

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

**California Independent System                    )     Docket Nos. ER06-615-000  
Operator Corporation                            )                   ER07-1257-000**

**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF  
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213 (2006), the California Independent System Operator Corporation (“CAISO”) respectfully submits this Motion for Leave to File Answer and Answer to comments and protests addressing the CAISO’s filing made on September 28, 2007 (“September 28 Filing”) in compliance with Commission orders issued over the past year addressing the CAISO’s Market Redesign and Technology Upgrade Tariff (“MRTU Tariff”).<sup>1</sup> Several parties have submitted comments and protests concerning the September 28 Filing.<sup>2</sup>

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<sup>1</sup> The Commission has addressed the provisions of the MRTU Tariff in several major orders over the course of the past year: Order Conditionally Accepting the CAISO’s MRTU Tariff, *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006) (“September 21 Order”); Order Granting in Part and Denying in Part Requests for Clarification and Rehearing, *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076 (2007) (“April 20 Order”); Order on Compliance Filings, *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,313 (2007) (“June 25 Order”); *Cal. Indep. Sys. Operator Corp.*, 120 FERC ¶ 61,023 (2007) (“July 6 Order”); *Cal. Indep. Sys. Operator Corp.*, 120 FERC ¶ 61,271 (2007) (“September 24 Order”); *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,030 (2007) (“October 15 Order”).

<sup>2</sup> Comments or protests concerning the September 28 Filing were submitted by the following entities: Alliance for Retail Energy Markets (“AREM”); Constellation Energy Commodities Group and Constellation NewEnergy (“Constellation”); EPIC Merchant Energy and SESCO Enterprises, LLP (“EPIC/SESCO”); Golden State Water Company (“GSW”); Imperial Irrigation District (“IID”); Pacific Gas and Electric Company (“PG&E”); Sacramento Municipal Utility District (“SMUD”); Southern California Edison Company (“SCE”); State Water Project of the California Department of Water Resources (“SWP”); Western Power Trading Forum (“WPTF”); and Williams Power Company (“Williams”).

Although an answer is permitted in response to comments, the CAISO recognizes that, unless authorized by the Commission, the Commission's Rules of Practice and Procedures precludes an answer to protests. However, the Commission has accepted answers that are otherwise prohibited if such answers clarify the issues in dispute, *Southwest Power Pool, Inc.*, 89 FERC ¶61,284 at 61,888 (2000); *Eagan Hub Partners, L.P.*, 73 FERC ¶ 61,334 at 61,929 (1995), or assist the Commission, *El Paso Electric Co.*, 72 FERC ¶ 61,292 at 62,256 (1995). The CAISO submits that this answer does both, and therefore respectfully requests that, to the extent that this pleading involves answers to protests, the Commission accept this answer.

For the reasons explained below, the Commission should reject comments seeking alterations to the CAISO's proposals as set forth in the September 28 filing. The following entities submitted comments in the above-referenced docket:

## **I. BACKGROUND**

In the September 28 Filing, the CAISO submitted proposed modifications to its MRTU Tariff in compliance with two Commission directives. First, the CAISO included tariff language to implement interim measures to address underscheduling behavior that has the potential to result in the exercise of demand-side market power, in compliance with Paragraph 452 of the September 21 Order and Paragraphs 118-119 of the April 20 Order. The CAISO also addressed the Commission's directive, as set forth in Paragraph 59 of the June 25 Order, that the CAISO work with SMUD to ensure that SMUD's concerns with respect to the treatment of Self-Scheduled exports explicitly sourced by non-Resource Adequacy Capacity under MRTU were resolved.

## II. ANSWER

### A. The CAISO's Proposed Interim Measures to Address Potential Exercise of Demand-Side Market Power are Just and Reasonable

#### 1. Contrary to Statements Made by Protestors, the CAISO's Interim Underscheduling Measures Meet all of the Commission's Requirements

The CAISO's proposed interim measures in compliance with the Commission's directives to address the potential exercise of demand-side market power are just and reasonable and meet all the requirements set forth by the Commission. In the September 21 Order, the Commission directed that the CAISO implement convergence bidding within twelve months after the implementation of MRTU because, as it had previously found in prior orders, convergence bidding improves market performance in various respects. The Commission also required that at start-up, MRTU "must include provisions to offset LSEs' incentive to underschedule in the day-ahead market" and directed the CAISO to develop and file interim measures, no later than 180 days prior to the effective date of MRTU Release 1 to address the potential economic incentive for LSEs to underschedule in the day-ahead market until the successful implementation of convergence bidding has been achieved.<sup>3</sup>

In its April 20 Order, the Commission reiterated its directive that the CAISO must develop and file interim measures to address the potential exercise of demand-side market power within 180 days prior to the effective date of MRTU Release 1. The Commission stated that it had not directed what form the interim measures should take and found it premature to evaluate whether these interim measures will necessarily be unduly burdensome to the CAISO, or prevent the CAISO from implementing

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<sup>3</sup> September 21 Order at P 452.

convergence bidding as directed and reserved its judgment on the effectiveness of the CAISO's proposal until after the proposal is filed with the Commission. The Commission also noted that the interim measures it contemplated "are not intended to prevent LSEs from taking steps to reduce the costs of serving their load" but should instead be designed to prevent uneconomic behavior. Therefore, the Commission concluded that it expected the "interim measures to address the problem of persistent underscheduling in the day-ahead market on occasions when energy prices suggest that it would be economic to buy in the day-ahead market."<sup>4</sup>

The CAISO specifically designed its interim measures through its stakeholder process to target persistent underscheduling resulting in the exercise of demand-side market power. Therefore, the CAISO proposes to evaluate each Scheduling Coordinator's scheduling performance based on deviations from its scheduled demand and meter data to determine the magnitude of underscheduling by each Scheduling Coordinator. The CAISO adopted a bright line rule<sup>5</sup> to target persistent underscheduling, having found that the Commission itself intended to address precisely such behavior as opposed to specific instances of underscheduling.<sup>6</sup> The CAISO also included in its proposal five exemptions to the Interim Scheduling Charge to address certain concerns

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<sup>4</sup> April 20 Order at PP 118 -19.

<sup>5</sup> The CAISO's proposal is as follows: In the event that in any given month a Scheduling Coordinator's Net Negative CAISO Demand Deviation in its applicable Load Aggregation Point ("LAP") exceeds fifteen percent (15%) of the Scheduling Coordinator's cleared total CAISO Demand as represented in its Day-Ahead Schedule in its applicable LAP for five percent (5%) or more of the total Trading Hours for that given month, the CAISO will apply an Interim Scheduling Charge, based on the magnitude of the underscheduling behavior. Once this bright line rule is triggered, the Interim Scheduling Charges will be incurred on a going-forward basis through the applicable month from the time the CAISO has determined that the Scheduling Coordinator exceeds the bright line criteria for the applicable month.

<sup>6</sup> April 20 Order at P 119.

raised by stakeholders to ensure the charge is implemented in a fair manner and to tailor the charge to best meet the Commission's directives.

**2. The CAISO's Proposed Thresholds are Tailored to Meet the Commission's Directives Whilst Avoiding the Creation of Adverse Economic Incentives**

While the Commission, the CAISO and its stakeholders are all cognizant that persistent underscheduling by Scheduling Coordinators that results in the exercise of demand-side market power has adverse market outcomes, the intent of these measures is not to eliminate the opportunity for Market Participants to make economic decisions regarding their exposure to day-ahead versus real-time prices by eliminating the ability to underschedule in the day-ahead entirely. WPTF contends that the CAISO's proposal to address potential underscheduling is flawed because it does not address "potential" underscheduling, as required by the Commission. According to WPTF, the Commission's references to potential underscheduling mean that any measures proposed by the CAISO to address underscheduling "must act before the underscheduling takes place, just as the CAISO's supply-side mitigation measures address the *potential* ability to exercise market power."<sup>7</sup> Specifically, WPTF takes issue with the CAISO's 15% and 5% "bright line" rules for triggering the Interim Underscheduling Charge, alleging that these rules will allow LSEs ample opportunity to underschedule without consequence.

As a general matter, WPTF's assumption that the Commission's use of the word "potential" necessarily means that the CAISO must implement measures that prevent underscheduling before it takes place is unwarranted. The Commission never made any such statements. In fact, the Commission expressly declined to mandate what form the

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<sup>7</sup> WPTF at 3-4.

provisions to deter underscheduling should take, stating that it would reserve judgment until it had the opportunity to review the CAISO's specific proposal. Moreover, the Commission did not require measures to prevent "potential" *underscheduling*. Rather, the Commission referred to the need to address "the potential exercise of demand-side market power."<sup>8</sup> WPTF's argument assumes that all underscheduling behavior rises to the level of exercise of demand-side market power. Such an assumption is entirely unwarranted. The CAISO has applied a clear reading of the Commission's orders in which it requires that the CAISO mitigate the "potential exercise of demand-side market power." Through its stakeholder process, the CAISO has found that it is just and reasonable to mitigate for such an outcome by implementing interim measures that deter "persistent" underscheduling that results in the exercise of demand-side market power. The CAISO's proposal does this by levying significant charges on LSEs that engage in persistent underscheduling behavior, based on the magnitude of the underscheduling, as opposed to adopting strict rules that essentially ban underscheduling as suggested by WPTF.

WPTF and EPIC/SESCO take issue with the CAISO's proposed 5 percent "bright line" rule for triggering Interim Underscheduling Charges. These parties contend that this rule will encourage underscheduling because it will provide LSEs with 34 to 37 "free" hours each month during which they can underschedule more than 15 percent of their day-ahead demand. WPTF and EPIC/SESCO therefore urge the Commission to reject the CAISO's 5 percent threshold.<sup>9</sup> Again, these statements are based on the flawed presumption that any instance of underscheduling should be subject to a penalty. This

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<sup>8</sup> April 20 Order at P 118.

<sup>9</sup> WPTF at 4-5; EPIC/SESCO at 4-5.

would mean that LSEs would have no margin for error for scheduling errors that exceed 15 percent for any hours. The Commission clearly did not mandate such a harsh requirement in its ruling and moreover, the CAISO and the majority of its stakeholders believe that such a result would be excessively harsh, and rather than deter persistent underscheduling, would very likely lead to overscheduling on the part of LSEs seeking to avoid the stiff financial consequences that would result from any instances of forecasting error that exceed 15 percent.<sup>10</sup>

The argument that the 5 percent threshold somehow encourages LSEs to underschedule up to that threshold is without merit. In developing a reasonable and workable interim underscheduling proposal, the CAISO made a concerted effort to create a mechanism that provides a strong deterrent to persistent underscheduling while not penalizing inadvertent deviations, thus allowing LSEs sufficient flexibility to participate in the MRTU markets in an economic manner. Based on its own analysis and input received through an extensive stakeholder process, the CAISO developed what it believes to be an appropriate threshold for imposing the Interim Underscheduling Charge. The advantage of this threshold is that it provides both Market Participants and the CAISO with certainty. With a fixed threshold, the CAISO will not be required to make individual judgment calls as to what underscheduling behaviors rise to the level of exercising demand-side market power. While it is technically true that an LSE could attempt to take advantage of the threshold by purposefully underscheduling in up to 5 percent of the hours during a month, it is not the case that such behavior would be without consequence. Sections 37 through 39 of the MRTU Tariff provide the CAISO with broad authority to monitor and report on behavior deleterious to the efficient

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<sup>10</sup> See PG&E at 3.

operation of the CAISO markets, and the CAISO believes that behavior that suggested a deliberate pattern of underscheduling, although it did not rise to the level of the 5 percent threshold, would qualify for monitoring and possible enforcement and/or reporting to the Commission through these mechanisms. The Commission has been clear in previous pronouncements dealing with the CAISO's enforcement authority that if the CAISO is to have the authority to impose a financial penalty, that such authority must be exercised pursuant to bright line rules, such as the 5 percent underscheduling threshold that the CAISO is currently proposing.<sup>11</sup>

WPTF, along with Constellation and EPIC/SESCO, take issue with the CAISO's proposed 15 percent Demand threshold. WPTF and EPIC/SESCO suggest that a 6 percent Demand threshold would be more appropriate, while Constellation believes that 5 percent is most reasonable.<sup>12</sup> WPTF and EPIC/SESCO claim that the CAISO has failed to support its "arbitrary" choice of 15 percent. However, the CAISO did not, as these parties suggest, select this threshold randomly and without due consideration. Rather, as explained above and further in its September 28 Filing, the CAISO developed this and the 5 percent threshold based on its own analyses, which took into account concerns relating to MRTU market integrity, including a desire to avoid encouraging inefficient scheduling behavior in the other direction – that is, overscheduling by LSEs because the margin for forecasting error is so low. Moreover, as the CAISO explained in the transmittal letter accompanying the September 28 Filing, the threshold levels were also

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<sup>11</sup> See, e.g., *California Independent System Operator Corporation*, 106 FERC ¶ 61,179, at P 40 (2004) (noting that the CAISO "may only undertake enforcement of violations that are clearly set forth in the ISO Tariff, in which the behavior is objectively identifiable and in which the violations have clear Commission-approved sanctions set forth in the ISO Tariff").

<sup>12</sup> WPTF at 6-11; EPIC/SESCO at 5; Constellation at 3-5.

designed to balance interests among both the load and supplier communities. The CAISO firmly believes that if these measures are designed too strictly such that Scheduling Coordinators are required to overschedule in the Day-Ahead simply to avoid the penalties, the whole purpose of a two settlements markets, which is to allow parties to make appropriate economic decisions to meet their load, would be eliminated. The CAISO also believes the Commission clearly did not set forth a directive to eliminate such ability by providing the CAISO and its stakeholder an opportunity to fashion a measure that best fits and meets their economic practices as opposed to mandating a strict day-ahead scheduling requirement. These well thought through reasons as evidenced by the significant stakeholder process and documentation on this issue are hardly “arbitrary.”

WPTF and Constellation contend that the 15 percent threshold is too high to allow the Day-Ahead Market to function economically.<sup>13</sup> WPTF, in particular, states that if all Resource Adequacy resources are required to bid into the Day-Ahead Market, and yet buyers can “withhold” up to 15 percent of their demand from the Day-Ahead Market, buyers would have an unfair advantage over sellers.<sup>14</sup> This argument is not compelling. First, neither WPTF nor Constellation explains why a 15 percent threshold would result in “uneconomic” results in the MRTU markets. Additionally, there is no such thing as “withholding” load in the CAISO markets. Load that is not scheduling in the Day-Ahead and that appears in real-time will be served regardless of whether it is scheduled or not. If LSEs fail to schedule their load in the Day-Ahead, they will be exposed to charges not just under the CAISO’s interim underscheduling proposal, but also to the numerous costs that are allocated to net negative deviators under the MRTU markets. One of the most

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<sup>13</sup> WPTF at 6-7; Constellation at 3-4.

<sup>14</sup> WPTF at 6.

significant of these costs are those associated with the Residual Unit Commitment (“RUC”) process, the majority of which are allocated to load that is not scheduled in the Day-Ahead Market. Moreover, WPTF and Constellation fail to observe that if participants “withhold” their demand in the Day-Ahead Market, they are essentially forgoing the opportunity to protect such load from congestion charges as the CAISO has designed its Congestion Revenue Rights to be based only on congestion in the Day-Ahead Market. Thus, the suggestion that LSEs can simply underschedule at will, so long as they do not exceed the 5 and 15 percent thresholds, without fear of consequence, is simply an exaggeration entirely unsupported by the facts. Moreover, with respect to Resource Adequacy charges, those costs will be borne by load already by virtue of the contracts under which Resource Adequacy units participate in the markets.

In an attempt to lend further support for its argument that the 15 percent threshold is excessive, WPTF notes that during 2005 and 2006, actual real-time demand was never more than 15 percent greater than day-ahead forecast demand. This fact does not, however, support WPTF’s argument. First, there is no Day-Ahead market under the CAISO’s current market structure, and therefore, there is not a financial incentive for LSEs to underschedule in the same manner as there can be under MRTU. Also, during part of 2005 and all of 2006, LSEs were required to schedule 95 percent of their load pursuant to Amendment No. 72 to the CAISO’s Tariff. That amendment, which was filed in order to address reliability concerns caused by potential underscheduling rather than the potential exercise of demand-side market power, was put into effect in September of 2005, just prior to the fall period during which the CAISO was most concerned that underscheduling might occur. Finally, the CAISO notes that WPTF fails

to recognize that when setting any threshold, it should be anticipated that the Scheduling Coordinator will estimate their own threshold for facing any penalties, which actually makes the margin tighter in order to avoid being exposed to the penalties set forth for any given violations. For example, if the Scheduling Coordinator indeed “played” the day-ahead scheduling requirement as suggested by WPTF such that it is always scheduling at as close to 15% as possible, it is likely that in fact it will be subject to the penalties due to factors that simply could not be known prior to its submission such as: 1) how much load actually clears in the Day-Ahead Market, 2) the magnitude of their own load forecast error; and 3) unknown system conditions. Therefore, the proposal provides sufficient incentives for participants not to be scheduling just at the margin and any tighter threshold could, as discussed above, eliminate their ability to economically schedule in the Day-Ahead Market. For these reasons, it is quite unremarkable that real-time demand did not exceed forecast demand by 15 percent or greater during the period cited by WPTF. Finally, WPTF concedes that its analysis was based on a comparison between system-wide real-time demand and forecast demand, which does not really provide any useful information about the scheduling practices of individual LSEs, which is obviously the focus of the underscheduling measures, and thus, is a fundamentally useless metric upon which to evaluate the validity of the CAISO’s proposed threshold.

All of the arguments to lower the thresholds, and WPTF’s in particular, clearly suggest that the CAISO should adopt interim underscheduling measures akin to its current 95 percent forward scheduling requirement as established under Amendment No. 72. The CAISO strongly disagrees with such an approach. Amendment No. 72 was implemented as a stopgap measure to ensure that CAISO grid operators had sufficient

information concerning the need for resources in real-time in order to ensure system reliability. As the CAISO has explained in previous submissions in this proceeding, a day-ahead scheduling requirement would not be necessary or appropriate under the MRTU market design. There is no need to perfectly match supply and demand schedules because there is a formal day-ahead energy market which allows market participants to submit demand bids that can be satisfied by other market participants submitting supply offers. Moreover, as the Commission itself recognized in addressing this issue, the interim underscheduling measures should not be so onerous as to prevent LSEs from taking steps to reduce their costs of serving load.<sup>15</sup>

Constellation raises several other issues with the CAISO's proposed thresholds. Several of Constellation's suggestions are no longer relevant, as they pertain to draft tariff language that was modified by the CAISO prior to the September 28 Filing. For instance, Constellation contends that the Interim Scheduling Charge should be assessed on hourly scheduling, not 10 minute intervals as currently proposed, to ease the administrative burden associated with the Interim Scheduling Charge. Proposed Section 11.24.2 sets forth a methodology that is based on Trading Hours, and thus, Constellation's concern is already satisfied. Constellation also maintains that the Interim Scheduling Charge should be assessed on an LSE's system-wide load, rather than based on LAPs. The CAISO disagrees, and believes that evaluating underscheduling based on LAPs is the most sensible approach, given that the CAISO's load pricing and settlement methodologies are fundamentally based on the LAP concept.

Additionally, Constellation argues that the Interim Scheduling Charge should be graduated, such that the Interim Scheduling Charge increases proportionately to the

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<sup>15</sup> April 20 Order at P 119.

extent the excursions exceed the threshold, so that lower excursions carry a smaller charge than much larger excursions. Constellation contends that this would ensure that LSEs with small loads and thus less ability to impact day-ahead prices through underscheduling, and even the larger LSEs whose underscheduling exceeds the threshold by small amounts, will not be unduly penalized by the imposition of the Interim Scheduling Charge. The CAISO disagrees. The fifteen and five percent thresholds should provide LSEs with sufficient protection against inadvertent deviations. Moreover, small LSEs are already protected under the CAISO's proposal by the small load exemption. There is no need to further complicate the interim underscheduling measures by adding additional gradations of Interim Scheduling Charges.

**3. The CAISO's Exemptions from the Interim Scheduling Charge are Appropriately Tailored to Ensure the Interim Measures Do Not Penalize Participants that Cannot Exercise Market Power.**

Several parties take issue with certain of the five exemptions from the Interim Scheduling Charge proposed by the CAISO in the September 28 Filing. First, WPTF and EPIC/SESCO take issue with the CAISO's proposed exemption for situations in which the Real-Time price turns out to be lower than the Day-Ahead price, and thus, no adverse economic consequences result. This exception was specifically created pursuant to the Commission's direct mandate, which was to prevent uneconomic behavior and to "address the problem of persistent underscheduling in the day-ahead market on occasions when *energy prices suggest that it would be economic to buy in the day-ahead market.*"<sup>16</sup> Clearly, when real-time prices are lower than day-ahead prices, it is not economic to buy in the day-ahead market, and therefore, per the Commission's own statements, the CAISO should not subject LSEs to penalties for underscheduling behavior.

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<sup>16</sup> April 20 Order at P 119 (emphasis added).

SCE contends that the CAISO's proposed exemption for small loads (*i.e.* LSEs serving loads under 500 MW in a given LAP) creates two classes of LSEs and provides smaller LSEs with a discriminatory, unreasonable and unjustified competitive advantage over larger LSEs. SCE states that if the Commission allows any LSE an exemption from the charges, the exemption should be based on technical reasons which make compliance with the rule overly burdensome or unreasonable.<sup>17</sup> The CAISO's goal in developing the interim underscheduling measures was to address the potential problem identified by the Commission – that is, the potential exercise of demand-side market power. As explained in its September 28 Filing, it is the CAISO's belief, based on its analysis of this issue, that LSEs that serve less than 500 MW in a LAP do not have the ability to exercise demand-side market power, regardless of their underscheduling behavior. In its analysis, in which it examined a typical summer day supply curve from the California Power Exchange, which operated a day-ahead energy market in California from 1998 through 2000, the CAISO found that load swings of plus or minus 1,000 MW from the average Demand changed the price by only about \$5.00.<sup>18</sup> Thus, the CAISO found that even at the 1000 MW level of LSEs would have a limited ability to significantly impact the DAM clearing price, and that therefore, 500 MW was a reasonable limit for the small load exemption from Interim Scheduling Charges. For these reasons, the CAISO does not believe it necessary, pursuant to the Commission's directive, to implement measures targeting entities with 500 MW or less of load in a particular LAP.

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<sup>17</sup> SCE at 4-5.

<sup>18</sup> See September 28 Filing at Attachment D.

**4. The CAISO's Proposed Allocation of Revenues Collected Under the Interim Scheduling Charge is Just and Reasonable**

WPTF argues that the CAISO's proposed allocation of revenues collected under the interim scheduling charge is inappropriate because under the CAISO's proposal, which applies the Interim Scheduling Charge Revenues to reduce the Market Usage Charge, some of these amounts will go back to the same Market Participants that they were collected from. WPTF contends that these amounts should be allocated instead to parties selling energy in the Day-Ahead Market in the same hour in which they are collected.<sup>19</sup> The CAISO believes that its proposed allocation methodology is appropriate because it is, first and foremost, feasible to implement on an interim basis at the outset of MRTU implementation. Also, under the CAISO's approach, most of the Interim Scheduling Charge Revenues will be allocated to suppliers rather than demand, and even among those amounts allocated to demand, only a portion of that amount will be credited back to the LSE from whom it was collected in the first place. Thus, at the end of the day, the LSEs paying any Interim Scheduling Charges will collect only a small percentage of the total revenues allocated. Given the need for a methodology that can be implemented at the outset of MRTU, the CAISO believes that its allocation proposal represents a reasonable compromise.

**5. The CAISO's Plan for Transition from Interim Underscheduling Measures to Convergence Bidding is Outside the Scope of this Proceeding**

EPIC/SESCO argue that the Commission should require the CAISO to make a compliance filing that sets out in detail the CAISO's plans for transitioning from the

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<sup>19</sup> WPTF at 13-14.

interim underscheduling measures to a full convergence bidding market.<sup>20</sup> Specifically, EPIC/SESCO argues for the “expeditious” resolution of features of the convergence bidding market design, including the issue of whether convergence bidding on a nodal basis will be part of the CAISO’s proposal.<sup>21</sup> In essence, EPIC/SESCO is asking that the Commission require the CAISO to file a conceptual convergence bidding market design proposal well in advance of the schedule for submitting a convergence bidding filing established by prior Commission orders that are no longer subject to rehearing.

At the outset, EPIC/SESCO’s argument should be rejected because it is beyond the scope of the September 28 Filing. The September 28 Filing was limited to proposing a mechanism, pursuant to the Commission’s directives, to address the potential exercise of demand-side market power through persistent underscheduling. It did not address the issue of convergence bidding. Also, on September 26, 2007 WPTF submitted a pleading in Docket No. ER06-615, captioned Answer to the CAISO’s Status Report and Motion to Compel Timely Submittal of Convergence Bidding Proposal (“WPTF September 26 Motion”) seeking a comparable Commission directive. On October 11, 2007, the CAISO filed an Answer to the WPTF September 26 Motion (“CAISO October 11 Answer”). A copy of the CAISO’s October 11 Answer is attached to the instant Answer and incorporated by reference. The EPCI/SESCO request for a convergence bidding “compliance filing” should be rejected for the reasons set forth in the CAISO October 11 Answer.

Like the WPTF September 26 Motion, the EPCI/SESCO request for a convergence bidding “compliance filing” is, in fact, a prohibited request for rehearing of

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<sup>20</sup> EPIC/SESCO at 4.

<sup>21</sup> *Id.* at 6.

the Commission's September 21, 2006 and April 20, 2007 orders in the above-captioned proceeding. In those orders, the Commission directed the CAISO to implement convergence bidding one year after implementation of MRTU and to file tariff language implementing convergence bidding.<sup>22</sup> Specifically, in the April 20 Order, the Commission directed the CAISO that "within 60 days prior to the one-year anniversary of Day 1 of MRTU operation, the CAISO must file tariff sheets implementing convergence bidding with a proposed effective date of that first anniversary."<sup>23</sup> Neither of the Commission's orders directed the CAISO to submit a conceptual filing to the Commission prior to development of the final tariff language and submittal of that language to the Commission for approval under Section 205 of the Federal Power Act.<sup>24</sup> EPIC/SESCO now seeks to impose new filing obligations on the CAISO directly related to the subject matter and outcome of the Commission's September 21 and April 20 Orders, a request which should have been made in a request for rehearing of those orders. EPIC/SESCO's request for a Convergence Bidding "compliance filing" therefore should be denied as an untimely rehearing request.

In addition, the CAISO strongly believes it is a mistake to make decisions regarding the conceptual design of the convergence bidding features in the CAISO's new market at this point. MRTU is currently on schedule to be implemented on March 31, 2008. The CAISO believes all stakeholders will benefit from continuing to address details of the convergence bidding rules in the ongoing stakeholder process and from

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<sup>22</sup> *California Independent System Operator Corporation*, 116 FERC ¶ 61,274 (2006) ("September 21 Order"); *California Independent System Operator Corporation*, 119 FERC ¶ 61,076 at P 117 (2007) ("April 20 Order").

<sup>23</sup> April 20 Order at P 117.

<sup>24</sup> See September 21 Order at P 452; April 20 Order at P 117.

observation and experience with the actual MRTU markets before finalizing many concepts in the convergence bidding features of the CAISO's tariff. To the extent that the CAISO and stakeholders begin litigating the concepts underlying the CAISO's convergence bidding rules early next year, it will divert attention away from developing a sound and workable convergence bidding proposal based, in part, on observations and lessons learned about the operation of the CAISO's restructured market in its early months. Accordingly, the CAISO believes that it is not in the interest of stakeholders or the CAISO itself to divert attention from the development of the tariff language by developing and litigating a conceptual filing throughout much of 2008.

**B. Report Regarding SMUD's Concerns With Respect to Capacity Re-Sales**

In the September 28 Filing, the CAISO addressed the status of its efforts to alleviate the concerns of SMUD and others with regard to ensuring the scheduling priority of exports supported by non-Resource Adequacy Capacity. The CAISO specifically noted that through the regional-wide effort coordinated by the WECC Seams Issues Subcommittee ("SIS"), which includes the participation of SMUD and IID, the CAISO has communicated to market participants its successful development and testing of functionality in its Scheduling Infrastructure and Business Rules (SIBR) that allows Scheduling Coordinators to "flag" non-Resource Adequacy Capacity in order to trigger the export priority. The CAISO further confirmed SIBR will therefore provide the means for all validations necessary to determine which exports should receive an export priority and which should not. Nevertheless, SMUD asserts that the foregoing information and

its activities on the SIS are insufficient and that the Commission should presently withhold acceptance of the CAISO's filing.<sup>25</sup> The CAISO disagrees.

At the most fundamental level, the CAISO has taken the necessary steps to accommodate SMUD by incorporating into the MRTU Tariff changes that provide exports from non-Resource Adequacy Capacity with the desired scheduling priority. In particular, Section 34.10.1 the CAISO clarified that it will first dispatch Economic Bids submitted in the HASP or RTM, with the last option being to utilize non-participating load reduction and self-schedules for exports at Scheduling Points in the HASP that are not served by Resource Adequacy or RUC capacity. The CAISO has also made changes to Section 30.5.3, consistent with its reliance on SIBR, requiring Scheduling Coordinators submitting Self-Schedules at Scheduling Points for export to indicate whether or not the export is served by Resource Adequacy Capacity. The CAISO remains committed to working with SMUD, IID and any other Market Participant to ensure that the processes to implement export priority sought in the MRTU Tariff, including appropriate testing, are effective and understandable.<sup>26</sup> Accordingly, to the extent there remains questions regarding precisely how SIBR will operate, the CAISO asserts that the SIS represents the appropriate forum and that the Commission may appropriately accept the CAISO's September 28 Filing.

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<sup>25</sup> SMUD at 5.

<sup>26</sup> The CAISO also provides a link to the presentation of Mark Rothleder, Principal Market Developer and MRTU Technical Lead, made at the January 23, 2007 MRTU Implementation Workshop, which provides additional detail on this topic: (<http://www.caiso.com/docs/2005/06/21/2005062113583824742.html>.)

### III. CONCLUSION

Wherefore, for all the reasons stated above, the CAISO respectfully requests that the Commission accept the September 28 Filing as filed.

Respectfully submitted,

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## **Certificate of Service**

I hereby certify that I have this day served a copy of this document upon all parties listed on the official service lists compiled by the Secretary in the above-captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 5<sup>th</sup> day of November, 2007 at Folsom in the State of California.

*/s/ Charity Wilson*

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