

110 FERC ¶61,071  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

California Independent System Operator Corporation                      Docket Nos. ER04-835-004  
ER04-835-005

ORDER ON REHEARING AND CLARIFICATION AND  
COMPLIANCE FILING

(Issued January 27, 2005)

1. In this order we deny requests for clarification and rehearing of an October 29, 2004 order,<sup>1</sup> in which the Commission accepted the California Independent System Operator Corporation's (CAISO's) compliance filing regarding proposed revisions to provisions of the CAISO's open access transmission tariff (tariff) relating to the implementation of the temporary must-offer obligation, submitted by the CAISO in Amendment No. 60 to the tariff. On November 29, 2004, the CAISO submitted a compliance filing as directed by the October 29 Order. The Commission accepts the CAISO's compliance filing.

**Background**

2. Through a series of orders issued since April 2001, the Commission has addressed the CAISO's implementation of the temporary must-offer obligation, including application and compensation issues. In Amendment No. 60, the CAISO proposed to modify the tariff provisions that implement the must-offer obligation. According to the CAISO, the purpose of the proposed modifications was threefold: (1) to provide for a more rational and efficient process for granting or denying waivers of the must-offer obligation; (2) modify certain payment terms and the allocation of must-offer costs in a manner more consistent with cost causation principles; and (3) set forth clear conditions in which Condition 2 Reliability Must-Run (RMR) Units are committed outside of the RMR contract to meet system reliability requirements.

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<sup>1</sup> *California Independent System Operator Corp.*, 109 FERC ¶ 61,097 (2004) (October 29 Order).

3. In an order issued on July 8, 2004, the Commission accepted, subject to modification, the CAISO's proposed tariff revisions, and hearing procedures were established regarding the allocation of must-offer costs.<sup>2</sup> In the October 29 Order, the Commission accepted the CAISO's compliance filing and, in addition, granted in part and denied in part requests for rehearing of the July 8 Order.<sup>3</sup>

### **Procedural Matters**

4. Timely requests for rehearing and/or clarification (Docket ER04-835-004) were filed by the CAISO; Powerex Corp. (Powerex); and the California Department of Water Resources State Water Project (SWP).

5. Notice of the CAISO's compliance filing (Docket No. ER04-835-005) was published in the *Federal Register*, 69 Fed. Reg. 71,810, with motions to intervene and protests due before December 20, 2004. Duke Energy North America, LLC and Duke Energy Trading and marketing, L.L.C (collectively Duke) filed a timely comment on the compliance filing and answer to the CAISO's request for clarification.

### **Discussion**

#### **I. Requests for Rehearing**

##### **A. Capacity Procurement and the Process for Committing Generating Units Through the Must-Offer Obligation**

###### **1. Inclusion of Real-Time Imports**

6. The October 29 Order accepted the CAISO's Operating Procedure M-432 relating to capacity procurement and the process for committing generating units through the must-offer obligation.<sup>4</sup> The Commission rejected Powerex's position that system imports and out-of-market capacity should be included in the CAISO's net short energy calculation, and found that the CAISO's method of calculation is reasonable. The order

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<sup>2</sup> *California Independent System Operator Corp.*, 108 FERC ¶ 61,022 (2004) (July 8 Order).

<sup>3</sup> See July 8 Order, 108 FERC ¶ 61,022 at P 3-8 for a detailed description of the evolution of the must-offer obligation.

<sup>4</sup> October 29 Order, 109 FERC ¶ 61,097 at P 38.

explained that “the CAISO does not include hydro generation and wind generation in its day-ahead estimates because these generators are considered unreliable resources that have no control of [their] generating output.”<sup>5</sup>

7. Powerex seeks clarification, or in the alternative rehearing, that the CAISO must alter its computer systems to use a similar-day average of real-time imports when projecting the net short position. According to Powerex, the CAISO concurred that it would be appropriate to use a similar-day average of real-time imports when projecting the net short position but indicated that it would take some time to do so because the data resides in a different computer system.<sup>6</sup> Further, Powerex asks for clarification, or in the alternative hearing, that the CAISO must commit to accomplish the computer changes by a date certain, suggesting either December 1, 2004 or another date when the CAISO reasonably believes it can implement the required changes. Related, Powerex asks that the Commission direct the CAISO to explain why it cannot use a manual process to incorporate the real-time schedule data until the computer change is completed.<sup>7</sup>

#### **Commission Determination**

8. We acknowledge the CAISO’s commitments to incorporate, at some future date, real-time import data in the CAISO’s net short energy position calculation. It appears that the CAISO did not offer to modify the net short energy calculation with a date certain because of the complexity of bridging the data. While we encourage the CAISO and Powerex to continue to discuss in good faith a reasonable timeline for the CAISO to include system imports in its calculation, we will not direct the CAISO to make any further compliance filings associated with Operating Procedure M-432. We note that once the CAISO has successfully bridged the data to include real-time system imports, the CAISO should make a separate filing with the Commission. Thus, we will deny Powerex’s request for clarification or in the alternative rehearing on this issue.

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<sup>5</sup> *Id.*

<sup>6</sup> See October 8, 2004, Answer of the CAISO in Docket No. ER04-835-004 (CAISO Answer) at 5.

<sup>7</sup> Powerex contends that it raised these issues earlier but were not specifically addressed in the October 29 Order.

## 2. Net Short Out-Of Market Capacity

9. As mentioned above, the October 29 Order accepted the CAISO's Operating Procedure M-432, rejected Powerex's position that system imports and out-of-market capacity should be included in the CAISO's net short energy calculation, and explained that the CAISO does not include hydro generation and wind generation in its day-ahead estimates because these generators are considered unreliable resources that have no control of their generating output.<sup>8</sup>

10. Powerex contends that the Commission erred in not requiring the CAISO to include in its formula for determining the net short out-of-market capacity, which includes hydro generation, municipal generation and wind generation. Powerex argues that the Commission's reasoning that hydro generation and wind generation are unreliable sources "does not square" with the CAISO's position on this issue. Powerex states that, according to the CAISO, hydro generation and municipal generation are not included in its net short calculation because the amount of hydro energy provided to the CAISO is supplemental energy that varies over the course of a year and, with municipal generation, little is bid into the CAISO's supplemental markets.<sup>9</sup> Powerex contends that the CAISO could use historical averages in the estimates.

11. With regard to wind generation, Powerex points out that the CAISO has already committed to factor in an estimate of wind generation when systems are in place to provide a reliable day-ahead estimate of wind generation.<sup>10</sup> Powerex contends that this demonstrates that the Commission erred in determining that the CAISO need not include wind generation in its estimate because the source is considered unreliable, and asks the Commission to direct that the CAISO provide a date certain when it will have the systems in place to provide a reliable day-ahead estimate of wind generation.

### Commission Determination

12. In the same CAISO pleading relied upon by Powerex, the CAISO states that "relying on aggressive projections of real-time hydro, muni, wind and import energy to decrease the amount of thermal generation committed through the must-offer obligation will decrease costs if the projections hold true, but exposes the ISO and California

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<sup>8</sup> October 29 Order, 109 FERC ¶ 61,097 at P 38.

<sup>9</sup> CAISO Answer at 5-6.

<sup>10</sup> *See id* at 6; CAISO Operating Procedure M-432C, at 8.

consumers to significant risks if they do not. . . . It is prudent for the ISO to exercise care when predicting the real-time availability of resources.”<sup>11</sup> We find that the CAISO, in its net short energy calculation, has adopted a reasonable approach regarding the real-time availability of these resources. Although Powerex advocates the CAISO taking a more aggressive approach, it is not the entity that is responsible for the risk of inaccurate projections, which could result in the CAISO not revoking must-offer waivers for a sufficient amount of generation and not being able to call upon that generation in a timely manner to meet system needs due to long start-up times. Therefore, we uphold our finding that the CAISO does not need to include these resources in its calculations.

13. Further, with regard to wind energy, the CAISO explained that it will “continue to fully discount wind generation capacity until there is a reliable [day ahead] wind/energy forecast that the CAISO is willing to risk firm commitment of generation in lieu of wind generation.”<sup>12</sup> While the CAISO indicates that it may include wind generation estimates in its calculations at some future time, we will not require the CAISO to produce a timetable for such inclusion. Again, the CAISO has examined the risks and indicates that it is not willing to include wind energy in its computations at this time. We find the CAISO’s approach to be reasonable. Accordingly, Powerex’s request for clarification, or in the alternative rehearing, is denied on this matter.

#### **B. Transparency Issues**

14. The October 29 Order denied, as outside the scope of the proceeding, claims that the CAISO is using must-offer generators to manage inter-zonal congestion rather than relying on existing congestion management procedures set forth in the CAISO tariff.<sup>13</sup> SWP argues that the Commission erred because the order failed to address SWP’s concerns that Operating Procedure M-432 does not provide sufficient transparency to enable market participants to understand how and why must-offer costs are incurred and allocated. SWP contends that greater transparency is required based on (1) escalating minimum load costs; (2) the CAISO’s use of must offer minimum load in lieu of the CAISO’s congestion management scheme set forth in the CAISO tariff; and (3) the CAISO has identified significant minimum load expenditures incurred for “unknown” reasons.<sup>14</sup> In addition, SWP argues that the Commission erred by failing to

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<sup>11</sup> CAISO Answer at 6-7 (emphasis in original).

<sup>12</sup> CAISO Operating Procedure M-432C, at 8.

<sup>13</sup> October 29 Order, 109 FERC ¶ 61,097 at P 39.

<sup>14</sup> SWP request for rehearing at 2, 6-7.

seek information from the CAISO to determine whether minimum load cost rates are unjust and unreasonable, as requested by SWP in its protest to the CAISO's compliance filing.

### **Commission Determination**

15. The reasons for greater transparency identified by SWP have less to do with the particulars of Operating Procedure M-432 and pertain more to the historical practices of the CAISO relating to the implementation of the Must-Offer Obligation that SWP finds objectionable. This docket, however, is limited to consideration of the CAISO's compliance filing. Accordingly, the Commission reaffirms its conclusion that SWP's requests are outside the scope of this proceeding. If SWP remains concerned about the CAISO's alleged use of must-offer generation for congestion management purposes or seeks to challenge the justness and reasonableness of must-offer costs, SWP may file a complaint with the Commission. Accordingly, SWP's request for rehearing is denied on this issue.<sup>15</sup>

## **II. Compliance Filing**

16. The October 29 Order directed the CAISO to modify tariff section 5.11.6.1.2.1 (Operating Must-Offer Generating Units above Minimum Load) to reflect the same compensation formula as section 5.11.6.1.2 (Minimum Load Cost).<sup>16</sup> In its November 29, 2004 compliance filing, the CAISO explained that section 5.11.6.1.2.1 was superseded by tariff language that took effect when the Phase 1B modifications were implemented on October 1, 2004. Accordingly, in its compliance filing, the CAISO

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<sup>15</sup> SWP also seeks rehearing of the statement that the order "benefits customers because it allows the CAISO to operate its system reliably while also effectively managing costs." October 29 Order, 109 FERC ¶ 61,097 at P 2. SWP contends that the CAISO has not effectively managed minimum load costs in light of the increased amount of such costs incurred since 2001. SWP's argument, however, is based on the CAISO's past practices such as the alleged use of the must-offer obligation for congestion management purposes and the CAISO's alleged failure to sufficiently identifying the reason for revoking must-offer waivers in some instances, and does not relate to the determinations in the October 29 Order. Again, while such allegations may be the subject of a separate complaint proceeding, this proceeding is not the appropriate forum. Moreover, the above statement was not the rationale for Commission action and, if omitted, the Commission would have made the same determination. Accordingly, SWP's request for rehearing is denied on this matter.

<sup>16</sup> October 29 Order, 109 FERC ¶ 61,097 at P 26.

submitted pre-Phase 1B modifications to the tariff reflecting the Commission's directive, and post-Phase 1B modifications to the ISO tariff reflecting that the provision has been superseded.

17. In a separate motion,<sup>17</sup> the CAISO asks the Commission to clarify that the compliance filing is, in fact, not required since tariff section 5.11.6.1.2.1 ceased to exist when the Phase 1B modifications were put into effect on October 1, 2004.

18. Duke comments that the Commission should deny the CAISO's motion and accept the compliance filing. Duke states that the July 8 Order accepted the CAISO's request for a July 11, 2004 effective date. Thus, although now superseded, section 5.11.6.1.2.1 was in effect from July 11, 2004 through October 1, 2004. Duke contends that, to the extent that the CAISO dispatched any must-offer generating unit to a level above its minimum load operating point during that period, the CAISO should be obligated to pay the generating unit in accordance with section 5.11.6.1.2.1 as modified in the compliance filing.

### **Commission Determination**

19. While the tariff revisions have been superseded by Phase 1B modifications on October 1, 2004, the Commission finds it appropriate to accept the tariff modifications in the compliance filing as consistent with the directives of the July 8 Order. In the July 8 Order, the Commission accepted for filing, *as modified*, the CAISO's proposed tariff revisions to become effective July 11, 2004.<sup>18</sup> In other words, the tariff modification to this compliance filing should be effective from the period July 11, 2004 through October 1, 2004. Hence, the Commission accepts the compliance filing and denies the CAISO's requests for clarification.

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<sup>17</sup> Although the CAISO seeks clarification of the October 29 Order, it is more appropriate to address the CAISO's concerns in the context of its compliance filing.

<sup>18</sup> July 8 Order, 108 FERC ¶ 61,022 at ¶ 122, Ordering Paragraph (A).

The Commission orders:

(A) The requests for rehearing and motions for clarification are hereby denied, as discussed in the body of this order.

(B) The CAISO's compliance filing is hereby accepted, effective July 11, 2004, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.