

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

**California Independent System            )       Docket No. ER09-1048-000  
Operator Corporation                    )**

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM  
OPERATOR CORPORATION TO MOTIONS TO INTERVENE AND  
COMMENTS**

On April 28, 2009, the California Independent System Operator Corporation (“CAISO”)<sup>1</sup> submitted in this proceeding a compliance filing that explained how the CAISO complies with or plans to comply with the requirements specified in the Commission’s Order No. 719.<sup>2</sup> The order requires changes in organized wholesale power markets, in four areas: (1) demand response and market pricing during periods of operating reserve shortage; (2) long-term power contracting; (3) market monitoring policies; and (4) the responsiveness of regional transmission organizations and independent system operators to their customers and other stakeholders, and ultimately to the consumers who benefit from and pay for electricity services.<sup>3</sup>

A number of entities submitted motions to intervene in response to the compliance filing,<sup>4</sup> and some of those entities also filed comments.

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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.

<sup>2</sup> *Wholesale Competition in Regions with Organized Electric Markets*, 73 Fed. Reg. 64100 (Oct. 17, 2008), FERC Stats. & Regs. ¶ 31,281 (2008) (“Order No. 719”).

<sup>3</sup> See *id.* at PP 1-9.

<sup>4</sup> The following entities submitted motions to intervene: the Alliance for Retail Energy Markets; California Calpine Corporation; City of Santa Clara, California; Comverge, Inc.; Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.; CPower, Inc.; Electric Power Supply Association; Electricity Energy Connect, Inc.; Energy Users Forum; EnerNOC, Inc.; Exelon Corporation; Mirant Energy Trading, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC; Northern California Power Agency; NRG Power Marketing LLC, Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Power LLC, and Long Beach Generation LLC; Powerex Corp.; and Western Power Trading Forum. The following submitted motions to intervene and

The CAISO does not oppose any of the motions to intervene. Pursuant to Section 213 of the Commission’s Rules of Practice and Procedure,<sup>5</sup> the CAISO hereby files its answer to certain of the comments on demand response and governance that were submitted in response to the Compliance Filing.

## **I. Demand Response**

In Order No. 719, the Commission directed independent system operators and regional transmission organizations to take certain actions to facilitate the participation of demand response in markets:

- Allow demand response resources to participate in Ancillary Service Markets.<sup>6</sup>
- Allow demand response resources to specify limits on the duration, frequency, and amount of their service in their bids to provide ancillary services or their bids into joint energy-ancillary services markets in the co-optimized markets.<sup>7</sup>
- In cooperation with their customers and other stakeholders, assess the technical feasibility and value to the market of smaller demand response resources providing ancillary services, including whether (and how) smaller demand response resources can reliably and economically provide operating reserves.<sup>8</sup>
- Modify their tariffs regarding deviation charges to buyers in the energy market for taking less energy in the real-time market than was scheduled in the day-ahead market.<sup>9</sup>

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comments: Department of Water Resources State Water Project (“SWP”); Electricity Consumers Resource Council; Energy Connect, Inc.; EnerNOC, Inc., Energy Connect, Inc., BluePoint Energy, LLC, CPower, Inc., the Energy Users Forum, the Alliance for Retail Energy Markets, and the California Manufacturers and Technology Association (jointly); Metropolitan Water District of Southern California; Modesto Irrigation District (“Modesto”); Pacific Gas and Electric Company (“PG&E”); RRI Energy, Inc. (“RRI”); Southern California Edison Company; Transmission Agency of Northern California (“TANC”); and Wal-Mart Stores, Inc. (“Wal-Mart”). The California Public Utilities Commission filed a notice of intervention and comments.

<sup>5</sup> 18 C.F.R. § 385.213.

<sup>6</sup> *Id.* at P 47.

<sup>7</sup> Order No. 719 at P 81.

<sup>8</sup> *Id.* at P 97.

<sup>9</sup> *Id.* at P 111.

- Amend their market rules as necessary to permit an Aggregator of Retail Customers (“ARC”) to bid demand response on behalf of retail customers directly into the regional transmission organization's or independent system operator's organized markets.<sup>10</sup>
- Reform or demonstrate the adequacy of its existing market rules to ensure that the market price for energy reflects the value of energy during an operating reserve shortage.<sup>11</sup>
- Assess and report on remaining barriers to comparable treatment of demand response resources that are within the Commission’s jurisdiction.<sup>12</sup>

The Commission directed independent system operators and regional transmission organizations to report, in a compliance filing, a description of the actions that the independent system operator or regional transmission organization has taken, or plans to take, to comply with the requirements of the order.<sup>13</sup> In its compliance filing, the CAISO reported that, consistent with Commission orders,<sup>14</sup> the CAISO has worked extensively with market participants since 2006 to present additional opportunities for demand response resources to participate in the CAISO markets, and that it is now working on further integration of demand response resources into the CAISO markets and expansion of the direct participation capability of retail loads in those markets.

The CAISO’s efforts are primarily focused on development of market and software enhancements, to be proposed as part of the CAISO’s Market and Performance initiative (formerly called “MRTU Release 1A”). The CAISO explained that a fundamental aspect of the CAISO’s demand response initiatives

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<sup>10</sup> *Id.* at P 154. The Commission provided an exemption if the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate.

<sup>11</sup> Order no. 719 at PP 194, 246.

<sup>12</sup> Order No. 719 at P 274.

<sup>13</sup> Order No. 719 at P 580.

<sup>14</sup> *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at Ordering Paragraph (R) (2006).

is the refinement and development of demand response products, including refinements to the existing Participating Load Program and the development of a Proxy Demand Resource product. The CAISO also detailed the actions it is taking with regard to each of the Commission's instructions. In addition, pursuant to the Commission's instructions, the CAISO filed its Demand Response Barriers Study.

A number of parties submitted comments on the CAISO's compliance with the Order No. 719 requirements for demand response directives. Some comments were supportive, while others made modest suggestions for Commission action. The CAISO does not believe it necessary to provides responses to these comments.

SWP (supported by the Metropolitan Water District), in contrast, submitted extensive comments. SWP complains that "barriers of particular concern to Participating Load" were not addressed in the compliance filing. SWP describes these concerns as (1) the need for accurate price signals; (2) nondiscrimination against load designated as a demand response resource when it is functioning as Demand; (3) comparability in bidding, payment and cost allocation for a demand response resource when it is functioning as Supply; and (4) legal protections to ensure that a demand response resource is not subject to open-ended CAISO tariff or other requirements that may impose additional burdens or obligations without the demand response provider's consent.<sup>15</sup> SWP asks the Commission to issue one or more directives regarding each of these "barriers,"

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<sup>15</sup> SWP Comments at 3.

as well as a requirement that the CASIO accept certain services that SWP currently provides under its existing transmission contracts.

A review of the matters that SWP argues were omitted from the CAISO's filing demonstrates that the matters were properly omitted from the CAISO's Demand Response Barriers Study because they are not barriers to new entry and because either (1) the Commission has already addressed them; or (2) they are the subject of on-going stakeholder consideration. The CAISO will address each of these matters in the sequence in which they are discussed in SWP's Comments.

#### **A. Compliance**

SWP argues that the barriers it has identified should have been given greater emphasis, because it is currently "the *only* active source of wholesale demand participating in CAISO markets."<sup>16</sup> Although SWP refers generally to omission of its issues from the compliance filing, the CAISO must assume SWP is referring more specifically to the Demand Response Barriers Study, because none of the issues that SWP raises relate in any manner to the six Commission directives the remainder of the compliance filing addressed. SWP's issues, however, are not the types of barriers that the Demand Response Barriers Study was intended to identify.

The CAISO understood the Commission's directive regarding the study to be focused on barriers to entry of new demand response. In contrast, SWP is already participating in the CAISO's markets as demand response. Its issues are reflect a desire to adjust the terms of demand response programs to better suit

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<sup>16</sup> SWP Comments at 3, emphasis in original.

SWP's interests, such as modifying the terms of SWP's Participating Load Agreement and addressing what it perceives as adverse potential impact of exceptional dispatch in situations where SWP has not submitted a bid. Accordingly, it is not surprising that the Demand Response Barriers Report did not include them.

Further, the portion of the Commission's Order No. 719 which directs the barriers effort asks for a *report*, not an extended stakeholder process, and recognizes that the effort would be an abbreviated process: "The report should identify all known barriers, and provide an in-depth analysis of those that are practical to analyze in the compliance time frame given and a time frame for analyzing the remainder."<sup>17</sup> Given the timeframe, the CAISO believes it was appropriate to focus on the barriers to new entry, not on particulars specific to SWP.

SWP goes on to state, "The CAISO's ongoing disregard of the issues SWP raised cannot be reconciled with the assertions of the CAISO and the conclusion of the Commission that these very barriers to demand response by Participating Load 'would be best addressed in the ongoing demand response stakeholder process.'"<sup>18</sup> The "assertions of the CAISO and the conclusion of the Commission" that SWP cites were made in the context of certain issues that SWP raised in connection with the CAISO's filing about parameter tuning. Both the CAISO and the Commission indicated that those issues would be best addressed in the *ongoing demand response stakeholder process*. Neither the

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<sup>17</sup> Order No. 719 at P 275.

<sup>18</sup> SWP Comments at 8-9 (footnotes omitted).

CAISO nor the Commission stated that they would be addressed in the Order No. 719 compliance filing or in the Demand Response Barriers Study. Moreover, the issues that SWP raised in connection with the parameter tuning filing and to which the CAISO's and Commission's statements pertain did not include all of the "barriers" that SWP identifies in its Comments. Indeed, as discussed below, the Commission has already rejected SWP's position on some of these "barriers."

None of this is to say, however, that the CAISO is not considering or will not address SWP's concerns. As discussed in the background discussion of the compliance filing, the demand response stakeholder process is ongoing. The fact that these issues are not identified in the Demand Response Barriers Study does not mean that these issues will not be examined in the CAISO's on-going demand response stakeholder process.

#### **B. Price Signals.**

SWP states, "Much work needs to be done to remove barriers associated with blunted or inaccurate price signals in the CAISO system."<sup>19</sup> Specifically, SWP requests that the Commission direct the CAISO to –

- Maximiz[e] reliance on price signals to loads, through expedited development of sub-[load aggregation points] and through use of market-based mechanisms instead of program designs directed toward a limited number of loads in load pockets or administrative fixes such as a "customer baseline," minimum bid prices, or restricting the number of hours a resource can participate; [and]
- Design[ ] non-market CAISO rates and cost allocation in a way that sends geographic and temporal price signals to loads, instead of flat socialization of costs.<sup>20</sup>

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<sup>19</sup> SWP Comments at 10.

Both of these matters are beyond the scope of Order No. 719. Moreover, the Commission has already addressed these arguments.

**1. Sub-Load Aggregation Points.**

SWP raised the issue of sub-load aggregation points with regard to the CAISO's recent filing about parameter tuning. In response, in an order issued less than four months ago, the Commission approved CAISO's current work plan, stating:

Regarding the level of granularity of load aggregation points, the Commission continues to find that the CAISO's commitment to develop increased granularity through the development of sub-load aggregation points for MRTU Release 2 is a sufficient timeline to address State Water Project's concerns.<sup>21</sup>

SWP does not identify any changed circumstances that would justify the Commission's revisiting this conclusion.

Most importantly, SWP's requested relief would circumvent the necessary stakeholder process. SWP's arguments about "program designs directed toward a limited number of loads in load pockets or administrative fixes such as a 'customer baseline,' minimum bid prices, or restricting the number of hours a resource can participate" are arguments about the CAISO Proxy Demand Response product and proposed refinements to Participating Load.<sup>22</sup> These matters, as discussed in the compliance report, are part of an ongoing stakeholder process. Rather than pre-empting the stakeholder process, the Commission should encourage SWP to raise its concerns during the process. If SWP finds the results unsatisfactory, it may bring them to the Commission's

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<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Cal. Indep. Sys. Operator Corp.* 126 FERC ¶ 61,147 at P 103 (2009).

<sup>22</sup> SWP Comments at 12-15.

attention when the CAISO files tariff amendments implementing the Proxy Demand Resource product and refinements to the Participating Load.

## **2. Time-of-Use and Geographically Determined Allocation of Non-Market Cost**

SWP's call for time-based and geographically determined CAISO allocation of non-market costs is also a collateral attack on prior Commission orders. SWP's only specific example is the CAISO's transmission rate. The Commission has already approved, over SWP's objections, the CAISO's transmission rate design as consistent with cost causation and the need to send price signals.<sup>23</sup> That rate design comprises a flat access charge to recover the embedded and maintenance costs of transmission facilities, which benefit all users, and a congestion charge. The congestion charge is the Marginal Cost of Congestion component of the Locational Marginal Price. The CAISO's congestion charge is sensitive to both time and location; it is greatest at the time and place where congestion is greatest. The CAISO's congestion charge is a far more sophisticated price signal than SWP's proposed alternative—time-of-use rates—which vary according to predetermined hours of the day rather than the realities of congestion. In addition, SWP's time-of-use rates are intended to reflect peak demand, which the Commission determined is not correlated with congestion on the CAISO system.<sup>24</sup>

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<sup>23</sup> *Cal. Indep. Sys. Operator Corp.*, 109 FERC ¶ 61,301 (2004), *reh'g denied* 111 FERC ¶ 61,337 (2005). *aff'd sub nom. State Water Contractors v. FERC*, 285 F.App'x 397, (9<sup>th</sup> Cir. 2008). Indeed, SWP's challenges to the rate design were so insubstantial that the Court of Appeals rejected them in a 3-paragraph memorandum order.

<sup>24</sup> 111 FERC ¶ 61,337 at P 79.

The CAISO's rate design is thus fully consistent with the national policy "that time-based pricing and other forms of demand response, whereby electricity customers are provided with electricity price signals and the ability to benefit by responding to them, shall be encouraged, the deployment of such technology and devices that enable electricity customers to participate in such pricing and demand response systems shall be facilitated," as cited by SWP.<sup>25</sup> Because the price for energy is the market clearing price determined by the CAISO's markets, it necessarily will ordinarily be greatest *at those times* when the demand is highest. Similarly, congestion costs will be greatest *at those times and places* where congestion is greatest. In short, the CAISO's rate design is superior to the "time-based pricing" being advocated as an alternative.

### **C. Demand Response Services.**

SWP asserts that the CAISO should not erect barriers to the demand-based reliability services that SWP has provided under Existing Transmission Contracts, but for which the CAISO tariff does not provide.<sup>26</sup> SWP asks the Commission to direct the CAISO to

Identify[ ] additional demand response services readily available to the CAISO (as are many such services already provided under Existing Transmission Contracts) and revising the tariff to accommodate continuation of such services.<sup>27</sup>

Once again, the subject of SWP's request has already been ruled on by the Commission, which ruled against requiring the CAISO to accept the same demand-based services that SWP has sought to unbundle from its existing

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<sup>25</sup> SWP Comments at 18, quoting the Energy Policy Act of 2005, § 1252(f).

<sup>26</sup> *Id.* at 21.

<sup>27</sup> *Id.* at 2.

transmission contracts and provide under the CAISO Tariff.<sup>28</sup> SWP's comments assert that the CAISO has stated it does not "want or need" SWP's demand-based services, except to the extent that SWP bid Participating Loads into existing CAISO markets on the same terms as generation. This takes CAISO's statement out of context. The full quotation is as follows:

Moreover, even if unbundling of services were at issue, the record would not support a conclusion that SWP is providing services that, were SWP not otherwise obligated to provide them under its Existing Contract, the [CAISO] would want or need them. For example, the record establishes that SWP cannot meet any of the CAISO's current Reliability Must Run needs. It also shows that, *in the event that termination of SWP's in-kind reliability support services created additional Reliability Must Run needs, the [CAISO] would seek to fulfill those needs competitively.* Similarly, the record demonstrates that the [CAISO] does not currently procure the Voltage Support services that SWP wishes to sell, *but would also procure them competitively if it needed them.*<sup>29</sup>

Indeed, the CAISO is currently pursuing market-based solutions for Path 26 dispatch and voltage support, consistent with the Commission's directives.<sup>30</sup> The CAISO will file a report on these efforts on or before June 22, 2009. As discussed in the compliance report, the CAISO is also committed to opening up its Ancillary Services markets to demand response.

The CAISO seeks to develop and implement new demand response products as needed. CAISO cannot simply assume, however, that every service

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<sup>28</sup> 109 FERC ¶ 61,301 at P 10, *aff'g* 106 FERC ¶63,026 at 264 (2004).

<sup>29</sup> *Cal. Indep. Sys. Operator Corp.*, Docket No. ER00-2019, Initial Brief of CAISO at 58 (FERC Dec. 17, 2003), available at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=10016696> (footnotes omitted, emphasis added).

<sup>30</sup> *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,150 at PP 44-45 (2009).

that SWP provides under its Existing Contracts is needed<sup>31</sup> and, if needed, should be procured on a basis other than competitively. SWP has not identified any deficiency in the CAISO's compliance with Commission orders in this regard.

**D. Discrimination Against Participating Load as Demand**

SWP asserts that “offering demand response in the CAISO system has carried the risk of inferior service and greater burdens and costs imposed for no reason other than Participating Load status.”<sup>32</sup> SWP asks that the Commission direct the CAISO to –

Ensur[e] that when functioning as Demand, demand response resources receive firm transmission services and are not burdened with cost exposure only by reason of eligibility to provide demand response.<sup>33</sup>

SWP cites three examples of what it considers inappropriate treatment of Participating Load when functioning as demand.<sup>34</sup> First, SWP argues that, because Participating Loads are scheduled and settled at Default Load Aggregation Points, they are more vulnerable to Day-Ahead curtailments than other loads. SWP made the same contention in connection with the CAISO's parameter tuning filing, and the Commission rejected it:

State Water Project confuses the integrated forward market conditions with real-time circumstances. State Water Project appears to believe that the instant parameter tuning filing will lead to the real-time curtailment of its participating load on a

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<sup>31</sup> SWP resurrects its argument that the CAISO's operating procedures allowed curtailment of SWP pump loads for a period after SWP's contract with SCE authorizing such curtailments terminated. SWP Comments at 21-22. This matter is discussed *infra*.

<sup>32</sup> SWP Comments at 27.

<sup>33</sup> *Id.* at 2.

<sup>34</sup> SWP asserts without support that, at the time an extension of the Participating Load Agreement was signed, the CAISO was unwilling to commit that Participating Load would receive nondiscriminatory firm service during those times that it was not offering demand response to the grid. SWP Comments at 26. Because SWP provides no citations or context for this claim, the CAISO is unable to respond.

discriminatory basis, but, as explained by the CAISO, this belief is unfounded. State Water Project's participating load will continue to receive the same firm transmission service that it currently receives through the CAISO markets. Other than an instance of a system emergency, the only possibility of an adjustment to a participating load self-schedule would be through the integrated forward market. An adjustment in the integrated forward market would, at most result in the participating load having to procure a portion of its submitted self-schedule load through the real-time market, rather than all of it clearing the integrated forward market.<sup>35</sup>

There is no reason for the Commission to now deem the circumstances described in this ruling a barrier to demand response.

Secondly, SWP describes an instance in which, in 2003, SWP's failure to follow an infeasible schedule resulted in a FERC investigation of potential abuses.<sup>36</sup> SWP will be protected from any similar situation by the Commission's directive in Order No. 719 that the CAISO allow demand response resources to specify limits on the duration, frequency, and amount of their service in their bids to provide ancillary services, and the actions that the CAISO has taken or plans to take to fulfill this directive.

Finally, SWP complains that the CAISO Tariff does not explicitly provide that when a Participating Load is not offering services, it must be treated as firm load like any other. Such a provision is unnecessary because nothing in the CAISO Tariff treats the load of a Participating Load resource, when it is not offering services, as any less firm than other loads.

#### **E. Comparable Treatment of Participating Load as Supply**

SWP asserts that the CAISO must undertake additional work to ensure that demand response can provide resources under requirements comparable to

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<sup>35</sup> *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61147 at P 100 (2009).  
<sup>36</sup> SWP Comments at 27.

those applicable to supply and receive comparable compensation.<sup>37</sup> SWP asks the Commission to –

Ensur[e] that when functioning as Supply to the grid, demand response resources receive bidding flexibility, payment and cost allocation comparable to that afforded other service providers.<sup>38</sup>

The CAISO is committed to ensuring that demand response resources are treated comparably to other supply resources. SWP's acknowledges that its first two examples of non-comparable treatment—that Participating Load was not initially permitted to bid in the hour-ahead timeframe and that the software allowed Participating Loads only two dispatch operating points—on and off—for loads amounting to hundreds of MW that could operate at various levels—involve matters that have already been resolved.<sup>39</sup>

SWP raises concerns about Participating Load being inappropriately charged for Ancillary Services or Exceptional Dispatch that it is providing. These concerns are misplaced. Charges for such services are based on metered demand or a derivative of metered demand (such as net negative uninstructed deviations). When Participating Load is dispatched (*i.e.*, curtailed) the amount that is dispatched will not constitute metered demand and, accordingly, will not be charged for the service being provided. The non-dispatched load, however, is still a demand on the CAISO Controlled Grid and, therefore, benefits from and is appropriately charged for the service. In the case of Ancillary Services, if the load is not curtailed by a dispatch, it is still part of the CAISO's load responsibility under WECC standards for which Ancillary Services must be provided. The load

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<sup>37</sup> SWP Comments at 30.

<sup>38</sup> SWP Comments at 2.

<sup>39</sup> SWP comments at 31.

should therefore be charged for those services. (Because the undispached Participating Load is also being paid for the Ancillary Service, the net impact will be neutral.)

Nonetheless, the CAISO intends to launch a stakeholder process to vet the issues regarding the comparable treatment of non-generation resources and generation resources for the provision of ancillary services. The CAISO will hold a conference call on June 30<sup>th</sup> to begin this discussion with stakeholders.

#### **F. Participating Load Agreement.**

SWP cites the Notice of Proposed Rulemaking for the proposition that “Market rules that do not allow a demand response provider to limit the frequency and duration of interruption may thereby create a disincentive for a demand response resource to bid into the operating reserves market.”<sup>40</sup> This point, of course, is incorporated in the Commission’s directive, noted above, that independent system operators and regional transmission organizations –

Allow demand response resources to specify limits on the duration, frequency, and amount of their service in their bids to provide ancillary services or their bids into joint energy-ancillary services markets in the co-optimized markets.<sup>41</sup>

The CAISO explained in the compliance report the actions that it is taking and plans to take to fulfill this requirement.

SWP goes further, however, and seeks to limit the CAISO’s authority to revise its tariff to conform the manner in which it complies with this directive to

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<sup>40</sup> SWP Comments at 32-33, citing *Wholesale Competition in Regions with Organized Markets*, 73 Fed. Reg. 12,576 (March 7, 2008).

<sup>41</sup> Order No. 719 at P 81.

future developments in the CAISO's markets and program. SWP asks that the Commission require the CAISO to –

Revis[e] the Participating Load Agreement and writ[e] other demand response agreements to [sic] *so that the scope and voluntary nature of demand response resources' provision of services is clearly delimited*—and not subject to unilateral changes through the CAISO tariff or other CAISO documents.<sup>42</sup>

SWP argues that legal protections are important for demand response resources, which have primary purposes other providing demand response services. It notes the criticality of its water management mission to the public health and safety of the State of California.

SWP states that the Participating Load Agreement “imposes open-ended obligations under the CAISO tariff that expose SWP to legal obligations that were not anticipated when it executed the [Participating Load Agreement] and those obligations may change through unilateral changes by the CAISO or the Commission.”<sup>43</sup> SWP further states:

[T]he CAISO's confidential Operating Procedures have at times erroneously treated SWP's loads as interruptible. SWP had no way of even knowing of such intended uses of its resources. Worse, resistance to infeasible CAISO obligations may, as noted above, invite market behavior investigations when demand response fails to perform the impossible.<sup>44</sup>

SWP asserts that demand response resources deserve special protection because they are CAISO “customers” and seeks the same protections against tariff changes as are included in Metered Subsystem Agreements and Reliability Must Run contracts.

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<sup>42</sup> SWP Comments at 2, emphasis added.

<sup>43</sup> SWP Comments at 34. SWP cites *Cal. Indep. Sys. Operator Corp.*, 127 FERC ¶ 61,004 at P. 5 for this quotation. In actuality, in paragraph 5, the Commission was simply reciting SWP's position.

<sup>44</sup> SWP Comments at 35.

The Commission has heard these concerns before and has addressed them. With regard to SWP's concerns about water management, the CAISO has pointed out that section 22.13 of the MRTU Tariff includes a provision making clear that "[n]othing in this CAISO Tariff is intended to permit or require the violation of Federal or California law concerning hydro-generation and Dispatch, including but not limited to fish release requirements, minimum and maximum dam reservoir levels for flood control purposes, and in-stream flow levels." The Commission has found that "section 22.13 of the MRTU Tariff sufficiently ensures that the CAISO will dispatch State Water Project's participating load to increase consumption only when State Water Project voluntarily agrees to such an increase in order to avoid damage to water-management equipment."<sup>45</sup> In its ruling on Exceptional Dispatch, the Commission noted this finding and further stated, "In addition, as SWP itself points out, the CAISO has 'unequivocally committed that SWP pump loads would in the future be adjusted or interrupted only when bid into CAISO markets or on an otherwise voluntary basis.' We see nothing in the record in this proceeding to indicate that the CAISO has changed its position on this issue."<sup>46</sup> The Commission also pointed out that the CAISO recognized the possible need for more specific assurances and procedures in light of the unique characteristics of SWP's participating load and encouraged further discussions, request a report on progress.<sup>47</sup> The CAISO will file a report on those discussions on June 22, 2009. In addition, a new provision has now been added to the SWP's Participating Load Agreement (at SWP's request and

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<sup>45</sup> *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,313 at P 186 (2007).

<sup>46</sup> *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,150 at P 241 (2009).

<sup>47</sup> *Id.* at P 242.

to which CAISO did not object), that allows SWP to immediately withdraw Load from the PLA arrangement when this is necessary for water management needs.

With regard to the CAISO Operating Procedures, as the CAISO told SWP at the time, the errors were corrected when brought to the CAISO's attention.

The CAISO informed the Commission,

[T]he record indicates that (1) the CAISO does not have authority to direct SWP loads to be involuntarily interrupted or curtailed; (2) the CAISO will direct the pump loads to be interrupted or curtailed only if SWP voluntarily bids those loads into the CAISO's markets or pursuant to a remedial action scheme in an agreement with the CAISO or a PTO; (3) since the beginning of the must-offer obligation, the CAISO has not directed SWP pump loads to be interrupted or curtailed involuntarily; and (4) SWP's pump loads are set to trip automatically at a higher frequency in the event of a frequency disturbance.<sup>48</sup>

The Commission concluded, "Our review indicates that the CAISO has provided compelling arguments that rebut SWP's argument that its pump loads are interruptible."<sup>49</sup> . Although SWP continues to raise the issue, it has never identified an instance where the CAISO impermissibly curtailed its pumps.

With regard to SWP's argument that demand response resources must be treated as customers, the Commission has previously pointed to SWP's own contentions that, when providing demand response, load is acting as a supplier. In ruling on SWP's assertions that the CAISO's parameters tuning filing discriminated against participating loads vis-à-vis other loads, the Commission observed:

State Water Project petitioned for its participating load to receive nodal treatment as opposed to zonal treatment to account for the fact that when it submits bids to provide energy through self-

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<sup>48</sup> *Cal. Indep. Sys. Operator Corp.* 117 FERC ¶ 61, 348 at P 71 (2006).

<sup>49</sup> *Id.* at P 72.

curtailment, it is acting more like a generator and therefore should be paid a locational (nodal) price. Given the unique nature of participating load in this regard, the fact that the CAISO's market optimization software also treats participating load nodally in determining optimal scheduling in the integrated forward market is appropriate. Because State Water Project's participating load can act as either a load or a generating resource, it is unique and not similarly situated to other market participants.<sup>50</sup>

In the same order, with regard to SWP's concerns about economic impacts, the Commission noted:

With respect to State Water Project's remaining arguments regarding the ability to decline a CAISO dispatch instruction, and other financial or legal ramifications that would arise from real-time curtailment or adjustment of State Water Project's participating load, we find that these concerns are adequately addressed based on the CAISO's response that absent a system emergency, real-time load is never curtailed.<sup>51</sup>

Similarly, when the Commission agreed to allow SWP to remove all or part of its pump load from the Participating Load Agreement without the advance notice required by the pro forma agreement, if such withdrawal was necessary to protect SWP's water management responsibilities, the Commission refused to allow such without notice in order to address economic impacts of CAISO dispatch.

The CAISO Tariff protects SWP from interference with its water management responsibilities when operating as a Participating Load.<sup>52</sup> Not satisfied with these protections, which could only be revised with approval of the Commission, SWP seeks insulation – absent an agreement or complaint proceeding to revise the Participating Load Agreement – from all impacts of

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<sup>50</sup> *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶¶ 61,147 at P. 99 (2009)

<sup>51</sup> *Id.* at P 102.

<sup>52</sup> Again, as previously noted, a new provision has now been added to the SWP's PLA (at SWP's request and which CAISO did not oppose), that allows SWP to immediately withdraw Load from the PLA arrangement when this is necessary for water management needs.

revisions to the CAISO Tariff that might affect its operation as a Participating Load. SWP's effort to seek support from the Metered Subsystem Agreements and Reliability Must Run contracts is inapt. The agreements govern the relationship of the CAISO and other parties regarding matters outside the CAISO markets. When SWP acts as a Participating Load, it chooses to act as a supplier in the CAISO's markets. The Participating Generator Agreement provides generators no immunization against changes in the CAISO Tariff. There is no reason for the Participating Load Agreement to provide otherwise.

## **II. Responsiveness**

Order No. 719 promulgated new regulations concerning "the responsiveness of regional transmission organizations and independent system operators to their customers and other stakeholders, and ultimately to the consumers who benefit from and pay for electricity services."<sup>53</sup> Under the new regulations:

Each Commission-approved independent system operator or regional transmission organization must adopt business practices and procedures that achieve Commission-approved independent system operator and regional transmission organization board of directors' responsiveness to customers and other stakeholders.<sup>54</sup>

The regulations require each independent system operator or regional transmission organization to satisfy four criteria: inclusiveness, fairness in balancing diverse interests, representation of minority positions, and ongoing responsiveness.<sup>55</sup> The purpose of the responsiveness requirement is to increase boards' "willingness . . . to directly receive concerns and recommendations from

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<sup>53</sup> Order No. 719 at P 477.

<sup>54</sup> 18 C.F.R. § 35.28(g)(5).

<sup>55</sup> *Id.*

customers and other stakeholders, and to fully consider and take actions in response to issues that are raised.”<sup>56</sup>

In its compliance filing, the CAISO explained that its existing governance practices and procedures directly address the Commission’s concerns, because meetings of the CAISO Board of Governors are not only open to the public, but the meetings also allow stakeholders the opportunity to engage directly with the CAISO Board of Governors on individual decisional items. Stakeholders can address the Board while the Board is considering a specific decisional item and anyone wishing to address the Board may speak after management has presented its view and before the Board takes action. In addition, written materials submitted to the Board summarize views expressed during any stakeholder process that took place during the development of the matter being presented to the Board. The CAISO noted that it is also not uncommon for stakeholders to send letters directly to the Board with comments on decisional items. The CAISO explained how the procedures by which stakeholders participate in the Board’s deliberations satisfy the Commission’s four criteria.

The CAISO also explained that, in addition to open board meetings, the CAISO provides an “avenue for customers and other stakeholders to present their views on . . . [independent system operator] decision-making, and to have those views considered,”<sup>57</sup> through the CAISO’s stakeholder process. The CAISO described its standard stakeholder process and the role of the CAISO’s

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<sup>56</sup> Order No. 719, Summary.  
<sup>57</sup> *Id.* at P 503.

stakeholder affairs group within the External Affairs division, under the direction of a Manager, Stakeholder and Industry Affairs.

Only three of the parties that filed comments regarding the CAISO's compliance filing addressed responsiveness: Wal-Mart, Modesto, and TANC. Of these, only Modesto and TANC were critical of the CAISO's compliance filing.

#### **A. Compliance**

Significantly, despite the purpose of Order No. 719 to ensure both stakeholder access to governing boards and governing board consideration of stakeholder views, neither Modesto nor TANC offer any criticism of CAISO Board's openness or receptivity. Modesto's only comment regarding the Board demonstrates the very type of open debate that the Commission seeks to foster: "Although [Modesto] and the affected entities were allowed to present their views to the CAISO Board, the discussion, again, had an adversarial tenor to it, between CAISO management and staff and the affected entities."<sup>58</sup> TANC's only comments about the Board praised recent developments:

In response, the [CAISO] does propose welcome reforms including the creation of a uniform comments template enabling stakeholders to submit their own summary views for a consolidated presentation to the Board. Most of these reforms—including creation of the template described above and the establishment of a "Stakeholder Symposium"—address the presentation of minority voices to the Board.<sup>59</sup>

Rather than addressing the openness and responsiveness of CAISO's Board, or any other requirement of Order No. 719, Modesto and TANC complain about the CAISO's stakeholder process that precedes Board deliberations. Both

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<sup>58</sup> Modesto Comments at 7-8.

<sup>59</sup> TANC Comments at 20.

Modesto and TANC focus on one of the dozens of stakeholder processes that the CAISO has undertaken in recent years.<sup>60</sup> Specifically, they complain that the CAISO gave insufficient consideration to stakeholder comments in the development of its Integrated Balancing Authority Area proposal.<sup>61</sup>

TANC contends that posting a discussion paper at close-of-business on a Wednesday for a conference call the following Tuesday provided insufficient time for consideration.<sup>62</sup> It also offers as evidence of the CAISO's lack of regard for stakeholder comments the fact that the CAISO intended to file its proposal the day after receipt of stakeholder comments (even though the CAISO, *in response to stakeholders*, deferred the filing).<sup>63</sup>

The Commission has already reviewed and rejected assertions that the stakeholder process regarding the Integrated Balancing Authority Area proposal was inadequate. Parties that opposed the CAISO's proposal, including Modesto and TANC, raised these same arguments when the CAISO filed its proposal.

The Commission found that the arguments lacked merit:

The Commission finds that the CAISO's stakeholder process prior to the filing of the IBAA proposal was sufficient and that the CAISO did not violate its tariff or Commission orders during the stakeholder process. As detailed in the CAISO's filing, interested parties have been in discussions concerning the issues addressed in this filing for many months. One of the protestors, Western, even acknowledges in its protest that, "the CAISO, Western and other parties had discussions related to the CAISO's modeling of prices, schedules, and settlements since the summer of 2007." Although some affected parties disagree with elements of the IBAA proposal, and some parties were unable to obtain their preferred resolution to

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<sup>60</sup> Modesto also commends the CAISO's conduct of a different stakeholder process. *Id.* at 6-7.

<sup>61</sup> *Id.* at 7-8, TANC Comments at 11-13.

<sup>62</sup> TANC Comments at 11-13.

<sup>63</sup> *Id.*

the issues presented in this matter during the process, the stakeholder process appears to have been robust. For example, in response to comments in the stakeholder process, the CAISO extended the stakeholder process several times and agreed to file the IBAA proposal as a section 205 filing rather than a compliance filing. Also, the CAISO made certain concessions based on the stakeholder process, such as committing to hold a stakeholder process to develop any further changes to the existing IBAA and providing the opportunity to enter into an MEEA to receive alternate pricing arrangements.<sup>64</sup>

TANC's and Modesto's dissatisfaction with the outcome of the Integrated Balancing Authority Area proceedings does not provide a basis for finding inadequacies in the CAISO's stakeholder process.

## **B. TANC Recommendations**

TANC asks that the Commission direct the CAISO to incorporate in its tariff certain timeline and reporting requirements.<sup>65</sup> For example, without suggesting specific deadlines, TANC asks the Commission to set standards "as to what constitutes sufficient notice for convening stakeholder meetings [or] conference calls, for the submission of stakeholder comments, and for subsequent consideration of those comments prior to the [CAISO] taking action."<sup>66</sup> TANC provides no basis, however, for its recommendations. Neither does TANC present evidence of inadequacies in this regard that should prompt further burdening the CAISO Tariff with the details of the corporate decision-making processes.

Moreover, the CAISO believes that TANC's proposals would be counterproductive. The CAISO already has internal quality guidelines for

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<sup>64</sup> *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,271 at P 337 (2008).

<sup>65</sup> TANC Comments at 16-19.

<sup>66</sup> *Id.* at 16.

stakeholder meetings, which include advance notice of meetings (three weeks) and calls (one week). CAISO tracks compliance with these guidelines. It achieved 94% compliance in 2008, and is aiming for at least 95% in 2009. Making these timelines inflexible, however, as TANC suggests, would restrict the CAISO's ability to respond to new needs as they emerge with no countervailing benefit.

The CAISO has consistently reported the results of stakeholder processes to the Commission in its tariff filings of recent years. The additional details that TANC seeks would similarly impose a burden with no corresponding improvement in the information that the CAISO provides.

Particularly inappropriate is TANC's suggestion that the Commission direct that the CAISO employ a stakeholder process using what TANC describes as the "negotiated rulemaking model."<sup>67</sup> Contrary to TANC's contentions, the Negotiated Rulemaking Act of 1990<sup>68</sup> does not provide a model that supports requiring the stakeholder process that TANC desires, in which the CAISO would be simply one party among equals. The Act does not require agencies to use negotiated rulemaking; rather, it leaves the choice of using negotiating rulemaking to an agency's discretion. Even if an agency decides to follow the process, it is free to ignore the results. The agency's choice, moreover, is not judicially reviewable.

Mandatory negotiation is not more appropriate for the CAISO than for a federal agency. The CAISO is not a cooperative or other form of joint venture.

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<sup>67</sup> *Id.* at 13-16.

<sup>68</sup> 5 U.S.C. §§ 561-570.

This CAISO is a public utility for purposes of the Federal Power Act, charged by state law and Commission regulation with operating and ensuring the reliability of the CAISO Controlled Grid. The responsibility for fulfilling that charge falls on CAISO management and the CAISO Board. Order No. 719, as well as the composition of the CAISO Board, ensures that decisions are made with extensive input from stakeholders; those decisions, however, must be made by the CAISO, not by negotiation or mediation.

### **C. Preparation of Compliance Filing**

TANC also argues that, because the CAISO relied upon its annual client survey to identify client concerns, the CAISO did not adequately comply with the Commission's directive that the CAISO consult with stakeholders in preparing its compliance filing on responsiveness.<sup>69</sup> As discussed in the compliance filing, however, the survey provided the CAISO with the necessary information to address the issues in the filing. It did not make sense to consult CAISO's stakeholders a second time in order to elicit the same information. And, in fact, the survey successfully identified stakeholder concerns about responsiveness. TANC itself points to issues identified in the survey as the issues that need to be addressed.<sup>70</sup> Perhaps most telling is that, out of hundreds of CAISO stakeholders, only two have found fault with the compliance filing.

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<sup>69</sup> *Id.* at 21-22. TANC erroneously states that CAISO surveyed only 38 stakeholder representatives. The CAISO compliance report summarizes contacts with 74 representatives. See CAISO Compliance Report at 7-8.

<sup>70</sup> *Id.* at 11, 20-21.

### III. Conclusion

For the reasons set forth above and in the compliance filing, the CAISO requests that the Commission accept the compliance filing as consistent with Order No. 719.

Respectfully submitted,

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Dated: June 10, 2009

## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service lists for the above-referenced 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 Washington, D.C. this 10<sup>th</sup> day of June, 2009.

/s/ Michael E. Ward  
Michael E. Ward