

108 FERC 61,142
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

California Independent System Operator
Corporation

Docket Nos. ER03-1046-001,
ER03-1046-002 and
ER03-1046-003
ER03-1046-004

ORDER ON REHEARING AND COMPLIANCE ON PROPOSED TARIFF
AMENDMENT NO. 54

(Issued August 5, 2004)

1. In this order, we grant in part and deny in part the requests for rehearing and/or clarification of the Commission's order issued on October 22, 2003 concerning proposed tariff revisions the California Independent System Operator Corporation (CAISO or ISO) filed as Amendment No. 54 to its open access transmission tariff (ISO Tariff).¹ We also accept in part and reject in part the CAISO's compliance filings submitted in response to the October 22 Order. This order benefits customers by clarifying certain provisions of the ISO Tariff and by implementing measures to improve market efficiency and enhance communication between the CAISO and market participants.

I. Background

2. On May 1, 2002 the CAISO submitted its Comprehensive Market Design 2002 (MD02) to be implemented in three Phases: Phase 1 - market power mitigation measures, real-time economic dispatch and the use of a single energy bid curve; Phase 2 - an integrated forward market, including an energy market and procedures for

¹ California Independent System Operator Corp., 105 FERC ¶ 61,091 (2003) (October 22 Order). Concurrent with the issuance of this order, the Commission is issuing an order addressing the CAISO's Amendment No. 58 in Docket No. ER04-609-000, *et al.*, 108 FERC ¶ 61,141.

procurement of ancillary services; and Phase 3 - implementation of the full network model, redesigned firm transmission rights, and the integration of congestion management with energy and ancillary services markets.

3. In an order issued July 17, 2002,² the Commission approved certain elements proposed for implementation in Phase 1 and directed the CAISO to hold technical conferences to further develop the longer-term elements of MD02. Specifically, the Commission approved the continued use of a West-wide “must offer” provision and implementation of automatic mitigation procedures, a safety net bid cap set at \$250/MWh, a cap on decremental bids set at -\$30/MWh, the use of a single energy bid curve, and real-time economic dispatch. The Commission also approved penalties on uninstructed deviation, subject to the condition that the CAISO implement software improvements which would allow more accurate representation of ramp rates at various operating points of a generating unit and would allow real-time communication of a generator’s outages, derates, and operating problems.

4. On August 16, 2002, the CAISO filed a request for rehearing of certain aspects of the July 17 Order, including the Commission’s decision authorizing the CAISO to implement real-time economic dispatch. In an order issued October 25, 2002,³ the Commission granted the CAISO’s request to delay the implementation of real-time economic dispatch until such time as the CAISO could also impose penalties for uninstructed deviation.

5. To reflect the staged implementation of the market design elements, the CAISO then divided Phase 1 of MD02 into two sub-Phases: Phase 1A, consisting of the market design elements of Phase 1 which had been approved by the Commission without conditions; and Phase 1B, real-time economic dispatch and penalties for uninstructed deviation.

6. On July 8, 2003, pursuant to section 205 of the Federal Power Act (FPA)⁴, the CAISO filed with the Commission Amendment No. 54 to the ISO Tariff. The CAISO sought approval for the implementation of the Phase 1B elements of the Real Time Imbalance Energy Market, including approval of Uninstructed Deviation Penalties (UDPs), Real Time Economic Dispatch (RTD), and inclusion of multiple ramp rates and

² California Indep. Sys. Operator Corp., 100 FERC ¶ 61,060 (2002) (July 17 Order).

³ California Indep. Sys. Operator Corp., 101 FERC ¶ 61,084 (2002).

⁴ 16 U.S.C. § 824d (2000).

other operational constraints into dispatch decisions. The implementation of the Phase 1B elements of the Real Time Imbalance Energy Market would complete the implementation of all the elements of Phase 1 of CAISO's MD02 that have been approved by the Commission. In the October 22 Order, the Commission accepted in part and rejected in part the ISO Tariff revisions proposed in Amendment No. 54 and ordered the CAISO to make a compliance filing.

7. On November 21, 2003, Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C. (Duke); the Northern California Power Agency (NCPA); Sacramento Municipal Utility District (SMUD); the Cities of Redding and Santa Clara, California (Cities); Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. (Reliant); the California Generators;⁵ and Williams filed timely requests for rehearing and/or clarification of the October 22 Order. On that same date, the CAISO submitted a compliance filing revising substantive provisions of Amendment No. 54, as directed in the October 22 Order (November 21 Compliance Filing). On March 11, 2004, the ISO submitted a compliance filing correcting inconsistencies and invalid references in the ISO Tariff and Operating Protocols, as directed in the October 22 Order (March 11 Compliance Filing).

8. On June 10, 2004, the Director of Division of Tariffs and Market Development – West issued a letter order pursuant to delegated authority⁶ directing the CAISO to submit additional information. On June 17, 2004, the CAISO submitted a response in Docket No. ER03-1046-004.

II. Notices and Pleadings

9. Notices of CAISO's filings in Docket Nos. ER03-1046-002, ER03-1046-003 and ER03-1046-004 were published in the *Federal Register*, 68 Fed. Reg. 68,368 (2003), 69 Fed. Reg. 13,517 (2004) and 69 Fed. Reg. 40,892 (2004). Comments, protests and interventions were due on June 28, 2004. On December 29, 2003, the CAISO filed an

⁵ The California Generators include Dynegy Power Marketing, Inc., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC and Cabrillo Power II LLC (collectively, Dynegy) and Williams Power Company, Inc. (formerly Williams Energy Marketing & Trading Company) (Williams), the Western Power Trading Forum, and Independent Energy Producers of California.

⁶ 18 C.F.R. ¶ 375.307 (2004).

answer to protests filed in response to the November 21 Compliance Filing. On April 1, 2004, Bonneville Power Administration (BPA) filed a timely, motion to intervene and protest to the March 11, 2004 Compliance Filing. On April 16, 2004, the CAISO filed an answer to BPA's protest.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the CAISO's answers because they have provided information that assisted us in our decision-making process.

B. Incorporation of Operating Constraints into Dispatch Instructions

Multiple Ramp Rates, Other Operating Constraints, Ancillary Service Ramp Rate and Reliability Must Run Ramp Rate

11. In the October 22 Order, the Commission conditionally approved the CAISO's proposal to incorporate specific, additional operating constraints when issuing dispatch instructions.⁷ The Commission required the CAISO to modify the ISO Tariff to state that the default must-offer ramp rate will be the low ramp rate, as the ISO committed to doing.

12. In its November 21 Compliance Filing, the CAISO proposes revisions to section 6.5 of the Schedules and Bids Protocol (SBP) to show the minimum ramp rate as the default ramp rate for a generating unit.

13. We find that the CAISO has made the appropriate changes to comply with our previous order and will approve them.

⁷ October 22 Order at P 23.

C. Uninstructed Deviation Penalties (UDPs)

1. Aggregation

14. In the July 17 Order, the Commission approved the CAISO's proposal to permit a market participant to aggregate and net generation deviations from Schedules and Dispatch Instructions amongst generating resources that connect to the ISO grid through the same grid interconnection point and voltage level. The Commission also approved the ISO's proposal that generating resources that do not interconnect to the ISO grid at the same interconnection point may be aggregated if such a proposed aggregation would not affect grid reliability, noting that the ISO had committed to develop a process to allow market participants to propose such aggregation.

15. In Amendment No. 54, the CAISO proposed that energy deviations from aggregated resources be netted without regard to whether such deviations were within or outside the tolerance band used to define deviations for purposes of the UDPs.

16. In the October 22 Order, the Commission found that the ISO's proposed rules for aggregation of resources for the purpose of netting deviations were reasonable and approved them and required the ISO to include the final aggregation operating procedure in the ISO Tariff in its compliance filing. The Commission noted that, in the event that a market participant believes that it was improperly denied the ability to aggregate deviations, it can request dispute resolution under the ISO Tariff.

a. Rehearing Request

17. On rehearing, Williams argues that the CAISO's proposed aggregation criteria are unjust and unreasonable. Williams claims that the ISO has not demonstrated how the "considerations and criteria" specified in the aggregation approval process operating procedure⁸ assures that "units aggregated are interchangeable, function as a single entity, and will not affect grid reliability."⁹ Williams states that the CAISO's unreasonably restrictive aggregation criteria results in the unjust and unreasonable denial of custom aggregation. Specifically, Williams states that, inconsistent with Operating Procedure M-435 (version 1.1), the ISO recently applied the requirement that "effectiveness factors" of aggregated units be within +/- 10 percent of each other as a 10

⁸ Citing Attachment E to Amendment No. 54 (draft version of Operating Procedure M-435, dated June 25, 2003); Operating Procedure M-435 (version 1.1) on CAISO website, effective as of September 16, 2003.

⁹ Quoting July 17 Order at 61,256.

percent multiplier which resulted in a more restrictive three percent bandwidth for the T-137 Serrano AA Bank effectiveness factor and created an unreasonable result.¹⁰ Williams claims that the ISO's aggregation policy is severely flawed because there is no standard or criteria to select an allowable bandwidth. Lastly, Williams states that it is unclear whether the aggregation criteria are based on economic or reliability issues. Williams requests that the Commission grant rehearing of its approval of the ISO's proposed rules for aggregation and direct the ISO to re-file its aggregation criteria.

18. Williams is mistaken that the primary purpose of aggregation is to afford Scheduling Coordinators (SCs) the ability to manage their portfolios so as to avoid UDP. Rather, the CAISO's intended purpose of this provision is to permit aggregation of units that are interchangeable without compromising reliability. Williams does not object to aggregation, but the extent to which the CAISO will permit it. As the operator of the grid, the CAISO must be confident that, if it dispatches one unit and another responds, it can predict that the substitution will have no adverse effect on system reliability. Accordingly, we believe the CAISO's limits on aggregation reasonably balance the flexibility afforded to SCs under this provision with its mandate to reliably operate the grid. Therefore, we deny rehearing.

b. Compliance Filing

19. In its November 21 Compliance Filing, the CAISO submits its proposed Uninstructed Deviation Penalty Aggregation Protocol (UDPA Protocol), setting forth the key concepts and processes related to aggregations (*i.e.*, the criteria and processes for reviewing, approving, modifying, restricting and suspending aggregation). It states that it has not provided detail related to internal ISO processes that may reasonably change from time to time.

i. UDPA Protocol in General

20. Dynegy and Williams argue that the proposed UDPA Protocol is even more ambiguous than the draft originally filed in this proceeding. They assert that, aside from deleting detail from the original draft, the ISO has not updated this protocol. They claim that there is still no definite procedure for action on a custom aggregation request. They contend that the adoption of a precise formula and a detailed procedure which limits the ISO's discretion and the opportunity for the ISO to arbitrarily deny an aggregation request is necessary for market participants to have confidence that the procedures are administered fairly and impartially. They request that the Commission

¹⁰ Citing Attachment B to Williams' Request for Rehearing.

direct the ISO to file a complete, fully detailed aggregation procedure that specifically establishes the entire deliberative process and criteria used by the ISO in reviewing and acting on an aggregation request.

21. In its answer, the CAISO argues that its UDPA Protocol is just and reasonable. It states that it is appropriate for the ISO to place some reasonable conditions on the ability to aggregate units because these units may not be interchangeable and it is the ISO's responsibility to determine a material difference that will effect grid operations. It also states that it has provided what the generators seek: a means to mitigate the risk of UDP if a unit cannot respond to an ISO dispatch instruction due to an outage. The ISO urges the Commission to approve the UDPA Protocol or, in the alternative, permit aggregations in limited circumstances in which the aggregation will work under all but the most unlikely sets of circumstances.

22. The CAISO explains that it removed detail regarding internal ISO staff processes from the UDPA Protocol because it would have had to re-file under section 205 of the FPA if a staff member changed titles or the instructions for completing a form changed. The ISO states that it selected the appropriate, substantive parts from the evolving procedure and filed those as the UDPA Protocol.

23. We accept the CAISO's explanation for the removal of unnecessary details from its UDPA Protocol. We find that the changes to the UDPA Protocol filed by the CAISO provide an appropriate level of detail to describe the process to be used by the CAISO to evaluate applications for aggregation and will accept them.

ii. Section 3 of the UDPA Protocol

24. In section 3 of the UDPA Protocol, the CAISO proposes that it will undertake its best efforts to review and approve or reject basic UDP aggregations within three weeks of receipt. The ISO states that the review of a custom UDP aggregation may take longer depending on the complexity of the proposed aggregation.

25. Dynegy and Williams question the proposed timeframes. They recommend that the ISO shorten the timeframe for the review of a properly submitted basic aggregation request to a week because the generating units included in the request will always have the same effectiveness factors and a technical analysis is not required. They also argue that it is unjustified for the ISO to need three weeks or more to review a properly submitted custom aggregation request and recommend that a response be provided within three weeks.

26. In its answer, the CAISO states that its approach and timeline for processing requests is reasonable because it will need to move ISO staff resources away from their primary focus of supporting the reliable grid operations to evaluating aggregations.

27. We agree with intervenors that evaluation of a basic aggregation request is a relatively straightforward process which should not take longer than one week. Further, while custom UDP aggregations are more complex and may take longer to review, we do not believe that the CAISO should be afforded unlimited time to respond to applicants. We find it reasonable that the CAISO should respond within 30 days to a properly submitted request for custom aggregation. We therefore direct the CAISO to revise its UDPA Protocol to accommodate this finding.

iii. Section 3.1.2 of the UDPA Protocol

28. In section 3.1.2 of the UDPA Protocol, the CAISO proposes additional eligibility criteria for a UDP aggregation, including that the “Generating Unit must exhibit the same effective factors (factors within +/- 10%) for managing inter- and –intra-zonal constraints, under ‘normal/all elements in service’ conditions, as well as during most local transmission outages.”

29. Dynegy and Williams protest the use of the +/- 10 percent effectiveness factor and the application of extra-procedure rules for determining the effectiveness factor. Dynegy and Williams request that the Commission direct the ISO (1) to list all of the intra-zonal constraints that the ISO will evaluate when reviewing an aggregation request and (2) to define “local transmission,” as it relates to aggregation. They allege that the ISO is defining these terms differently in different circumstances.

30. In its answer, the CAISO proposes to notify the SC requesting the aggregation of the constraint that caused the ISO to deny its request only if the ISO has denied the request. The ISO states that it is unnecessarily burdensome to notify the SC of every constraint that the ISO evaluates. The ISO also states that it considers “‘local transmission’ to be transmission typically within a unit’s respective geographic area, whereby a generating unit has a recognized effect on the amount of power that flows across that transmission, or transmission on which a generating unit contributes to the control of voltage on that transmission.” It adds that as a general rule, a line would be considered “‘local transmission’ if a generating unit exhibited an effectiveness factor or five percent or more on that line, *i.e.*, the power flow on that line changed five or more percent of the change in output of a generating unit.”

31. We find reasonable the CAISO’s proposal to identify to a SC only those constraints which cause the CAISO to deny their request for aggregation. We agree with intervenors that the CAISO should use the term “local transmission” consistently as it relates to aggregation and will accept the CAISO’s criterion of a five percent effectiveness factor for the purpose of defining local transmission. We agree with intervenors that the CAISO has not adequately supported its proposed requirement that effectiveness factors of aggregated units be within +/- 10 percent of each other. We

direct the CAISO to resubmit its aggregation criteria with a clear specification of the factors used to qualify or disqualify the effectiveness factors of the units for which aggregation is requested, and it must fully support the reasonableness of such criteria.

iv. Sections 4.1 and 4.2 of the UDPA Protocol

32. In section 4.1 of the UDPA Protocol, the CAISO proposes to “temporarily restrict the schedules of aggregated Units based upon changes in system conditions, operating constraints, and other relevant factors as needed to ensure ISO Controlled Grid reliability.” In section 4.2 of the UDPA Protocol, the ISO proposes to permanently suspend previously approved UDP aggregations.

33. Dynegy and Williams argue that the authority under section 4.1 of the UDPA Protocol should only apply to custom aggregations. They assert that basic aggregations should be permanent unless the generator-unit connections at the bus bar become separated or the physical configuration of the plant changes significantly. Dynegy and Williams contend that allowing the ISO to suspend basic aggregation other than in the splitting of the local substation will only cause disputes and not enhance the ISO’s ability to control grid reliability. They also argue that the reliability criteria that will trigger the suspension of aggregation status are undefined and the ISO has failed to explain the correlation between schedules of aggregated units and UDP.

34. In its answer, the CAISO states that it is necessary for the ISO to be able to suspend a basic aggregation if a bus station at a station is split which may have resulted from a bus-tie circuit breaker that is out of service. The ISO agrees that the provision in section 4.1 of the UDPA Protocol which allows the ISO to “temporarily restrict the schedules of aggregated units” should not be part of the protocol and agrees to delete it.

35. We agree with parties that a basic aggregation should be suspended only when the generator-unit connections at the bus bar become separated or the physical configuration of the plant changes significantly. We agree with the CAISO that the provision in section 4.1 regarding temporary schedule restriction is unnecessary and direct the CAISO to delete the provision.

36. Dynegy and Williams also recommend that the ISO: (1) specifically identify the criteria that will be used to determine if custom aggregation should be suspended; (2) provide for notification to the affected SC prior to any suspension; (3) state the specific reasons for the contemplated suspension and permit the affected SC a reasonable opportunity to respond; and (4) inform the SC of the expected duration of the suspension. They also request that the ISO identify the specific criteria that will be used to determine permanent suspensions under section 4.2 of the UDPA Protocol.

37. In its answer, first, the CAISO states that it will suspend an aggregation when the aggregation, due to the outage of a generating unit, transmission line or other grid component or other modification (such as a sale of a unit), fails to meet the criteria set out in sections 3.1.1 and 3.1.2 of the UDPA Protocol. Second, the ISO agrees to notify the SC as far in advance of the suspension as reasonably possible. The ISO states that, if it is required to permanently suspend an approved aggregation due to, for example, the reconfiguration of the transmission grid, then the ISO expects to provide notice well in advance of the suspension after the ISO becomes aware of the reconfiguration proposal. The ISO notes that, if the outage that causes the need to suspend the aggregation occurs in real-time, then the notice of a suspension may not be made until real-time. It adds that the ISO cannot allow an affected SC the opportunity to respond because the ISO cannot engage in on-going negotiations or discussions with market participants about operational issues. Rather, as noted by the Commission, the ISO states that market participants may request dispute resolution under the provisions of the ISO Tariff.¹¹ It adds that advance or real-time disputes over aggregation should not be permitted to interfere with ISO grid operations because aggregations are a financial convenience which limits SCs' exposure to UDP, not an operational requirement.

38. We find that the CAISO's answer has adequately addressed intervenors' concerns and direct the CAISO to reflect these commitments in its UDPA Protocol.

2. Exemptions

39. In Amendment No. 54, the CAISO proposed to modify the application of UDPs to resources providing Regulation Energy. The CAISO sought to penalize a regulating resource when it is deviating (as a result of its own actions, whether voluntary or involuntary, but not as a result of CAISO Dispatch Instructions) from its Schedule by more than the awarded amount of regulation plus the tolerance band of the greater of 5 MW or 3 percent of the units' maximum operating level.

40. Among other things, the ISO stated that it (1) will not levy uninstructed deviation penalties upon a resource where it provides Regulation Energy in one hour but not in the following hour and is, at the end of the first hour, above or below its preferred operating point as a result of providing Regulation Energy; and (2) will recognize when a unit is temporarily taken off regulation to move to a new regulation range and will not impose uninstructed deviation penalties in such events. The ISO also stated that, for Ancillary

¹¹ *Citing California Indep. Sys. Operator Corp.*, 100 FERC 61,060 at P 145 (2002).

Services capacity awarded in the CAISO forward markets, but not delivered in real time because the operating level ramp rate specified does not permit such delivery, it will take back capacity and Energy payments for the capacity that subsequently was not available.

41. The CAISO also proposed that all System Resource¹² bids that the CAISO pre-dispatches, at least forty minutes before the operating hour, are subject to UDP if energy from those bids is not subsequently delivered. According to the proposal, the CAISO may pre-dispatch System Resources after forty minutes before the operating hour, but such bids are not required to be held for the CAISO and are not subject to penalties if the bids are no longer available. The CAISO further proposed to provide an exemption from the UDP for Participating Intermittent Resources which meet the scheduling obligations established in the Eligible Intermittent Resources Protocol. Specifically, those Eligible Intermittent Resources that intend to become Participating Intermittent Resources must execute the following agreements: (a) a Participating Generator Agreement (PGA) that, among other things, binds the Participating Intermittent Resource to comply with the ISO Tariff; (b) a Meter Service Agreement for ISO Metered Entities; and (c) a letter of intent to become a Participating Intermittent Resource.

42. In the October 22 Order, the Commission conditionally approved the CAISO's proposed exemptions from UDP. The Commission required the CAISO in its compliance filing to respond to the requests for clarification of the proposed application of UDP to out-of-market transactions and System Resources and to modify section 11.2.4.1.2 (g) and insert section 11.2.4.1.2 (u), as it committed to doing.¹³

a. Rehearing Request

43. On rehearing, SMUD requests that the Commission direct the CAISO to include all intermittent resources in the UDP exemption, including those that have not executed a PGA. It claims that the Eligible Intermittent Resource Protocol requirement in section 2.2 that a unit be subject to a PGA unreasonably and unjustifiably discriminates against those units that have not or cannot execute a PGA.¹⁴

¹² The CAISO defines a System Resource as a resource located outside of the CAISO Control Area capable of providing Energy and/or Ancillary Services to the CAISO Controlled Grid.

¹³ October 22 Order at P 46.

¹⁴ See ISO Tariff, Second Revised Sheet No. 337.

44. We agree with the CAISO that it is equitable for an intermittent resource to receive the benefit of the exemption from UDP only if, in return, the intermittent resource is made subject to the terms described in the PGA as well as the other requirements for becoming a Participating Intermittent Resource. We find that the CAISO's proposal appropriately balances incentives for intermittent resources with the responsibility to comply with the provisions of the CAISO tariff which is imposed by the PGA.

b. Compliance Filing

45. In its November 21 Compliance Filing, the CAISO submits modifications to ISO Tariff section 11.2.4.1.2 (o) and the definition of "Tolerance Band." The ISO clarifies that the tolerance band does not apply to System Resources because the concept of a maximum unit output, or Pmax, does not apply to System Resources and transactions from System Resources, as inter-control area interchange schedules, are deemed delivered.

46. According to the ISO, UDP will apply to System Resource only when the System Resource has provided the ISO with a bid, the ISO calls upon (*i.e.*, pre-dispatches) that bid at least 40 minutes prior to the operating hour, and the System Resource declines to perform to that bid by failing to schedule that transaction as an interchange schedule. It adds that out-of-market transactions from System Resources are subject to UDP only if the ISO and System Resource agree on the transaction and the System Resource then fails to schedule the transaction. With respect to both of these scenarios, the ISO states that System Resources are not subject to UDP if the transaction is not scheduled due to the actions of the control area operator. It explains that out-of-market transactions from generating units and system units, which have physical maximum operating limits, are subject to UDP as are market transactions from those resources. The ISO states that those resources are subject to UDP if their output varies by more than the tolerance band from the dispatch operating point in an interval.

47. As directed in the October 22 Order, the CAISO also submits modifications to ISO Tariff section 11.2.4.1.2 (g) to exempt units providing Regulation and under the control of the ISO's Automatic Generation Control system from UDP as well as new ISO Tariff section 11.2.4.1.2 (u) to exempt RMR Condition 2 units from UDP.

48. Dynegy and Williams request that the ISO clarify its intent regarding the proposed revisions to ISO Tariff section 11.2.4.1.2 (o). Specifically, Dynegy and Williams request clarification that an out-of-market transaction must be fully specified before UDP can apply. They also request that the ISO clarify that UDP only applies when the out-of-market transaction has been accurately reflected in the ISO's automated real-time instructions and its expected energy calculation because a verbal out-of-market instruction could change a unit's output while the ISO's instruction (*i.e.*, its expected

energy computed by its real-time dispatch software) does not reflect the out-of-market call. They recommend that the proposed revision be revised to read: “The Uninstructed Deviation Penalty shall not apply to any excess Energy delivered from or any shortfall of Energy not delivered from an Out of Market (OOM) transaction involving a Generating Unit or a System Unit unless the ISO and the supplier have agreed upon the time of, duration of, and the amount of Energy to be delivered in the OOM transaction and the ISO reflects the OOM transaction in its real-time Expected Energy calculations.”

49. In its answer, the CAISO states that it does not oppose the proposed modification and will include it if directed to do so by the Commission.

50. We agree with intervenors that these changes will preclude the possibility that a penalty would be applied as a result of a miscommunication and direct the CAISO to include the proposed modification.

D. Dispatch and Settlement of Transmission Losses

51. In Amendment No. 54, the CAISO proposed to not allow SCs for System Resources, other than dynamically scheduled System Resources, to self-provide for transmission losses; or (2) allow any SCs to self-provide losses associated with real-time dispatch instructions. The CAISO proposed to dispatch additional imbalance energy to cover such losses and allocate the charges for those losses to the market.

52. In the October 22 Order, the Commission directed the CAISO to continue to permit all SCs, including System Resources, the option of self-providing Transmission Losses.

Compliance Filing

53. In its November 21 Compliance Filing, the CAISO proposes changes to ISO Tariff section 7.4.1 to meet the Commission’s directive.

54. Powerex asserts that, in spite of the CAISO's representation in its transmittal letter, the proposed revision to ISO Tariff section 7.4.1 does not permit all SCs to self-provide transmission losses. Powerex contends that the CAISO continues to limit the ability to self-provide in the final hour-ahead market to SCs representing generators or system units. Powerex argues that the ISO has failed to add the required reference to system resources that will self-provide losses as part of their final hour-ahead schedule, as it did for the transmission losses associated with Imbalance Energy Dispatch Instructions in the real-time market. It adds that precluding SCs which serve system resources from self-providing transmission losses in the final hour-ahead market is inconsistent with the requirement in ISO Tariff section 2.2.7.2 that all SCs submit

balanced schedules that take into account transmission losses. Powerex states that the Commission did not distinguish between the two markets when it directed the ISO to offer self-provision of transmission losses to all SCs, including system resources. Powerex requests that the Commission reject the proposed revision.

55. In its answer, the CAISO states that, consistent with the Commission's rejection of the proposed revision to ISO Tariff section 7.4.1, it restored the prior, Commission-approved version of that provision. The ISO asserts that Powerex's protest goes beyond the scope of the November 21 Compliance Filing and is misplaced. It states that, if Powerex objects to the previously-approved provision, then Powerex must file a complaint under section 206 of the FPA, rather than attack the compliance filing. It adds that, after Amendment No. 54 is implemented, the ISO will include the transmission losses associated with the generating unit's forward schedule in the real-time dispatch instruction, unless the SC signals its intent not to self-provide those losses, and that the ISO will account for the self-provision when applying UDP. It states that, if the SC signals that it will not self-provide, then the generating unit will not be expected to over-deliver its real-time dispatch instruction by the amount of losses equal to its forward schedule. It further states that no market participant may self-provide losses associated with a real-time dispatch instruction and that the ISO will determine and provide all such losses.

56. In the October 22 Order, the Commission agreed with Powerex that the CAISO's proposal would unnecessarily remove an option available to all SCs.¹⁵ Therefore, the Commission directed the CAISO to continue to permit all SCs, including System Resources, the option of self-providing transmission losses.¹⁶ The CAISO states that this directive has been complied with by reinserting the provision quoted above into ISO Tariff section 7.4.1. However, Powerex is correct in asserting that the omission of the term "System Resource" from the ISO Tariff language in the third sentence of this section has the opposite effect. The CAISO is directed to revise its ISO Tariff section 7.4.1 to add the required reference to System Resources that will self-provide losses as part of their final hour-ahead schedule.

¹⁵ *Id.* at P 58.

¹⁶ *Id.*

E. Market Clearing Price (MCP)**Performance Requirement**

57. In Amendment No. 54, the CAISO proposed to add a performance threshold so that an otherwise eligible unit could set the MCP only if the performance of that unit's output was within ten percent of its Dispatch Operating Point. To this end, the ISO proposed new ISO Tariff provisions that directed that only Dispatched Generating Units whose output was between ninety percent and one hundred and ten percent of the Dispatch Operating Point at the end of the Dispatch Interval were eligible to set the MCP.

58. In the October 22 Order, the Commission found that the additional performance requirement was redundant due to the UDP and that the ISO had other mechanisms at its disposal to confront potential market participant misconduct. The Commission concluded that the performance requirement was unnecessary.

Compliance Filing

59. In its November 21 Compliance Filing, the CAISO notes the Commission's rejection of the proposed performance band and now proposes revisions to ISO Tariff section 2.5.23.2.1.2 to this effect.

60. We find that the CAISO has made the appropriate changes to comply with our October 22 Order. We accept the CAISO's revisions.

F. Minimum Load Cost Compensation (MLCC)**1. Settlement of MLCC**

61. In Amendment No. 54, the CAISO proposed to change the time period for determination of minimum load costs from an hourly basis to a 10-minute Settlement Interval basis within a Waiver Denial Period.

62. In the October 22 Order, the Commission agreed that it was reasonable to assess compliance on a 10-minute basis as a means to reduce deviations within the hour, to synchronize the settlement system with the compliance system, and to reduce the size of adjustments for non-compliance. However, the Commission required the ISO's Department of Market Analysis to monitor this approach to assure it has the intended consequences and, if not, to work with market participants to revise its approach.

Request for Rehearing

63. On rehearing, Reliant argues that the CAISO's existing procedures for procuring reserve services are not transparent and are causing excessive and inappropriate reliance on the waiver denial procedure. Reliant contends that the CAISO's routine use of the waiver denial procedure to secure capacity margin reserves and locational reserves is inappropriate. Reliant believes that the ongoing stakeholder processes addressing the CAISO's reserve requirements and the mechanisms for selecting and compensating the resources that provide those services should be consolidated. Reliant states that, while Amendment No. 54 does not specifically encompass the use of Reliability Must Run (RMR) Condition 2 units to provide operating reserves and imbalance energy and the related issue regarding how the CAISO uses the Must-Offer Waiver Denial procedure to procure reserves, these issues are inextricably intertwined with the Must-Offer Waiver Denial compensation issue that is at issue in Amendment No. 54. Reliant believes that these issues should be addressed together, rather than in isolation, because they all impact the level of operating reserves procured by the CAISO through market mechanisms and impact imbalance energy prices.

64. The Commission reiterates its requirement that the ISO's Department of Market Analysis monitor this approach to assure it has the intended consequences and, if not, to work with market participants to revise this approach. We will not at this time respond to the concerns raised by Reliant. The Commission believes that Reliant's concerns are beyond the scope of this proceeding.¹⁷

2. Revocation of MLCC

65. In Amendment No. 54, the CAISO proposed to monitor a resource's energy production on a Settlement Interval basis and revoke: (1) MLCC during a Waiver Denial Period when energy production in a Settlement Interval varies by more than the tolerance band; or (2) MLCC and bid cost recovery in a Settlement Interval when energy within that interval varies from the total expected output by more than the tolerance band.

66. In the October 22 Order, the Commission rejected the ISO's proposal not to compensate a Must-Offer Generator for either minimum load costs or bid costs for energy dispatched above minimum load when it generates outside of the tolerance band within a Settlement Interval. The Commission found that the proposed language

¹⁷ In the recent order on Amendment No. 60, the Commission addressed the use of RMR Condition 2 units for system reliability needs. California Indep. Sys. Operator Corp., 108 FERC ¶ 61,022 (2004).

revoking payment for minimum load costs contravened our directive that the ISO must compensate a generator under the Must-Offer Obligation for that generator's minimum load costs. The Commission also found that the proposed language that would deny bid cost recovery to a Must-Offer Generator whose energy output varies from its expected output by more than the tolerance band was inconsistent with the proposal for UDPs which are assessed only against energy generated outside of the tolerance band.

a. Request for Clarification

67. On rehearing, Duke requests that the Commission clarify that: (1) the CAISO must compensate a generator running under a Must-Offer Requirement for its actual, minimum load costs, up to its minimum operating level (Pmin) in every hour; and (2) if the generator exceeds its tolerance band, the CAISO may only deny it MLCC for the generation outside the tolerance band. Duke claims that revocation of all MLCC payments for generating outside the tolerance bands is confiscatory and contrary to the Commission's admonitions in the October 22 Order that the ISO must compensate a

generator under the Must-Offer Obligation for that generator's minimum load costs.¹⁸ Duke also argues that it is inconsistent with the provision for UDPs that the Commission has approved, which are assessed only against energy generated outside of the tolerance band.¹⁹ Duke claims that it is unreasonable not to compensate the generator for minimum load costs it has actually incurred up to the tolerance bands when the ISO has denied it a waiver and required it to remain on-line and available for dispatch.

68. The October 22 Order did not alter the Commission's previous decision in a May 15, 2002 Order regarding revocation of MLCC. In that order, the Commission found it reasonable to deny MLCC when a generator varies from its minimum load by more than the tolerance band when running at minimum load pursuant to a waiver denial.²⁰ We deny Duke's request for rehearing on this issue.

¹⁸ *Citing* October 22 Order at P 107; *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services*, 102 FERC ¶ 61,285 at P 7 (2003).

¹⁹ *Citing* October 22 Order at P 107.

²⁰ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services*, 99 FERC ¶ 61,158 at 61,632 (2002).

b. Compliance Filing

69. In its November 21 Compliance Filing, the CAISO states that it will set the variable PERF_STAT,²¹ as defined in section 2.6.1 of Appendix D of the Settlements and Billing Protocol (SABP) and used in section 2.6 of Appendix D of the SABP, to 1 in every interval in which the unit could be producing Instructed Imbalance Energy. To this end, the ISO proposes revisions to section 2.6.1 of Appendix D of the SABP.

70. The ISO also states that, while the Commission expressly stated that must-offer resources dispatched above minimum load are not to be subject to the tolerance band, the Commission did not propose to extend the same treatment to non-must-offer resources. The ISO now proposes to eliminate bid cost recovery payments for those intervals in which the non-must-offer resource does not operate within the tolerance band amount of the Dispatch Operating Point. The ISO submits modifications to: (1) ISO Tariff section 5.11.6.1.1 to exempt Must-Offer Generators from any tolerance band requirements for an interval in which the ISO dispatches energy above minimum load and (2) related section 2.9 of Appendix D of the SABP. The ISO also proposes modifications to ISO Tariff section 11.2.4.1.1.1 to distinguish the bid cost recovery for must-offer resources and non-must-offer resources.

71. In its filing on proposed Amendment No. 58, the CAISO correctly interprets the Commission's October 22 Order as holding that "the application of UDP (as governed by the Tolerance Band) is sufficient to ensure compliance with Dispatch Instructions without also putting MLCC and Bid Cost Recovery at risk due to non-compliance with a Dispatch Instruction."²² While the instant proposal would apply only to non-must-offer generators and thus deals only with bid cost recovery, the same logic still applies here. We find unconvincing the CAISO's argument in this filing that UDP would not be a sufficient deterrent to generators who could choose not to perform at all and still receive compensation. The Commission has put into place market behavior rules²³ which, in combination with vigilant market monitoring and UDP, should be more than adequate

²¹ The CAISO's software uses the variable "PERF_STAT" to indicate whether a particular generating resource is eligible to recover its bid costs for any given interval. A resource which is eligible will be assigned a PERF_STAT = 1; a resource which is not eligible will be assigned a PERF_STAT = 0.

²² CAISO Amendment No. 58 Transmittal Letter at 4.

²³ See Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorization, 107 FERC ¶ 61,175 (2004).

safeguards against this type of behavior. We therefore reject the CAISO's proposal to eliminate bid cost recovery payments for non-must-offer resources operating outside the tolerance band amount of the Dispatch Operating Point.

3. Minimum Load Costs Allocated to Metered Sub-Systems

72. In Amendment No. 54, the CAISO added language to the ISO Tariff to clarify that Metered Sub-Systems (MSSs) may also elect to recover minimum load costs. The ISO also proposed to clarify that MSSs that elect to follow their own load are not eligible for bid cost recovery and are allocated bid cost recovery charges on a net demand basis, while MSSs that do not follow their load are eligible for bid cost recovery and are assessed bid cost recovery charges on a gross demand basis.

73. In the October 22 Order, the Commission accepted the proposed modification which would allocate minimum load costs to MSS Operators on the same basis that they are currently allocated start-up and emission charges. The Commission found that the modification was consistent with the allocation directed in an order issued by the Commission on December 19, 2001.²⁴ The Commission also found that the proposed modification was consistent with the MSS and MSSA Agreements because it provided the municipal utilities the opportunity to annually choose whether or not they will bill the CAISO for minimum load costs.

Rehearing Request

74. On rehearing, NCPA argues that the allocation of MLCC costs to NCPA would result in an unjust cost shift from the entities that actually cause the need for MLCC to NCPA which is resource-sufficient and does not contribute to the need for MLCC costs to be incurred by the CAISO.²⁵ NCPA also argues that the Commission is required to provide a cost causation explanation to justify the new charge for MLCC in section 23.16.3.

²⁴ See *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services*, 97 FERC ¶ 61,293 (2001).

²⁵ The Cities concur in NCPA's arguments and requests for rehearing.

75. The Commission has previously considered this question and addressed it in the October 22 Order.²⁶ We deny rehearing on this issue.

4. Recovery of Minimum Load Costs by Must-Offer Generators

76. In Amendment No. 54, the CAISO proposed to revise ISO Tariff section 5.11.6.11 to provide that the MLCC payment for an hour will only be made as an uplift payment to the extent that instructed energy payments during that hour are insufficient to cover minimum load costs. This revision was not discussed in the ISO's filing transmittal letter. In the October 22 Order, the Commission did not reach a determination on the revision to ISO Tariff section 5.11.6.1.1.

a. Rehearing Request

77. On rehearing, Duke, Reliant and the California Generators request clarification of the Commission's determination on and/or rejection of the CAISO's proposal for netting of market revenues against MLCC payments.²⁷ They argue that the proposed revision to ISO Tariff section 5.11.6.1.1, which would permit the ISO to pay minimum load costs of eligible Must-Offer Generators as an uplift payment only to the extent those costs are not covered by the ex-post imbalance energy market revenues, is not only inconsistent with the representations made by the ISO in its transmittal letter,²⁸ but

²⁶ October 22 Order at P 113.

²⁷ On October 21, 2003, Dynegey and Williams filed an untimely, supplemental protest which requested rejection of the proposed revisions to ISO Tariff Section 5.11.6.1.1 with respect to netting of market revenues.

²⁸ California Generators argue that the proposed revision must either be removed from the ISO Tariff or the transmittal letter must be amended and re-filed to include a summary of the netting proposal. *Citing* Carolina Power & Light Co., *et al.*, 94 FERC ¶ 61,273 at 61,998 (2001) (where the proposed tariff language does not correspond to the transmittal letter, the tariff must be amended); Virginia Elec. and Power Co., 44 FERC ¶ 61,121 at 61,331 (1988) ("The company cannot buy a change which requires explicit Commission approval in voluminous documents required to be filed as a part of a rate change application and later claim that the Commission approved the change because no objections were raised."). Because we reject the proposed revisions, we will not require the ISO to amend and re-file its transmittal letter.

also contravenes Commission orders that have rejected such an MLCC netting proposal.²⁹ California Generators also request that the Commission clarify that the ISO has not been authorized to net ex-post revenues against minimum load costs under any circumstances, including a daily, hourly or Settlement Interval (10-minute) basis. If the Commission accepts the proposed netting, Reliant requests that the Commission direct the ISO to retain the pre-Amendment No. 54 compensation mechanism until MD02 Phases 2 and 3 are implemented or until the stakeholder processes produce an agreed upon alternative approach which addresses the amount of reserves the ISO requires and the mechanism for procuring them.

78. We agree with intervenors that the proposed tariff language is contrary to the representations made by the CAISO in its transmittal letter. We reject the provision to net ex-post revenues against minimum load costs.

b. Compliance Filing

79. In its November 21 Compliance Filing, the CAISO states that it has revised ISO Tariff sections 5.11.6.1.1 and 11.2.4.1.1.1 and section 2.6.1 of Appendix D of the SABP to eliminate the proposed tolerance band applicable to must-offer generators when dispatched. In addition, the CAISO has modified proposed section 2.9 to Appendix D to the SABP to define a generator's MLCC "as the market revenue deficit below its minimum load costs," rather than as all of a generator's minimum load costs.

80. In order to be consistent with the October 22 Order, Dynegy and Williams request that the Commission direct the ISO to strike the phrase "subject to performance within its Tolerance Band" from the end of ISO Tariff section 5.11.6.1.1. They argue that this phrase is confusing and unnecessary because there is no payment limitation related to the tolerance band in this instance.

²⁹ San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services, 99 FERC ¶ 61,158 at 61,631; San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services, 99 FERC ¶ 61,159 at 61,641 (2002). *See also* San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services, 97 FERC ¶ 61,293 at 62,363 (2001). Additionally, in an order issued on October 28, 2003 on MD02, the Commission rejected the ISO's proposal to net market revenues against minimum load cost as part of the residual unit commitment procedure. California Indep. Sys. Operator Corp., 105 FERC ¶ 61,140 at P 115 (2003).

81. In its answer, the CAISO agrees that the phrase should be deleted and states that the ISO deleted it in the December 15, 2003 compliance filing submitted in response to the order issued on November 14, 2003.³⁰

82. We direct the CAISO to delete the phrase “subject to performance within its Tolerance Band” from the end of ISO Tariff section 5.11.6.1.1.

83. Dynegy and Williams also allege that, through the proposed revision to section 2.9 to Appendix D to the SABP, the ISO is attempting to implement an impermissible netting procedure. They claim that this material change was not authorized by the October 22 Order and is not described in the ISO’s compliance filing transmittal letter. They further argue that this change contravenes Commission orders which require the ISO to pay minimum load costs during each hour that a generator runs without a bilateral schedule pursuant to the ISO’s denial of a must-offer waiver³¹ and which rejected a previous ISO MLCC netting proposal.³² Dynegy and Williams request that the Commission reject this provision.

84. In its answer, the CAISO states that section 2.9 of Appendix D of the SABP is the mathematical equivalent of ISO Tariff section 5.11.6.1.1 that was approved by the Commission in the October 22 Order. It claims that, consistent with ISO Tariff section 5.11.6.1.1, the formula in section 2.9 of Appendix D of the SABP defines MLCC as any shortfall that may arise from paying minimum load energy at the imbalance energy price. It explains that section 2.9 only describes an uplift amount added to the imbalance energy payment made to minimum load energy, not an amount to be netted from any payment for minimum load energy. It states that netting would occur only if the ISO were using revenues to offset minimum load costs. It adds that, if a generator receives moneys for its minimum load energy in excess of its unit’s minimum load costs, then the generator can retain those excess revenues.

³⁰ *Citing* California Indep. Sys. Operator Corp., 105 FERC ¶ 61,196 (2003).

³¹ *Citing* San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services, 105 FERC ¶ 61,196 at P 7 (2003); San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services, 101 FERC ¶ 61,112 at 61,450 (2002); San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services, 99 FERC ¶ 61,158 at 61,632.

³² *Citing* San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services, 99 FERC ¶ 61,158 at 61,631; *accord*, San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services, 99 FERC ¶ 61,159 at 61,641 (2002).

85. We agree with intervenors that the proposed language in section 2.9 to Appendix D to the SABP defining a generator's MLCC "as the market revenue deficit below its minimum load costs," rather than as all of a generator's minimum load costs is misleading. We direct the CAISO to submit a revised definition of MLCC in this section.

G. Errors in Amendment No. 54

1. Time to Provide ISO with an Explanation after a Forced Outage

86. In its November 21 Compliance Filing, the CAISO states that ISO Tariff section 11.2.4.1.2 (p), as submitted in Amendment No. 54, inadvertently created a conflict with existing, approved ISO Tariff section 2.2.3.9.5. According to the ISO, section 11.2.4.1.2 (p) proposed that a generating unit must provide the ISO with information that verifies the reason the generating unit did not comply with the dispatch instruction within 72 hours of an event that causes the generating unit to be unable to perform with the instruction, while existing section 2.2.3.9.5 directs the generating units to provide such information within 48 hours. The ISO proposes to modify ISO Tariff section 11.1.4.1.2 (p) to require the submission of such information within 48 hours, rather than 72 hours.

87. We will accept the CAISO's proposed revision to ISO Tariff section 11.1.4.1.2 (p) to require the submission of information that verifies the reason a generating unit did not comply with a dispatch instruction within 48 hours rather than 72 hours. We find this proposed revision reasonable.

2. Energy Formulae

a. First Tier Uninstructed Imbalance Energy Correction

88. In its November 21 Compliance Filing, the CAISO proposes to amend the first tier Uninstructed Imbalance Energy (UIE) formula in section 2.1.1 of Appendix D of the SABP to include the data term for self-provided transmission loss quantities and to reflect this change in the definition in section 3.91 of Appendix D of the SABP. The ISO states that this modified formula will achieve UIE settlement using the same resource-specific price that was used to settle the deemed-delivered expected energy quantities and it applies to specific conditions for any undelivered self-provided transmission loss quantities. The ISO explains that the current formula results in a UIE settlement based upon a different zonal price rather than the resource-specific price used to settle the deemed-delivered energy.

89. We will accept the CAISO's proposed amendments to the formula contained in sections 2.1.1 and 3.9.1 of Appendix D of SABP. We find these proposed revisions reasonable.

b. Transmission Loss Obligation

90. In its November 21 Compliance Filing, the CAISO states that the proposed transmission loss obligation formula in section 2.7 of Appendix D of the SABP submitted in Amendment No. 54 calculates the obligation based upon the difference between the metered and self-provided transmission loss quantities. The ISO states, however, that self-provided transmission losses should not be included in this calculation. The ISO proposes a corrected formula which calculates the transmission loss obligation based upon metered energy quantities only.

91. We will accept the CAISO's proposed correction of the proposed transmission loss obligation formula in section 2.7 of Appendix D of the SABP to exclude self-provided transmission losses. We find this proposed revision reasonable.

H. Tariff Inconsistencies

92. In the October 22 Order, the Commission agreed that it is imperative that the ISO Tariff and Operating Protocols be consistent and up-to-date. Therefore, the Commission directed the CAISO to file a compliance filing on Amendment No. 54 to correct any inconsistencies and invalid references in both the ISO Tariff and Operating Protocols.

Compliance Filing

93. In its March 11 Compliance Filing, the CAISO proposes to: (1) correct the use of terms defined in Appendix A to the ISO Tariff (Appendix A); (2) delete definitions from the ISO Protocols that are identical or substantially similar to definitions in Appendix A; (3) delete the outdated definition of the term "ISO Metered Entity" from several of the ISO Protocols, leaving the current definition of the term in Appendix A; (4) delete several terms defined in the ISO Protocols which are defined with substantially different words in Appendix A and adapt the definitions of these terms to the definitions in Appendix A; (5) delete outdated references to and provisions concerning the California Power Exchange and the Western Systems Coordinating Council; and (6) correct spelling and punctuation errors.

94. BPA claims that the CAISO has proposed substantial changes to ISO Tariff sections 11.2.4.2 and 11.2.4.2 (a) which will result in unjust settlements for real-time energy. BPA asserts that, as a result of these modifications, real-time energy will be paid at the hourly average price rather than the interval price for the intervals in which the energy is supplied to the ISO. It argues that the change may result in an

unreasonable penalty for generators or consumers because the hourly average price does not always reflect the value of the energy at the time it is delivered. BPA adds that the change is inconsistent with the ISO's long-standing direction toward real-time pricing at 10-minute and, recently, 5-minute intervals. BPA also contends that the proposed changes may result in the overcompensation of generators. It states that the proposed revisions allow the ISO to apply a bargain price to a premium service (*i.e.*, the provision of emergency power) and thus sends inappropriate price signals which provide a disincentive for suppliers. BPA requests that the Commission reject these modifications and require the ISO to make any necessary changes in the ISO Tariff and Protocols to require payment for real-time energy at real-time interval prices.

95. In its answer, the CAISO responds that the Commission has recognized that ISO Tariff section 11.2.4.2 sets forth two payment options available to suppliers that receive an out-of-market call: (1) hourly *ex post* price, or (2) a price consisting of: (a) a capacity component based on certain market indices, (b) an energy component based on certain market indices, (c) verifiable start-up fuel costs, and (d) verifiable gas imbalances charges, if any.³³ The ISO states that it has never proposed and the Commission has never found that out-of-market payments under ISO Tariff section 11.4.2 should be made at the real-time interval price. The ISO explains that it merely corrects the erroneous cross-references in ISO Tariff section 11.2.4.2 to ISO Tariff section 11.2.4.1. The ISO proposes to change the cross-references so that they refer to ISO Tariff section 2.5.23.2.2, which explains how the hourly *ex post* price is calculated.³⁴ The ISO argues that, absent the proposed modifications, section 11.2.4.2(a) would contain a cross-reference to section 11.2.4.1 immediately followed by the contradictory direction to use the hourly *ex post* price.

96. The ISO also argues that BPA's suggested modification is unnecessary because the current ISO Tariff provides BPA with numerous ways to achieve the result it seeks: (1) it can bid its energy into the ISO's real-time Imbalance Energy market at the price it

³³ *Citing* San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services, 97 FERC ¶ 61,275 at 62,234 n.377 (2001); California Indep. Sys. Operator Corp., 90 FERC ¶ 61,006 at 61,014 (2000); California Indep. Sys. Operator Corp., 91 FERC ¶ 61,026 at 61,086 (2000); California Indep. Sys. Operator Corp., 92 FERC ¶ 61,004 at 61,007 (2000); Dynegy Power Marketing, Inc. v. California Indep. Sys. Operator Corp., 101 FERC ¶ 61,369 at P 5 and 20 (2002); El Segundo Power, LLC, 91 FERC ¶ 61,110 at 61,390-91 (2000), *reh'g denied*, 95 FERC ¶ 61,159 at 61,516-17 (2001).

³⁴ The CAISO states that this modification should have been made in Amendment No. 29 to the ISO Tariff. *Citing* Amendment No. 29, Docket No. ER00-2383-000 (filed May 2, 2000), Amendment B.

chooses consistent with any market power mitigation measures approved by the Commission; and (2) as an out-of-state resource not directly subject to ISO dispatch authority and not subject to the payment provisions of ISO Tariff section 11.2.4.2, it can negotiate an individual price. It adds that, under Phase 1B, System Resources that are dispatched and deliver hourly pre-dispatched Instructed Imbalance Energy will receive the higher of their bid price or the MCP.³⁵ It contends that paying the real-time interval price will create an incentive to “game” the ISO market by withholding resources until they are dispatched under the out-of-market provisions.

97. We agree with BPA that settlements for real-time energy should, to the extent that it is possible, reflect the value of that energy at the time it is delivered. However, we also agree with the CAISO that it has not proposed that out-of-market payments under ISO Tariff section 11.4.2 should be made at the real-time interval price and that this proposed change merely corrects erroneous cross-references in the ISO Tariff. We find that the proposed changes are reasonable and will correct inconsistencies in the CAISO tariff and therefore accept the CAISO’s proposed changes. We note that the Commission has expressed its concern with out of market transactions and has recently directed the CAISO’s Division of Market Analysis to provide an analysis of such transactions, their effect on market clearing prices, and the potential for monopsony abuse.³⁶

98. The ISO also proposes to correct section 3.26 of Appendix D of the SABP which cross-references to ISO Tariff section 7.4.3, rather than 7.4.2.

99. We will accept the ISO’s proposed corrections.

I. Compliance Filing

100. We direct the CAISO to submit a compliance filing within 30 days of the date of this order with the revisions directed herein.

The Commission orders:

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

³⁵ *Citing* October 22 Order at P 122-23.

³⁶ California Indep. Sys. Operator Corp., 108 FERC ¶ 61,022.

(B) The CAISO's proposed tariff changes, as modified in Ordering Paragraph (A), are hereby accepted for filing, without suspension or hearing, to become effective ten days after the CAISO provides notice to the Commission and Market Participants that the software necessary to implement these tariff changes is ready for implementation.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.