capacity requirements and are assigned a peak contribution of zero for the purposes of assigning obligations and tracking load shifts."[2] CDWR asserts that contrary to the treatment provided here, the ISO New England tariff contains no reporting requirements of the sort the May 12 Order would impose upon CDWR, nor even the coordination and consultation CDWR will voluntarily perform to assure the CAISO that it is not leaning on other entities.

13. CDWR asserts that the May 12 Order is inconsistent in its application of resource adequacy requirements to various entities. CDWR argues that the May 12 Order unduly discriminates against CDWR in favor of behind-the-meter load and MSS entities. In this regard, CDWR claims that the Commission's determination to minimize the reporting burdens of MSS entities, while providing the CAISO the information it needs to administer the overall IRRP, and the applicability of the IRRP to on-site generation, tank

[2] CDWR request for rehearing at 13 (citing *New England ISO, Inc.*, FERC Electric No. 3, Market Rule 1, Original Sheet No. 7238 (2005)).

farm load, de minimis load, small LSEs and federal entities, unduly discriminates against CDWR.

14. CDWR states that its operational characteristics warrant special treatment under the IRRP. CDWR argues that it is in fact unique because unlike other loads subject to resource adequacy requirements, to the maximum extent possible, CDWR operates its massive dispatchable pump load in off-peak periods. According to CDWR, its load (approximately 2000 MW) and generation (also approximately 2000 MW) provide considerable reliability support to the grid, including voltage support and a remedial action system that supports the capacity of Paths 15 and 66.

15. CDWR asserts that contrary to the May 12 Order's conclusion that there is "no basis for exempting CDWR from the requirements of the IRRP," the proposal did not exempt CDWR, but rather required that CDWR coordinate with the CAISO to establish that CDWR did not lean on other entities' resources. Finally, CDWR asserts that the May 12 Order undermines the stakeholder process and does not provide justification or explanation for doing so.

16. GSW argues that the Commission's rejection of the CAISO's proposal for temporarily exempting GSW until the CPUC completed its pending proceedings to establish such requirements for small IOUs like GSW was contrary to law, because the Commission did not find that the CAISO's proposed "rule, regulation, [or] practice … affecting such … classification" of GSW was "unjust, unreasonable, unduly discriminatory or preferential," and absent that finding, the Commission exceeded its authority by substituting its preferred interim reliability requirements for the CAISO's proposal. GSW asserts that the Commission lacks the authority to impose indirect resource adequacy requirements by requiring the CAISO to apply the IRRP to GSW as if the CPUC had adopted such requirements for GSW. According to GSW, the Commission exceeded its authority by extending existing CPUC resource adequacy requirements to GSW before a CPUC decision on these matters. GSW argues that the Commission's rejection of the CAISO's proposal for temporarily exempting GSW from the IRRP, to the extent it rested on findings of fact, was not based upon substantial evidence. Further, GSW asserts, the Commission did not provide a reasoned basis for its decision to second-guess the CAISO and CPUC's phased implementation of resource adequacy requirements for smaller IOUs such as GSW.

17. GSW further argues that the Commission lacks the authority to implement resource adequacy requirements on CPUC-regulated utilities which exceed those adopted by the CPUC. GSW asserts that under FPA section 201(b)(1), the states, rather than the Commission, have jurisdiction over facilities used for the generation and local

distribution of electricity.[3] GSW points out that, while the Commission claims it has not usurped this authority, it has, in fact rejected the CAISO's proposal to follow the CPUC's phased implementation of its resource adequacy program for CPUC-jurisdictional IOUs. GSW states that while the Commission is entitled to consider non-jurisdictional issues like generation resource adequacy when considering interstate transmission of electrical energy, the Commission cannot exercise authority over a state legislature directive to the state regulatory commission. GSW objects to the Commission's "regulatory gap" argument[4] stating that the FPA was designed to supplement, not supplant, state regulatory authority. GSW further explains that the FPA does not give the Commission the authority to encroach upon CPUC's jurisdiction by second-guessing the CPUC's decision to phase its implementation of state resource adequacy requirements.

18. GSW further contends that the May 12 Order improperly ruled under section 206(a) of the FPA. GSW argues that the Commission did not find that the CAISO's proposal to afford a temporary exemption for GSW from the IRRP was "unjust, unreasonable, unduly discriminatory or preferential." Hence, in GSW's view, the Commission did not satisfy the condition precedent to an order modifying the CAISO's proposed rule, regulation, or practice, and directing the CAISO to impose the IRRP on GSW.[5] GSW further argues that the Commission lacks the statutory authority to require the CAISO to file an IRRP of the Commission's choosing, unless the Commission first finds that the CAISO's IRRP is unjust, unreasonable, unduly discriminatory, or preferential.[6]

19. GSW explains that the Commission's justification for denying permanent exemptions to CDWR and Western Area Power Administration (WAPA) should not be applied to GSW, which sought a temporary exemption. In addition, GSW states that the Commission should not usurp the CAISO's determination to temporarily allow GSW to be exempt from the IRRP provisions until the CPUC creates resource adequacy rules for smaller IOUs such as GSW. GSW also argues that the Commission was incorrect in

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[3] GSW request for rehearing at 14 (citing 16 U.S.C § 824(b)(1)).

[4] GSW request for rehearing at 15 (citing *Altamont Gas Transmission Co v. FERC*, 92 F.3d 1293, 1246-48 (D.C. Cir. 1996)).

[5] GSW request for rehearing at 17 (citing *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002); *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1578-80 (D.C. Cir. 1993)).

[6] GSW request for rehearing at 17 (citing *Atlantic City Elec. Co.*, 295 F.3d at 10).

finding that the CAISO's reasoning for temporarily exempting GSW was inconsistent with respect to its requirement that all other LSEs comply with the IRRP. GSW explains that this temporary exemption was not inconsistent, and explains that the CAISO proposed to exclude CDWR from the definition of LSE in favor of adopting specially-tailored rules. Regardless of the fact that the Commission rejected the CAISO's proposal to work with CDWR on a mutually beneficial plan, GSW argues that the CAISO cannot be accused of inconsistently favoring GSW by affording it a temporary exemption. GSW further indicates that the Commission accepted the alternative requirements the CAISO proposed for MSSs. GSW states that the CAISO's decision to provide GSW with a temporary exemption was in line with the other exemptions afforded to CDWR and the MSSs, and therefore cannot be rejected.

20. GSW argues that the lack of CPUC resource adequacy requirements for smaller IOUs, such as GSW, will result in confusing reporting requirements for GSW and its scheduling coordinator. For example, according to GSW, section 40.3(a) of the CAISO tariff requires that for CPUC-regulated LSEs, the required demand forecast is "the Demand Forecast required by the CPUC." GSW states that the CPUC has no such requirement for GSW at this time. GSW states IRRP Tariff section 40.3(c) further complicates matters by requiring GSW to use a monthly non-coincident peak demand forecast in its service area, which may overstate GSW's resource adequacy requirements by a large percentage. GSW further asserts that there are a number of uncertainties relating to GSW's qualifying capacity requirements under sections 40.5 or 40.12 of the CAISO Tariff.

21. Finally, GSW argues that the lack of resource adequacy requirements for smaller IOUs creates uncertainty regarding penalties for noncompliance. GSW is concerned that the CAISO will report any resource adequacy deficiencies by CPUC jurisdictional entities to the CPUC for enforcement, and may take enforcement action of its own, or refer the issue to the Commission as a potential violation of its market rules. GSW argues that the IRRP cannot expand the CAISO or Commission's authority to enforce non-existent CPUC resource adequacy requirements.

Commission Determination

22. We deny the rehearing requests of CDWR and GSW. In our prior order, we noted that the CAISO has the responsibility to ensure the reliability of the transmission system under its control. Further, we found that the IRRP, applicable to LSEs, is essential to the reliable operation of the CAISO-controlled grid and the maintenance of just and reasonable wholesale prices pursuant to FPA section 205. The CAISO failed to explain why the exemption of CDWR and GSW would not hamper its ability to operate the grid reliably. Without such an explanation, we cannot find that the proposed exemptions are just and reasonable.

23. Where an interconnected transmission system is operated on a regional basis as part of an organized market for electricity, as in California, all users of the system are interdependent, particularly with respect to reliability, *i.e.*, one participant's reliability decisions can impact the reliability of service available to other participants and the related costs the other participants must bear. As noted above, the Commission must act to ensure that rates for jurisdictional services provided in such an interconnected system remain just and reasonable and not unduly discriminatory or preferential pursuant to sections 205 and 206 of the FPA. We find that, in situations where one party's resource adequacy decisions can cause adverse reliability and cost impacts on other participants in a regionally operated system, it is appropriate for us to consider resource adequacy in determining whether rates remain just and reasonable and not unduly discriminatory.[7]

24. In this regard, we note that CDWR is the largest single power consumer and the largest user of the transmission grid in California.[8] Any exemption of CDWR from the IRRP could significantly hamper the CAISO's ability to reliably operate the grid. While CDWR may not be like traditional LSEs, its load and use of the transmission grid are similar to traditional LSEs; therefore it is not inappropriate to include CDWR within the definition of LSE. Therefore, we find that CDWR should be included in the definition of LSE and subject to the IRRP requirements.

25. CDWR argues that it does not meet the definition of LSE under the CAISO tariff. However, this assertion is inconsistent with the revision to section 40.1 that the CAISO proposed in its Answer. The proposed revision exempts CDWR from the definition of LSE but requires that CDWR develop, in consultation with the CAISO, a program that ensures it will not unduly rely on the resource procurement practices of "other Load Serving Entities."[9] If CDWR is not within the definition of LSE, the CAISO would not have needed to revise its proposal to provide for an exemption. CDWR asserts that the proposed revision is the result of discussions between the CAISO and CDWR in the stakeholder process. While we encourage parties to engage in the stakeholder process to resolve issues, we may at times find the result may not have been shown to be just and reasonable, as we find in this case. We further note that in the MRTU proceeding,[10] the

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[7] *See California Independent System Operator Corp.*, 116 FERC ¶ 61,274 at P 1113 (2006) (MRTU Order).

[8] Affidavit of Michael Werner at 3.

[9] CAISO Answer at 17.

[10] Docket Nos. ER06-615-001 *et al.*

CAISO stated that it believes the definition of "Load Serving Entity" appropriately includes CDWR. We accepted this proposal in the MRTU Order. Given that CDWR will be required to comply with resource adequacy and reporting requirements under MRTU, we find that as a practical matter, there is no compelling reason to treat CDWR inconsistently with respect to the IRRP. We found in the MRTU Order that it would leave a significant hole to have five percent of the CAISO load unaccounted for, and thus, the definition of LSE appropriately includes CDWR.

26. While CDWR argues that it does not fall within the traditional definition of an LSE under the state and Federal statutes, for purposes of its tariff, the CAISO can propose and support a revised definition of LSE as it believes is appropriate. However, in the instant case, we find that the CAISO's revised proposal to exclude CDWR from the definition of an LSE for purposes of the IRRP is not adequately supported and would lead to an unjust and unreasonable result, as discussed herein. We also find that under the IRRP, CDWR is its own LRA and therefore can establish its own planning reserve margin and determine how it will meet its reserve requirements, including counting curtailable load towards resource adequacy requirements. The CAISO is responsible for ensuring the reliability of the grid as a whole and will use the information reported by CDWR and other LSEs to fulfill its obligations in this regard.

27. CDWR asserts that the May 12 Order, in granting modified reporting requirements to MSS entities, unduly discriminates in favor of MSS entities. The revisions to tariff sections 40.2.1, 40.2.2, and 40.6., accepted in the May 12 Order, modify the reporting and information provision requirements of MSS entities, rather than the applicability of the IRRP to such entities. CDWR's arguments, in contrast, concern the extent to which it is required to have a resource adequacy plan in place, rather than whether its circumstances warrant modified reporting requirements. Therefore, we find without merit CDWR's arguments that the May 12 Order unduly discriminates in favor of MSS entities.

28. With regard to CDWR's argument that the May 12 Order unduly discriminates against CDWR in favor of behind-the-meter load, we point out that the IRRP sets forth certain requirements that behind-the-meter load must meet in order to be excluded from the definition of LSE. For behind-the-meter load to be excluded from the definition, it must, for example, take standby service that provides for adequate backup planning and operating reserves or be connected to the grid in such a way that when the customer's generator fails, backup electricity is not supplied to it from the grid. CDWR has not demonstrated, nor does it argue, that its load is physically and operationally similarly situated to behind-the-meter load that is excluded from LSE definition. Therefore, including CDWR in the definition of LSE is not discriminatory.

29. We also find without merit CDWR's argument that the May 12 Order fails to reconcile our findings here with the treatment of pump loads under the New England ISO tariff. The New England ISO tariff provisions cited by CDWR pertain to loads associated with pumping of pumped hydro generators. However, not all of CDWR's pump loads are associated with pumped hydro generation and serve only to increase demand on the CAISO-controlled grid. Pumped hydro generation pumping load can be reduced or turned off when needed to free up generation capacity. In contrast, CDWR pump load operations are constrained by water delivery obligations[11] and do not have the same flexibility as pumped hydro generation. We thus find that, consistent with our findings that CDWR's load and use of the transmission grid are similar to traditional LSEs, the IRRP requirements should apply to CDWR.

30. With respect to GSW's assertion that smaller IOUs regulated by the CPUC should be exempted from IRRP requirements, we find that GSW offers no new arguments that persuade us to revisit our conclusions in the May 12 Order. All LSEs, including those that do not represent significant numbers of customers, must bear their fair share of the reserve obligation.[12]

31. GSW argues that it only sought a temporary exemption from the IRRP until such time as the CPUC promulgates resource adequacy requirements applicable to GSW, whereas WAPA and CDWR sought a permanent exemption. As GSW itself acknowledges, the CPUC is expected to promulgate resource adequacy requirements applicable to GSW and other smaller IOUs regulated by the CPUC in the near future. In this regard, GSW is similarly situated to LSEs not regulated by the CPUC which are required to comply with the IRRP pending the approval of resource adequacy plans by their respective LRAs. Thus, the application of the IRRP to GSW and other smaller IOUs is consistent with the application of the IRRP to LSEs not regulated by the CPUC.

32. With regard to GSW's contentions that, unlike LSEs not regulated by the CPUC, it is unable to determine for itself the appropriate resource adequacy requirements for its service area and that it is unclear as to how the reporting requirements would apply to GSW, the IRRP, as accepted, accommodates these concerns as they relate to municipals and federal entities. Under the IRRP, in order to avoid any unnecessary use of the default criteria, the CAISO will accept the resource adequacy program of a municipal or federal entity that is proposed to its governing board even if it has not been expressly approved by the LRA. In light of the concerns expressed by GSW, we direct the CAISO to

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[11] Werner Affidavit at 7.

[12] *See California Independent System Operator Corp.*, 116 FERC at P 1142.

similarly accept a resource adequacy plan proposed by GSW to the CPUC or that is being considered by the CPUC. In the May 12 Order, we encouraged the CAISO to work with the municipal community to develop an acceptable reporting template that meets the business needs of both the CAISO and the municipal community. We will likewise encourage the CAISO to work with GSW to develop an acceptable reporting template that meets the needs of GSW and the CAISO for use until such time as the CPUC implements resource adequacy requirements for GSW and other smaller IOUs regulated by the CPUC.

33. We note that unlike in MRTU, the IRRP is essentially an information sharing requirement in that there are no per se penalties for an LSE's failing to be resource adequate. Under the IRRP, the CAISO will not acquire capacity for entities that are not resource adequate and assign cost responsibility. With regard to the GSW's concerns about the IRRP's enforcement provisions, the CAISO explained in its Answer[13] that it agrees that the CPUC is responsible for enforcement of the resource adequacy requirements that apply to CPUC-jurisdictional entities. The CAISO explained that, should the CPUC for some reason direct LSEs to refuse to provide the CAISO with resource adequacy plans, proposed sections 40.2.1 and 40.2.2 permit them to do so such that the form of the submission to the CAISO would be blank. According to the CAISO, the penalty for failing to provide information does not create a de facto obligation on the CPUC or its jurisdictional LSEs to provide the information to the CAISO in perpetuity. The CAISO will only enforce the timing and accuracy of the information provided as directed by the tariff in accordance with the existing Enforcement Protocol. The CAISO acknowledged in its Answer that the CPUC is the sole arbitrator of whether LSEs subject to its jurisdiction are in compliance with the CPUC's requirements.

2. Obligation to Offer Available Capacity

Request for Rehearing

34. Imperial requests rehearing on the grounds that the IRRP impermissibly requires resource adequacy resources of non-jurisdictional governmental entities to offer to sell all of their available generation to the CAISO even if that generation is not designated as resource adequacy capacity. To remedy this perceived problem, Imperial requests that the definition of "Available Generation," i.e., generation subject to resource adequacy must-offer obligation, be modified to subtract from available generation the capacity that is committed by contract to a co-owner or customer serving load outside the CAISO control area.

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[13] CAISO April 19, 2006 Answer at 54.

35. Imperial contends that the May 12 Order negatively impacts the reliability of the CAISO's neighboring control areas by trapping generation in the CAISO control area and limiting export availability. Imperial further argues that the May 12 Order extends the current must-offer obligation and unlawfully applies it to governmental entities. Imperial asserts that the May 12 Order ignores that in the CAISO proposal for MRTU in Docket No. ER06-615-000, the CAISO is proposing changes to its tariff "that would halt exports."

36. Finally, Imperial requests that the Commission direct additional changes to the tariff to remove what Imperial characterizes as "redundant Commission-imposed must offer requirements." If the Commission does not remove the Commission-imposed must-offer obligation now, Imperial urges that the Commission ensure that the IRRP be implemented in a manner that does not impair the contractual rights of power purchasers serving loads outside the CAISO's control area.

Commission Determination

37. We deny Imperial's request for rehearing for the following reasons. Imperial is concerned, incorrectly, that the IRRP impairs the rights to generation capacity of entities outside the CAISO control area. Imperial overlooks the fact that the starting point for calculating available generation is resource adequacy capacity, i.e., capacity from a generator that has been contracted for resource adequacy and is designated as such by a load serving entity and by the generator. Therefore, the IRRP does not impose a resource adequacy must-offer obligation to any capacity from a generator that is not resource adequacy capacity.

38. With regard to import capability allocation proposed under the IRRP, we point out that this import allocation is for the purpose of limiting the amount of generation LSEs in CAISO are allowed to count towards their resource adequacy requirement. Allocation of export capacity is not germane to resource adequacy requirements within the CAISO. However, to the extent that Imperial's LRA adopts resource adequacy rules that limit how much exports from the CAISO can be counted toward Imperial's resource adequacy requirements, Imperial is free to collaborate with the CAISO and other stakeholders to develop a tariff proposal for the allocation of export capacity.

39. We deny Imperial's request to terminate the must-offer obligation. The IRRP is not a replacement for the must-offer obligation. The IRRP only applies, on an interim basis, to a subset of resources that are subject to must-offer obligation and establishes unit commitment priority and minimum load cost compensation for resource adequacy resources. Moreover, the IRRP does not affect the contractual rights of power purchasers serving load outside the CAISO's control area and Imperial has not pointed to any

provision of the IRRP that does so. Any issues concerning exports under MRTU should be raised in that proceeding.

3. Submission of Supply Plans

Rehearing Request

40. Imperial requests that the Commission provide access to confidential data so that Imperial can verify and ensure that generation capacity committed to Imperial is not being designated inaccurately by others as available to serve the CAISO load.

Commission Determination

41. We deny Imperial's request for rehearing. As we stated in the May 12 Order, market-sensitive data submissions such as annual and monthly resource adequacy plans should be afforded confidential treatment.[14] In addition, the CAISO will compare the resource adequacy plans filed by LSEs against resource plans filed by generators to ensure that there is consistent reporting on both sides and will notify the scheduling coordinators for the LSE and the generator if the information submitted by each half of the transaction doesn't match. Hence, a generator can contest an inaccurate designation by an LSE.

4. Recovery of Minimum Load Costs by Resource Adequacy Resources

Requests for Rehearing and Clarification

42. Joint Movants seek rehearing of the May 12 Order's determination regarding the compensation received by generating units that sell part of their capacity under a resource adequacy contract (partial resource adequacy resources). In the IRRP filing, the CAISO proposed that a resource adequacy resource, unlike a FERC must-offer resource, will not be paid for both minimum load cost and for imbalance energy produced while operating at minimum load. Thus, while the CAISO proposed to guarantee MLCC recovery for resource adequacy resources, it also proposed to eliminate the imbalance energy payment currently paid to must-offer resources when those resources are called upon by the CAISO and operate at minimum load. In the May 12 Order, the Commission approved the CAISO's proposal in this regard.

[14] May 12 Order at P 138.

43. Joint Movants argue that the MLCC recovery for resource adequacy resources is insufficient because it eliminates the imbalance energy payment currently paid to must-offer resources when those resources are called upon by the CAISO and operate at minimum load. Joint Movants state that resource adequacy resources should receive the imbalance energy payment in order to encourage generators to offer their capacity for resource adequacy contracts to small LSEs.

44. Joint Movants state that a rational generator will not enter into a resource adequacy contract that potentially leaves it in a worse financial position vis-à-vis the must-offer obligation than it would be had it not entered into the contract. According to the Joint Movants, the practical effect of this rational business judgment is that small LSEs seeking to purchase small amounts of capacity will bear a disproportionate share of the financial risk created by the elimination of the imbalance energy payment because rational generators are naturally discouraged from offering their units for resource adequacy contracts unless they can (1) sell the entire unit, or a large portion of the unit, or (2) the buyer is willing and able to cover the generator's risk of losing the fixed cost contribution under the must-offer obligation. Since small LSEs often do not require such substantial capacity, and because they may find that covering such generator risk is prohibitively expensive, they will encounter difficulty in satisfying their resource adequacy obligations.

45. Joint Movants request that the Commission grant rehearing of the May 12 Order and direct that a partially-contracted resource adequacy resource shall continue to receive an imbalance energy payment while operating at minimum load pursuant to the must-offer obligation in proportion to the uncontracted capacity of the unit. This solution would eliminate the risk that a generator faces when dealing with small LSEs that require only a small portion of a unit's capacity to meet their resource adequacy obligations (which may or may not be greater than the unit's minimum operating level), and it would eliminate the difficulty that small LSEs may encounter when attempting to secure sufficient capacity to meet their resource adequacy obligations.

46. In addition, Joint Movants seek clarification regarding the May 12 Order's finding that "as the CAISO points out, a generator should not enter into a resource adequacy contract for an amount of capacity that is less than its minimum load point since doing so would be inconsistent with the generators physical and operational characteristics."[15] They contend that the resource adequacy product is capacity, not energy, and as such, the unit under contract need not be scheduled (to provide energy) against the buyer's load. Joint Movants add that the offering obligation imposed by the IRRP is satisfied by

[15] May 12 Order at P 125.

making an offer to the CAISO. Joint Movants request that the Commission clarify that a generator may enter into a resource adequacy contract for an amount of capacity that is less than its minimum load point.

Commission Determination

47. We deny the Joint Movants' rehearing request as it relates to minimum load cost compensation for partial resource adequacy resources. As we stated in the May 12 Order, the minimum load compensation under the FERC must-offer obligation is intended to compensate generators for their minimum load costs while providing a contribution toward the generators' fixed costs through payment to generators for imbalance energy produced at minimum load. In contrast, resource adequacy resources have the opportunity to receive compensation toward their fixed costs through resource adequacy contracts. And, importantly, LSEs that enter into resource adequacy contracts appropriately bear the cost of capacity they need. Therefore, for generators that sell resource adequacy capacity, resource adequacy contracts are the proper vehicle for receiving compensation toward their fixed costs.

48. With regard to the argument that small LSEs may encounter difficulty meeting their resource adequacy obligations, we are not persuaded by the Joint Movants' claim that because an entity has had to turn away one small LSE, small LSEs have difficulty meeting their resource adequacy obligations. This single incident does not support such a generalization about small LSEs. In addition, to the extent that small LSEs indeed have difficulty meeting their resource adequacy obligations, small LSEs can bring any concerns to the appropriate LRA.

49. We grant Joint Movants' request for clarification regarding whether a generator can enter into a resource adequacy contract for an amount that is less than its minimum load point. In the May 12 Order, the referenced language from the CAISO's Answer was in the context of the discussion regarding minimum load energy compensation. That is, to the extent a generator believes it will be harmed financially by entering into a resource adequacy contract for an amount of capacity that is less than its minimum load, it has the option not do so. However, we are not aware of any physical or reliability-related issue that would prevent a generator from entering into a resource adequacy contract for an amount that is less than its minimum load point. The market dispatch mechanism is designed to recognize and accommodate the physical characteristics, including minimum dispatch levels, of the units it dispatches and we do not interpret the IRRP provisions as changing this fact. Therefore, we clarify that a generator may enter into a resource adequacy contract for an amount that is less than its minimum load point.

5. Deliverability of Imports

Request for Clarification or, in the Alternative, Rehearing

50. In its original March 13, 2006 filing, the CAISO proposed one methodology for allocating import capacity for the purpose of counting resource adequacy resources. In response to comments filed in this docket, the CAISO in its April 19 Answer agreed to revise the allocation of import capability for 2007, such that both CPUC and non-CPUC LSEs are permitted to receive resource adequacy import allocation for their existing (as of March 10, 2006) resource agreements. Under this revised proposal, any remaining import capacity would be allocated to both CPUC and non-CPUC LSEs based on an LSE's load share of the CAISO control area peak load.

51. Six Cities supports the CAISO's revised proposal and requests clarification that this methodology was the one accepted by the Commission. In the alternative, Six Cities requests rehearing of this issue.

52. Separately, Six Cities requests rehearing regarding Firm Transmission Rights (FTR) in the import allocation process. Six Cities asserts that neither the CAISO's original nor its revised method provide any recognition in the import allocation process of FTR rights granted to new Participating Transmission Owners (PTOs). Failure to provide any recognition of the FTR rights granted to new PTOs, Six Cities contends, will deprive new PTOs of a significant benefit of the FTRs that were granted to them when they became PTOs. Although the new PTOs could continue to utilize their FTRs to hedge energy costs, their ability to hedge capacity costs would be eliminated. Six Cities explains, prior to the implementation of the IRRP, new PTOs could procure capacity resources with confidence that their FTR rights would protect them from exposure to unhedged congestion costs for delivery of capacity and energy from those resources. If the new PTOs cannot use their FTR rights in the future to procure capacity resources that will count toward resource adequacy requirements, then the capacity value of the FTR rights clearly has been eliminated.

Commission Determination

53. While the Commission clearly stated its acceptance of the CAISO's plan to allocate import capacity for 2007, the Commission did not clearly distinguish that it was accepting the CAISO's *revised* allocation methodology. As such, we grant Six Cities' request for clarification and dismiss as moot its attendant request for rehearing.

54. With regard to FTR rights due new PTOs, we deny Six Cities' request for rehearing. As the Commission stated in the May 12 Order, the allocation of import capacity for resource adequacy purposes does not degrade the benefits of FTRs held by

new PTOs. The import allocation procedure under the IRRP is for resource adequacy counting purposes and in no way degrades the value of FTRs for hedging transmission congestion costs – the only risk FTRs were designed to hedge. We also note that the allocation methodology accepted herein applies only to 2007. Further refinement of the process for future allocations of import capacity will take place in the CAISO's MRTU proceeding.[16]

6. Allocation of Minimum Load and Other Costs

Rehearing Requests

55. Under the IRRP, the CAISO allocates to load any MLCC costs due to resource adequacy resources in the same manner as MLCC costs are allocated for must-offer resources.[17] SMUD seeks rehearing of the Commission's determination that resource adequacy-related MLCC costs should be allocated consistent with the outcome of the Amendment No. 60 proceeding.

56. SMUD asserts that, in both the Amendment No. 60 proceeding and the instant proceeding, the cost allocation is inappropriate, because the purpose attributed to these MLCC costs – maintaining the reliable operation of the grid – is overly broad and discriminatory. Further, SMUD contends that principles of cost causation dictate that, because resource adequacy-related MLCC costs can be directly traced to load located in the CAISO control area, it is inappropriate to allocate any of these costs to non-CAISO load. Therefore, SMUD proposes that MLCC be allocated only to control area gross load, and not to load located within the state of California but outside the CAISO control area.[18]

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[16] Docket No. ER06-615-000. In particular, staff will conduct a technical conference to further explore the issue of allocation of capacity for resource adequacy purposes. *California Independent System Operator Corp.*, 116 FERC at P 1226.

[17] The Commission addressed issues relating to the allocation methodology of MLCC costs for must-offer resources in *California Independent System Operator Corporation*, 117 FERC ¶ 61, 348 (2006).

[18] Control area gross load is, in essence, a measure of the energy consumed within the CAISO control area.

57. Finally, SMUD argues that it is discriminatory to allocate MLCC costs to exports serving non-CAISO (but within California) load while not allocating those costs to exports serving load that is both outside the CAISO control area and the state of California. SMUD notes that in its Brief on Exceptions in the Amendment No. 60 proceeding, it argues that there is no rational basis for distinguishing between wheel-throughs serving in-state and out-of-state load. In addition, SMUD postulates that each control area should be responsible for its own resource adequacy costs. In this light, SMUD asserts, LSEs in non-CAISO control areas within California are similarly situated to non-California LSEs. Therefore, both types of wheel-through loads should be exempt from resource adequacy-related MLCC costs.

58. CDWR argues that the extended use of the cost allocation methodology from CAISO tariff Amendment No. 60, is improper, and does not follow cost causation principles. CDWR also argues that the CAISO's proposal to use the Amendment 60 methodology here cannot be reconciled with the CAISO's insistence that the Amendment No. 60 cost allocation will not be extended. CDWR next asserts that the Amendment No. 60 cost allocation is vague, and requires an explanatory attachment from the CAISO that has not been provided. CDWR also asserts that in failing to allocate MLCC costs incurred to meet peak loads to those peak loads, the cost allocation does not send proper price signals and, therefore, contravenes the Energy Policy Act[19] and Commission precedent concerning the need for additional demand response in the CAISO system. CDWR asserts that in the MRTU proceeding, the CAISO proposed to allocate resource adequacy-related costs based on an entity's contribution to system peak, and that the IRRP should do the same.

Commission Determination

59. We do not agree with SMUD and CDWR that the Amendment No. 60 cost allocation methodology is improperly extended under the IRRP. The IRRP is a refinement of the current must-offer obligation – and attendant cost allocations – ordered by this Commission. As such, it is reasonable that MLCC costs be allocated in the same manner, and we deny rehearing on this issue.

60. With respect to CDWR's claim that the Amendment No. 60 cost allocation is vague and requires an explanatory attachment from the CAISO that has not been provided, we deny rehearing because we find that the issue was more appropriately

[19] Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005) (EPAct 2005).

addressed in the Amendment No. 60 proceeding where a full evidentiary record has been developed.[20] Similarly, SMUD's claims of discriminatory treatment for exports to non-CAISO load located within the state of California and its concerns about discriminatory treatment for wheel-through transactions when allocating MLCC costs are more appropriately addressed in the Amendment No. 60 proceeding. The Commission addressed SMUD's concerns in the order recently issued in that proceeding, where we found it unreasonable to assign MLCC costs to wheel-through transactions to control areas within California. Therefore, it is unnecessary to develop a separate record on this issue in this proceeding.

61. With respect to CDWR's concerns that the IRRP's cost allocation methodology does not send proper price signals, we note that the Amendment No. 60 cost allocation better assigns cost responsibility to those responsible for the incurrence of such costs, as compared to its predecessor.[21] Moreover, we note that the IRRP will remain in effect only until implementation of MRTU, and that the MRTU proposal as conditionally accepted by the Commission will significantly further improve price signals and enhance opportunities for demand response resources in the CAISO's markets.[22]

B. Compliance Filing

62. On June 12, 2006, the CAISO submitted tariff sheets to comply with the May 12 Order. Among other things, the revised tariff sheets establish default planning reserve margins and qualifying capacity rules for LSEs whose LRA does not act by August 31, 2006; utilizes existing reporting requirements under MSS agreements; extends the submission date for annual resource plan reporting to October 25, 2006; permits LSEs with de minimis load to supply an annual resource plan that also constitutes the LSE's monthly resource adequacy plan; and requires the CAISO to notify an LSE within 10 business days if a discrepancy or deficiency exists within its resource adequacy plans.

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[20] The Commission issued an order in this proceeding on December 27, 2006. *See California Independent System Operator Corporation*, 117 FERC ¶ 61, 348 (2006).

[21] Prior to the Amendment No. 60 proceeding, the CAISO allocated MLCC costs to market participants on a system-wide basis. The Amendment No. 60 cost allocation instead allocates MLCC costs according to a three-category rate design based on whether generating units are committed and operated under the must-offer obligation for local reliability, zonal reliability, or system reliability. *Id.* at P 3, 4, 16.

[22] *See California Independent System Operator Corp.*, 116 FERC ¶ 61,274 at P 10.

63. In addition, the revised tariff sheets provide additional detail regarding the CAISO's determination of net qualifying capacity and eliminate confusion over the apparent duty to prevent degradation of an existing unit's deliverability. The revised tariff sheets also reflect the CAISO's newly proposed import allocation methodology. The interplay between the CAISO's Participating Intermittent Resource Program (PIRP) and resource adequacy requirements are addressed, as is the role system resources play in the IRRP.

64. The revised tariff sheets exclude qualifying facilities with PURPA contracts from some reporting requirements. Obligations of scheduling coordinators under the IRRP are clarified. Finally, the revised tariff sheets address various confidentiality concerns raised by commenters, and provide that specific information submitted under the IRRP will be given confidential treatment. In addition, this revised section clarifies that certain information gathered under the IRRP will be disclosed to LRAs as appropriate.

1. Protests and Comments

65. GSW protests the change the CAISO proposes to sections 40.4 (Planning Reserve Margin) and 40.5.1 (Qualifying Capacity), which would impose a default planning reserve margin and a default qualifying capacity calculation on any entity whose LRA did not adopt its own standards by August 31, 2006. GSW notes that the CAISO did not include a cut-off date in its original IRRP filing or answer, nor did the May 12 Order dictate such. GSW adds that this deadline fails to account for the procedural schedule that the CPUC – its LRA – has adopted for adopting resource adequacy rules. GSW asserts that the CAISO has not shown that its August 31, 2006 deadline is reasonable or that the imposition of the CAISO default criteria after August 31, 2006 is necessary to the administration of the IRRP.

66. Six Cities requests clarification on two aspects of the CAISO's proposal to allocate import capacity. First, it wants assurance that seasonal resource commitments (as opposed to resource commitments that last all of 2007) will count for the purposes of allocating import capacity. Second, Six Cities request that the Commission clarify that the CAISO's revised import allocation methodology is not binding beyond December 31, 2007.

2. Commission Determination

67. We accept the CAISO's compliance filing, subject to modification, as discussed below.

68. We agree with GSW's claim that the CAISO's August 31, 2006 deadline is unsupported. We direct the CAISO to remove this provision from its tariff or explain to the Commission why such a deadline is necessary for implementation of the IRRP.

69. We grant Six Cities' requests for clarification. The seasonal variation in load makes it highly likely that LSEs procure capacity from different resources for different contract durations. Therefore, it is reasonable for seasonal commitments of resources for resource adequacy purposes to count toward an entity's allowable import allocation. And, as stated earlier, the import allocation methodology accepted herein applies only to 2007.[23]

70. Several other items included in the CAISO's proposed tariff sheets merit further review. As noted earlier, in section 40.2.1 the revised tariff sheets extend the deadline for non-CPUC LSE submission of annual resource adequacy plans from September 30 to October 25 of each year. However, section 40.6 still inexplicably requires scheduling coordinators representing resource adequacy resources to submit to the CAISO an annual supply plan by September 30. We direct the CAISO to make a compliance filing that maintains symmetry between the submission of load resource adequacy plans and supply resource adequacy plans.

71. The CAISO compliance filing proposes substantial additions and changes to the import capacity allocation methodology originally filed. As previously clarified, the Commission intended to accept the import capacity allocation methodology discussed by protestors and agreed to in the CAISO's answer. The revised tariff sheets largely reflect that discourse. However, one key element is missing. In the May 12 Order, the Commission required the CAISO to complete its annual import allocations no later than July 1, and to include tariff language reflecting that deadline. The CAISO now observes that, while its determinations of total import capacity will be complete by July 1, it is dependent upon information from the California Energy Commission, the timing of which prevents the final import capacity allocation to be completed by July 1.

72. AReM originally requested, and the Commission accepted, the July 1 deadline, as it gave contracting parties approximately 90 days to sign contracts before resource adequacy showings were due to the CAISO. While we are sympathetic to the CAISO's reliance on a state agency for data, we believe the CAISO has a duty to provide market participants with some certainty as to information that directly affects their ability to sign

[23] *See* P 54, *supra.*

contracts. Therefore, we direct the CAISO to establish a deadline by which it will complete its annual import allocations and to include that deadline in its tariff.

73. The CAISO's proposal for import capacity allocation provides that trading of import capacity by LSEs and other market participants can occur "during a period of time established by ISO Market Notice" and that such trades must be "reported to the ISO in a manner established by ISO Market Notice."[24] Similarly, if import capacity remains, LSEs and market participants may submit additional requests for capacity to the CAISO "in the time period and manner established by ISO Market Notice."[25] We reiterate our sentiment that market participants deserve more certainty as to the process and deadlines by which the allocation of import capacity will take place. We direct the CAISO to revise this proposed tariff language to include both the manner and timeframe in which trades and/or additional requests for capacity must be submitted to the CAISO.

74. Finally, proposed section 40.5.2.1 (Deliverability Within the ISO Control Area) contains a provision stating that the results of the CAISO's 2006 deliverability analysis shall be effective for a period "no shorter than compliance year 2007" without explaining what constitutes "compliance year 2007." We direct the CAISO to revise this tariff language to clearly state the effective dates of its 2006 deliverability analysis.

The Commission orders:

(A) The requests for rehearing are hereby denied, as discussed in the body of this order.

(B) The requests for clarification are hereby granted, as discussed in the body of this order.

(C) The Compliance filing is hereby accepted, subject to modification, as discussed in the body of this order.

[24] Proposed section 40.5.2.2, Step 5.

[25] Proposed section 40.5.2.2, Step 7.

(D) The CAISO is hereby directed to make a compliance filing consistent with this order within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.