

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

California Independent System) Docket No. ER09-292-000
Operator Corporation)

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO COMMENTS OF THE CITY OF SANTA CLARA**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213, the California Independent System Operator Corporation ("CAISO") hereby submits this answer to the December 4, 2008 comments by the City of Santa Clara, doing business as Silicon Valley Power, ("SVP") regarding the CAISO's filing of a unilaterally-executed Amended and Restated Metered Subsystem Agreement with SVP in these proceedings. For the reasons set forth below, the Commission should accept the agreement as filed and should reject SVP's request for additional special provisions in the agreement that would create further variances from the terms of the CAISO tariff.

I. ANSWER

In its comments, SVP notes that the agreement as filed by the CAISO "is the product of protracted negotiations between SVP and the CAISO" to convert its terms to reflect the new version of the CAISO tariff that will apply as of the implementation of the CAISO's Market Redesign and Technology Upgrade ("MRTU") and that "SVP believes that the version filed by the CAISO is, for the most part, a fair compromise between the parties."¹ However, SVP submits

¹ SVP comments at 9-10.

comments seeking three additional sets of special provisions to be added to the extensive incorporation of special provisions in the agreement as filed by the CAISO. SVP characterizes its additional needs as follows: “The three areas where SVP believes its concerns were not appropriately addressed are (1) the durability of emergency sales compensation calculations and what costs will be included in such calculations; (2) emergency sales compensation prior to MRTU startup; and (3) the use of broad MRTU Tariff provision references when more narrowly tailored references would be appropriate.”² As was the CAISO’s final position at the conclusion of negotiations with SVP, the CAISO does not find these additional special provisions to be warranted, given the applicability of MRTU tariff provisions that address SVP’s circumstances reasonably and appropriately.

A. SVP Seeks Unwarranted Special Treatment Regarding Its Compensation for Power Delivered During Emergency Conditions.

In its comments, SVP recounts a single period in July 2006 in which it believes it was undercompensated for the delivery of energy to the CAISO in response to requests for emergency assistance by the CAISO.³ Building on that one circumstance, SVP declares that it has a need for special compensation provisions in future similar circumstances beyond those afforded to all other potential emergency assistance providers pursuant to the terms of the MRTU tariff. The CAISO disagrees.

² SVP comments at 10.

³ SVP comments at 6.

First, the CAISO denies the relevancy of the 2006 incident in the context of MRTU. As discussed below, the Default Energy Bid (“DEB”) provides assurance that SVP will be provided adequate compensation. Second, the CAISO denies that SVP was, ultimately, undercompensated for the 2006 incident.⁴ While the CAISO is sympathetic to SVP’s concerns about the adequacy of compensation for emergency services, it is the CAISO’s firm belief that the provisions of the MRTU tariff will fully address SVP’s concerns once MRTU is implemented. The CAISO’s intent is that all market participants are treated similarly in this regard under the MRTU tariff. The MRTU tariff already provides the framework for establishing DEBs, how they can be revisited, and how to handle any disagreements, including a good faith negotiation process.⁵ Moreover, as SVP points out in its comments, MRTU tariff Section 39.7.1.3 sets forth a process and procedure associated with the use of a Negotiated Rate Option under the DEB.⁶ This option provides flexibility for establishing DEBs based on unique characteristics of resources so that resources can recover their costs.

Despite the extensive provisions of the CAISO tariff on this subject, SVP still asserts that it needs further certainty (i.e., “durability”) regarding its compensation for emergency assistance in its agreement with the CAISO. To that end, SVP proposes that Section 7.1.3 of the agreement be revised to

⁴ Because the CAISO believes this incident to be irrelevant, the CAISO does not believe it is appropriate to engage in an extensive factual discussion of the incident. Moreover, such a discussion would require disclosure of confidential information.

⁵ Unless otherwise defined herein, terms used with initial capitalization have the meanings set forth in the Master Definitions Supplement, Appendix A of the MRTU tariff.

⁶ SVP comments at 12.

provide “(1) that SVP’s DEB that results from negotiations pursuant to the Negotiated Rate Option will ensure full recovery of SVP’s costs, and (2) the types of cost elements that would be included in the negotiation of SVP’s DEB pursuant to the Negotiated Rate Option, including opportunity costs.”⁷

However, the CAISO has already addressed similar concerns in its response to comments on and protests on the CAISO’s tariff provisions on the options for calculating Default Energy Bids. Arguments regarding the purported uncertainty regarding cost recovery pursuant to the MRTU tariff provisions are speculative and run contrary to the Commission’s repeated acknowledgement that the Negotiated Rate Option is sufficiently flexible to allow resources to be fully compensated (even without the negotiated Default Energy Bids having to be made subject to prior Commission approval).⁸ Setting aside SVP’s concerns about the sufficiency of its compensation under the current version of the CAISO tariff for a single prior circumstance as irrelevant to the adequacy of the new MRTU tariff provisions to be applicable in the future, there is nothing unique

⁷ SVP comments at 12.

⁸ *California Independent System Operator Corp.*, 120 FERC ¶ 61,271, at P 17 (2007) (stating that the negotiated DEB option is “a flexible means by which a mitigated market participant could recover its costs during market power mitigation”); *California Independent System Operator Corp.*, 119 FERC ¶ 61,076, at P 510 (2007) (“There are a myriad of pragmatic reasons for not requiring prior Commission approval of these negotiated default energy bids, including the undesirability of limiting the CAISO’s and generators’ flexibility to make timely modifications to these bids in response to changing conditions.”); *California Independent System Operator Corp.*, 116 FERC ¶ 61,274, at P 1046 (2006) (“Thus, we accept the values of \$2/MWh and \$4/MWh as the O&M default level for generation as proposed. We deny WPTF/IEP’s request to include a third adder for gas turbines. We reiterate that, if a supplier finds that its O&M costs for gas turbine units are higher than the proposed default value, it should enter into negotiations with the CAISO to determine an alternate default energy bid.”); *id.* at P 1048 (“We recognize SoCal Edison’s concerns regarding opportunity costs for hydroelectric units. To the extent that market participants, including hydroelectric units, believe that a particular default energy bid calculation will cause them to under-recover their costs, they may elect the negotiated option for establishing the default energy bid. We add that any negotiated default energy bid for hydroelectric units should reflect a reasonable estimate for opportunity costs.”)

about SVP regarding this matter that merits carving out a special provision addressing this matter in SVP's agreement with the CAISO. The Commission should reject SVP's request for special treatment in this regard.

B. SVP's Request for Particular MRTU Tariff Provisions to Apply to SVP in Advance of the Actual Effectiveness of the MRTU Tariff Is Unwarranted and Impractical.

Related to the foregoing request by SVP for additional special treatment beyond that already afforded in the agreement as filed by the CAISO, SVP seeks to "make the emergency sales provisions (modified to reflect the current CAISO Tariff) effective upon Commission approval of the SVP MSS, prior to MRTU startup."⁹ This proposal by SVP is unwarranted and impractical.

First, SVP's proposal is beyond the scope of this proceeding and should be rejected by the Commission on that basis. The agreement filed by the CAISO in this proceeding is by its own terms and the terms of the CAISO's filing intended to be made effective simultaneously with the effectiveness of the MRTU tariff. In fact, the primary purpose of the agreement and the CAISO's filing is to make conforming revisions to SVP's existing agreement to make it consistent with the MRTU tariff. There is no aspect of the proposed revised agreement or this proceeding that is intended to alter SVP's existing agreement with the CAISO, and it is inappropriate for SVP to attempt to use the vehicle of this filing to amend its existing agreement. The only appropriate procedural vehicle for this request by SVP is for SVP to file a complaint with the Commission under Section 206 of the Federal Power Act that these particular provisions of its existing

⁹ SVP comments at 14.

agreement, which has already been accepted by the Commission, are now unjust, unreasonable, and unduly discriminatory.

Second, it would be extraordinarily burdensome for the CAISO to have to apply provisions of the MRTU tariff in this regard solely to SVP in advance of the actual implementation of MRTU, particularly given the absence of the effectiveness of all of the associated provisions of the MRTU tariff that are designed to operate in conjunction with the Exceptional Dispatch compensation provisions of the MRTU tariff. Finally, there is nothing unique about SVP regarding this matter that merits carving out a special provision addressing this matter in SVP's agreement with the CAISO. Again, the Commission should reject SVP's request for special treatment in this regard.

C. SVP Seeks Overly Narrow References to MRTU Tariff Provisions in Certain Sections of the Agreement.

In addition to the foregoing special provisions that SVP seeks with respect to compensation for power it may supply to the CAISO during emergency conditions, SVP also seeks to narrow certain references to applicable provisions of the CAISO tariff in the agreement. While the CAISO has been willing to agree to numerous provisions in the agreement that limit the scope of references to the CAISO tariff, the CAISO considers these additional limitations proposed by SVP to be overly restrictive and inappropriate.

With regard to Section 5.5 of the agreement, SVP objects to the general reference to the need to manage Congestion in accordance with the CAISO tariff and instead seeks to limit that reference only to Section 31.3.3 of the CAISO

tariff. However, while Section 31.3.3 of the MRTU tariff specifically applies to Congestion within a Metered Subsystem (“MSS”), it is by no means the sole provision of the MRTU tariff that governs the management of Congestion that could affect an MSS. In fact, the primary focus of MRTU is to revise the CAISO’s approach to Congestion management by moving from a zonal to a nodal approach, and that involves extensive provisions of the MRTU tariff. The provisions of MRTU tariff Section 31.3.3 cannot be applied in isolation to management of Congestion in SVP’s MSS. The provisions of this section only make sense in the context of the entirety of the MRTU tariff as it implements an entirely new approach to Congestion management.

With regard to Sections 3.3.3 and 3.3.5 of the agreement, SVP objects to general references to the requirement to comply with Sections 4.6 and 4.4 of the CAISO tariff, respectively, as overbroad. In the first place, these references are already in SVP’s existing agreement with the CAISO as previously negotiated by SVP and accepted by the Commission. There is nothing about the current effort to conform SVP’s existing agreement to be consistent with the MRTU tariff that gives rise to a justification for undoing these general references under which SVP has been operating satisfactorily for years.

Moreover, the structure of Section 3.3 of SVP’s agreement has operated to reconcile any potential ambiguity asserted by SVP since it was first negotiated. In particular, Section 3.3.1 expressly provides: “If and to the extent a matter is specifically addressed by a provision of this Agreement (including any schedules or other attachments to this Agreement), the provisions of this Agreement shall

govern notwithstanding any inconsistent provision of the CAISO Tariff or any CAISO Business Practice Manual (including, except as provided in Section 3.3.2, any CAISO Tariff or CAISO Business Practice Manual provision that is referenced in this Agreement).” This provision could not be more clear: in the event of a conflict, the provisions of the agreement prevail over any inconsistent provisions of the CAISO tariff. In addition, SVP makes no assertion that these provisions of its existing agreement have ever resulted in any dispute or conflict.

Moreover, the CAISO has bargained for the structure of Section 3.3 in all of its other agreements with MSS Operators over the years, including the other MSS agreements for which the CAISO is currently seeking acceptance by the Commission for similar MRTU conformance purposes in Docket Nos. ER09-188, ER09-259, ER09-321, and ER09-332. The Commission should reject this attempt by SVP to carve out for itself additional special provisions that the CAISO has been unwilling to negotiate originally with SVP, currently with SVP, or at any time with any other MSS Operator.

II. CONCLUSION

For the reasons set forth above, the CAISO urges the Commission to accept the CAISO's filing in this proceeding as submitted and to reject the requests by SVP for additional special treatment at variance with the terms of the CAISO tariff.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all parties 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 at Folsom, California this 19th day of December 2008.

Anna Pascuzzo
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