

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

MMC Energy, Inc.)	
Complainant,)	
)	
v.)	Docket No. EL08- 46-000
)	
California Independent System)	
Operator Corporation)	
Respondent.)	

**MOTION FOR LEAVE TO ANSWER AND REPLY OF
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO MMC ENERGY, INC.'S RESPONSE**

Pursuant to the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213, the California Independent System Operator Corporation (“CAISO”) respectfully submits this Motion for Leave to Answer and Reply (“CAISO Reply”) to MMC Energy, Inc.’s (“MMC”) April 29, 2008 Response to the Answer and Motion of the CAISO (“MMC Response”) as filed in the captioned docket. This proceeding arises out of MMC’s March 13, 2008 Complaint filed against the CAISO for the CAISO’s alleged “failure to abide by its Tariff requirements in procuring Spinning Reserve ancillary services.” On April 14, 2008, the CAISO filed a Motion for Partial Summary Disposition (“CAISO Motion”) and Answer (“CAISO Answer”) to MMC’s Complaint. The primary issue in this proceeding is whether the CAISO may enforce the clear requirements of its Tariff to prevent MMC from exploiting a CAISO staff mistake – a mistake that MMC exploited to contravene the CAISO’s Tariff when bidding Spinning Reserve capacity, thereby giving MMC a significant competitive advantage over other Spinning Reserve Market Participants and allowing it to collect significant revenues not authorized by the Tariff.

I. SUMMARY OF ARGUMENT

MMC's lengthy Response to both the CAISO's Motion and the CAISO Answer makes many new factual allegations and presents new affidavits. The new factual contentions seem to be designed to make the resolution of the CAISO Motion appear more complicated than it really is. Although the CAISO strongly disputes many of MMC's factual assertions, the Commission need not resolve these factual disputes in order to resolve the CAISO's Motion for Partial Summary Disposition. Rather, the CAISO Motion is directed to two fundamental underlying legal issues raised by MMC's Complaint: (i) the meaning of the CAISO Tariff definition of Spinning Reserve, and (ii) MMC's request for a grandfathered right to receive Spinning Reserve awards for offline capacity. Resolution of these issues does not depend on facts in dispute. Commission action on the CAISO Motion will resolve either directly or indirectly all the issues raised in the Complaint except for MMC's claim regarding the CAISO's rescission of certain Spinning Reserve revenues – which the CAISO refers to as the “No-Pay charges.” Moreover, prompt resolution of the Tariff issue through the Motion for Summary Disposition will provide certainty to the CAISO's Market Participants, enhance reliability in the California market, and greatly simplify this proceeding, thus saving considerable time and expense for both parties and the Commission.

The first question of law presented by the CAISO's Motion for Partial Summary Disposition goes to the Tariff issue, specifically whether MMC's offline capacity qualifies as Spinning Reserve capacity under the CAISO Tariff. The importance of the Commission affirming the CAISO's Tariff definition of Spinning Reserve extends far beyond the dispute at hand – it is a matter of preserving the integrity of the Tariff to ensure the fair, adequate, and reliable operation of the grid.

The CAISO Tariff defines Spinning Reserve as the “portion of unloaded synchronized generating capacity that is immediately responsive to system frequency and that is capable of being loaded in ten minutes, and that is capable of running for at least two hours.”¹ This definition makes clear that Spinning Reserve is defined on a capacity basis, not a resource basis. Therefore, the capacity of a combustion turbine (“CT”) unit that is shut down does not represent *capacity* that is synchronized and frequency responsive, even if it is aggregated with a tiny host unit that is synchronized and frequency responsive.

Spinning Reserves play a crucial role in the CAISO reliability system, providing a known quantity of additional capacity that is both synchronized and frequency responsive. If every generator could collect Spinning Reserve payments simply by attaching a small host unit without incurring the cost of operating the CT unit (as MMC seeks to continue to do), the market for Spinning Reserve would unravel. The CAISO would be left with inadequate and unknown levels of Spinning Reserve capacity that is truly synchronized and responsive to system frequency. The reliability of the California grid would be put at risk.²

Reading the Tariff as MMC proposes – which is to say, reading the word “capacity” out of the definition of Spinning Reserve – would also put the CAISO in conflict with a NERC Regional Reliability Standard for the Western Interconnection developed by the Western Electricity Coordinating Council (“WECC”), WECC Standard BAL-STD-002-0. Reliability Standard BAL-STD-002-0 (“Operating Reserves”) requires a minimum quantity of Spinning

¹ CAISO Tariff, Appendix A, Master Definitions Supplement, Original Sheet No. 528A.

² While MMC calls the CAISO’s reliability concerns spurious and new, *see* MMC Response at 3, the reliability issue has been the CAISO’s principal concern dating back to its 2006 evaluation of its Spinning Reserve Procurement to ensure it met the WECC reliability criteria. *See* CAISO Motion, Exhibit G (Aug. 31, 2006 Market Notice on Ancillary Services – Spinning Reserve, Testing and Certification).

Reserve and defines Spinning Reserves as being “synchronized.”³ MMC’s position would lead to the CAISO procuring inadequate levels of Spinning Reserve as defined by WECC.

The second question of law presented by the CAISO’s Motion for Partial Summary Disposition concerns MMC’s request that its facilities be grandfathered in the event that the CAISO “seeks to change its Tariff in the future.”⁴ This request is plainly not ripe. If the CAISO seeks to change its Tariff in the future, MMC will be free to make its grandfathering request in that future proceeding. Even were it ripe, however, MMC’s requested grandfathering remedy is without precedent and, on its face, inappropriate. The CAISO knows of no cases – and MMC has pointed to none – in which the Commission grandfathered a single company in perpetuity for a mistake made by ISO staff or grandfathered any market participant in a way that would give it such a substantial and unwarranted competitive advantage in the marketplace.

Moreover, MMC’s representation that it deserves grandfathered treatment because it would have liquidated these facilities if not for the promise of Spinning Reserve revenues is dubious.⁵ MMC plans to vastly expand the capacity of its facilities by replacing the existing turbines at an expense that dwarfs MMC’s original investment.⁶ MMC has announced its commitment to spend some \$31 million on two new turbines for its Chula Vista facility.⁷ This \$31 million investment is nearly ten times what MMC spent to recommission all three of its units.⁸ The notion that the Commission ought to grandfather the regulatory status of facilities that will have been dismantled and replaced simply defies comprehension.

³ See CAISO Motion, Exhibit A (Reliability Standard BAL-STD-002-0).

⁴ MMC Response at 49.

⁵ See MMC Complaint at 12.

⁶ See May 1, 2008 Press Release, Preliminary Staff Assessment Released for Chula Vista Energy Upgrade Project, at <http://ir.mmccenergy.com/releasedetail.cfm?ReleaseID=307705>.

⁷ See January 29, 2008 Press Release, MMC Energy, Inc. Announces Turbine Purchase, at <http://ir.mmccenergy.com/releasedetail.cfm?ReleaseID=290625>.

⁸ MMC has stated that it spent “over \$3.5 million to refurbish the [three] facilities.” See MMC Complaint at 14.

II. MOTION FOR LEAVE TO ANSWER

MMC has presented a moving target, filing a Response that contains new legal arguments and new exhibits, and that is in fact longer than its original complaint. Moreover, MMC has changed a fundamental aspect of its legal theory regarding the Tariff definition of Spinning Reserve. Whereas MMC's complaint appeared to argue that the plain language of the CAISO Tariff supported its position,⁹ MMC's Response now clearly takes the very different legal position that the CAISO Tariff is ambiguous as to whether non-synchronized capacity may qualify as Spinning Reserve.¹⁰

In this Reply, the CAISO will not address every inflammatory and inaccurate statement in MMC's Response.¹¹ The CAISO submits this limited Reply only to respond to the critical legal errors advanced by MMC as they impact the CAISO Motion for Partial Summary Disposition. The CAISO believes that basic fairness dictates that it be allowed to respond to new arguments raised by MMC.¹² The CAISO submits that the instant filing will aid the Commission in its deliberation of the two central legal questions presented in CAISO's Motion for Partial Summary Disposition. The Commission routinely allows such answers when they serve to complete the record, clarify the issues in dispute, or otherwise assist the Commission in the decision-making process.¹³

III. REPLY TO MMC'S LEGAL ERRORS

⁹ See MMC Complaint at 21 ("This Complaint thus requests that the Commission find that the new Tariff requirements CAISO seeks to apply to aggregated generating facilities are not properly on file with the Commission, and thus are not lawfully enforceable terms and conditions of service.").

¹⁰ MMC Response at 18 – 26.

¹¹ The CASIO adamantly disagrees with MMC's brazen statement that "the CAISO Answer admits all of the material allegations made by MMC" and that the "now undisputed facts also show that MMC reasonably relied on the statements and actions of the CAISO Staff." MMC Response at 5.

¹² See *Tesoro Refining & Mktg Co.*, 118 FERC ¶ 61,092, at P 3 (2007).

¹³ See, e.g., *Midwest Independent Transmission Operator, Inc.*, 123 FERC ¶ 61,070, at P 11 (2008); *Kinder Morgan Interstate Gas Transmission LLC*, 123 FERC ¶ 61,018, at P 6 n.6 (2008); *Strategic Transmission, LLC v. PJM Interconnection, LLC*, 120 FERC ¶ 61,224 (2007).

A. CAISO Tariff Unambiguously Requires Synchronized, Frequency-Responsive Capacity for Spinning Reserve

The CAISO Tariff defines “Spinning Reserve” as:

The portion of unloaded synchronized generating capacity that is immediately responsive to system frequency and that is capable of being loaded in ten minutes, and that is capable of running for at least two hours.¹⁴

This definition plainly shows that the requirements of Spinning Reserve – *i.e.* that it be unloaded synchronized, frequency responsive, and capable of loading within ten minutes for two hours – are imposed on a *capacity* basis, not a resource basis. In other words, if, with respect to an aggregated unit, some capacity meets the requirements of Spinning Reserve and some capacity does not, then only the capacity that meets those requirements counts as Spinning Reserve and is entitled to the Spinning Reserve capacity payment. This is a perfectly sensible way – indeed the only sensible way – for the Tariff to provide compensation for Spinning Reserves given that the reliability benefits of Spinning Reserves are directly proportional to the *capacity* of the reserves provided.

Contrary to MMC’s repeated claims, the CAISO has not prohibited aggregated units from providing Spinning Reserve. Aggregated units routinely participate in the CAISO Spinning Reserve market, frequently earning Spinning Reserve revenues on their entire capacity.¹⁵ Indeed, there are currently 49 aggregated units certified to provide Spinning Reserve in the CAISO market. The CAISO has not prevented these units from participating in the Spinning Reserve market, nor has it prevented MMC from participating in the Spinning Reserve market. MMC is free to bid in the Spinning Reserve market up to its maximum capacity of its aggregated units, provided it operates the aggregated units in accordance with the Tariff. The CAISO’s position is

¹⁴ CAISO Tariff, Appendix A, Master Definitions Supplement, Original Sheet No. 528A.

¹⁵ These facilities, unlike MMC, incur fuel and other operational costs associated with their units being on-line and synchronized when awarded Spinning Reserve capacity.

simply that it will only award Spinning Reserve revenues to capacity that is synchronized and immediately responsive to system frequency. This is nothing more than what the plain language of the CAISO Tariff requires.

MMC's position is that by attaching a tiny host unit to the CT unit, the entire aggregated unit becomes synchronized and frequency responsive, even if the CT unit is shut down. This position can not be squared with the plain language of the CAISO Tariff. In effect, MMC's position would read the word "capacity" out of the definition of Spinning Reserve. Nowhere in its lengthy Response has MMC explained why its offline CT units' capacity should qualify as synchronized and frequency responsive *capacity*, as the CAISO Tariff requires.

MMC has also failed to square its claim with the CAISO Tariff's distinction between Spinning Reserve and Non-Spinning Reserve. The CAISO Tariff defines "Non-Spinning Reserve" as:

The portion of off-line generating capacity that is capable of being synchronized and Ramping to a specified load in ten minutes (or load that is capable of being interrupted in ten minutes) and that is capable of running (or being interrupted) for at least two hours.¹⁶

When they are shut down, MMC's CT units represent off-line generating capacity capable of being synchronized and ramping to a specified load in ten minutes. This product fits squarely within the definition of Non-Spinning Reserve. MMC provides no rationale for any other conclusion.

In an effort to avoid addressing the synchronization requirement, MMC submits with its Response expert testimony that attempts to engage the Commission in an academic debate as to whether Spinning Reserve is an appropriate vehicle for system operators to obtain frequency responsiveness. The Commission need not adjudicate this debate as the CAISO Tariff clearly

¹⁶ CAISO Tariff, Appendix A, Master Definitions Supplement, Original Sheet No. 515.

demands that Spinning Reserve be frequency responsive and the reasonableness of that requirement is not at issue in this case. While the CAISO is ready to refute the statements of MMC's consultants regarding frequency response,¹⁷ the Commission should not be sidetracked from the controlling fact of this case – that nearly all the generation capacity of MMC's version of “Spinning Reserve” is not spinning. It is off. It is not synchronized to the grid (or to anything else) and is not responsive to frequency immediately or otherwise while it is off.

B. The Plain Language of the CAISO Tariff Is Unambiguous and Cannot Be Rendered Ambiguous by Extrinsic Evidence

By defining Spinning Reserve as the “portion of unloaded synchronized generating capacity that is immediately responsive to system frequency,” the CAISO Tariff leaves no doubt that these two requirements of Spinning Reserve – synchronization and frequency responsiveness – apply on a capacity basis rather than a resource basis. Nevertheless, MMC now insists that the Tariff is ambiguous as to whether the capacity associated with its off-line CT units should count as Spinning Reserve. MMC makes two attempts to read ambiguity into the Tariff definition of Spinning Reserve, but neither succeeds.

First, MMC claims that the Tariff definition is ambiguous because it does not contain specific rules as “how aggregated facilities are to be treated.”¹⁸ There is, however, no need for the Tariff to create special rules for aggregated units. By imposing the Spinning Reserve requirements on a capacity basis rather than on a resource or unit basis, the CAISO Tariff has

¹⁷ Both the West Affidavit and the ECCO Comments are riddled with irrelevancies and errors. For example, ECCO claims that the CAISO's interpretation of its own Tariff is inconsistent with WECC's requirements. The statement is flatly wrong. It is based on the assertion that the WECC requirements for Spinning Reserve do not require immediate frequency response and, therefore, the CAISO's Tariff definition of Spinning Reserve should not require frequency responsiveness. *See* MMC Response, Exhibit A, ECCO Comments at 4. WECC's full requirements for spinning reserve, as set forth in its definition of “reserve” in the WECC/MORC standards (Western Electricity Coordinating Council NERC/WECC Planning Standards and Minimum Operating Reliability Criteria, Definitions (Revised Aug. 9, 2002)) requires a portion of spinning reserve to be regulating reserve, which is an “amount of spinning reserve responsive to Automatic Generation Control.”

¹⁸ MMC Response at 19.

created a rule that applies equally to aggregated and non-aggregated units alike. A tariff provision is not ambiguous simply because it creates rules that apply generally to more than one type of unit. If that were the standard for ambiguity, any number of market rules would become ambiguous overnight.

Second, MMC argues that alleged “confusion” by the CAISO itself shows that the Tariff is ambiguous.¹⁹ This argument is foreclosed by settled Commission precedent: extrinsic evidence may only be consulted after a tariff or contract has been found ambiguous based on its plain language.²⁰

But even if MMC were permitted to rely on extrinsic evidence, MMC has failed to show any confusion as to the meaning of the CAISO Tariff among CAISO officials responsible for Tariff interpretation. As evidence of this alleged confusion, MMC points principally to the CAISO stakeholder process.²¹ However, the record clearly shows that, throughout the stakeholder process, the CAISO consistently maintained the position that only synchronized capacity qualifies as Spinning Reserve.

In all of its market notices and in the white paper associated with the 2007 stakeholder process, the CAISO repeatedly reaffirmed the Tariff requirements for Spinning Reserve, including the requirement that the entire awarded Spinning Reserve capacity be synchronized to

¹⁹ *Id.* at 22.

²⁰ The Commission has held that “when the meaning of a contract is clear upon its face, the use of extrinsic evidence to interpret the contract is improper.” *Pacific Gas & Elec. Co.*, 85 FERC ¶ 61,180, at p. 61,724 (1998); *Mississippi River Transmission Corp.*, 96 FERC ¶ 61,185, at p. 61,819 (“If a contract is not ambiguous, extrinsic evidence cannot be used as an aid to interpretation”) (citing *Lee v. Flintkote Co.*, 593 F.2d 1275, 1282 (D.C. Cir. 1979)). In other words, the Commission can not look to extrinsic evidence to determine that a tariff is ambiguous if the language of the tariff is “clear upon its face,” otherwise extrinsic evidence would be allowed to overcome clear tariff language. The Commission reinforced this principle in *New York Independent System Operator, Inc. v. Astoria Energy LLC* when it stated that had the NYISO tariff been “clear and unambiguous . . . informal communications (whether written or oral) by NYISO’s representatives would be immaterial to resolving the issues.” 118 FERC ¶ 61,216, at P 36 (2007).

²¹ MMC Response at 2.

the grid.²² For example, the CAISO announced in its September 18, 2006 Market Notice that it had found that “in some cases, a portion of the awarded spin capacity from aggregated Generating Units had not been synchronized to the grid.”²³ The Market Notice went on to state clearly that “to comply with the requirements of the CAISO Tariff . . . [t]he entire award [of] Spin Capacity must be synchronized to the Grid.”²⁴

A CAISO employee mistake resulted in MMC’s and three other aggregated generation facilities being certified to provide Spinning Reserve where the operators intended to operate the aggregation in a way that would not comply with the Tariff requirements for Spinning Reserve. The CAISO’s certification procedures were not, at that time, designed to identify and prevent this mistake. As the CAISO explained in its 2007 stakeholder process:

The limitation in this process is that the test does not assure that the full amount of certified capacity is synchronized and immediately responsive to frequency at the beginning of the test – *which is necessary if the capacity is to meet the CAISO Tariff definition of Spinning Reserve.*²⁵

The CAISO engaged in the stakeholder process not to explore the meaning of the CAISO Tariff definition of Spinning Reserve, but to consider changes to the certification procedures that would better ensure compliance with the Tariff definition of Spinning Reserve.

²² Aug. 31, 2006 Market Notice (CAISO Motion, Exhibit G) “CAISO has suspended all Spinning Reserve testing on aggregated units where the total awarded Spinning Reserve capacity is not synchronized to the system”; Sept. 18, 2006 Market Notice at p. 2 (CAISO Motion, Exhibit H) (“In order to comply with the requirements of the CAISO Tariff . . . [t]he entire awarded Spin capacity must be synchronized to the Grid.”); June 4, 2007 White Paper at p. 2 (MMC Complaint, Attachment H) (“A Generation Unit that is awarded Spinning Reserve Capacity must be synchronized to the Grid.”); June 13, 2007 Market Notice, <http://www.caiso.com/1bfc/1bfc62542f12.html>, (“The California ISO Tariff requirements . . . require that a Generating Unit that is awarded Spinning Reserve Capacity must be synchronized to the Grid and must have its governor in service for the duration of time the bid has been accepted.”); Sept. 20, 2007 Market Notice at p. 2 (CAISO Motion, Exhibit I) (“The definition requires that Spinning Reserve capacity be unloaded, synchronized, and immediately responsive to system frequency.”); and Nov. 30, 2007 Market Notice, <http://www.caiso.com/1c60/1c60ab611f7f2.html> (“In order to comply with the requirements of the CAISO Tariff . . . the entire awarded Spinning Reserve capacity must be synchronized to the Grid; and must be synchronized to the Grid at the beginning of the interval awarded.”).

²³ CAISO Motion, Exhibit H at 1 (Sept. 18, 2006 Market Notice).

²⁴ *Id.* at 2. The CAISO made clear that it would closely monitor the performance of all Generation Units that are awarded Spinning Reserve and would initiate appropriate actions for non-compliance with Spinning Reserve requirements.

²⁵ MMC Complaint, Attachment H (CAISO June 4, 2007 White Paper “Proposal for Spinning Reserve Certification”) (emphasis added).

On September 20, 2007, the CAISO issued a market notice announcing changes to the certification procedures that would address the problem identified in the June 2007 White Paper.²⁶ In that notice, the CAISO once again made crystal clear its position on the Tariff definition of Spinning Reserve. The CAISO quoted the definition and then stated:

The definition requires that Spinning Reserve capacity be unloaded, synchronized, and immediately responsive to system frequency. *It is physically impossible for the host/CT aggregation to meet this requirement if the CT is off-line during the period of a Spinning Reserve award.* The capacity of the CT is neither synchronized nor immediately responsive to frequency deviations.²⁷

During the course of this stakeholder process, the CAISO raised the possibility of going to the Commission to “confirm” its interpretation of the Tariff.²⁸ Ultimately, however, the CAISO determined that doing so would be unnecessary because “the Tariff clearly sets forth the requirements for providing Spinning Reserve.”²⁹ The fact that the CAISO contemplated and rejected the idea of going to the Commission to confirm its understanding in no way suggests that the CAISO officials responsible for Tariff interpretation were ever “confused” about the meaning of the Spinning Reserve definition – indeed, the CAISO officials publicly stated their understanding of the Spinning Reserve definition clearly and consistently from 2006 through the close of the stakeholder process.

MMC also points to the fact that CAISO engineer Clyde Loutan brought the Spinning Reserve issue to a meeting of a WECC working group. The working group confirmed that the total capacity awarded Spinning Reserves must be synchronized in order to qualify for Spinning Reserve, concluding that “the existing WECC MORC language is self-explanatory.”³⁰ From this, MMC argues that “the very fact that the CAISO’s engineer felt the need to present the issue

²⁶ CAISO Motion, Exhibit I at 3 (Sept. 20, 2007 Market Notice).

²⁷ *Id.* at 2.

²⁸ *Id.* at 3.

²⁹ November 30, 2007 Market Notice, CAISO Motion, Exhibit B.

³⁰ CAISO Motion, Attachment to Exhibit C at 3 (WECC MORC Working Group Meeting Minutes).

at a WECC meeting indicates that he believed at the time that the Tariff and WECC requirements regarding aggregated units were ambiguous.”³¹ This argument is illogical. The fact that the WECC workgroup discussed the application of *WECC rules* to aggregated units says nothing about the CAISO Tariff. Nor does this meeting present evidence that anyone believed the WECC rules themselves to be ambiguous (a question not at issue in this case). As noted, the members of the group concluded that “the existing WECC MORC language is self-explanatory.”³²

C. Even Were the Tariff Language Ambiguous, MMC’s Interpretation of the CAISO Tariff Is Unreasonable

MMC has offered no serious argument to suggest that the language of the CAISO Tariff is ambiguous. Therefore, as the CAISO explained more fully in its Motion, the Commission must not look beyond the four corners of the Tariff.³³ Nevertheless, even if the Commission found the Tariff to be ambiguous, MMC’s interpretation of the CAISO Tariff would have to be rejected as manifestly unreasonable.

First, MMC’s interpretation of the CAISO Tariff is unreasonable insofar as it would put the CAISO Tariff in conflict with the WECC reliability standards. Both Commission precedent and the CAISO Tariff³⁴ require the CAISO to adhere to the minimum WECC reliability standards. The WECC Reliability Standard BAL-STD-002-0 (“Operating Reserves”) requires the CAISO to procure a minimum level of “Spinning Reserve” capacity.³⁵ The reliability standard then goes on to define “Spinning Reserve” as “*synchronized* and ready to serve

³¹ MMC Response at 26.

³² CAISO Motion, Attachment to Exhibit C at 3 (WECC MORC Working Group Meeting Minutes).

³³ See CAISO Motion at 5 – 11.

³⁴ Section 8.2.3.2 of the CAISO Tariff, entitled “Spinning and Non-Spinning Reserves,” provides that the “ISO shall maintain minimum contingency Operating Reserve made up of Spinning Reserve and Non-Spinning Reserve in accordance with WECC MORC criteria.”

³⁵ See CAISO Motion, Exhibit A, Reliability Standard BAL-STD-002-0 (“Operating Reserves”) at § B(a)(ii).

additional demand.”³⁶ To comply with the WECC rules, the CAISO must procure a minimum level of Spinning Reserve capacity that meets the WECC definition – which is to say, a minimum level of *synchronized* Spinning Reserve capacity. MMC’s reading of the CAISO Tariff, which would require the CAISO to accept non-synchronized capacity as Spinning Reserve, would put the CAISO in conflict with the WECC reliability rules and is thus unreasonable.

Second, and relatedly, the interpretation of the CAISO Tariff urged on the Commission by MMC is unreasonable because it would frustrate the reliability purpose of the CAISO Spinning Reserve market. Clearly, the drafters of the CAISO Tariff required Spinning Reserves to be synchronized and frequency responsive because these attributes are necessary to preserve reliability of the grid. It is also clear that these attributes of Spinning Reserve – synchronization and frequency responsiveness – enhance the reliability of the grid in proportion to the *capacity* of reserves that are synchronized or frequency responsive. A 20 kW host unit that is synchronized and frequency responsive does nothing to enhance the reliability contribution of the CT unit that is off-line and neither synchronized nor frequency responsive. MMC’s reading of the CAISO Tariff is unreasonable insofar as it would frustrate the obvious purpose of the CAISO Spinning Reserve market to procure the synchronized, frequency-responsive capacity necessary to preserve reliability on the California grid.

Third, MMC’s reading of the CAISO Tariff is unreasonable because it is at odds with the generally accepted understanding of Spinning Reserve at the Commission and in the electric power industry. The Commission has consistently included synchronization as a characteristic of spinning reserves. MMC’s assertion in its Response that Spinning Reserve only needs to respond in 10 minutes because the definition only requires it be fully loaded in 10 minutes is

³⁶ *Id.*

false.³⁷ The clear difference between Spinning Reserve and Non-spinning Reserve is the immediate availability of Spinning Reserve to begin to load. Both the current and proposed WECC regional NERC standards require spinning reserve to be on-line generation, and a number of decisions by the Commission and its judges make clear that an essential characteristic of spinning reserve is its ability to begin to handle load immediately upon dispatch.³⁸ In Order No. 693, the Commission defined “Spinning Reserve” as: “Unloaded generation that is *synchronized* and ready to serve additional demand.”³⁹ In its dictionary for Electronic Quarterly Reports, the Commission defines Spinning Reserve as: “Unloaded *synchronized* generating capacity that is immediately responsive to system frequency.”⁴⁰ Similarly, other ISOs consistently require that Spinning Reserve capacity be synchronized.⁴¹ Indeed, even MMC’s own paid consultant, ECCO

³⁷ See MMC Response, Exhibit A at 7 (ECCO Comments) and Exhibit D at P 5-6 (West Affidavit).

³⁸ *New York Independent System Operator, Inc. et al.*, 110 FERC ¶ 61,244, at P 2, *order on reh’g*, 113 FERC ¶ 61,155 (2005) (noting that pursuant to the NYISO’s tariff, “of the various types of reserve, ten minute spinning reserve (SR) is synchronized to the system and available almost immediately, while ten minute non-spinning reserve (NSR) can be synchronized within 10 minutes but is not immediately available to the system, and is thus a less valuable product); *Entergy Services, Inc.*, 102 FERC ¶ 63,016, at P 112 (2003) (reaffirming the Commission’s definition of spinning reserve as set forth in Order No. 888, specifically that “spinning reserve, as its name implies, is provided by generating units that are on-line but are producing less than their maximum output. These units can be “ramped up” immediately to serve load in the event something unexpected occurs. The second type of reserve service is supplemental reserves. This service is provided by generating equipment that may not be available immediately but can be brought on-line in a short period of time, usually ten minutes or so”) (citing Order No. 888, FERC Stats. & Regs. P 31,036 at 31,708; 61 Fed. Reg. at 21582-83 (1996)); *New York State Electric & Gas Corp.*, 85 FERC ¶ 63,002, at p. 65,045-46 (1998) (holding that the Commission was clear in Order No. 888 that spinning reserve is provided by generating units that are on-line and loaded at less than maximum output and are available to serve load *immediately* in an unexpected contingency, such as an unplanned outage of a generating unit as compared to supplemental reserve, which is not available *instantaneously*, but rather within a short period, usually within ten minutes), *aff’d in part and reversed in part on other grounds*, 92 FERC ¶ 61,169 (2000).

³⁹ *Mandatory Reliability Standards for the Bulk-Power System*, 118 FERC ¶ 61,218 (2007) (Order No. 693) (emphasis added).

⁴⁰ *Revised Public Utility Filing Requirements for Electric Quarterly Reports*, 122 FERC ¶ 61,194, at Appendix A (2008) (emphasis added).

⁴¹ See, e.g., New England Independent System Operator Market Rule 1, § III.1.3.2 (defining “Ten Minute Spinning Reserve” as “the reserve capability of a generating unit that can be converted fully into energy within ten minutes from the request of the ISO . . . and is provided by generating units and Dispatchable Asset Related Demand pumps electrically synchronized to the New England Transmission System.”); New York Independent System Operator Service Tariff § 2.129 (defining “Spinning Reserve” as “Operating reserves provided by Generators . . . that are already synchronized to the NYS Power System and can respond to instructions to change their output level, or reduce energy usage, within ten (10) minutes”); PJM Operating Agreement § 1.3.33B.01 (defining “Synchronized Reserve” as “provided by equipment that is electrically synchronized to the Transmission System”); see also *Wholesale Competition in Regions with Organized Electric Markets*, 122 FERC ¶ 61,167, at P 39 (2008) (describing

International, describe Spinning Reserve as a product coming from “on-line synchronized units.”⁴²

D. Any Reliance by MMC on the Misstatements of CAISO Technical Staff Was Legally Immaterial and Plainly Unreasonable

If MMC, as it claims, took any action in reliance on the representations of CAISO staff, such reliance was unreasonable and is irrelevant to a ruling on the CAISO’s Motion for Partial Summary Disposition.⁴³ The CAISO has acknowledged that, one of its employees, Mr. Edward Fishback advised MMC that an off-line unit could receive Spinning Reserve payments. MMC attempts to inflate the significance of Mr. Fishback’s advice, noting that he held title “project manager for new resource interconnections” in order to claim that he was a member of CAISO management.⁴⁴ Wordplay aside, Mr. Fishback’s testimony makes clear that his position at the CAISO is neither supervisory nor managerial and that he has never held himself out as such.⁴⁵ MMC has introduced no evidence that any other CAISO employee ever gave it such advice.

Although MMC does not claim that CAISO senior management endorsed Mr. Fishback’s advice, MMC does assert that CAISO management was aware of how it planned to operate its facilities.⁴⁶ The only evidence it points to is a May 24, 2006 letter from Mr. Martin V. Quinn of MMC to Mr. James Detmers, Vice President of Operations of the CAISO, on which MMC copied several other CAISO managers. The purpose of MMC’s letter was to attempt to accelerate the certification process and to complain about delays that had occurred between

synchronized reserves as “PJM’s term for spinning reserves”).

⁴² MMC Complaint, Attachment I at 3 (ECCO’s July 2007 Response).

⁴³ *New York Independent System Operator*, 118 FERC ¶ 61,216, at P 36 (2007) (establishing that where tariff language is “clear and unambiguous . . . informal communications (whether written or oral) by [ISO staff] would be immaterial to resolving the issues”).

⁴⁴ MMC Response at 8.

⁴⁵ CAISO Motion, Exhibit D at ¶ 2 (Declaration of Edward Fishback).

⁴⁶ See MMC Response at 8 – 10. As the CAISO stated in its Answer, in April 2006, CAISO Vice President, Mr. Detmers became aware of how MMC proposed to operate its aggregated facilities when bidding for Spinning Reserve.

March and May 2006. However, as the letter makes clear, by May 2006 MMC had already made its investments in Chula Vista and Escondido. Thus, MMC can in no way claim that this letter provided any basis for its decision to invest in these aggregated units.

E. MMC’s Requested Grandfathering Remedy Is Not Ripe

In its Answer, MMC requests that the Commission find that “the CAISO must grandfather the MMC facilities if it seeks to change its Tariff in the future.”⁴⁷ This request is plainly not ripe for decision. If the CAISO is going to change its Tariff at any future date (whether the change relates to Spinning Reserve or anything else), it will file a section 205 application in a new docket. As the CAISO determined in its stakeholder process, the Tariff definition of Spinning Reserve clearly sets forth the requisite characteristics of Spinning Reserve, accordingly, the CAISO does not intend to revise the definition. Should the CAISO ever make a section 205 filing to revise its Tariff, MMC will be free to intervene in that new docket and to make any arguments it wishes at that time. However, there is no justification for the Commission to rule on such a hypothetical request now. Accordingly, this claim should be summarily dismissed.⁴⁸

The CAISO fully demonstrated in its Motion for Partial Summary Disposition the legal deficiencies of MMC’s extraordinary grandfathering request,⁴⁹ and will not repeat itself here.⁵⁰ However, the Commission should take notice of MMC’s publicly announced plans to completely overhaul its facilities at Chula Vista and Escondido, replacing the existing equipment and

⁴⁷ *Id.* at 48 – 49.

⁴⁸ See *Northern Indiana Public Service Co. v. Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,089, at P 23 (2006) (dismissing aspects of a complaint that depended on future events and were thus not ripe for Commission review); see also *California Independent System Operator Corp.*, 119 FERC ¶ 61,061, at P 92 (2007); *Niagara Mohawk Power Corp. v. New York State Reliability Council and New York Independent System Operator, Inc.*, 114 FERC ¶ 61,098 (2006).

⁴⁹ MMC’s grandfathering request is a misnomer as it is no more than a request that the Commission permit MMC to bid its aggregated units for Spinning Reserve, in perpetuity, in accordance with the reading of the Tariff requirements that MMC advances in its Complaint and Response.

⁵⁰ See CAISO Motion at 11 – 13.

substantially increasing their capacity. According to its website, MMC plans to expand its existing facility at Chula Vista by replacing the existing generators with two new GE LM-6000 turbines costing an estimated \$31 million (or nearly ten times the expenditures MMC made on all of its facilities that it claims as the basis for this action).⁵¹ At its Escondido facility, MMC has also announced plans to replace the existing (older technology) twin-pack simple cycle generation facilities with one GE LM6000 combustion turbine unit.⁵²

There is no justification for the Commission to grandfather the regulatory status of facilities that MMC is in the process of replacing.

F. MMC Has Failed to Substantiate its Allegations of Discrimination

MMC alleges in its Complaint that the CAISO unduly discriminated against it by focusing its stakeholder process on the MMC and Wellhead units.⁵³ MMC has failed, however, to identify even a single example of the CAISO letting another generator receive Spinning Reserve awards for off-line capacity.⁵⁴ In its lengthy Response, MMC still does not substantiate its allegation of discrimination. In actuality, if the CAISO continued to accept MMC's bids for Spinning Reserve when MMC's CT unit was off, then the CAISO would be giving MMC an undue preference over Market Participants who incur fuel and other operational costs associated with synchronizing all of the units associated with the capacity bid for Spinning Reserve. Although MMC's discrimination claim is not a subject of the CAISO's Partial Motion for Summary Disposition, the CAISO believes that, based on the pleadings alone, the Commission can and should dismiss MMC's unsubstantiated discrimination claim for failing to satisfy 18

⁵¹ See Chula Vista Efficiency Upgrade Brochure, at www.mmcenergy.com/cv_eff_upg_brochure.pdf and MMC Complaint at 14 (claiming \$3.5 million in expenses).

⁵² See Escondido Efficiency Upgrade Fact Sheet, at www.mmcenergy.com/esc_eff_upg_fact_sheet.pdf.

⁵³ See MMC Complaint at 31 – 35.

⁵⁴ CAISO Motion at 23 – 24.

C.F.R. § 385.206(b)(1), which requires a Complainant to clearly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements.

G. MMC’s Expanded Claims with Respect to the No-Pay Dispute Should Be Rejected

As noted above, the CAISO is not seeking in this filing to answer MMC’s Response⁵⁵ with respect to the No-Pay charge dispute.⁵⁶ In its Response, MMC impermissibly seeks to amend its Complaint by expanding the scope of the requested remedies, as to both the amounts claimed and the dates in dispute.⁵⁷ MMC’s Response even asserts a collateral attack on the CAISO’s Tariff by challenging the CAISO’s authority to rescind ancillary services payments from certified generators.⁵⁸ MMC’s newly expanded claims must be dismissed as procedurally deficient.⁵⁹

The Commission consistently rejects requests to treat as a complaint, claims and disputes raised in other types of pleadings,⁶⁰ and rejects complaints combined with other pleadings.⁶¹ Thus, the Commission should summarily reject MMC’s attempt through its Response to enlarge the amounts at issue in the No-Pay dispute. To the extent these new claims are not dismissed,

⁵⁵ MMC’s Response is unauthorized and should be rejected to the extent it responds to the CAISO’s Answer.

⁵⁶ MMC Response at 41-47.

⁵⁷ MMC now challenges the No-Pay assessed for MMC’s failure to provide both Spinning Reserve and Non-Spinning Reserve. In addition, MMC now disputes No-Pay charges that the CAISO assessed MMC during all of 2007. MMC Response at n.5. The Complaint specifically challenged only the rescission through No-Pay charges of Spinning Reserve capacity payments and only the rescission of such payments on certain days in the summer of 2006 and for dates in July, August, and September 2007. MMC Complaint at 39, 40 & 42.

⁵⁸ MMC Response at 43.

⁵⁹ Rules 206 and 215 prohibit a complainant from amending its complaint through an unauthorized answer. See 18 C.F.R. §§ 385.206 & 385.215 (2007).

⁶⁰ See, e.g., *Entergy Servs., Inc.*, 52 FERC ¶ 61,317, at p. 62,270 (1990) (refusing requests to consider protests as “complaints” because the Commission’s regulations provide for the filing of complaints in such circumstances in order to ensure the orderly processing of pleadings filed before it); *Louisiana Power & Light Co.*, 50 FERC ¶ 61,040, at p. 61,062 (1990) (rejecting request to consider a “protest and motion to intervene” as a “complaint,” because different procedural requirements associated with complaints provide to interested parties notice and an opportunity to respond).

⁶¹ See, e.g., *ISO New England, Inc.*, 91 FERC ¶ 61,227, at p. 61,830 (2000); *Midwest Indep. Transmission Sys. Operator, Inc., et al.*, 108 FERC ¶ 61,248, at P 5 and n.8 (2004)(providing that the Commission has “consistently rejected efforts to combine complaints with other types of filings,” because “[a] combined filing does not assure that the procedural and other requirements applicable to the processing of a complaint will be met.”) (citing *Consol. Edison Co. of New York, Inc.*, 97 FERC ¶ 61,241, at p. 62,092 (2001)).

the CAISO reserves its right to provide a full response. For now, the CAISO simply notes that it strongly disputes all of the new allegations MMC raises with respect to the No-Pay dispute. The CAISO further emphasizes that it assesses No-Pay charges as a matter of course, and has never used No-Pay as a retaliatory tool against any market participant. Moreover, the Commission should reject the attempt by MMC to blur its No-Pay claims with its Tariff claim.

IV. CONCLUSION

For the foregoing reasons, the CAISO requests that the Commission issue an order:

- (i) granting the CAISO's Motion for Summary Disposition and finding that the CAISO Tariff requires Spinning Reserve to be capacity that is synchronized and immediately responsive to system frequency;
- (ii) summarily disposing of MMC's grandfathering request as not ripe or as plainly unjustified on the merits;
- (iii) rejecting MMC's claim to undue discrimination on the ground that it has failed to properly allege any unduly discriminatory actions by the CAISO; and
- (iv) resolving all other issues on the merits based on the written pleading as set forth in the CAISO's April 14, 2008 Answer.

Dated this 14th day of May, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served this day copies of the foregoing filing on the official service list compiled by the Office of Secretary in accordance with the Commission Rules of Practice and Procedure.

Dated at Washington, D.C. this 14th day of May, 2008.

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