

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

**California Independent System            )       Docket No. ER08-1203-000  
Operator Corporation                    )**

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
CORPORATION TO MOTIONS AND COMMENTS, AND MOTION TO FILE  
ANSWER AND ANSWER TO PROTESTS**

On July 1, 2008, the California Independent System Operator Corporation (“CAISO”) submitted for Commission acceptance in the above-referenced proceeding an amendment (“Amendment No. 2”) to the Participating Load Agreement (“PLA”) between the CAISO and the California Department of Water Resources (“CDWR”).<sup>1</sup> The sole purpose of Amendment No. 2 is to extend the term of the current PLA. The Commission established a July 22, 2008, comment date regarding Amendment No. 2. In response, the Metropolitan Water District of Southern California (“MWD”) filed a motion to intervene, motion to reject or, in the alternative, protest, and CDWR State Water Project (“SWP”) filed a motion to intervene and comments.

The CAISO does not object to these parties’ motions to intervene. Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213, the CAISO files its answer to MWD’s motion to reject and SWP’s comments, and pursuant to Rules 212 and 213 of the Commission’s Rules, 18 C.F.R. §§ 385.212, 385.213, the CAISO respectfully requests leave to

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, Appendix A to the CAISO Tariff.

file an answer, and files its answer, to MWD's alternative protest.<sup>2</sup> For the reasons explained below, the Commission should accept the PLA as amended by Amendment No. 2 ("amended PLA") without further modification.

**I. ANSWER**

**A. The Commission Should Reject MWD's Argument that the Commission Lacks Jurisdiction Over the Amended PLA.**

MWD argues that the Commission should reject the amended PLA on the grounds that the Commission lacks jurisdiction over the amended PLA because CDWR is not a public utility as defined in the Federal Power Act ("FPA") and the demand response services that CDWR provides to the CAISO pursuant to the PLA are therefore not subject to Commission review pursuant to the FPA.<sup>3</sup>

There is no merit to MWD's argument. The Commission has already determined that the *pro forma* PLA, like other *pro forma* CAISO agreements (e.g., the *pro forma* Participating Generator Agreement), is a service agreement that governs the jurisdictional rates, terms, and conditions of services that the CAISO provides as a public utility.<sup>4</sup> The amended PLA is based on the *pro forma* PLA, though the

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<sup>2</sup> The CAISO requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to make an answer to the protest. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case. See, e.g., *Entergy Services, Inc.*, 116 FERC ¶ 61,286, at P 6 (2006); *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,124, at P 11 (2006); *High Island Offshore System, L.L.C.*, 113 FERC ¶ 61,202, at P 8 (2005).

<sup>3</sup> MWD at 5-7.

<sup>4</sup> *California Independent System Operator Corp.*, 110 FERC ¶ 61,124, at P 5 (2005) (directing that the *pro forma* PLA and other jurisdictional *pro forma* service agreements must be included with appropriate tariff sheet designations in the CAISO Tariff because "Section 35.10a of the Commission's Regulations requires that a public utility include as part of its applicable tariff an unexecuted standard service agreement approved by the Commission for each category of generally applicable service offered by the public utility under its tariff").

amended PLA is different in that it contains provisions that are necessary to reflect the circumstances of CDWR as a Participating Load.<sup>5</sup> Moreover, as mentioned above, the sole purpose of Amendment No. 2 is to extend the term of the current PLA with CDWR, not to revise any of its other provisions. The Commission accepted that PLA as originally filed in 2001, and accepted the first amendment to the PLA as filed in 2006, without making any finding that it lacked jurisdiction.<sup>6</sup> The Commission should do the same in the instant proceeding, in which the CAISO only proposes to extend the PLA's term.

**B. The Commission Should Reject MWD's Alternative Argument that the Amended PLA Should Be Revised.**

MWD argues that, if the Commission does not reject the amended PLA, the Commission should direct the CAISO to revise the amended PLA to conform to the provisions of the current CAISO Tariff and the Market Redesign and Technology Upgrade ("MRTU") Tariff.<sup>7</sup> The Commission should not require the amended PLA to be revised as MWD recommends. In the order accepting the CAISO's simplified and reorganized ("S&R") Tariff on which the current CAISO Tariff is based, the Commission stated that it "accept[s] the S&R Tariff with the clear understanding that the S&R Tariff was not intended to make any substantive changes to the [then-]current tariff."<sup>8</sup> Further, the CAISO has posted

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<sup>5</sup> See Transmittal Letter for Filing Containing Original PLA with CDWR, Docket No. ER01-2632-000 (July 20, 2001), at 2-4.

<sup>6</sup> See Letter Order, Docket No. ER01-2632-000 (Sept. 13, 2001); Letter Order, Docket No. ER06-1045-001 (Aug. 23, 2006).

<sup>7</sup> MWD at 7-8.

<sup>8</sup> *California Independent System Operator Corp.*, 114 FERC ¶ 61,199, at P 15 (2006).

on the CAISO Website a table of tariff section number cross-references that allows Market Participants to “translate” old references to tariff section numbers into more up-to-date references to tariff section numbers.<sup>9</sup> As a result, the references in the amended PLA to the CAISO Tariff can be readily understood with regard to the current CAISO Tariff.

As for the MRTU Tariff, the CAISO filed updated versions of all of the *pro forma* agreements, including the *pro forma* PLA, in the revisions to the MRTU Tariff contained in the CAISO’s December 21, 2007, filing in Docket Nos. ER06-615 and ER08-367 (“December 21 Filing”). After the Commission accepts the updated versions of these *pro forma* agreements, the CAISO intends to work with all of the parties that have executed such agreements and with other stakeholders to develop a plan to harmonize the agreements with the new MRTU versions. However, this will necessarily require a substantial effort over many months, and it is premature at this time to undertake this effort for CDWR or any other particular party to an executed *pro forma* agreement. The CAISO believes that, until the agreements with parties are harmonized as described above, the provisions of most or all of those agreements that incorporate by reference all applicable provisions of the CAISO Tariff and specify that the CAISO Tariff will prevail in the event of any inconsistency with the agreements – which is the case with Sections 1.2(a) and 4.5 of the amended PLA – will be sufficient to ensure appropriate interpretation of any outdated provisions of the agreements pending their harmonization with new MRTU versions.

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<sup>9</sup> See <http://www.caiso.com/docs/2005/09/22/2005092214375729496.pdf>.

**C. The CAISO Agrees with SWP that It Is Permitted to Remove All or Part of Its Pump Load from Participating Load Status Immediately, if Water Management Needs So Require.**

SWP requests that the Commission accept the amended PLA subject to the clarification that, consistent with Section 3.2.2 of the amended PLA, SWP may remove all or part of its pump load from Participating Load status immediately, if water management needs so require.<sup>10</sup> The CAISO agrees with SWP that the Commission should grant the requested clarification. Section 3.2.2 states that, “in accordance with Section 4.4 [of the amended PLA], the Participating Load may modify Schedule 1 [of the amended PLA] to eliminate Load which it no longer provides for and such modification shall be effective upon receipt by the [CA]ISO.” Although Section 4.4 of the amended PLA requires a Participating Load to give the CAISO 60 days’ prior notice of any changes to the technical information in Schedule 1, the CAISO would have no objection to waiving this 60-day notice requirement to the extent necessary to permit SWP to remove all or part of its pump load from Participating Load status immediately, if water management needs so require.

**D. The Commission Should Accept the Amended PLA Without Conditioning that Acceptance on a Requirement that Participating Load Will Be Treated as Firm Load When Not Bid into CAISO Markets to Provide Load Drop.**

SWP requests that, “[i]n view of the uncertainty surrounding MRTU tariff Section 31.3.1.3(b)(2) and the CAISO’s Parameter Tuning program addressing this provision,” the Commission accept the amended PLA subject to the condition that Participating Load, when not bid into CAISO markets to provide load drop,

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<sup>10</sup> SWP at 1-2.

will be treated as firm load when using CAISO transmission, on a non-discriminatory basis with any other firm loads.<sup>11</sup> There is no need for the Commission to condition acceptance of the amended PLA as SWP requests. The CAISO is already required to submit, at least 62 days prior to the implementation of MRTU, a filing that includes clarification of how Section 31.3.1.3 will operate.<sup>12</sup> The CAISO will address the issues raised by SWP in that clarification filing. Given these circumstances, there is no reason to condition acceptance of the amended PLA as requested by SWP.

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<sup>11</sup> SWP at 2-6.

<sup>12</sup> *California Independent System Operator Corp.*, 119 FERC ¶ 61,313, at PP 162-64 (2007); Notice of Extension of Time, Docket Nos. ER06-615-000, *et al.* (Feb. 1, 2008). The first of the above-cited Commission issuances directing the CAISO to submit a clarification filing referred to Section 31.3.1.2. That MRTU Tariff section was renumbered as Section 31.3.1.3 in the December 21 Filing.

## II. CONCLUSION

For the reasons explained above, the Commission should accept the amended PLA without further modification.

Respectfully submitted,

Michael D. Dozier  
Senior Counsel  
The California Independent  
System Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Tel: (916) 351-4400  
Fax: (916) 608-7246  
E-mail: mdozier@caiso.com

/s/ Bradley R. Miliauskas  
Michael E. Ward  
Bradley R. Miliauskas  
Alston & Bird LLP  
The Atlantic Building  
950 F Street, NW  
Washington, DC 20004  
Tel: (202) 756-3300  
Fax: (202) 756-3333  
E-mail: michael.ward@alston.com  
bradley.miliauskas@alston.com

Attorneys for the California Independent System Operator Corporation

Dated: August 6, 2008

## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service list in 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 Washington, D.C. this 6<sup>th</sup> day of August, 2008.

/s/ Bradley R. Miliauskas  
Bradley R. Miliauskas