

I. STATEMENT OF ISSUES

In accordance with Rule 203(a)(7), 18 C.F.R. 385.203(a)(7), the CAISO presents this Statement of Issues.

1. The Commission's consideration of whether an extension of time for comments to the CAISO's MRTU Tariff is warranted should await the actual MRTU Tariff filing so that the Commission may balance numerous factors, including the amount of material that is filed with the MRTU Tariff and was released prior to the submission, the extent of the stakeholder process on the issues, and the need for a timely decision to allow sufficient time for implementation of necessary software and systems procedures prior to implementation of MRTU.
2. CAISO's request for extension, which the Commission granted in its September 1, 2005 Notice of Extension of Time, relates to the requirement in *California Independent System Operator Corp.*, 105 FERC ¶ 61,140 (2003) (October 28 Order) at Paragraph 172, that the CAISO file information concerning the "first year allocation" for CRRs at least three months prior to the actual tariff filing. SMUD's request for clarification is nothing more than an impermissibly late request for rehearing as to the scope of the informational filing based on an erroneous assertion that the Commission has required the CAISO to include long-term CRRs on day one of MRTU.
3. Contrary to the implication of SMUD in its request for clarification, the Commission has not determined that long-term CRRs must be a feature of

the new market design, let alone a feature of the first year allocation.

Rather, the Commission has stated that the MRTU proceeding will determine “whether or not, and in what manner, the CAISO should offer long-term transmission service.” *Pacific Gas & Electric Company*, 111 FERC ¶ 61,175, P 22 (2005).

4. As the filing entity, the CAISO has a right to file amendments to its Commission-approved tariff. The Commission cannot prospectively dictate a rate, term or condition. *Atlantic City Electric Co. v. Fed. Energy Regulatory Comm’n*, 295 F. 3rd 1, 10 (D.C. Cir. 2002). Moreover, pursuant to Section 205 of the Federal Power Act, a public utility bears the burden of establishing the justness and reasonableness of the proposed terms and conditions, which need not be perfect, only reasonable. *New England Power Co.*, 52 FERC ¶ 61,090 at 61,336 (1990), *reh’g denied*, 54 FERC ¶ 61,055 (1991), *aff’d Town of Norwood v. FERC*, 962 F.2d 20 (D.C. Cir. 1992); *citing City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 917 (1984); *OXY USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995).

II. DISCUSSION

A. The Request for an Extension of Time Is Premature

The Commission should deny SMUD's prospective request for extension as it is premature and is requesting that the Commission make a decision without the benefit of the full set of information it needs to make this decision. The Commission's consideration of whether an extension of time for comments to the CAISO's MRTU Tariff is warranted should await the actual MRTU Tariff filing so that the Commission may balance all known factors at the time of the filing.

The CAISO is currently working with stakeholders on finalizing the new MRTU market design. The MRTU Tariff filing will be the culmination of an extensive stakeholder and internal process over several years. SMUD and the other market participants have been afforded the numerous opportunities to comment to the CAISO throughout this process, and to the Commission with respect to the conceptual filings made by the CAISO. Moreover, the CAISO has been releasing the draft tariff language and whitepapers on design elements as they have been developed since June 7, 2005.

As part of this process, SMUD has been afforded timely information regarding the CAISO's proposals for allocation of CRRs. This includes an August 12, 2005 whitepaper on allocation of CRRs to entities, such as SMUD, located outside the CAISO Control Area, presentations on allocation issues at the stakeholder meetings on August 18 and August 31, 2005, an updated position paper issued September 15, 2005, and an updated whitepaper on CRR allocation to internal LSEs issued on September 27, 2005. Indeed, SMUD submitted comments to the CAISO on its CRR allocation proposal as far

back as March 15, 2005 and again as recently as September 2, 2005, and no doubt is already preparing its arguments, reflecting its position on this important issue, that it plans to file in response to the MRTU Tariff filing.

While the CAISO recognizes that its MRTU Tariff filing will be significant in scope and that some extension of the normal comment period may be warranted, any such determination should wait until the filing is made and the Commission has the benefit of the actual submission to determine the scope of any such extension. Moreover, any such extension must balance the extensive stakeholder process that has already taken place, the CAISO's conceptual filings and the Commission's orders in response thereto, with the need for final Commission approval of the market design at the earliest possible date to ensure that the necessary software and system procedures are in place to support timely implementation of the CAISO's MRTU market design in February 2007.

B. The Request for Clarification Should Be Denied

SMUD's request for clarification is wholly without merit. The Commission should reject this improper attempt by one market participant to force the CAISO to include a market design feature in its MRTU irrespective of the stakeholder review and conceptual filings that have been the driving elements for MRTU policy development. Moreover, SMUD has misrepresented the Commission's prior pronouncements on the need for long-term CRRs under the new market design. Allowing such a piecemeal approach fails to recognize the CAISO's ability as the filing entity to put forth a proposal for determination as to its justness and reasonableness on a comprehensive basis. Finally, permitting the "clarification" would only encourage other market participants to seek similar pre-determination of their specific issues, distracting CAISO, stakeholder,

and Commission resources from finalization of the market design. Accordingly, SMUD's request for clarification should be denied.

1. While the Commission Has Directed SMUD to Raise Its Concerns Regarding Long Term CRRs In This Docket, the Commission Has Not Directed the CAISO to Include Long Term CRRs as Part of Its MRTU Market Design and Should Not Do So at This Time.

SMUD's request for clarification is an attempt encourage FERC to force CAISO to include a market design feature that FERC has already in many instances provided CAISO the benefit of determining in the first instance whether it should be part of its MRTU design. When SMUD's Existing Contract with Pacific Gas & Electric Company expired, the Commission rejected SMUD's request to have it renewed stating "the CAISO tariff was the only relevant tariff for transmission service and that SMUD would have non-discriminatory access to transmission service under the CAISO tariff." *Sacramento Municipal Utility District v. PG&E, et al.* 107 FERC ¶ 61,237 at P 12 (2004). At that time, the Commission noted that SMUD's concern regarding the availability of long-term firm transmission service should be addressed "in an ongoing proceeding to resolve market design issues." *Id.* at P 14.

Contrary to the impression in SMUD's Motion, however, the Commission has never before insisted that long-term CRRs be a feature of the new market design. As the Commission clearly stated:

The CAISO's comprehensive market redesign proposal in Docket No. ER02-1656-000 is an ongoing proceeding to resolve market design issues in the CAISO. That proceeding is best suited for determining *whether or not*, and in what manner, the CAISO should offer long-term transmission service. SMUD should pursue its concerns regarding long-term service in that proceeding.

Pacific Gas & Electric Company, 111 FERC at P 22 (emphasis added). SMUD's reliance on a 1999 Commission decision regarding the CAISO's implementation of its Firm Transmission Right Program as evidence that the Commission has mandated the implementation of long-term CRRs under MRTU is entirely misplaced in the current MRTU proceeding. Indeed, in the context of MRTU, this 1999 order is simply an anachronism, issued in the early days of CAISO operations, before the California energy crisis, under a completely different market structure and well before the stakeholder process on MRTU. This is particularly so when the Commission has directly stated that the issue of *whether or not* long term CRRs should be included in the MRTU design is an open question.

Moreover, SMUD has directly challenged the CAISO's conceptual MRTU filings on the issue of CRRs and long-term transmission services:

SMUD contends that the CAISO's filing is deficient because it contains no tariff sheets and fails to address a number of unresolved issues, such as CRRs, development of long-term transmission service, resource adequacy, etc.

* * *

Commission Determination

We disagree with SMUD's contention that the CAISO's filing is deficient. The instant filing is conceptual, and, by its nature, lacks details and supporting tariff language that one would expect to find in a more detailed tariff filing under section 205. The matters discussed in the filing and this order are subject to further proceedings and orders. The market design elements proposed in the instant filing will be submitted for Commission consideration as part of a comprehensive tariff, which will include the Release I market features. At that time, parties will have the opportunity to comment on the details and tariff language pertaining to the instant proposal.

In the instant filing, the CAISO seeks Commission guidance and approval in principle of only certain elements of its Market Redesign. The CAISO plans to provide details on the Category B issues in its Market Redesign

tariff filing in November 2005. In the meantime, it plans to conduct a several-month stakeholder process to resolve the Category B issues. [FN84] SMUD's contentions that this stakeholder process might not yield desirable results in time for the November filing is not a compelling reason for rejecting the instant conceptual filing.

California Independent System Operator Corp., 112 FERC ¶ 61,013 (2005) at PP 166-170, *rehearing denied*, 112 FERC ¶ 61,310 at P 79-80 (2005) (“The CAISO plans to make a tariff filing in November 2005. Only at that time will the Commission be able to determine whether the pending issues have been resolved among the CAISO and stakeholders. Accordingly, SMUD’s request for an evidentiary hearing is hereby denied.”).

As is clear from the record before the Commission, the Commission has consistently and repeatedly informed SMUD that it will get its chance to make its argument, but that SMUD should wait for the CAISO’s filing to be made to file any comments or protest. That is the proper time and place for SMUD to formally raise these issues to the Commission.

Finally, CAISO’s request for extension, which the Commission granted in its September 1, 2005 Notice of Extension of Time, relates to the requirement in *California Independent System Operator Corp.*, 105 FERC ¶ 61,140 (2003) (October 28 Order) at Paragraph 172, that the CAISO file information concerning the “first year allocation” for CRRs at least three months prior to the actual tariff filing. SMUD’s request for clarification is nothing more than an impermissibly late request for rehearing as to the scope of the informational filing based on an erroneous assertion that the Commission has required the CAISO to include long-term CRRs on day one of MRTU.

2. The CAISO has the Right to Make Tariff Amendments.

Under Section 205 of the Federal Power Act, the CAISO's has the right to file tariff amendments proposing new rates, terms and conditions. *Atlantic City Electric Company v. Federal Energy Regulatory Commission*, 295 F. 3rd at 8. Moreover, for a proposed tariff filing to be acceptable, it need be neither perfect nor even the most "desirable;" it need only be just and reasonable. See *New England Power Co.*, 52 FERC at 61,336; *OXY USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995). The Commission has no authority in advance of the CAISO's MRTU Tariff filing under Section 205 to direct the CAISO to include any specific term or condition or to condition its approval of the MRTU Tariff. SMUD will have the opportunity to comment or protest and the Commission will consider the comprehensive MRTU Tariff along with all other intervenors' comments and protests under the "just and reasonable" standard pursuant to Section 205.

III. CONCLUSION

Wherefore, for the reasons set forth above, the CAISO respectfully requests that the Commission deny SMUD's motion for an extension and request for clarification.

Respectfully submitted,

Charles F. Robinson
Sidney Mannheim Davies
Anna A. McKenna
The California Independent
System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 608-7147

/s/ _____
Roger E. Smith
David B. Rubin
Troutman Sanders, LLP
401 9th Street, N.W.
Washington, D.C. 20004
Tel: (202) 274-2800

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Certificate of Service

I hereby certify that I have this day served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 4th day of October, 2005 at Folsom in the State of California.

____/s/ Anna A. McKenna _____

Submission Contents

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