

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

**California Independent System                    )       Docket No. ER06-615-000  
Operator Corporation                            )**

**ANSWER OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
TO THE EMERGENCY MOTION FOR STAY OF THE  
SACRAMENTO MUNICIPAL UTILITY DISTRICT AND  
THE CITY AND COUNTY OF SAN FRANCISCO**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213, the California Independent System Operator Corporation (“CAISO”) respectfully submits this Answer to the “Emergency Motion for Stay” (“Motion”) of the Sacramento Municipal Utility District (“SMUD”) and the City and County of San Francisco (“CCSF”).

**I. INTRODUCTION AND SUMMARY OF ARGUMENT**

On September 21, 2006, in its order conditionally approving the CAISO’s Market Redesign and Technology Update (“MRTU”), the Commission approved the CAISO’s proposal to include Marginal Losses<sup>1</sup> in the calculation of Locational Marginal Prices. *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006) (“MRTU Order”). The Commission affirmed its decision April 21, 2007. *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076 (2007) (“Rehearing Order”). On June 15, 2007 – nine months after the MRTU Order, two months after the Rehearing Order, and based on information known before the MRTU Order – SMUD and CCSF filed a factually and legally unsupported<sup>2</sup>

---

<sup>1</sup> Capitalized terms not otherwise defined have the meaning given them in Appendix A of the MRTU Tariff.

<sup>2</sup> SMUD and CCSF submitted no evidentiary support for their irreparable harm claim.

“Emergency” Motion for Stay pending appeal. SMUD and CCSF allege that allowing the CAISO to implement the use of marginal losses will cause irreparable harm and constitute a disservice to the public interest because the CAISO will expend funds in the process that cannot later be recovered. SMUD and CCSF also assert that they are likely to succeed on appeal because the CAISO failed to comply with a Commission “directive” in a June 2004 Order regarding MRTU<sup>3</sup> that the CAISO consult with stakeholders regarding the costs and benefits of marginal losses versus average losses and because the Commission failed to address SMUD’s arguments regarding that failure.

As SMUD and CCSF well know, the CAISO has already incurred the costs to develop the LMP software that includes the calculation of Marginal Losses. Directing the CAISO not to implement the Marginal Losses functionality would not save any of these expenditures and would only impose additional costs on the CAISO and its customers to develop, test and implement an alternative. If these additional costs are incurred, they would only add to the cost of MRTU implementation without bringing any benefit, affecting not only SMUD and CCSF but all Market Participants. More significantly, MRTU implementation would be delayed if the CAISO were required to implement an alternative average loss approach. Any such delay would be contrary to the public interest.

Further, inclusion of Marginal Losses in the calculation of Locational Marginal Prices on the effective date of MRTU would not cause irreparable harm. In the unlikely event a Court of Appeals were to rule in SMUD’s and CCSF’s favor, the CAISO would simply recalculate and re-invoice Market Participants accordingly.

---

<sup>3</sup> *Cal. Indep. Sys. Operator Corp.*, 107 FERC ¶ 61,274 (2004) (“June 2004 Order”).

SMUD and CCSF also fail to establish any likelihood of success, let alone a substantial likelihood of success. The CAISO has never been under a Commission directive that would require the CAISO to implement average losses or even discuss this issue with stakeholders. The Commission's policy preference and the CAISO's policy preference has always been to price and charge for Marginal Losses. As the Commission explicitly responded to SMUD and CCSF on rehearing, it had merely offered guidance that it would not prohibit average loss pricing at the inception of MRTU under certain circumstances. No court would reject the Commission's reasonable interpretation of its own order.

## **II. BACKGROUND**

In its July 2003 MRTU filing with the Commission, the CAISO proposed to include losses in the calculation of Locational Marginal Prices using Marginal Losses rather than average losses. At that time, the CAISO proposed to refund any over-collection through the Congestion Revenue Rights Balancing Account. In an October 28, 2003, Guidance Order, the Commission approved the CAISO's proposal as necessary to ensure least-cost dispatch.<sup>4</sup> The CAISO did not revise its approach in its subsequent May 2004 proposal, and the Commission reiterated its approval, over numerous comments and protests, in its June 2004 Order. June 2004 Order at P 142. As discussed at greater length below, however, the Commission did give the CAISO the option of later proposing to use average losses if it determined in discussions with stakeholders that "use of average losses at inception would be more easily administered and less costly." June 2004 Order at P 147.

---

<sup>4</sup> *Cal. Indep. Sys. Operator Corp.*, 105 FERC ¶ 61,140 at P 77 (2003).

When the CAISO filed the MRTU Tariff on February 9, 2006, it retained the Marginal Losses methodology but, in response to stakeholder concerns, modified the mechanism for the refund of over-collections. Under the MRTU Tariff, the CAISO would credit the over-collection to all Scheduling Coordinators on monthly statements according to Measured Demand (CAISO Demand plus exports), including that served by Existing Transmission Contracts and Transmission Ownership Rights, by calculating, on an hourly basis, the over-collection for the system and dividing the result by the total megawatt-hours of Measured Demand to determine a per-MWh refund amount of the over-collection for the period of each settlement statement.

Notwithstanding the Commission's prior conceptual approval of the use of Marginal Losses, various parties objected to the CAISO's proposal. Relevant to the Motion, SMUD contended that the CAISO had not complied with what it asserted was a Commission directive in the June 2004 Order that the CAISO consult with stakeholders regarding whether the costs of implementing Marginal Losses outweighed the benefits. MRTU Order at 69.

Consistent with its longstanding endorsement of marginal loss pricing,<sup>5</sup> the Commission conditionally accepted the CAISO's proposal "because doing so sends more accurate price signals and assures least-cost dispatch." MRTU Order at P 90. It also accepted the new proposal for allocation of over-collections because it allows the participants to pay the marginal cost of energy, allows the revenues to be disbursed more quickly, and is responsive to those who would not have benefited from a reduction in the

---

<sup>5</sup> See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at PP 238-41, *order on reh'g*, 109 FERC ¶ 61,157 (2004); *ISO New England, Inc.*, 91 FERC ¶ 61,311 at 62,069-70 (2000); *Central Hudson Gas & Elec. Corp., et al.*, 86 FERC ¶ 61,062 at 61,213-14 (1997).

Access charge, such as the holders of Transmission Ownership Rights and Existing Transmission Contracts. The Commission did not at that time address SMUD's argument about the CAISO's consultation with stakeholders.

The Commission affirmed its approval of the CAISO's proposal on rehearing. Rehearing Order at P 37. As discussed below, it also responded to SMUD's argument, concluding that the CAISO had complied with the directives it had given in June 2004. Rehearing Order at 46.

### **III. ARGUMENT**

#### **A. SMUD and CCSF Have Presented No Basis for a Stay.**

SMUD and CCSF properly note that the Commission considers three factors in determining whether to stay its orders: (1) whether the moving party will suffer irreparable injury without a stay; (2) whether issuing the stay will substantially harm other parties; and (3) whether a stay is in the public interest. Motion at 2, citing *MidAmerican Energy Holdings Co.*, 118 FERC ¶ 61,003 at P 22 (2007). SMUD and CCSF neglect, however, to note the Commission's general policy of refraining from granting a stay of its orders, in order to assure definiteness and finality in Commission proceedings. 118 FERC ¶ 61,003 at P 22. The Commission's general policy is particularly appropriate in this case because SMUD's and CCSF's arguments arise from either a fundamental factual misunderstanding or a failure to acquaint themselves with public information regarding the current status of MRTU. SMUD and CCSF can demonstrate none of the relevant factors favoring a stay.

##### **1. Denial of the Stay Will Not Cause Irreparable Harm.**

The Commission has stated that the key element in determining whether to grant a stay is irreparable injury to the moving party. *Id.* SMUD and CCSF contend that

implementation of Marginal Losses will cost tens of millions of dollars, that if the CAISO continues implementation those costs will become sunk costs, and that the costs will not be recoverable from the CAISO because the CAISO is a non-profit organization. Motion at 4-5.

Contrary to these assumptions, as is apparent from the monthly updates filed with the Commission and the regular stakeholder meetings on MRTU progress, the major expenditures for implementation of market software have already occurred. The software for the calculation of Marginal Losses is part and parcel of the software package for the calculation of Location Marginal Prices that has already been developed. That software package has already been designed and built and is now well into the testing phase. No money can be saved on the software at this point.

Further, no money can now be saved by ceasing continued implementation. Because the Marginal Losses calculation is part of the software package, any attempt to switch to average losses would require revisions to the software and additional expenses. If the incurrence of additional MRTU expenses can be deemed irreparable harm to SMUD and CCSF, then it is the grant of the stay – not the denial – that would cause irreparable harm.

Finally, although SMUD and CCSF have only complained about the implementation cost of Marginal Losses, it should also be noted that no irreparable harm will arise from the actual execution of the CAISO's Marginal Losses tariff provisions on the effective date of MRTU. In the unlikely event a Court of Appeals were to rule in favor of SMUD and CCSF and in the unlikely event this would result in the Commission directing the CAISO to implement average losses tariff provisions, the CAISO would be

in the same position as any Public Utility that is permitted to implement a tariff provision that is accepted “subject to refund.” If a tariff provision is ultimately found not to be just and reasonable, the Public Utility will be required to implement alternative tariff provisions and recalculate and re-invoice charges and payments accordingly.

**2. A Stay Would Cause Harm to Others.**

As discussed above, if the Commission were to stay the implementation of the use of Marginal Losses, the CAISO would need to expend considerable funds to decouple the calculation of Marginal Losses from Locational Marginal Prices and to substitute average losses. The costs of such software development are capital costs, which are passed through the CAISO’s Grid Management Charge and allocated proportionally across all components of the Grid Management Charge. As a municipal utility outside the CAISO’s Control Area, SMUD pays only very limited components of the CAISO’s Grid Management Charge. The overwhelming portion of the additional costs, should the stay be granted, would be borne by parties other than SMUD, most of whom have not opposed the use of Marginal Losses.

**3. A Stay Would Be Contrary to the Public Interest.**

Not only would it require additional funds to revise the calculation of Locational Marginal Prices to elimination the inclusion of Marginal Losses, but it would require additional time. Such a revision could not be accomplished without a delay in the implementation of MRTU. The Commission has repeated stressed the need to implement MRTU as soon as possible. *See, e.g.,* MRTU Order at PP 1382, 1402. The Commission, its staff, the CAISO, and Market Participants have been working overtime to achieve that goal. The stay requested by SMUD and CCSF would present yet another roadblock to implementation, and perhaps expose California to the stresses of yet another summer

season without the “the numerous benefits that the MRTU Tariff provides to the California markets and the entire West.” MRTU Order at P 1402. Such an action is unnecessary and unjustified.

**B. The Intended Appeal Lacks All Substantive Merit.**

Although they acknowledge that the likelihood of success upon appellate review is not a factor in the Commission’s determination of whether to grant a stay, SMUD and CCSF nonetheless argue their substantive case in the Motion. In doing so, they do not help their case. They contend that they are likely to prevail because the Commission failed to address their argument that CAISO had ignored the Commission’s directive to consult with stakeholders to determine whether the implementation costs of the use of Marginal Losses would exceed the benefits. Motion at 1-4. This contention is patently in error and, if even if it were true, would not constitute reversible error.

There are two fatal flaws with their assertion: first, the Commission issued no such directive; and, second, the Commission did address SMUD’s and CCSF’s argument by explaining both the directive it did issue and the CAISO’s compliance with that directive. As SMUD and CCSF quote, the Commission stated in the June 2004 Order:

[I]f in the process of further developing the marginal loss proposal and tariff language the CAISO and market participants determine that use of average losses at inception would be more easily administered and less costly, then the CAISO may file to use average losses when it makes its tariff filing.

June 2004 Order at P 147. One can search this quotation in vain for any mandate regarding specific consultations; it is a *conditional* statement regarding determinations that *might* be made during a stakeholder process that neither SMUD nor CCSF denies occurred.

Directly responding to SMUD's and CCSF's arguments, the Commission explained in the Rehearing Order exactly what it had previously mandated and why the CAISO had complied:

In the June 2004 Order, the Commission required an explanation from the CAISO *to the extent that* it and its stakeholders determined that implementing marginal losses would be substantially more costly than implementing average losses. In the MRTU filing, the CAISO neither represents to the Commission that using marginal losses would raise the implementation cost of MRTU, nor did it propose to use average losses.

Rehearing Order at P 46 (emphasis added). In other words, the Commission did not require that the CAISO conduct a specific consultation on that subject; all that the Commission required was that, if, during the MRTU stakeholder process, the CAISO and the stakeholders reached such a conclusion, the CAISO was to explain it to the Commission and the Commission would consider permitting the use of average losses at the inception of MRTU, rather than the preferred marginal loss approach. Not only is the Commission's interpretation the most logical and obvious reading of the June 2004 Order, but even if it were not, it would be upheld on appeal. The courts will defer to the Commission's interpretations of its own orders as long as they are reasonable. *See Entergy Serv., Inc. v. FERC*, 375 F.3d 1204, 1209 (D.C. Cir. 2004); *E. Tex. Elec. Coop. v. FERC*, 218 F.3d 750, 753 (D.C. Cir. 2000); *Texaco, Inc. v. FERC*, 148 F.3d 1091, 1099 (D.C. Cir. 1998). Far from being a "non sequitur," as SMUD and CCSF claim,<sup>6</sup> the Commission's response is both eminently rational and unassailable. Finally, under Section 205 of the Federal Power Act, a public utility has the right to file tariff amendments and the Commission is required to accept those amendments if it finds them

---

<sup>6</sup> Motion at 4 n.5.

to be just and reasonable. As noted above, the Commission found the CAISO's proposal to be just and reasonable in the September 21 MRTU Order.

#### **IV. CONCLUSION**

For the reasons discussed above, the CAISO requests that the Emergency Motion for Stay be denied.

Respectfully submitted,

/s/ Michael E. Ward

Nancy Saracino, General Counsel  
Sidney M. Davies, Assistant General Counsel  
The California Independent System  
Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Tel: (916) 351-4400  
Fax: (916) 351-4436

Sean A. Atkins  
Michael E. Ward  
Alston & Bird LLP  
The Atlantic Building  
950 F Street, N.W.  
Washington, DC 20004-1404  
Tel: (202) 756-3405  
Fax: (202) 756-3333

Counsel for the California Independent System  
Operator Corporation

Dated: June 25, 2007

## **CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for 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 Folsom, California this 25th day of June, 2007.

/s/ Charity Wilson  
Charity Wilson