

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation )  
Docket No. ER08-760-000 )  
ER08-\_\_\_-000 )  
)  
)

**MOTION FOR CLARIFICATION, OR IN THE ALTERNATIVE, PETITION FOR WAIVER, AND REQUEST TO SHORTEN COMMENT PERIOD, OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rules 207 and 212 of the Rules of Practice and Procedure of Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. §§ 385.207 and 385.212 (2007), the California Independent System Operator Corporation ("CAISO") respectfully moves for clarification that the erroneous revocation of a Must Offer Waiver ("MOW") to El Segundo Unit #3 on June 8, 2008, contrary to the terms of the ISO Tariff,<sup>1</sup> does not result in a 30-day designation of capacity under the Transitional Capacity Procurement Mechanism ("TCPM"). Alternatively, the CAISO seeks waiver of the Commission's requirement in the May 30, 2008 Order in the captioned docket<sup>2</sup> that the aforementioned mistaken MOW revocation results in a 30-day designation of capacity under the TCPM.<sup>3</sup> Revocation of El Segundo Unit #3's MOW was the result of operator error

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

<sup>2</sup> *Cal. Indep. Transmission Sys. Operator*, 123 FERC ¶ 61,229 (2008) ("TCPM Order").

<sup>3</sup> In making this filing at this time, the CAISO does not waive its right to seek further rehearing/clarification of the May 30, 2008 Order. Due to the time sensitive nature of this issue, the CAISO is making the instant filing to resolve the issue prior to the deadline for filing rehearing requests.

because El Segundo Unit #4 -- which is a Resource Adequacy ("RA") Resource -- was available for commitment, but the CAISO operator mistakenly revoked El Segundo Unit #3's MOW rather than El Segundo Unit #4's MOW. Under the ISO Tariff, the CAISO is required to revoke the MOWs of Resource Adequacy Resources before revoking the MOWs of Generating Units that are not Resource Adequacy Resources, *i.e.*, FERC Must Offer Generators. The CAISO also respectfully requests that a shortened comment period be instituted and that the Commission take expedited action on this petition due to the time sensitive nature of this issue.

#### **I. Background**

On March 28, 2008, the CAISO submitted its TCPM proposal which provides the CAISO with a tariff-based mechanism to permit the CAISO to engage in backstop capacity procurement under a defined set of circumstances when necessary to meet Reliability Criteria and maintain system operations. The TCPM is designed to work with the Must-Offer Obligation ("MOO") that the Commission imposed as a mitigation measure during the California Energy Crisis, as well as with the RA requirements adopted by the California Public Utilities Commission and other Local Regulatory Authorities.

In accordance with the ISO Tariff, the CAISO is to engage in backstop procurement under the TCPM only if it does not have capacity available to meet reliability needs from units that are Resource Adequacy Resources. The CAISO is authorized to grant and revoke waivers of both the Commission-imposed

MOO, which applies to FERC Must Offer Generators, and the RA must offer requirement, which applies to Resource Adequacy Resources. In the event additional capacity is needed, the CAISO is required, to the extent conditions permit, to grant waivers to FERC Must Offer Generators first, before granting waivers to Resource Adequacy Resources.<sup>4</sup> Similarly, “[t]o the extent conditions permit, the ISO will revoke the waivers of Resource Adequacy Resources and TCPM resources prior to revoking the waivers of FERC Must Offer Generators.”<sup>5</sup> In other words, the CAISO is to rely on Resource Adequacy Resources before relying on FERC Must Offer Generators.

On May 30, 2008, the Commission accepted the TCPM tariff filing subject to modification. The Commission directed the CAISO to modify its TCPM proposal by “providing units with a minimum 30-day capacity designation upon

---

<sup>4</sup> CAISO FERC Electric Tariff, Third Replacement Volume No. 1, Section 40.7.6. In that regard, Section 40.7.6 of the Tariff provides with respect to FERC Must-Offer Generators:

[i]f conditions permit, the ISO may, at its sole discretion, grant waivers and allow a FERC Must-Offer Generator to remove one or more Generating Units or System Units from service. In doing so, the ISO will first grant waivers to FERC Must-Offer Generators, on a non-discriminatory basis, that are not also Resource Adequacy Resources or resources designated under the TCPM and then, if permissible, the ISO may grant waivers to Resource Adequacy Resources or resources designated as TCPM on a non-discriminatory basis.

Section 40.6A.6 of the ISO Tariff similarly provides with respect to Resource Adequacy Resources:

[i]f conditions permit, the ISO may, at its sole discretion, grant waivers and allow a Resources Adequacy Resource to remove one or more Generating Units from service, and, in doing so, the ISO will first grant waivers to FERC Must-Offer Generators, on a non-discriminatory basis, that are not also Resource Adequacy Resources or resources designated under the TCPM, and then, if permissible, the ISO may grant waivers to Resources Adequacy Resources or resources designated as TCPM on a non-discriminatory basis.

CAISO FERC Electric Tariff, Third Replacement Volume No. 1, Section 40.6A.6.

<sup>5</sup> CAISO FERC Electric Tariff, Third Replacement Volume No. 1, Sections 40.6A.6 and 40.7.6.

the first commitment under the must-offer obligation.”<sup>6</sup> In other words the issuance of a Must Offer Waiver Denial (“MOWD”) would result in an automatic 30-day designation under the TCPM.<sup>7</sup>

On June 8, 2008, the CAISO determined that it needed to commit additional capacity in Southern California as a result, among other things, of a transmission outage associated with work on the Lugo-Mira Loma #1 500 kV line, an outage at the San Onofre Nuclear Generating Station, and the expectation that real-time demand in the area was going to exceed the day-ahead forecast. The CAISO revoked El Segundo Unit #3’s MOW on June 8, 2008 and committed the unit to be on-line starting at 8:00 a.m. on June 9, 2008.

Subsequently, the CAISO conducted a review of the decision to revoke El Segundo Unit #3’s MOW. At the time the decision to revoke the MOW was made, the CAISO operator directly responsible for final MOW decisions had a list of Resource Adequacy Resources that were available for commitment during the month of June (the “RA Designation tool”). El Segundo Unit # 4 was listed on the RA Designation tool as an available Resource Adequacy Resource; El Segundo Unit #3 was not listed as a Resource Adequacy Resource. However, the CAISO operator mistakenly revoked the MOW of El Segundo Unit #3, which is not a Resource Adequacy Resource, instead of revoking the waiver of El Segundo Unit #4, which is a Resource Adequacy Resource. In that regard, the operator

---

<sup>6</sup> TCPM Order at P 32. The Commission stated, “we direct the CAISO to make a compliance filing within 30 days of the date of this order with revised tariff sheets that require the designation of a TCPM capacity resource for a (minimum) 30-day period upon the first commitment, i.e. must-offer waiver denial, of a resource under the must-offer obligation.” *Id.* at P 37.

<sup>7</sup> *Id.* at P 37.

thought incorrectly that El Segundo Unit #3 was also a Resource Adequacy Resource.

Upon completion of the CAISO's internal review, on June 13, 2008, the CAISO notified NRG -- the Scheduling Coordinator for El Segundo Unit #3 -- by phone and follow-up email that: (1) the commitment of El Segundo Unit #3 was the result of operator error and was inconsistent with the ISO Tariff, (2) the CAISO would not treat El Segundo Unit #3 as a TCPM resource due to the mistaken commitment, (3) the CAISO intended to make a filing to correct the designation with the Commission, and (4) the CAISO would propose to enter into Good Faith Negotiations ("GFN") with NRG pursuant to the dispute resolution provisions of the ISO Tariff to mutually agree on appropriate compensation for the service the unit provided since its initial commitment.

The CAISO notes that, as a result of revocation of the MOW, El Segundo Unit #3 was committed on June 9 and 10, 2008. El Segundo Unit #4 was not committed on either day. Both El Segundo Unit #3 and El Segundo Unit #4 have a capacity of 335 MW, have the same owner, and are located at the same site.

## **II. MOTION FOR CLARIFICATION**

The CAISO respectfully requests that the Commission clarify that the mistaken revocation of El Segundo Unit #3's MOW, as described above, does not result in a 30-day TCPM designation under the May 30 Order. Such a finding will prevent unnecessary costs from being imposed on consumers.

In revoking the MOW of El Segundo Unit #3, which is not a Resource Adequacy Resource instead of revoking the MOW of the similarly situated El Segundo Unit #4, which is a Resource Adequacy Resource, the CAISO operator directly responsible for final MOW decisions made an inadvertent error and took an action that is not consistent with the ISO Tariff.<sup>8</sup> Consistent with Sections 40.7.6 and 40.6A.6 of the ISO Tariff, the CAISO operator should have revoked El Segundo Unit #4's MOW before revoking El Segundo Unit #3's MOW. There were no conditions that would have precluded the operator from revoking El Segundo Unit #4's MOW.

In requiring that any MOWD commitment result in an automatic 30-day TCPM designation, the Commission explained that the purpose was to compensate FERC Must-Offer Generators on a comparable basis to Resource Adequacy Resources for providing similar reliability services "when the resource adequacy program is not able to provide [the CAISO] with sufficient resources to operate the grid reliably."<sup>9</sup> In this instance, the RA program was able to meet the CAISO's reliability needs, without resorting to the use of a FERC Must-Offer Generator.

Thus, the Commission should clarify that the mistaken revocation of El Segundo Unit #3's MOW does not result in a 30-day designation of capacity under the TCPM. Such an action will protect customers from the consequences of the inadvertent mistake.

---

<sup>8</sup> Under Section 205 of the FPA and the filed rate doctrine, a regulated entity must charge the rate that is on file with the Commission. 16 U.S.C. § 824d; *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577 (1981).

<sup>9</sup> TCPM Order at P. 36.

To ensure that the unit owner is appropriately compensated for the service that El Segundo Unit #3 provided in connection with revocation of its MOW, the CAISO proposes to enter into GFN with the unit owner pursuant to Section 13.2.1 of the ISO Tariff to mutually agree upon an appropriate level of compensation for the unit. Section 13.2.1 provides that the CAISO and the Market Participant “. . . shall make good-faith efforts to resolve any dispute between them arising under ISO documents prior to invoking the ISO ADR Procedures. . . .” To the extent the CAISO and the unit owner are unable to reach agreement, the issue would proceed to mediation or arbitration under the ISO ADR Procedures set forth in Section 13 of the ISO Tariff. The CAISO requests that the Commission confirm that the CAISO should take appropriate steps under its tariff to address the compensation issue.

### **III. PETITION FOR WAIVER**

In the event the Commission finds that a motion for clarification is not the appropriate procedural avenue for addressing the matter raised herein, then the CAISO alternatively moves for waiver of the 30-day designation requirement in the May 30 Order so that revocation of El Segundo Unit #3's MOW described above does not result in a 30-day designation of capacity under the TCPM. Good cause supports this request because it will prevent unnecessary costs from being imposed on Market Participants as a result of operator error that was inconsistent with the ISO Tariff. The Commission has stated:

Where good cause for a waiver of limited scope exists, there are no undesirable consequences, and the resultant benefits to customers are evident, we have found that a one-time waiver is appropriate.<sup>10</sup>

The CAISO submits that waiver is appropriate in this instance and customers will benefit from granting such waiver. As noted above, the CAISO proposes to engage in GFN with the unit owner to ensure that El Segundo Unit #3 is properly compensated for the service it provided following the mistaken revocation of its MOW.

#### **IV. REQUEST FOR SHORTENED COMMENT PERIOD AND EXPEDITED ACTION**

The CAISO respectfully requests that the Commission provide a shortened comment period of seven days in response to this motion and expeditiously issue an order in this matter. Because this issue involves a potential 30-day designation period, the resolution of this matter is time sensitive. A prompt response will benefit all consumers who will absorb the costs for the mistaken designation described above. Also, expedited action on this request will enable the CAISO to promptly enter into a GFN with the unit owner to ensure that the unit owner is compensated in a timely manner for the service the unit provided. Accordingly, the Commission should institute a shortened comment period and issue an order on this waiver as expeditiously as possible.

---

<sup>10</sup> Cal. Indep. System Operator Corp., 118 FERC ¶ 61,226 at P 24 (2007), order on clarification, 120 FERC ¶ 61,180 (2007), citing Cal. Indep. System Operator, Corp., 109 FERC ¶ 61,153 at P 28 (2003); see also TransColorado Gas Transmission Co., 102 FERC ¶ 61,330 at P 5 (2003) (granting waiver of tariff provision for good cause shown).



## V. COMMUNICATIONS

Correspondence and other communications regarding this filing should be directed to:

Nancy Saracino  
General Counsel  
\*Anthony Ivancovich  
Assistant General Counsel -  
Regulatory  
California Independent System  
Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
dbrubin@troutmansanders.com  
Tel: (916) 351-4400  
Fax: (916) 351-4436  
[aivancovich@caiso.com](mailto:aivancovich@caiso.com)

\*David B. Rubin  
Roger E. Smith  
Troutman Sanders, LLP  
401 9<sup>th</sup> Street, N.W  
Suite 1000  
Washington, DC 20004  
Tel: (202) 274-2964  
Fax: (202) 654-5636

\* Individuals designated for service pursuant to 18 C.F.R. § 203(b)(3).

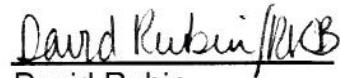
## VI. CONCLUSION

For the reasons discussed above, the CAISO requests that the Commission grant the request for clarification, or in the alternative, waive the Commission's requirement in the May 30 Order, so that the aforementioned revocation of the MOW issued to El Segundo Unit #3 does not result in a 30-day designation of capacity under the TCPM. CAISO also respectfully requests the Commission institute a shortened comment period and issue an order on this matter on an expedited basis.

Nancy Saracino, General Counsel  
Anthony J. Ivancovich, Assistant General  
Counsel  
The California Independent System  
Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Tel: (916) 351-4400  
Fax: (916) 351-4436

Dated: June 17, 2008

Respectfully submitted,



David Rubin  
Troutman Sanders LLP  
401 9<sup>th</sup> Street, N.W.  
Washington, D.C. 20004  
Tel: (202) 274-2964  
Fax: (202) 654-5636

Counsel for the California Independent  
System Operator Corporation

## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the California Public Utilities Commission, California Energy Commission, California Electricity Oversight Board, all Scheduling Coordinators, all of the parties listed on the official service list for the captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 17<sup>th</sup> day of June, 2008.

A handwritten signature in black ink, reading "Anna Pascuzzo/RKB", is written over a horizontal line.

Anna Pascuzzo