

As explained in greater detailed herein, the CAISO respectfully requests that the Commission deny SMUD's Motion. Contrary to SMUD's allegations,³ the CAISO's treatment of OCALSEs and wheel through transactions is not unduly discriminatory and the CAISO is in full compliance with Paragraphs 79 and 80 of *Order No. 681-A*.

II. BACKGROUND.

A. Short-Term CRRs under the MRTU Tariff and SMUD's Objections.

Under the MRTU Filing, the CAISO proposed to allocate Seasonal and Monthly Congestion Revenue Rights ("CRRs") to OCALSEs and to Load Serving Entities ("LSEs") within the CAISO Control Area.⁴ Under the allocation process for Seasonal and Monthly CRRs, an OCALSE is required to make a showing of legitimate need for the nominated CRRs and pre-pay the appropriate Wheeling Access Charge ("WAC") in the amount of MWs of the nominated CRRs.⁵ The determination of legitimate need is based on a demonstration of either an existing contract for Generation internal to the CAISO Control Area that covers the time period of the CRRs nominated, or ownership of a Generating Unit internal to the CAISO Control Area.⁶ The Commission approved of these requirements for OCALSEs to be allocated Seasonal and

led to *Order No. 681* (see SMUD's March 13, 2006 comments in Docket No. RM06-8-000 at 18, n. 21 and accompanying text) and in its comments on the CAISO's provision for short-term CRRs (*i.e.*, Seasonal and Monthly CRRs) in the MRTU filing (see SMUD's April 10, 2006 comments in Docket No. ER06-615-000 at 16-27).

³ SMUD Motion at 3, 4.

⁴ Under the MRTU Tariff the term "Load-Serving Entity" is defined as an entity serving End Users within the CAISO Control Area. However, for the purposes of this pleading, the term LSE is used as a generic term. In this pleading, the CAISO refers to LSEs within its Control Area as either "LSEs internal to the CAISO Control Area" or "LSEs within the CAISO Control Area." Entities serving load outside of the CAISO Control Area are referred to as OCALSEs.

⁵ See MRTU Tariff at §§ 36.9.1 and 36.9.2. See also *California Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 at P 716 (2006) ("September 21 Order").

⁶ See MRTU Tariff at § 36.9.1.

Monthly CRRs in the *September 21 Order*.⁷ Moreover, the Commission approved of these requirements over SMUD's objection that the requirements were unduly discriminatory, violated Commission precedent, and unreasonably prevented SMUD from receiving wheel-through CRRs.⁸

B. Long Term CRRs under the MRTU Tariff and SMUD's Objections.

Pursuant to Commission direction, the CAISO incorporated the provision of Long Term CRRs into the conditionally-approved MRTU Tariff provisions for short term (*i.e.*, Seasonal and Monthly) CRRs. In *Order No. 681*, the Commission noted that it did not want the Final Rule to create a preference for LSEs that prefer short-term rights over long-term rights⁹ and that it would be beneficial if the transmission organization could apply the same basic principles in allocating long-term rights as it currently uses for the allocation of short-term rights.¹⁰ Consistent with the Commission's guidance and recommendations, the CAISO designed its Long Term CRR proposal as an extension of its Seasonal and Monthly CRR program conditionally approved by the Commission in the *September 21 Order*.

With regard to OCALSEs, the CAISO proposed to apply the same requirements for an OCALSE to receive Seasonal and Monthly CRRs to an OCALSE seeking an allocation of Long Term CRRs.¹¹ SMUD again objected to the requirements placed on OCALSEs that want to

⁷ *September 21 Order* at PP 766-769.

⁸ See SMUD's April 10, 2006 comments in Docket No. ER06-615-000 at 16-27.

⁹ See, *e.g.*, *Order No. 681* at PP 119, 179.

¹⁰ See, *e.g.*, *Order No. 681* at PP 321, 322.

¹¹ The only change in the requirements was an accommodation regarding the pre-payment of access charges over the longer term of the new Long Term CRRs. See Transmittal Letter to January Filing at 16-17; see also March 12, 2007 CAISO Answer at 18. Recognizing that the payment of access charges for the entire term of a Long Term CRR could be unduly burdensome, the CAISO proposed that an OCALASE must execute a contract with the CAISO committing the entity to make annual access charge payments for each year of the term of a Long Term

receive an allocation of Long Term CRRs.¹² The CAISO responded to SMUD's allegations regarding OCALSEs (and the comments of others) on March 12, 2007.¹³

On March 19, 2007 SMUD filed the instant motion for partial summary disposition. As explained below, SMUD's arguments are without merit and should be rejected by the Commission.

III. DISCUSSION.

The Commission should dismiss the SMUD Motion as an attempt to redirect the Commission's previously stated position on the treatment of OCALSEs in the allocation of long-term transmission rights, through a misinterpretation and misapplication of the Commission's prior rulings on the subject matter. The CAISO agrees with SMUD that there is no need for a hearing in this case, but contrary to SMUD's assertions, to grant its Motion would require the Commission's reversal of its prior stated policy. The Commission may dispose of this issue without requiring a hearing, but should do so consistent with its prior findings and based on the CAISO's prior demonstration of the just and reasonableness of its proposal, which has been fully vetted with its stakeholders and was established to strike the proper balance between internal LSEs and outside entities.

The SMUD Motion is premised on the allegation that the CAISO's Long Term CRR proposal does not comport with Paragraphs 79 and 80 of the *Order No. 681-A*.¹⁴ Paragraph 79 reads as follows:

CRR. The proposal lessens the financial burden on OCALSEs so that the pre-payment requirement is on par with what the Commission has previously approved for OCALSEs under the conditionally approved MRTU Tariff.

¹² See SMUD's February 23, 2007 Motion to Intervene and Protest at 4-16.

¹³ See the CAISO's March 12, 2007 Answer at 15-20.

¹⁴ SMUD Motion at 2-3.

[The Commission] clarify[ies], however, that in cases where a load serving entity has *an existing agreement with the transmission organization to pay a share of the embedded costs of the transmission system on a long-term basis to support load outside the region*, that load serving entity should be given a preference in the allocation of long-term firm transmission rights for the external load equal to the preference given to load serving entities with loads that lie within the transmission organization’s region.

Order No. 681-A at P 79 (emphasis added). SMUD’s interpretation of this paragraph is that two classes of LSEs “receive the highest priority” for allocation of Long Term CRRs: (1) LSEs serving load that lies within a transmission organization’s region, and (2) LSEs with existing agreements that serve load that lies outside that region.¹⁵ SMUD then notes that Commission established a lower priority for OCALSEs without existing contracts in Paragraph 80 of *Order No. 681-A*.¹⁶ Paragraph 80 reads as follows:

[The Commission] further clarify[ies] that, in cases where *no such agreement exists*, a load serving entity with load that sinks outside the transmission organization’s region is entitled to receive long-term firm transmission rights from existing system capacity to support that load to the extent that capacity is available *after the needs of the load serving entities whose loads are within the region have been met*. However, in such cases, we expect that the load serving entity would be required to contribute, on a long-term basis, toward the embedded cost of the transmission system, by paying either pancaked or non-pancaked rates, as applicable.

Order No. 681-A at P 80 (emphases added).

SMUD’s conclusion from its interpretation of Paragraphs 79 and 80 is that the CAISO’s Long Term CRR proposal “ignores both of the Commission’s directives regarding priority.”¹⁷ SMUD then elaborates that the CAISO’s proposal “does not give the required priority [from Paragraph 79] to LSEs outside the control area that have existing contracts, and it does not

¹⁵ *Id.*

¹⁶ *Id.* at 3.

¹⁷ *Id.*

establish the second tier priority [from Paragraph 80] for LSEs outside the control area that are without existing contracts.”¹⁸

SMUD’s application of Paragraphs 79 and 80 to the CAISO’s Long Term CRR proposal is in error. The type of “agreement” mentioned by the Commission in Paragraph 79 unquestionably is a transmission agreement, *i.e.*, “an existing agreement with the transmission organization to pay a share of the embedded costs of the transmission system on a long-term basis to support load outside the region.”¹⁹ This requirement of Paragraph 79 is clearly irrelevant to the CAISO’s Long Term CRR proposal because the CAISO does not have any such agreements with OCALSEs. The CAISO proposal also does not use the presence of an existing transmission agreement to create a hierarchy between LSEs with and without transmission agreements. Using SMUD’s vernacular, under the CAISO proposal there is no reason to afford OCALSE’s a “second tier priority” because all OCALSEs (*i.e.*, both those with and without existing transmission agreements) are treated the same under the CAISO’s proposal *and* all OCALSEs are treated on an equal basis with LSEs within the CAISO Control Area.²⁰

The CAISO’s proposal is simpler and more favorable to OCALSEs than the situation the Commission describes in Paragraphs 79 and 80. The CAISO proposal puts OCALSEs on an equal priority with LSEs within the CAISO Control Area for Long Term CRRs (and for Seasonal CRRs).²¹ So long as the OCALSE makes a showing of legitimate need in accordance with the CAISO’s MRTU Tariff and filed Long-Term CRR proposal and agrees to pre-pay the WAC

¹⁸ *Id.* (parenthetical citations added).

¹⁹ *Order No. 681-A* at P 79.

²⁰ It may be that the source of SMUD’s error is confusion regarding the generation agreements involved in an OCALSE’s demonstration of legitimate need with the transmission agreements discussed by the Commission in Paragraphs 79 and 80 of the *Order No. 681-A*. Regardless, SMUD’s allegations are in error.

²¹ For example, the simultaneous feasibility tests that are run do not distinguish between Long Term CRRs nominated by OCALSEs versus those nominated by LSEs internal to the CAISO Control Area.

within the CAISO Control Area, OCALSE is afforded access to the Long-Term CRR Allocation.²² In short, contrary to SMUD's allegations, the CAISO's proposal satisfies the Paragraphs 79 and 80 of the *Order No. 681-A*.

As noted by the Commission in the *September 21 Order* and by the CAISO in its January Filing, an OCALSE's demonstration of legitimate need is based either on ownership of, or a bilateral energy contract with, generation inside CAISO control area and the generation resources will define the eligible sources the OCALSE may nominate for CRR allocation.²³ This requirement also means that intertie Scheduling Points cannot be nominated by OCALSEs as sources for CRR allocation. The limitation preserves the priority for native CAISO Control Area load in obtaining import CRRs. The CAISO's proposal is non-discriminatory with regard to the restriction on allocation of Long Term CRRs for wheel-through transactions. No LSE (*i.e.*, neither LSEs internal to the CAISO Control Area nor OCALSEs nor any other party) can receive an allocation of Long Term CRRs for wheel-through transactions under the CAISO proposal.²⁴ Moreover, in *Order No. 681-A* the Commission specifically rejected SMUD's allegation that applying additional requirements on customers external to the transmission provider's control area was unduly discriminatory.²⁵

²² With regard to the OCALSE requirements themselves (*i.e.*, the legitimate showing of need and the agreement to pre-pay the WAC), these requirements are supported by Paragraph 81 of *Order No. 681-A* which SMUD wholly ignores. The Commission states in Paragraph 81 that it is not discriminatory for a transmission organization to impose additional requirements on customers external to the transmission organization's control area as a precondition to receiving CRRs. *Order No. 681-A* at P 81 (*citing to: (i) New England Power Pool, 100 FERC ¶ 61,287, at P 85, where the Commission required external load to pre-pay its transmission access charge in order to receive FTRs; and (ii) the September 21 Order at P 766, where the Commission stated that external load and internal load are not similarly situated with respect to their reliance on the transmission organization's grid*).

²³ See *September 21 Order* at P 767 and January Filing at 16.

²⁴ Any entity desiring such an instrument must acquire it through the secondary market for Long Term CRRs or through the annual auction processes for one-year seasonal portions of Long Term CRRs and Seasonal CRRs.

²⁵ See *Order No. 681-A* at P 81.

There is one additional concern with regard to allocation of Long Term CRRs for wheel-through transactions that must be mentioned. As the CAISO has explained in both its MRTU Tariff filing and its Long Term CRR compliance filing with respect to allocation of CRRs to OCALSEs, the CAISO believes it is appropriate to ensure that any allocated CRRs are allocated on the basis of an OCALSE's need to manage the congestion costs associated with serving load. In particular, the rules proposed by the CAISO in both instances were crafted to minimize the possibility of an entity performing a purely financial calculation and pre-paying the WAC for the purpose of obtaining through the allocation process a valuable CRR, and then holding that CRR as a financial investment while bypassing the CAISO grid to transport energy. The legitimate need requirement of having generation internal to the CAISO Controlled Grid is a reasonable assurance against such behavior. With wheel-through transactions for Long Term CRRs, the risk of financial speculation is present because both the load and the supply are outside the CAISO Controlled Grid. When the terms of allocated CRRs are limited to one-year Seasonal CRRs, this type of behavior is self-correcting within the year because the OCALSE who does not have a current history of hourly exports from the CAISO grid will not be able to obtain the CRR the next year. But in the case of Long Term CRRs there would be no way for the CAISO to prevent the kind of financial speculation described above and reclaim the CRR within its ten-year term in the event the OCALSE does not export power from the CAISO Controlled Grid in a manner reflective of its allocated Long Term CRRs. The CAISO therefore believes that its filed rules regarding allocation of CRRs to OCALSEs are entirely appropriate to protect the Commission-approved priority for internal load.

Finally, in the interests of completeness, because SMUD's allegations involve existing transmission arrangements,²⁶ the CAISO notes that its Long Term CRR proposal allows holders of expiring Existing Transmission Contracts ("ETCs") (these are not agreements with the Transmission Organization described in P 79 of *Order No. 681-A*) to nominate the ETC rights in the Priority Nomination Process for the year that follows the expiration of the ETCs.²⁷ This provision will allow the expiring ETC holder to be allocated Seasonal CRRs for the path of the expiring ETC to the extent the allocation is within the LSE's eligible quantity. If the ETC holder is allocated a Seasonal CRR, it may then nominate the Seasonal CRR as a Long Term CRR.

IV. CONCLUSION.

For the reasons expressed herein, the CAISO respectfully requests that the Commission deny SMUD's Motion. The CAISO's proposal complies with Paragraphs 79 and 80 of *Order No. 681-A*. There is no requirement under the CAISO proposal for an OCALSE to have an existing long term transmission agreement in order to receive Long Term CRRs. All that is required of an OCALSE is to make a showing of legitimate need and to pre-pay the appropriate WAC. Once an OCALSE makes a showing of legitimate need and pre-pays the appropriate

²⁶ SMUD mentions an existing transmission contract that expired at the end of 2004 and blames the CAISO for its expiration. See SMUD Motion at 4, n.13 (citing to SMUD's Protest at 8-10). The CAISO is not responding to the merits of the allegation that the CAISO "caused" the expiration of SMUD's ETC because SMUD states that the Commission need not resolve this allegation in acting on the SMUD Motion. *Id.*

²⁷ See Dr. Kristov's testimony attached to the January Filing, Exh. No. ISO-1 at pp. 42-43; see also proposed tariff § 36.8.3.5.1.

WAC, its priority is equal to that of any LSE (*i.e.*, LSEs internal to the CAISO Control Area, other OCALSEs, and any LSE with or without an existing transmission agreement).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-captioned docket.

Dated at Folsom, California on this 3rd day of April, 2007.

/s/ Anna A. McKenna
