



California Independent
System Operator Corporation

April 2, 2008

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: Answer of the California Independent System Operator Corporation
Docket Nos. ER08-556-000 and ER06-615-020**

Dear Ms. Bose:

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.213 (2007), the CAISO respectfully submits an answer ("Answer") to Calpine Corporation's ("Calpine") March 18, 2008 Motion to Lodge CAISO's Comments and Reply Comments ("CAISO Comments") on the Capacity Market Structure filed at the California Public Utilities Commission ("CPUC").¹

If there are any questions concerning this filing, please contact the undersigned.

Respectfully Submitted,

/s/ Anthony J. Ivancovich

Anthony J. Ivancovich
Counsel for the California Independent
System Operator Corporation

¹ Docket Nos. ER08-556-000, ER06-615-020, "Calpine Corporation's Motion to Lodge Comments and Reply Comments of the California Independent System Operator Corporation on Capacity Market Structure Filed at the California Public Utilities Commission," March 18, 2008 ("Calpine Motion").

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

California Independent System Operator, Corp.)))	Docket No. ER08-556-000 Docket No. ER06-615-020
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**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.213 (2007), the California Independent System Operator Corporation (“CAISO”) hereby submits this answer to Calpine Corporation’s (“Calpine”) March 18, 2008 Motion to Lodge CAISO’s Comments and Reply Comments (“CAISO Comments”) on the Capacity Market Structure filed at the California Public Utilities Commission (“CPUC”).² For the reasons discussed herein, the motion should be denied. Calpine’s motion does not assist the Commission’s consideration of the justness and reasonableness of the Interim Capacity Procurement Mechanism (“ICPM”) filed by the CAISO in this docket on February 8, 2008, but instead it invites the Commission to: (1) preempt the CPUC’s consideration of the proper long-term Resource Adequacy (“RA”) structure for utilities under its jurisdiction -- an issue that is currently being addressed in an ongoing CPUC proceeding; and (2) preempt the stakeholder process that the CAISO intends to undertake subsequent to the conclusion of the CPUC’s long-term RA proceeding to develop a more permanent capacity procurement/pricing mechanism that can replace the ICPM and effectively

² Docket Nos. ER08-556-000, ER06-615-020, “Calpine Corporation’s Motion to Lodge Comments and Reply Comments of the California Independent System Operator Corporation on Capacity Market Structure Filed at the California Public Utilities Commission,” March 18, 2008 (“Calpine Motion”).

complement the long-term RA framework.

Specifically, Calpine seeks to lodge: “Comments of the California Independent System Operator on Staff Recommendations on Capacity Market Structure,” filed with the CPUC on February 29, 2008; and “Reply Comments of the California Independent System Operator on Staff Recommendations on Capacity Market Structure,” filed with the CPUC on March 14, 2008. The Commission should reject Calpine’s request.

- First, the information that Calpine seeks to lodge is not germane to the Commission’s consideration of the justness and reasonableness of the ICPM.
- Second, the Calpine Motion represents an impermissible collateral attack on the Commission’s prior determination to defer to state authorities’ determination of long-term resource adequacy requirements.
- Third, the Commission has determined previously that the new Market Redesign and Technology Upgrade (“MRTU”) is just and reasonable, without the CAISO’s implementation of a centralized capacity market.
- Fourth, the CAISO needs the ICPM in order to have the authority to engage in backstop capacity procurement under defined circumstances if necessary to meet Reliability Criteria at the startup of MRTU.
- Fifth, Calpine ignores (1) the fact that the ICPM is an interim mechanism with a prescribed sunset date, and (2) the CAISO’s commitment to work with stakeholders after the conclusion of the CPUC’s long-term RA proceeding to develop a long-term capacity procurement mechanism that will complement the long-term RA framework.

Accordingly, the Calpine Motion is without foundation and should be denied.

The CAISO and Calpine appear to agree on three points: (1) that a well-developed capacity market can provide benefits; (2) that the appropriate forum for consideration of long-term RA issues in the first instance is the ongoing CPUC proceeding; and (3) that the CAISO will need to develop a more permanent structure for the CAISO's backstop procurement. These areas of agreement all relate to proceedings and issues that are beyond the scope of the ICPM, which is an interim, administrative mechanism that will permit the CAISO to efficiently procure backstop capacity on a short-term, basis from existing resources to meet reliability needs as they arise.

Even if the CPUC recommends moving from the current RA paradigm (based on reliance on self-supply and bilateral contracting to meet established Reserve Margins)³ to the development of a capacity market, it will take a reasonable period of time to develop and implement such a market. The "I" in ICPM recognizes that the CAISO needs a backstop procurement mechanism, and the implementation of MRTU should not be delayed to await the potential development of a capacity market. Instead, the CAISO has filed an *interim* backstop procurement proposal to be utilized as a "bridge" until the CAISO develops and implements a more permanent capacity procurement mechanism that comports with the long-term need for capacity and can complement the long-term RA design.

Calpine claims in its Motion that the interim period for the ICPM is of an uncertain direction.⁴ That is simply incorrect. The CAISO has proposed an automatic sunset date of December 31, 2010 for the ICPM, and that sunset date is reflected in the

³ Capitalized terms not otherwise defined herein have the meanings set forth in the Master Definition Supplement, Appendix A to the ISO Tariff.

⁴ Calpine Motion at 2.

tariff language filed by the CAISO. This sunset date was incorporated into the CAISO's proposal to make it clear that ICPM is an interim mechanism. As the CAISO has indicated in its ICPM Filing Letter and its Answer to Protests herein, subsequent to the conclusion of the long-term RA proceeding, the CAISO will undertake a stakeholder process to develop a long-term capacity procurement and pricing mechanism. Calpine is essentially seeking to preempt this stakeholder process and the CAISO's exercise of its Section 205 rights.

Below the CAISO addresses some of the specific elements of the Calpine Motion.

I. ANSWER

A. The CPUC's Long-Term RA Program is Separate from CAISO's Proposed ICPM.

As Calpine notes in its Motion, the CAISO Comments provide the "CAISO's perspective on the optimal, integrated, market-based framework for assuring resource adequacy in California over the long-term."⁵ Further, the "CAISO recommends development and implementation of robust, centralized, auction-based forward capacity markets for both primary and backstop procurement of needed capacity."⁶ While these statements are both true, Calpine fails to recognize that such comments must be viewed in the context in which they were submitted - in a CPUC proceeding *which is addressing the appropriate long-term RA framework, including the potential future development of a capacity market.*

⁵ Calpine Motion at 1.

⁶ *Id.*

On the other hand, as the CAISO noted in its recent answer in this proceeding,⁷ the ICPM is an interim mechanism that will permit the CAISO to procure backstop capacity on a short-term basis from existing resources that have capacity available and that are willing to make that capacity available to the CAISO via a forward ICPM designation in order for the CAISO to meet reliability needs that arise. The CAISO Comments, submitted within the context of the CPUC's long-term RA proceeding are pertinent to, and reflect the CAISO's views regarding the long-term RA and capacity market issues being addressed in that proceeding. Those comments are not, however, pertinent to the ICPM proposal in this docket because they do not reflect the CAISO's views regarding the appropriate design of the ICPM, which is intended as an interim mechanism until a long-term capacity procurement mechanism can be developed and implemented. Indeed, Calpine ignores the commitment the CAISO has made (in its ICPM Filing Letter and in its Answer to Protests) to institute a stakeholder process to evaluate long-term capacity pricing mechanisms following a decision in the CPUC long-term RA proceeding.⁸ As indicated above, Calpine is essentially seeking to pre-empt the CAISO's Section 205 rights.

The Commission has previously denied a motion to lodge where the issues were being addressed in another forum and those issues were not germane to the proceeding at bar.⁹ Similarly, Calpine's efforts to lodge the CAISO Comments should be denied as irrelevant to the instant case. The ICPM is an interim program designed to be utilized

⁷ Docket No. ER08-556-000, *et al.*, "Motion for Leave to File Answer and Answer of California Independent System Operator Corporation," at 4, filed Mar. 17, 2008 ("CAISO Answer").

⁸ CAISO Answer at 83.

⁹ *See Alternate Power Source, Inc. v. W. Mass. Elec. Co., N.E. Utils. Sys.*, 104 FERC ¶ 61,255 (2003).

during the period between the commencement of MRTU and the time when a long-term capacity procurement mechanism can be implemented. Such implementation cannot occur until there has been a an orderly stakeholder process to fully develop and design the mechanism, the proposal has presented to, and approved by, the CAISO Governing Board and the Commission, and all necessary systems and software have been developed so that the mechanism can actually be implemented. To the extent that Calpine seeks an order requiring the CAISO to respond to the outcome of the CPUC proceeding, the request is moot because the CAISO has already made the commitment to do just that. Calpine ignores this commitment as stated in the ICPM filing and in the answer to protests.

B. Calpine’s Claims Amount to a Collateral Attack on Prior Commission Orders

Calpine states that CAISO’s Comments demonstrate the limitations of administrative mechanisms like the ICPM for procurement of backstop capacity. Calpine instead argues for the development of “an integrated, market-based approach to resource adequacy.”¹⁰ Calpine’s arguments amount to a collateral attack on prior Commission Orders and, thereby, provide additional reason for denying the Calpine Motion.¹¹ Specifically, the Commission approved MRTU without a capacity market and with a determination that CAISO would defer to state decisions on RA (other than the

¹⁰ Calpine Motion at 5.

¹¹ See, e.g., *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs. Into Markets Operated by the CAISO*, 117 FERC ¶ 61,151 (2006) (denying California Parties’ motion to lodge as outside the scope of the compliance proceeding and in essence a challenge to a prior Commission Order). *Id.* at P 70.

determination of locational RA requirements).¹² If Calpine took issue with the Commission's determinations, it could have objected during that proceeding or taken rehearing of those Commission orders. Instead, Calpine attempts to lodge the CAISO Comments in this proceeding which essentially constitutes a "backdoor" means to have the Commission reverse these prior determinations.

Calpine's Motion also ignores the Commission's March 26, 2008 Order on the Midwest ISO's ("MISO") Resource Adequacy tariff amendment filing, which was intended to comprehensively address *long-term RA requirements* in the MISO footprint.¹³ In its MISO RA Order, the Commission denied the protests of certain parties who urged the Commission to: (1) reject MISO's proposal to rely on bilateral procurement of capacity by load serving entities ("LSE"), and (2) direct MISO to establish a centralized capacity market, such as those in place in PJM and ISO New England.¹⁴

The Commission should not countenance Calpine's attempt to use the CAISO's filing of an interim backstop capacity procurement mechanism to undo the careful balancing of jurisdictional issues associated with long-term RA procurement established in the MRTU orders and the recent decision involving the Midwest ISO.

C. The CAISO Will Need the ICPM in Order to Have the Authority to Engage in Backstop Capacity Procurement under Defined Circumstances if Necessary to Meet Reliability Criteria at the Startup of MRTU.

Calpine contends that the Commission should delay a decision on the ICPM proposal due to the delay in the startup of MRTU and the prospect of a *potential* CPUC

¹² *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006) (September 21 Order), *order on reh'g*, 119 FERC ¶ 61,076 (2007) ("April 2007 Order").

¹³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,283 (2008) ("MISO RA Order")

¹⁴ *Id.* at P 376.

decision in its long-term RA proceeding in May. Calpine argues that such a delay would give the CPUC time to “develop and to implement centralized capacity markets for both primary and backstop procurement of capacity.”¹⁵ The CAISO strongly disagrees that such an approach would be prudent or feasible.

At the outset, Calpine seems to either prejudge the outcome of the CPUC proceeding in that it would recommend a capacity market (or conversely would have the Commission step in and overrule the CPUC’s determination). More importantly, assuming a capacity market approach is ultimately pursued, it will take more than the few months that Calpine assumes to properly design, develop, and implement such a market. A capacity market is a complex mechanism “with a lot of moving parts.” The capacity markets in the east were not developed overnight. Rather, they were the subject of significant and lengthy stakeholder processes, and in many instances litigation, and these capacity market mechanisms are still undergoing refinements. Following the CPUC decision, the CAISO would first have to undertake a stakeholder process to design the capacity market, including the myriad of details associated with capacity markets (that would have not been discussed in the CPUC proceeding). This task is made more difficult given the fact that many capacity market elements are controversial. Indeed, in the CPUC’s long-term RA proceeding, there is a significant split between the proponents of a centralized capacity market and the proponents of a bilateral approach. Further, in the CPUC proceeding, several parties submitted different high level capacity market designs to the CPUC for consideration. After developing a comprehensive capacity market design proposal and obtaining the approval of the CAISO Governing

¹⁵ Calpine Motion at 9.

Board for such proposal, the CAISO would then have to file the proposal with the Commission and face potential litigation there. Following a Commission decision, the CAISO would then have to begin developing the systems and software necessary to support the capacity market. Under these circumstances, it is wholly unrealistic to think that something as complex and as controversial as a centralized capacity market could properly be developed and actually be implemented in a matter of months following the CPUC decision. As the CAISO and the Commission are painfully aware, rushing to develop and implement significant market design features can have undesirable outcomes.

As the CAISO explained in the ICPM filing letter, the CAISO must have an interim backstop program in place that works with the MRTU market design at the outset of MRTU.¹⁶ While there have been unavoidable delays in the startup of MRTU, it would be wrong to further delay MRTU implementation for what would likely be a lengthy period of time in order to accommodate the development and implementation of a capacity market program. In any event, the imposition of such a requirement would be inconsistent with the prior MRTU and MISO RA Orders.

The Calpine Motion is simply a supplement to its original protest. Calpine is seeking to improperly and unnecessarily expand the scope of this proceeding from a narrow one involving the reasonableness of the CAISO's interim backstop procurement program to the much broader issue of reconsideration of the means by which RA requirements are determined and RA resources are procured. Accordingly, Calpine's Motion should be denied.

¹⁶ ICPM Transmittal Letter at 1-2.

II. CONCLUSION

For the reasons discussed above, the CAISO requests that the Commission deny Calpine's Motion to Lodge the CAISO Comments in this proceeding.

Respectfully submitted,

/s/ Anthony J. Ivancovich

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Dated: April 2, 2008

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 2nd day of April, 2008.

/s/ *Anna Pascuzzo*
Anna Pascuzzo