

118 FERC ¶ 61,097
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket No. ER07-326-000

ORDER ON AMENDMENTS AND TARIFF REVISIONS

(Issued February 13, 2007)

1. In this order, the Commission accepts amendments to the California Independent System Operator Corporation (CAISO) Tariff,¹ including provisions relating to the 2007 Local and Significant Event Reliability Capacity Services Tariff (RCST) designations, effective January 1, 2007. Additionally, this order accepts revisions to the CAISO Tariff incorporating Commission-approved waivers from certain requirements of Order No. 676,² effective on July 1, 2006, as requested.

Background

2. In an order issued on April 26, 2001,³ the Commission established a prospective mitigation and monitoring plan for the California wholesale electric markets. One of the

¹ FERC Electric Tariff, Third Replacement Volume No. 1.

² *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676, 71 Fed. Reg. 26,199 (2006), FERC Stats. & Regs. ¶ 31,216 (Order No. 676), *order on reh'g*, Order No. 676-A, 116 FERC ¶ 61,255 (2006).

³ *San Diego Gas & Electric Co., et al.*, 95 FERC ¶ 61,115, at 61,355-57 (April 26, 2001 Order), *order on reh'g*, 95 FERC ¶ 61,418, *order on reh'g*, 97 FERC ¶ 61,275 (2001), *order on reh'g*, 99 FERC ¶ 61,160 (2002), *petition pending sub nom. Public Utilities Commission of the State of California v. FERC*, 9th Cir. Nos. 01-71051, *et al.* (placed in abeyance Aug. 21, 2002).

fundamental elements of the plan was the implementation of a must-offer obligation, pursuant to which certain generators serving California markets are required to offer all of their capacity in real time during all hours if it is available and not already scheduled to serve bilateral agreements. CAISO implemented the must-offer obligation beginning July 20, 2001.

3. In an order issued on June 17, 2004,⁴ the Commission recognized the California Public Utilities Commission's (CPUC) plan to phase in resource adequacy requirements and suggested that if CAISO determines that the resource adequacy requirements are sufficient to meet its operational needs, the resource adequacy requirements and obligations could replace the existing must-offer obligation.⁵ Additionally, on July 8, 2004,⁶ the Commission stated that if Independent Energy Producers Association (IEP) believed the current must-offer obligation to be unjust and unreasonable, it may make an alternative proposal.⁷ IEP did so in an August 26, 2005, Complaint against CAISO under section 206 of the Federal Power Act (FPA).⁸ The Complaint alleged that the existing must-offer obligation under the CAISO tariff is flawed and no longer just and reasonable. The Complaint also requested that the Commission direct CAISO to replace the existing must-offer obligation and related minimum load cost compensation tariff provisions with an interim set of tariff provisions.

4. On November 14, 2005, IEP requested that the Commission defer action on the Complaint pending settlement discussions with the parties.⁹ On November 18, 2005, Commission Staff convened a technical conference to discuss the issues raised in the

⁴ *California Independent System Operator Corp.*, 107 FERC ¶ 61,274 (June 17, 2004 Order), *order on reh'g*, 108 FERC ¶ 61,254 (2004).

⁵ See June 17, 2004 Order, 107 FERC ¶ 61,274 at P 26-28.

⁶ *California Independent System Operator Corp.*, 108 FERC ¶ 61,022 (July 8, 2004 Order), *order on reh'g*, 109 FERC ¶ 61,097 (2004).

⁷ July 8, 2004 Order, 108 FERC ¶ 61,022 at P 116.

⁸ 16 U.S.C. § 824e (2000).

⁹ IEP and CAISO filed joint motions to continue deferral of action on the Complaint on December 9, 2005, and on December 19, 2005.

Complaint. On March 31, 2006, the Settling Parties¹⁰ filed an Offer of Settlement (Offer of Settlement) that proposed the institution of a Reliability Capacity Services Tariff. The RCST, which was initially proposed by IEP in the Complaint, provides a backstop capacity procurement mechanism to the CAISO that includes provisions establishing: (1) must-offer capacity payment rates; (2) RCST rates due to designation resulting from a Significant Event; (3) RCST rates due to designation resulting from deficiency in Resource Adequacy showings; and (4) payments to frequently mitigated units. In addition, the RCST establishes cost allocation methodologies and governs the rules by which the CAISO can procure RCST capacity. The Settling Parties stated that the Offer of Settlement resolves the Complaint.

5. In a July 20, 2006 Order on Complaint and Offer of Settlement,¹¹ the Commission found that, under the then-current market design, the must-offer obligation did not adequately compensate generators for the reliability services they provide. The Commission found that generators under the must-offer obligation may not have sufficient opportunity to recover their fixed costs in the energy market, and, therefore, the compensation to generators under the must-offer obligation was no longer just and reasonable. However, the Commission was unable to find that the rates and cost allocation mechanisms under the Offer of Settlement are just and reasonable. Accordingly, the July 20, 2006 Order established paper hearing procedures to review evidence on whether the rates and cost allocation under the Offer of Settlement or some other rates and cost allocation are just and reasonable with respect to the must-offer obligation.

6. On September 27, 2006, the Commission issued an Order on Clarification as to the July 20, 2006 Order.¹² The Commission clarified, among other things, that the July 20, 2006 Order implemented the Offer of Settlement rates on an interim basis pursuant to Rule 602(h) of our regulations.¹³ The Commission also clarified that the July 20, 2006

¹⁰ The Settling Parties include IEP, CAISO, CPUC, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SoCal Edison).

¹¹ *California Independent System Operator Corp.*, 116 FERC ¶ 61,069 (2006) (July 20, 2006 Order).

¹² *California Independent System Operator Corp.*, 116 FERC ¶ 61,297 (2006) (September 27, 2006 Order).

¹³ 18 C.F.R. § 385.602(h) (2006).

Order directed CAISO to make a compliance filing to implement the Offer of Settlement Rates. Furthermore, the Commission clarified that, upon approval of the interim tariff sheets, CAISO will be authorized to implement all terms of the Offer of Settlement relating to the sale of capacity, and that all potential sellers of capacity under the RCST can collect the Offer of Settlement rates, if such an election has been made pursuant to the July 20, 2006 Order.

7. The Commission further clarified that, upon approval of appropriate interim tariff sheets, CAISO will have the authority to recover costs incurred through the payment of RCST charges according to the cost allocation methodologies set forth in the Offer of Settlement. The Commission clarified that all issues relating to cost allocation under the Offer of Settlement should be addressed in the paper hearing. However, since the Offer of Settlement did not propose a method for allocating certain RCST costs in 2007, the paper hearing would not address the 2007 allocation of these costs.¹⁴

8. On February 13, 2007, the Commission approved, with modifications, the contested Offer of Settlement filed in Docket No. EL05-146, on March 31, 2006.¹⁵ The Commission found that the RCST provisions are just and reasonable, but recommended modifying the Offer of Settlement with respect to two secondary provisions relating to mitigation measures and ancillary services dispatch decisions.

Notice of Filings, Responsive Pleadings, and Procedural Matters

9. Notice of the CAISO's December 15, 2006, filing was published in the *Federal Register*, 71 Fed. Reg. 78,177 (2006), with interventions and protests due on or before January 5, 2007. Timely motions to intervene were filed by the Modesto Irrigation District, the Northern California Power Agency (NCPA), the NRG Companies,¹⁶ the CEG Companies,¹⁷ Williams Power Company, Inc (Williams), and the California Electricity Oversight Board (CEOB). A timely motion to intervene and protest was filed jointly by six cities, including Anaheim, Azusa, Banning, Colton, Pasadena, and

¹⁴ September 27, 2006 Order at P 22.

¹⁵ *Independent Energy Producers Assoc.*, 118 FERC ¶ 61,096 (2007) (February 13, 2007 Order).

¹⁶ The NRG Companies include NRG Power Marketing Inc., Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Power LLC, and Long Beach Generation LLC.

¹⁷ The CEG Companies include Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.

Riverside, California (collectively Six Cities). Timely motions to intervene and comment were filed by SoCal Edison and the California Department of Water Resources State Water Project (SWP). A timely motion to intervene, protest and comment was jointly filed by the City of Santa Clara and the M-S-R Public Power Agency (collectively, M-S-R/City). A timely motion to intervene and request for clarification was filed by the Alliance for Retail Energy Markets (AREM). On January 22, 2007, CAISO filed a motion for leave to answer and answer to protests, comments and request for clarification.

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make NCPA, the NRG Companies, the CEG Companies, Williams, CEOB, Six Cities, SoCal Edison, SWP, M-S-R/City, and AREM parties to this proceeding.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by decisional authority. We will accept the CAISO's answer because it has provided information that assisted us in our decision-making process.

Description of the Filings

1. CAISO Proposed Revisions

12. On December 15, 2006, CAISO submitted the instant filing under section 205 of the Federal Power Act (FPA) to implement the 2007 cost allocation methodologies for the costs incurred while making 2007 Local and Significant Event RCST designations. The filing also includes amendments that reflect a Commission-approved waiver from certain requirements of Order No. 676.

13. The CAISO states that the proposed modifications to sections 43.2.1 and 43.8(3) of the CAISO Tariff permit the CAISO to make Local RCST designations in 2007 to address Local Resource Adequacy Requirement Deficiencies and to allocate any costs incurred for making 2007 Local RCST designations.¹⁸ The CAISO states that the proposed section 43.2.1 allows the CAISO to obtain the information it needs to determine whether 2007 Local RCST designations are necessary and also allows deficient LSEs to

¹⁸ Resource adequacy deficiencies arise when load-serving entities (LSEs) do not procure enough capacity to meet their resource adequacy requirements established by either the CPUC or Local Regulatory Authorities. See December 15, 2006 Filing at Master Definitions Supplement, Appendix A.

inform the CAISO of the timing and nature of any steps to be taken to correct such deficiencies. Furthermore, the CAISO states that section 43.8(3) of the CAISO Tariff will permit the CAISO to allocate Local RCST costs in an equitable manner, because the costs of Local RCST designations will be borne by the deficient LSEs that caused such costs to be incurred.

14. For the Significant Event RCST designations, the CAISO states that modifications to section 43.8(5) of the CAISO Tariff will permit the CAISO to allocate any costs incurred for making Significant Event RCST designations during 2007.¹⁹ The CAISO notes that the proposed methodology for the allocation of 2007 Significant Event designation costs is the same methodology that was proposed under the RCST for the allocation of 2006 Significant Event designation costs, except that the load ratio share is based on more recent coincident peak loads.²⁰

15. Finally, on a related matter, the CAISO explains that section 7.2.2.4 of the CAISO Tariff has been revised to reflect the Commission's granting of the CAISO's petition for renewal of waiver in Docket No. ER06-1094-009,²¹ and Commission approval of section 7.2.2.4 in Docket No. ER06-1395-000.²² The CAISO states that the present modifications reflect the Commission's directive to include the North American Energy Standards Board's (NAESB) revised Standard WEQ-006-4 in its Tariff.

¹⁹ Under the RCST, the CAISO can make Significant Event RCST designations if system conditions change significantly and the resources procured in meeting resource adequacy requirements are no longer sufficient to maintain reliability standards. *See also* CAISO October 20, 2006 Filing at Master Definitions Supplement, Appendix A.

²⁰ The CAISO explains that Significant Event costs will be allocated based on Scheduling Coordinators' 2007 Resource Adequacy (RA) Entity Load Share Percentage in the Transmission Access Charge (TAC) Area in which the Significant Events occurred. The 2007 RA Entity Load Share Percentage is calculated for each RA Entity by dividing the RA Entity's actual coincident peak Load in each TAC Area for 2006 by the total coincident peak Load of all RA Entities in the TAC Area in 2006.

²¹ *California Independent System Operator Corp.*, 117 FERC ¶ 61,196 (2006) (November 16, 2006 Order).

²² *California Independent System Operator Corp.*, Docket No. ER06-1395-000 (October 18, 2006)(unpublished letter order).

2. Request for Clarification, Protests, and Comments on the RCST Amendments

16. M-S-R/City and Six Cities note that the RCST provisions currently included in the CAISO Tariff are the product of a contested settlement proposal in Docket No. EL05-146, and that the Commission has not yet resolved the challenges to the proposed settlement raised by multiple interveners in that docket. Six Cities points out that they have requested rehearing of the Commission's July 20, 2006 Order, permitting interim implementation of the RCST provisions, subject to refund, on the grounds that section 206 of the Federal Power Act does not provide authority to implement relief in response to a complaint under that section until the Commission has issued a final order on the complaint and approved a compliance filing in response to such order.²³ Thus, Six Cities argues that the RCST provisions that the CAISO proposes to modify in this docket are not yet properly in effect.

17. M-S-R/City similarly notes that the Commission has not approved the RCST tariff provisions reflected in the CAISO October 20, 2006 compliance filing.²⁴ Furthermore, M-S-R/City contends that the July 20, 2006 Order clearly stated that the Commission could not find the rates and terms proposed in the settlement to be just and reasonable, and that the September 27, 2006 Order reiterated that the rates had not been shown to be just and reasonable, but purported to exercise powers under Rule 602(h)²⁵ to implement the rates on an interim basis, subject to refund. M-S-R/City points out, however, that the Commission did not approve the rates, but required a compliance filing containing interim tariff sheets, and stated that the CAISO could implement the terms, and collect the rates on an interim basis, subject to refund "upon approval of appropriate interim tariff sheets."²⁶ Given the unresolved nature of the paper hearing and compliance filing, M-S-R/City asserts that the appropriate manner to address changes to the interim tariff provisions would have been an amendment to the CAISO's October 20, 2006 compliance filing. Therefore, M-S-R/City concludes that the proposed RCST Tariff amendment

²³ See "Request for Rehearing on Behalf of the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California," *Indep. Energy Producers Ass'n v. Cal. Indep. Sys. Operator Corp.*, Docket No. EL05-146-000 (Aug. 18, 2006) in Docket No. EL05-146-000, 116 FERC ¶ 61,069 (2006).

²⁴ California Independent System Operator Corp. October 20, 2006 Filing, Docket No. EL05-146-000.

²⁵ 18 C.F.R. § 385.602(h)(1)(ii)(B) (2006).

²⁶ September 27, 2006 Order at P 14.

contained in the December 15, 2006 filing is premature, and, as a stand alone section 205 filing, is deficient, lacks support, fails to demonstrate just and reasonable rates and terms, and must be rejected.

18. SWP renews in its comments to the instant filing any objections it previously set forth in Docket No. EL05-146 and states that the instant filing will be affected by the outcome of Docket No. EL05-146.²⁷

19. In the alternative, Six Cities argues that if the Commission approves the proposed amendments, Six Cities does not object to the language of the amendments themselves, but do believe additional provisions are necessary to allow participation by stakeholders in the development of local capacity requirements. Six Cities asserts that in order to participate meaningfully in that process, stakeholders must have access to relevant technical information, and that to ensure this information is available to Local Regulatory Authorities and resource adequacy entities, as well as other interested stakeholders, additional provisions for the RCST are needed.²⁸

20. AREM and SoCal Edison argue that section 43.2.1 may cause unnecessary confusion and LSEs should not be required to re-submit their local resource adequacy criteria to the CAISO after the Commission approves the CAISO's tariff language. AREM and SoCal Edison argue that the CAISO is already aware of the local resource adequacy requirements established for LSEs subject to the CPUC's requirements. SoCal Edison states that LSEs have already made their local resource adequacy showings and that the CPUC has already adopted a local resource adequacy requirement for 2007. AREM and SoCal Edison request that the CAISO modify its tariff accordingly.

21. AREM also states that it does not oppose the January 1, 2007 effective date, but notes that the CAISO cannot issue 2007 Local RCST designations until it receives Commission approval of its RCST Amendments. Therefore, AREM expects that LSEs are to be billed only prospectively for any such designations.

3. CAISO's Answer

22. CAISO argues that the Commission carved out from Docket No. EL05-146 certain RCST cost allocation issues that the CAISO stated it would address in a separate filing under section 205 of the FPA. According the CAISO, the Commission made clear in its September 27, 2006 Order that the 2007 allocation of RCST costs fall outside the scope

²⁷ Cal. Dept. of Water Res. State Water Proj. January 2, 2007 Comments at 5.

²⁸ See Six Cities January 5, 2007 Protest at 6-8.

of issues to be addressed in Docket No. EL05-146, and are, therefore, addressed in the instant filing.

23. The CAISO also argues that Six Cities' proposal for additional RCST provisions relating to the access of technical information is entirely outside the scope of the 2007 Local RCST designation amendments. The CAISO explains that it did not propose any changes to the previously filed RCST tariff provisions regarding Local Regulatory Authorities' ability to determine a local capacity requirement. Additionally, the CAISO argues that an important element of the RCST settlement is that the CAISO can only designate Local RCST resources to the extent a Local Regulatory Authority in fact establishes local requirements and its LSEs are deficient in meeting such requirements. CAISO states that, while it has no objection to meeting with the Six Cities to discuss what additional information the CAISO can provide, subject to confidentiality requirements, the Six Cities' request for additional ISO Tariff changes should be denied.

24. In its answer to AREM and SoCal Edison, the CAISO states that it does not object to making the proposed tariff modification to section 43.2.1.

Commission Determination

25. In an order issued concurrently, the Commission determined that the RCST rates in Docket No. EL05-146 are just and reasonable.²⁹ Therefore, resolution of the issues in EL05-146 render moot the protestors' concern that the present docket's proposed 2007 cost allocation methodology is premature. Accordingly, the Commission accepts the CAISO's method for allocating costs for 2007 in the instant filing.

26. In response to Six Cities' request for technical information, we agree with the CAISO that Six Cities' request is beyond the scope of the instant proceeding. The proposed tariff provisions neither establish nor modify existing local resource adequacy requirements. Instead, the tariff provisions adopt existing local resource adequacy requirements established by either the CPUC or Local Regulatory Authorities. Additionally, the provisions establish the process for meeting these local requirements and define the methodology for allocating any costs incurred. Therefore, Six Cities' request to have the CAISO modify its tariff to provide certain technical information relating to the development of local capacity requirements is unrelated to the issues concerning the CAISO making 2007 Local RCST designations.

²⁹ February 13, 2007 Order.

27. While we will not direct the CAISO to modify its tariff, we continue to encourage the CAISO to make all information appropriate for dissemination available to its market participants. In its answer, we note that the CAISO states it is open to meeting with Six Cities to discuss what information the CAISO can provide. The establishment of effective local capacity requirements is in each parties' best interest, and we expect the CAISO to work with Six Cities in this regard.

28. We accept the CAISO's answer to AREM and SoCal Edison regarding tariff modifications to section 43.2.1, and accordingly, direct the CAISO to make a compliance filing within 60 days of the date of this order reflecting the proposed tariff modifications.

The Commission orders:

(A) The Commission accepts the December 2006 Local and Significant Event RCST Designation Amendments, effective January 1, 2007, as discussed in the body of this order.

(B) The Commission directs the CAISO to submit a compliance filing within 60 days from the date of this order with regard to section 43.2.1, as discussed in the body of this order.

(C) The Commission accepts revised section 7.2.2.4 to the CAISO Tariff to reflect certain Commission-approved waivers from certain of the requirements of Order No. 676, effective July 1, 2006, as requested.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.