

**Comments of the Modesto Irrigation District (“MID”)¹ as to
Draft Uneconomic Adjustment Policy Paper of the
Market Surveillance Committee (“MSC”)**

June 27, 2008

MID submits the following comments in response to the California Independent System Operator Corporation’s (“CAISO”) MSC draft opinion, dated June 24, 2008, entitled “Uneconomic Adjustment Policy for Market Redesign and Technology Upgrade (MRTU) for Locational Marginal Pricing Scheduling and Pricing Runs”:

The MSC’s draft is troubling in its flawed view of property rights, namely those of existing transmission contracts (“ETCs”) and transmission ownership rights (“TORs.”). The MSC essentially concludes that ETCs and TORs are harmful to the MRTU market: “Specifically, there appears to be a contradiction between the mandate to treat ETCs and other related commitments with such high priority and the mandate to set just-and-reasonable prices.” Dr. at 4.

High scheduling priority (i.e., last or later in order to be curtailed) is a critical part of the very definition of the property rights inherent in ETCs and TORs. Without such reservation priority, ETCs and TORs lose much of their value as property rights. Nevertheless, when the MSC suggests that honoring ETCs and TORs is a choice (“If it is determined that honoring ETCs is so very important. . . .” *Id.*), and supports more frequent curtailments of those rights, the MSC supports a taking of property rights.

The MSC is silent regarding any compensation for the taking of those rights. An expected response is that compensation is possible by becoming a CAISO Participating Transmission Owner (“PTO”). However, MID is not obligated to become a PTO, and thus taking away curtailment priority without any compensation in return is simply a confiscation.

MID is also concerned that the CAISO’s proposal leaves it too great of discretion as to when to curtail ETCs and TORs. Curtailments can be expected for ETCs and TORs in reliability circumstances. The MSC appears to believe that ETC and TOR holders dispute this when it cites meeting demand as a countervailing concern: “We believe that it would be unreasonable to treat the schedules of ETCs, TORs, and self-scheduled resources as completely sacrosanct and inviolable. There are many other important constraints, including meeting demand, that need to be balanced in some way.” Dr. at 5. However, meeting demand is not the MSC’s concern when it states that it is worried about unjust and unreasonable prices. Thus, when the CAISO “proposes to relax these

¹ MID submits these comments in the spirit of open discussion, and reserves the right to change its position on the above matters in the future, as well as reserves the rights to comment on any other issue in this process.

priorities under certain extreme circumstances,” Dr. at 1, MID questions whether this proposal is not meant for reliability goals, but rather to meet the CAISO’s own economic goals at the ETC/TOR holders’ expense. MID is puzzled as to why the electric system’s reliability is viewed as a practical compromise to meet economic targets. MID also wonders under exactly what circumstances will the CAISO choose to relax ETC and TOR priorities. When economics are brought into the picture as opposed to reliability, it is easy to anticipate that the circumstances triggering curtailment will be more readily reached, particularly if the CAISO finds it economically preferable to favor its PTOs at the expense of ETC and TOR holders serving load. As referenced above, curtailments to ETC and TOR holders for economic reasons would devalue the long-term investment in those rights, or in the case of ETCs, unsettle the balance of benefits and burdens negotiated for those rights. Moreover, such curtailments would harm the reliable delivery of power to serve the rights holders’ native load, if alternative transmission is not found.

The CAISO created the MRTU construct, and the issue at hand is the result of choices made by the CAISO. The CAISO could have removed ETCs and TORs from the Integrated Forward Market, but chose not to do so. If the problem is as significant as the MSC suggests, and ETCs and TORs are inimical to just and reasonable rates, it is puzzling to MID why the MSC did not identify this issue earlier. Honoring ETCs and TORs has been an obligation of the CAISO since CAISO start-up, and this proposal comes late in what has been a long process toward LMP markets.

Accordingly, MID urges the MSC to reconsider its opinion that ETCs and TORs are incommensurate with just and reasonable rates. Certainly many property rights can be criticized for not bringing the greatest good to the greatest number. However, the mere possession of property rights has not been in inexorable conflict with the notion of just and reasonable rates, as the opinion seems to suggest.