125 FERC ¶ 61,339
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

California Independent System Operator Corporation    Docket Nos. ER06-615-027
ER06-615-028

ORDER DENYING IN PART AND GRANTING IN PART REHEARING
AND CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued December 19, 2008)

1. This order denies in part and grants in part requests for rehearing of the Commission's July 17, 2008 order on interim measures proposed by the California Independent System Operator Corporation (CAISO) to discourage underscheduling in the day-ahead market under its Market Redesign and Technology Upgrade (MRTU).[1] In addition, this order conditionally accepts the CAISO's August 18, 2008 filing made in compliance with the July 2008 Underscheduling Order, which, among other things, required elimination of the so-called "free pass" feature of the CAISO's original proposal.[2]

---

[1] *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,043 (2008) (July 2008 Underscheduling Order).

[2] CAISO's August 18, 2008 Compliance Filing, Docket No. ER06-615-028 (August 2008 Compliance Filing). For explanation of the "free pass" feature, *see infra* at paragraph 6 and footnote 9.

# I. Background

## A. Underscheduling

2. In its September 2006 MRTU Order,[3] the Commission directed the CAISO to implement convergence bidding[4] within 12 months of the effective date of MRTU, rather than postpone MRTU until the development and approval of a convergence bidding plan. Nevertheless, the Commission directed the CAISO to develop and file interim measures to mitigate the potential economic incentives for load serving entities to underschedule in the day-ahead market. These measures would remain in effect until superseded by the implementation of an approved convergence bidding proposal. The Commission has found that before implementation of the convergence bidding feature of MRTU, load serving entities may have an incentive to underschedule in the day-ahead market.[5] Specifically, load serving entities may underschedule in an effort to exploit the market rules and artificially deflate prices in the day-ahead markets. Rather than postpone MRTU until convergence bidding is offered, the Commission required the CAISO to provide an interim measure to discourage underscheduling until convergence bidding goes into effect.[6]

3. Therefore, in the September 2006 MRTU Order conditionally accepting the MRTU Tariff, the Commission directed the CAISO to propose revisions to the MRTU Tariff to address the potential economic incentive for load serving entities to underschedule in the day-ahead market prior to implementation of convergence bidding.[7]

---

[3] *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 452 (2006) (September 2006 MRTU Order), *on reh'g*, 119 FERC ¶ 61,076, at P 118-19 (2007) (April 2007 MRTU Rehearing Order); *see also Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,313 (2007).

[4] Convergence bidding is a market feature that involves the submission of bids to buy or sell energy in the day-ahead market that will ultimately not be consumed or produced in real time, which results in the convergence of day-ahead and real-time prices. Convergence bids represent financial transactions, are submitted like other bids, and are recognized by system operators as not being physical. September 2006 MRTU Order at P 430 n.198.

[5] September 2006 MRTU Order at P 453.

[6] *Id*. P 453.

[7] *Id.* P 452.

4. On September 28, 2007, the CAISO made a compliance filing in this proceeding in response to the Commission's directive concerning underscheduling.[8]

### B. Underscheduling Proposal

5. In its September 2007 CAISO Filing, the CAISO presented an interim plan consisting of a bright line test, interim scheduling charges and confidential weekly reports.

6. The CAISO proposed a bright line test to identify and penalize underscheduling. Under the proposed plan, scheduling coordinators would be penalized when, in any given month, a scheduling coordinator's Net Negative CAISO Demand Deviation[9] at its applicable Load Aggregation Point exceeds 15 percent of the scheduling coordinator's cleared total CAISO demand as represented in its day-ahead schedule at its applicable Load Aggregation Point for five percent or more of the total trading hours for that month. The five percent buffer is referred to as a "free pass."[10] The CAISO's proposal would not penalize scheduling coordinators for amounts below the bright line test threshold.

7. The CAISO proposed to assess each scheduling coordinator an interim scheduling charge when the scheduling coordinator triggers the bright line test. The CAISO's proposal assigned a charge in the amount of $150/MWh to be applied to underscheduled quantities when metered load is between 15 percent and 20 percent greater than its cleared day-ahead schedule, and $250/MWh for trading hours where a scheduling coordinator's metered load is 20 percent or more than its cleared day-ahead schedule. The CAISO also proposed to exempt scheduling coordinators from these charges in certain circumstances, including when the CAISO's day-ahead peak daily demand

---

[8] CAISO's September 28, 2007 Proposed Revisions to its MRTU Tariff, Docket No. ER06-615-013 (September 2007 CAISO Filing.) The September 2007 CAISO Filing also addressed compliance items required by other Commission orders. *See Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,313, at P 59 (2007) (addressing scheduling priority for different capacity). However, no party requested rehearing with respect to these items. Therefore, we do not address them in this order.

[9] *See* CAISO MRTU Tariff Fourth Replacement Tariff Volume No. II Original Sheet No. 903 (defining Net Negative CAISO Demand Deviation as "the difference between metered CAISO demand and the total CAISO demand scheduled in the day-ahead schedule if positive").

[10] The five percent free pass provision would allow a load serving entity to underschedule more than 15 percent of demand for five percent of the trading hours for each month without penalty.

forecast is 95 percent or less of actual CAISO metered demand, a load serving entity has demands of 500 MW or less at a Load Aggregation Point, or the CAISO's real-time price is less than the day-ahead price.[11]

### C. July 2008 Underscheduling Order

8. In the July 2008 Underscheduling Order, the Commission conditionally accepted the September 2007 CAISO Filing, subject to modifications. The primary modification the Commission directed the CAISO to make to its proposal was to eliminate the five percent free pass provision.[12] The Commission determined that the free pass could provide the load serving entity with an economic incentive, during peak hours, to strategically exceed the 15 percent threshold in order to artificially reduce the day-ahead price without penalty.[13] The Commission concluded that the free pass was unnecessary because the proposed 15 percent threshold provided load serving entities with sufficient flexibility to address variables such as unavoidable forecasting errors and market uncertainties.

### D. Rehearing Requests

9. On August 18, 2008, Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SoCal Edison) each filed requests for rehearing concerning the July 2008 Underscheduling Order.

10. On September 2, 2008, the Alliance for Retail Energy Markets (AREM) filed an Answer to the Requests for Rehearing. Rule 713(d)(1) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.713(d)(1) (2008), prohibits an answer to a request for rehearing. Accordingly, we reject AREM's answer.

## II. Discussion

11. In their rehearing requests, SoCal Edison and PG&E claim that the Commission's elimination of the five percent free pass is unjust and unreasonable. Specifically, in connection with their challenge to the elimination of the free pass, these parties raise multiple issues, including whether scheduling coordinators should be subject to penalty when the CAISO cuts self-schedules, thereby causing load not to clear the day-ahead

---

[11] An exemption also applies in circumstances when the resource is Participating Load and when the resource is Metered Subsystem Load-Following Demand.

[12] July 2008 Underscheduling Order, 124 FERC ¶ 61,043 at P 23.

[13] *Id.*

market. We grant rehearing on the latter issue and deny rehearing on all other issues, as discussed below.

### A. Persistent Underscheduling

12. SoCal Edison and PG&E focus on the word "persistent" in the Commission's April 2007 MRTU Rehearing Order, where the order discussed the Commission's underscheduling concerns.[14] SoCal Edison and PG&E claim that removal of the five percent free pass will cause the CAISO's proposal to miss its target of discouraging persistent underscheduling, and will instead penalize occasional outlier underscheduling rather than just repetitive behavior. SoCal Edison claims that by eliminating the five percent free pass, there is no benchmark for persistent underscheduling. SoCal Edison adds that the proposal, as adopted by the July 2008 Underscheduling Order, will penalize the scheduling coordinator even if the underscheduling was outside of the scheduling coordinator's control and whether or not the underscheduling had any material impact on the resulting market outcomes.

13. PG&E argues that the proposal as adopted by the July 2008 Underscheduling Order goes beyond what is necessary to address persistent underscheduling of load in the day-ahead market and is inconsistent with the Commission's prior explanations of the purpose of the proposal. PG&E notes that in its April 2007 MRTU Rehearing Order, the Commission explained that:

> [T]hese interim measures are not intended to prevent [load serving entities] from taking steps to reduce the costs of serving load. Instead, these interim measures should be designed to prevent uneconomic behavior. More specifically, we expect 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.[15]

14. PG&E maintains that by eliminating the five percent free pass, the Commission creates a zero tolerance standard for matching load and resources in the day-ahead market and thus goes beyond addressing persistent underscheduling. Essentially, SoCal Edison and PG&E argue that underscheduling is not "persistent" unless a load serving entity has

---

[14] SoCal Edison Rehearing Request at 3 (citing April 2007 MRTU Rehearing Order, 119 FERC ¶ 61,076, at P 119); PG&E Rehearing Request at 3 (citing same).

[15] PG&E's August 18, 2008 Rehearing Request, Docket No. ER06-615-027, at 3 (quoting April 2007 MRTU Rehearing Order, 119 FERC ¶ 61,076, at P 119 (2007) (emphasis omitted)).

underscheduled by at least 15 percent, more than five percent of the time. In other words, these parties assert that a one-time occurrence of underscheduling should not trigger a penalty because it does not denote "persistent" underscheduling.

**Commission Determination**

15. SoCal Edison's and PG&E's contention that the elimination of the five percent free pass extends the reach of the penalties beyond persistent underscheduling is unconvincing. We disagree that the threshold for imposing penalties must be reached more than five percent of the time in a month before underscheduling may be penalized. The Commission's goal is to prevent underscheduling from becoming persistent in the absence of convergence bidding, and the proposal as accepted by the Commission accomplishes this. It does so by applying appropriate penalties when a load serving entity's metered demand exceeds its day-ahead schedule by more than 15 percent. Indeed, contrary to challengers' assertions, the elimination of the free pass is not draconian because the 15 percent margin of error, as well as other exemptions,[16] provides a generous allowance for scheduling imprecision such that unavoidable disparities between scheduled and actual load are not likely to be penalized.[17] Therefore, the Commission finds that its July 2008 Underscheduling Order is consistent with its prior directives concerning persistent underscheduling prevention,[18] and we deny rehearing on this issue.

**B. Economic Behavior**

16. PG&E states that economic considerations may affect scheduling. Similarly, SoCal Edison argues that the proposal, as adopted by the July 2008 Underscheduling Order, will dissuade participants from taking what would be rational and legitimate economic actions. SoCal Edison also claims that the elimination of the five percent free pass discourages market participants from diversifying by purchasing some of their energy in the day-ahead market and some in the real-time market.

---

[16] *See supra* text at paragraph 7 for the list of exemptions contained in MRTU Tariff § 11.24.3.

[17] Indeed, in the pre-MRTU tariff, load serving entities must schedule 95 percent of on-peak forecast load. *See* CAISO FERC Electric Tariff Third Replacement Tariff Volume No. I Superseding First Revised Sheet No. 20.

[18] *E.g.*, April 2007 MRTU Rehearing Order, 119 FERC ¶ 61,076 at P 119.

**Commission Determination**

17. SoCal Edison's and PG&E's concerns that the proposal as approved by the Commission may discourage scheduling coordinators from purchasing less energy in the day-ahead market when it is economically rational to do so are resolved by the proposal itself. The Commission-approved proposal provides an exemption for when the CAISO's real-time price is less than the day-ahead price. Thus, when it makes economic sense not to purchase in the day-ahead market, the scheduling coordinator is protected. However, attempts to take advantage of the market rules by underscheduling are penalized. The Commission is unconvinced by the argument that the proposal discourages "diversification" between purchases in the day-ahead and real-time market because even if we allowed it, the five percent free pass would only provide a few hours of free underscheduling, hardly enough to create a "diverse" portfolio. On balance, any incremental benefit to be gained by this sliver of diversification would be outweighed by the negative impact of persistent underscheduling.[19] Moreover, as the Commission has pointed out on numerous occasions, the optimal solution to facilitate the diversification parties seek would be implementation of convergence bidding.[20] Therefore, we deny rehearing on this issue.

**C. Forecasting Errors**

18. SoCal Edison asserts that eliminating the five percent free pass would result in application of penalties for events that could not reasonably be forecasted. SoCal Edison contends that it can miss its forecast by over 15 percent due to the inconsistencies of the weather and the length of time beforehand that the forecast is made.

19. PG&E adds that, under the proposal as adopted by the July 2008 Underscheduling Order, scheduling coordinators could incur underscheduling penalties even though the underscheduling is neither persistent nor uneconomic because variables such as weather and demand response could lead to incorrect load forecasting. PG&E maintains that such variables ensure that the load scheduled in the day-ahead market will always differ somewhat from a scheduling coordinator's actual load, and may at times differ significantly.

---

[19] September 2006 MRTU Order, 116 FERC ¶ 61,274 at P 449-451, 430 and n.198 (citing *Cal. Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,013, at P 173-75 (2005); *Cal. Indep. Sys. Operator Corp.*, 110 FERC ¶ 61,041, at P 33 (2005); and *Cal. Indep. Sys. Operator Corp.*, 107 FERC ¶ 61,274, at P 75-76, 158 (2004),

[20] *See, e.g.,* September 2006 MRTU Order, 116 FERC ¶ 61,274 at P 449-451.

**Commission Determination**

20. SoCal Edison and PG&E cite many variables that can make forecasting load difficult, and they claim that a forecasting error of greater than 15 percent could occur and lead to a penalty under the proposal. However, evidence suggests that forecasting errors in excess of 15 percent have been quite rare,[21] and the proposal as accepted by the Commission provides an exception for instances when the CAISO's day-ahead peak daily demand forecast is 95 percent or less of actual CAISO metered demand. Thus, in the unlikely event of a significant forecasting error, the scheduling coordinator could be exempt from penalty. Therefore, we deny rehearing on this issue.

**D. Self-Scheduled Load**

21. SoCal Edison argues that there is no guarantee that self-scheduled load will clear the integrated forward market. SoCal Edison states that if the CAISO experiences (1) insufficient ancillary services, (2) insufficient supply bid into the market, (3) the inability to resolve certain transmission constraints, (4) certain reliability issues, or (5) a need to make adjustments in order to honor existing transmission contracts and transmission ownership rights, the CAISO's tariff allows it to cut self-scheduled load in the integrated forward market. Thus, argues SoCal Edison, even if a scheduling coordinator took every possible action allowed under MRTU to have its load cleared in the day-ahead market, if the CAISO cuts self-schedules, the load will not clear the day-ahead market, and could be subject to underscheduling charges. Thus, SoCal Edison requests that, if the Commission does not restore the five percent free pass, then the Commission should exempt hours in which the CAISO was forced to curtail self-scheduled load in the integrated forward market.

**Commission Determination**

22. SoCal Edison raises a valid concern regarding the possibility that the CAISO may cut self-scheduled load and, as a result, the scheduling coordinator could be subject to underscheduling charges. The Commission finds that, in such circumstances, it would be unfair to penalize the scheduling coordinator because penalties are meant to deter conduct, and these self-scheduled entities have no control over whether they are curtailed.[22] Thus, we direct the CAISO to submit within 30 days of the issuance of this

---

[21] *See* Western Power Trading Forum October 16, 2007 Protest and Comment, Docket No. ER06-615-013, at Attachment A.

[22] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom.*

(continued)

order a proposed tariff provision that exempts from the underscheduling penalty load that was curtailed by the CAISO due to reasons beyond the scheduling coordinator's control. We note that, for consistency, this exemption should apply not only to self-scheduled load but also to any day-ahead scheduled load that is administratively curtailed by the CAISO under circumstances in which that load would otherwise have cleared the day-ahead market.

### E. Human Error and Computer Malfunction

23. SoCal Edison and PG&E also claim that the five percent free pass offers a cushion for underscheduling caused by human error or computer malfunction.

**Commission Determination**

24. SoCal Edison's and PG&E's claims that human error or computer malfunction could lead to inadvertent underscheduling are not convincing arguments for the free pass. The Commission finds that the elimination of the five percent free pass appropriately encourages load serving entities to ensure that bids are properly submitted. Also, the 15 percent threshold would apply, giving the scheduling coordinator a cushion for such human error or computer malfunction. Therefore, we deny rehearing on this issue.

### F. Distorted Bidding

25. SoCal Edison further asserts that without the five percent free pass, bidding behavior will be distorted. In addition to discouraging diversification of bidding, as discussed above, SoCal Edison also claims that in order to avoid underscheduling charges, scheduling coordinators may have an incentive to submit self-schedules for their entire forecasted load, rather than price-responsive demand bids.

**Commission Determination**

26. Although SoCal Edison suggests that the elimination of the five percent free pass may encourage self-scheduling rather than the submission of economic bids, SoCal Edison offers no evidence to support that contention. Further, as discussed above,[23] the

---

*Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005). *See also, Midwest Indep. Trans. System Operator, Inc.*, 105 FERC ¶ 61,145, at P 92, 98 (2003) (stating, "in a fully functioning energy market the efficient price signals provided by [locational marginal pricing] should serve as the primary motivator for market participants… but penalties may have a role as a support mechanism").

[23] *See supra* discussion at paragraph 17.

exemptions, including the exemption for occasions when prices in the real-time market are less than the day-ahead market and the exemption discussed above for times when the CAISO curtails scheduled load, will protect economic bidding practices. Therefore, we deny rehearing on this issue.

### G. 500 MW Exemption

27. SoCal Edison also claims that the exemption for load serving entities with loads of 500 MW or less creates an unfair competitive advantage for such load serving entities. SoCal Edison claims that there is no support for exempting load serving entities with load less than 500 MW. SoCal Edison states that it supported an exemption for scheduling coordinators that have 100 MW or less and urges the Commission to modify the exemption level for small load serving entities to 100 MW per Load Aggregation Point. Further, SoCal Edison claims that in order to satisfy its obligation under the Federal Power Act, the Commission should not adopt a policy that inappropriately favors one class of market participants over another.[24]

#### Commission Determination

28. SoCal Edison's contention that the 500 MW exemption should be lowered to 100 MW is not convincing. SoCal Edison claims that there is no support offered for the 500 MW exemption. However, the CAISO provided supporting data for the proposed exemption with the CAISO August 2007 Filing.[25] In contrast, SoCal Edison provides no support for lowering the exemption to 100 MW. The Commission continues to find that it is appropriate to exempt from underscheduling penalties load serving entities with demand of 500 MW or less because of the limited impact such load serving entities could have on market prices and the disproportionate effect a percentage-based penalty trigger could have on such small load serving entities.[26] These features distinguish small load

[24] SoCal Edison August 18, 2008 Rehearing Request, Docket No. ER06-615-027, at 15 (citing Federal Power Act § 205, 16 U.S.C. § 824d(b)).

[25] CAISO September 2007 Filing, Attachment D at 4-5 (demonstrating what little effect 500 MW of load normally can have on price).

[26] July 2008 Underscheduling Order, 124 FERC ¶ 61,043 at P 32 (finding the exemption for small load serving entities necessary because "the interim plan was not intended to penalize small load serving entities that experience significant deviations based on relatively small changes in demand that cannot affect prices in the day-ahead market").

serving entities from those with demand above 500 MW, and renders the exemption consistent with the Federal Power Act.[27] Therefore, we deny rehearing on this issue.

### H. Alternative Proposal

29. SoCal Edison offers an alternative to reinstating the original free pass. SoCal Edison proposes that the Commission could require the CAISO to apply the five percent free pass to non-peak hours and either not apply, or apply a reduced free pass, to peak hours. SoCal Edison claims that such an arrangement would allow the Commission to accommodate inherent load forecast uncertainty during shoulder and non-peak hours to avoid underscheduling charges to scheduling coordinators due to conditions outside their control because load is variable during non-peak and shoulder hours.

### Commission Determination

30. SoCal Edison's alternative proposal is not acceptable. SoCal Edison fails to demonstrate that the present proposal, as accepted, is not just and reasonable. Therefore, SoCal Edison's alternative proposal does not alter the Commission's position on the accepted proposal.[28] Further, SoCal Edison's alternative still permits underscheduling beyond the 15 percent bright line and would not effectively discourage underscheduling. Further, SoCal Edison submitted no evidence that supports the contention that shoulder periods are more variable than any other periods. Moreover, the 15 percent threshold offers sufficient variability for all periods.

## III. Compliance Filing

31. On August 18, 2008, the CAISO submitted its compliance filing to eliminate the five percent free pass, as required by the Commission's July 2008 Underscheduling Order.[29]

---

[27] 16 U.S.C. § 824d(b) (2006); *see also* ISO New England, Inc., 122 FERC ¶ 61,016, at 61,050 (2008) (stating the Federal Power Act prohibits undue discrimination, not all differences in treatment no matter the justification).

[28] *Louisville Gas and Elec. Co.*, 114 FERC ¶ 61,282, at P 29 (2006) (stating "the just and reasonable standard under the FPA is not so rigid as to limit rates to a 'best rate' or 'most efficient rate' standard. Rather, a range of alternative approaches often may be just and reasonable.").

[29] CAISO's August 18, 2008 Compliance Filing, Docket No. ER06-615-028 (August 2008 Compliance Filing).

### A. Notice of Filing and Responsive Pleadings

32. Notice of the August 2008 Compliance Filing was published in the *Federal Register*, with interventions and protests due on or before September 8, 2008.[30] On September 8, 2008, PG&E and SoCal Edison filed timely comments. On September 19, 2008, the CAISO filed a motion for leave to answer and an answer to the comments.

### B. Procedural Matters

33. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the timely, unopposed motions to intervene serve to make the entities that made them parties to this proceeding.[31] Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to an answer or protest unless otherwise permitted by the decisional authority. We will accept the CAISO's answer because it has assisted us in our decision-making process.

### C. Comments and Answer

34. In their comments on the August 2008 Compliance Filing, SoCal Edison and PG&E continue to challenge the Commission's elimination of the five percent free pass, reiterating many of the same arguments they made in their rehearing requests concerning the July 2008 Underscheduling Order. They ask the Commission to reinstate the MRTU Tariff language as originally proposed in the September 2007 CAISO Filing.

35. In its Answer, the CAISO states that, while many of the issues commenters raise are the reasons why it had originally proposed the five percent free pass, many of these issues are beyond the scope of the compliance phase of this proceeding. The CAISO adds that incorporating commenters' suggestions could hamper the implementation of the interim underscheduling measures in time for MRTU go live. The CAISO states, therefore, that it would be appropriate to implement the interim underscheduling measures as already approved by the Commission. The CAISO further promises to monitor the underscheduling charges in the early months of MRTU and convene a stakeholder process if it determines that load serving entities are being inappropriately penalized.

36. In addition, the CAISO suggests further edits to the August 2008 Compliance Filing version of section 11.24.2 (Interim Scheduling Charge) of the MRTU Tariff. The CAISO states that its proposed modifications are necessary to make the tariff provision

[30] 73 Fed. Reg. 50,805 (2008).

[31] 18 C.F.R. § 385.214 (2008). PG&E and SoCal Edison timely intervened in the root docket of this proceeding, ER06-615-000.

clear and unambiguous, and to ensure that the penalty charge is calculated and understood appropriately without the five percent free pass.

**Commission Determination**

37. The Commission conditionally accepts the CAISO's August 2008 Compliance Filing. At the outset, we note that the purpose of a compliance filing is to make the modifications directed by the Commission, and the Commission reviews compliance filings to ascertain whether the modifications are appropriate.[32] Consequently, we reject the protests of SoCal Edison and PG&E because they constitute inappropriate collateral attacks on the July 2008 Underscheduling Order.[33] The appropriate procedural juncture at which these parties should have raised these concerns with the July 2008 Underscheduling Order is on rehearing of that order. Indeed, parties did raise these issues on rehearing of the July 2008 Underscheduling Order, and they are discussed in the determinations above.

38. Further, the Commission finds that the CAISO's proposed revision to section 11.24.2 of the MRTU Tariff clarifies the provision and better carries out the intent of the July 2008 Underscheduling Order.[34] Consequently, we direct the CAISO to submit tariff sheet(s) implementing its proposed modification within 30 days of issuance of this order.

The Commission orders:

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

---

[32] *AES Huntington Beach, LLC.*, 111 FERC ¶ 61,079, at P 60 (2005) (citing *Pacific Gas and Electric Company*, 109 FERC ¶ 61,336, at P 5 (2004)); *Midwest Independent Transmission System Operator, Inc.*, 99 FERC ¶ 61,302, at 62,264 (2002); *ISO New England, Inc.*, 91 FERC ¶ 61,016, at 61,060 (2000); *Sierra Pacific Power Co.*, 80 FERC ¶ 61,376, at 62,271 (1997); *Delmarva Power & Light Co.*, 63 FERC ¶ 61,321, at 63,160 (1993).

[33] *See Acadia Power Partners, LLC*, 106 FERC ¶ 61,215 (2004) (collateral attacks on Commission orders may not be made through protests to compliance filings).

[34] CAISO's September 19, 2008 Answer, Docket No. ER06-615-028 (proposing additional changes to the MRTU Tariff to ensure that the tariff language reflects the fact that elimination of the five percent free pass results in a charge that is immediately triggered in the event of underscheduling beyond the 15 percent threshold).

(B) The August 2008 Compliance Filing is conditionally accepted, as discussed in the body of this order.

(C) The CAISO is directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of the order.

By the Commission.

( S E A L )

Kimberly D. Bose,
Secretary.

Document Content(s)

19873860.DOC.....................................................1-14