

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

California Independent System Operator Corporation)))))	Docket No. ER06-615-__ Docket No. ER07-1257-__
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**REQUEST FOR CLARIFICATION OR REHEARING OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Section 313(a) of the Federal Power Act, 16 U.S.C. § 825/(a), and Rules 212 and 713 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.713, the California Independent System Operator Corporation (“CAISO”)¹ hereby submits this Request for Clarification or Rehearing of the Commission’s order issued on June 20, 2008, 123 FERC ¶ 61,285 (“June 20 Order”) conditionally accepting, subject to modification, the CAISO’s filings submitted in this proceeding on March 20, 2007, and August 3, 2007 (“August 3 Filing”). The CAISO seeks clarification or rehearing regarding the allocation to Metered Subsystems (“MSSs”) of the tier 2 Integrated Forward Market (“IFM”) Bid Cost Recovery (“BCR”) Uplift Payments costs. The CAISO is requesting clarification or rehearing because the Commission was not clear as to whether load-following MSSs should be completely exempt from the tier 2 allocation, should be charged based on their Net Negative Uninstructed Deviations (“NNUD”), or should be charged in some other manner. Moreover,

¹ Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the CAISO Tariff or, where appropriate, Market Redesign & Technology Upgrade (“MRTU”) Tariff.

while the Commission directed the CAISO to allocate those costs consistently with the MSS Agreement (“MSSA”),² the MSSA was written for the current CAISO market context which does not include a Day-Ahead energy market and, as such, does not address the allocation of IFM costs, let alone provide an exemption. The CAISO asks that the Commission provide guidance as to the appropriate allocation of tier 2 IFM BCR Uplift Payments costs. If the Commission intended that load-following MSSs be completely exempt from such costs or charged based on their NNUD, for the reasons further stated below, the CAISO respectfully requests that the Commission reverse that determination.

I. REQUESTS FOR CLARIFICATION AND SPECIFICATION OF ERRORS

The CAISO requests that the Commission clarify the manner in which IFM BCR Uplift Payment costs – specifically the tier 2 component of such costs – should be allocated to load-following MSSs. The Commission’s directives in Paragraph 153 are not sufficiently clear.

If the Commission intended in its directives in Paragraph 153 that load-following MSSs be exempt from allocation of tier 2 of the IFM BCR Uplift Payment costs or be charged those costs based on their NNUD, then the CAISO respectfully submits that the June 20 Order erred in the following respects:

- The Commission’s directives are based on an erroneously conclusion that provisions of the MSSA addressing the allocation of Real-Time Market costs, which were developed and approved by the Commission in the absence of a CAISO Day-Ahead energy market, should

² June 20 Order at P 153.

determine the allocation of IFM BCR Uplift Payment costs to load-following MSSs; and

- The Commission erroneously concluded that certain MSSs, because they follow their load in Real-Time, should be either exempt from the allocation of tier 2 of the IFM BCR Uplift Payment costs or charged based on their NNUD.

II. STATEMENT OF ISSUES FOR REHEARING REQUEST

1. Whether the Commission properly concluded that the MSS Agreement requires that load-following MSSs be exempt from the allocation of tier 2 of the IFM BCR Uplift Payment costs or be charged for such costs based on their NNUD, either of which conclusion would be inconsistent with previous rulings. See *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006); *Cal. Indep. Sys. Operator Corp.*, 105 FERC ¶ 61,091 (2003).

2. Whether it is consistent with cost causation and not unduly discriminatory to exempt an MSS that follows load from being allocated a share of tier 2 IFM BCR Uplift Payment in a manner comparable to such allocation to other Scheduling Coordinators. *Id.*

III. BACKGROUND

On February 9, 2006, the CAISO filed a proposed MRTU Tariff that included modifications to the then-current CAISO Tariff reflecting the numerous changes to the CAISO's market structure included in the MRTU proposal. On September 21, 2006, the Commission issued an order conditionally accepting the

MRTU Tariff for filing, subject to modifications.³ As defined in Appendix A of the MRTU Tariff, Bid Cost Recovery (“BCR”) is “[t]he CAISO settlements process through which Eligible Resources recover their Bid Costs,” and the Bid Costs are “costs for resources manifested in the Bid components submitted,” including Start-Up Cost, Minimum Load Cost, Energy Bid Cost, Pump Shut-Down Cost, Pumping Cost, Ancillary Services Bid Cost, and Residual Unit Commitment (“RUC”) Availability Payment. In the Order, the Commission noted that the CAISO stated that it has not had the opportunity to fully address how BCR costs should be allocated to MSSs, based on different elections, and promised to make a future filing addressing this issue. It directed the CAISO to make a compliance filing within 30 days after finalizing its proposal concerning how to allocate BCR costs to MSSs.⁴

The CAISO proposed its allocation in the August 3 Filing. Relevant for the purposes of this request, the CAISO proposed to allocate IFM BCR Uplift Payment costs to Scheduling Coordinators of MSS entities under the same two-tier process that would apply to other Scheduling Coordinators, with certain appropriate modifications to provide consistency with the other approved MRTU Tariff provisions for MSSs entities. In the first tier, all MSS entities – regardless of whether the MSS had elected load-following or non-load following, or gross settlement or net settlement – would be subject to the IFM BCR Uplift Payment obligation based on the difference between the total Demand scheduled in the Day-Ahead Schedule for the individual Scheduling Coordinator and the

³ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006) (“September 21 Order”).

⁴ *Id.* at P 646.

scheduled Generation from the Self-Schedules in the Day-Ahead Schedule of that Scheduling Coordinator, plus imports scheduled for that Scheduling Coordinator in the Day-ahead Schedule, adjusted for any applicable trades of IFM Load Uplift Obligations among Scheduling Coordinators. In the second tier, MSS Operators that elected both to not follow their Load and settle on a gross basis will be allocated the IFM BCR Uplift Payment amounts based on their Measured Demand, whereas MSS Operators that elected either to follow their Load or to settle on a net basis would be allocated based on their MSS Aggregation Net Measured Demand.⁵

The Northern California Power Agency (“NCPA”) did not object to most portions of the CAISO’s proposal, but protested the proposed allocation of tier 2 costs to load-following MSSs as inconsistent with the MSSA. It cited Section 13.10.2 of its MSSA, which provides:

NCPA may elect not to be eligible for recovery of Minimum Load Costs and not to charge the ISO for the Emissions Costs and Start-Up Costs of the Generating Units serving the Load of NCPA’s System. If NCPA makes such election, then the Scheduling Coordinator for NCPA as MSS Aggregator shall bear its proportionate share of the total amount of those costs incurred by the ISO based on NCPA as MSS Aggregator’s Net Negative Uninstructed Deviations.

In response to a reply by the CAISO, NCPA clarified that it did not challenge the allocation of tier 2 IFM BCR Uplift Payment costs as a general principle, as they reflected NCPA’s reliance on the CAISO system, but took issue with the inclusion of Minimum Load and Start-Up Costs in tier 2 as inconsistent with the MSSA.⁶

⁵ See June 20 Order at P 141.

⁶ See *id.* at PP 143-46, 148.

The Commission agreed with NCPA that its MSSA provides for a load-following option that exempts NCPA from recovery of minimum load and start-up. It stated that it “therefore reject[s] the CAISO’s proposal to allocate tier 2 IFM BCR Uplift Payment costs to load-following MSS entities that elected under their MSS agreement not to be eligible for recovery of certain costs in return for being required to pay imbalance charges only to the extent that they ‘lean’ on the CAISO grid.” The Commission directed the CAISO to honor the terms and conditions of the MSSA.⁷

IV. REQUEST FOR CLARIFICATION

The CAISO seeks clarification because Paragraph 153 is not clear and sufficiently specific as to how the Commission intends the CAISO to allocate tier 2 IFM BCR Uplift Payment costs to load-following MSSs. The Commission’s statement that it rejects the CAISO proposal to allocate those costs to “load-following MSS entities that elected under their MSS agreement not to be eligible for recovery of certain costs in return for being required to pay imbalance charges only to the extent that they ‘lean’ on the CAISO grid” might be read to imply that those entities are exempt from any tier 2 allocation, presumably because any leaning on the CAISO grid by such entities would be fully compensated through their payment of imbalance charges. Such a reading of the Commission’s statement would be illogical, however, because imbalance charges would not compensate the system for “leaning” that occurs in the IFM. As the CAISO explained earlier, entities may also “lean” on the CAISO system by not scheduling sufficient Generation in the IFM to cover their IFM-scheduled

⁷ *Id.* at P 153.

Load.⁸ Such leaning would be entirely within the Day-Ahead Market and thus could not be compensated through payment of Real-Time imbalance charges. Moreover, such an interpretation would be illogical as going beyond NCPA requested relief; NCPA did not challenge the CAISO's allocation of tier 2 IFM BCR costs in principle, but only the Minimum Load and Start-Up elements of those costs.

Alternatively, the Commission's statement quoted above might be read to imply that load-following MSSs should be allocated tier 2 IFM BCR Uplift based on their NNUD. This interpretation would also be illogical because it would also fail to address the way such entities may lean on the CAISO system in the Day-Ahead Market.

Given that neither of these two possible interpretations are consistent with the structure of the MRTU markets, the CAISO is not clear as to the Commission's intention regarding the allocation of tier 2 IFM BCR Uplift to load-following MSSs. Although the Commission directed the CAISO to "honor the terms and conditions of the [MSSA],"⁹ that directive does not help resolve the ambiguity. The MSSA never contemplated a CAISO market structure that includes a Day-Ahead energy market. In particular, Section 13.10.2 of the MSSA, on which the Commission relied, was written for the current CAISO market structure featuring only a Real-Time Energy market, to resolve the issue of IFM BCR Uplift allocation.¹⁰

⁸ See June 20 Order at P 148.

⁹ June 20 Order at P 153.

¹⁰ The MSSA does provide for a revision process to reflect the MRTU market changes. As discussed below, the Commission has previously recognized that not all

This MSSA language with respect to Minimum Load and Start Up cost allocation to load-following MSSs is appropriate and sufficient for the current real-time-only energy market structure because load following is inherently a real-time activity. It is therefore logical to use NNUD – a quantity that reflects participation in or “leaning on” the Real-Time market – to allocate any uplift payments associated with the Real-Time market. This MSSA language cannot be applied in a straight-forward manner to the allocation of BCR Costs associated with the IFM without ignoring distinctions between the IFM and the RTM.

A further complication would arise from trying to apply the existing language of the MSSA to the issue of IFM BCR Uplift cost allocation. As noted above, under MRTU BCR contains other elements in addition to the Minimum Load and Start-Up costs addressed by the NCPA argument. If the Commission intended, based on the existing MSSA language, that such MSSs only be exempt from charges relating to the Minimum Load and Start-Up Cost components of Bid Costs, the CAISO would face significant challenges to implement such an allocation approach, which may not even be feasible. Such an approach would require reconfiguring the previously-approved BCR Uplift cost settlement process for all Scheduling Coordinators so as to apply different allocation rules to different BCR cost elements, in an already complex process of calculating Bid Cost Recovery payments that involves netting of revenue shortfalls and surpluses across multiple market intervals.

terms and conditions of the MSSA can continued unmodified under MRTU. The CAISO and the MSS entities are currently engaged in the process of revising these contracts, and results will be filed with the Commission at least 60 days prior to MRTU start-up.

The CAISO therefore requests that the Commission clarify the manner in which it intends the CAISO to allocate tier 2 IFM BCR Uplift Payment costs to load-following MSSs.

V. REQUEST FOR REHEARING

In the event that the Commission intended that load-following MSSs that choose not to receive Minimum Load and Start-Up Cost payments either be exempt from the allocation of tier 2 IFM BCR Uplift Payment costs or be charged based on their NNUD, the CAISO seeks rehearing because the Commission erroneously relied upon the MSSA as requiring that result. The CAISO further requests that the Commission accept the CAISO's previously-filed tariff language (Section 11.8.6.4) as the appropriate allocation of IFM BCR Uplift costs to MSSs and other Scheduling Coordinators.

First, the existing language of the MSSA is logically constructed for a real-time-only Energy market with no consideration to a CAISO Day-Ahead Energy market, and therefore does not address allocation of costs related to the IFM. Section 13.10.2 of the MSSA addresses payments that the CAISO makes to Generators for Minimum Load Costs and Start-Up Costs. The CAISO made these payments when it directed a Generator to start and remain at Minimum Load under the must-offer requirement, so that the Generator would be available in Real-Time.

IFM BCR Uplift Payments are an entirely different construct. They address CAISO unit commitments and schedules established in the Day-Ahead Market. The Commission has previously recognized the different nature of these

costs. In response to the CAISO's February 9, 2006, MRTU filing, various municipal utilities argued that newly defined cost components in MRTU required clarification so as to avoid violating the intent of MSSA. They urged the Commission to direct the CAISO to amend the filing to assure that MSSs will not be allocated costs in violation of the terms of their MSSAs. In particular, they asserted that, under MRTU Tariff Section 11.8.6, a load-following MSS could be allocated IFM, RUC, and Real-Time Market Bid Cost Uplifts, which they asserted would be inconsistent with the MSSAs.¹¹

The Commission disagreed with the municipal utilities regarding their interpretation of the cost allocations under MRTU Tariff Section 11.8 and other sections. In the September 21 Order, it stated that these sections each introduced *new market features* for California. As such, it found that these market features are subject to Section 3.6 of the municipal utilities' MSSA (which is identical to that in the NCPA MSSA): "If components of the MRTU design are not known until after the execution of this [MSS] Agreement, the Parties agree to amend this Agreement in accordance with Sections 3.4 and 3.5.2." The Commission stated, "Clearly, the MRTU Tariff sections at issue here are new market design elements that were developed after the execution of the [MSSA] and are the type of future market design component contemplated by Section 3.6 of the [MSSA]."¹² The same charges are at issue here. The Commission cannot conclude that the MSSA controls the allocation of those charges when it specifically found to the contrary in the September 21 Order.

¹¹ September 21 Order at PP 636-37.

¹² *Id.* at P 645.

Second, the BCR Uplift Payments also differ from Minimum Load and Start-Up Costs paid to must-offer Generators because they reflect Minimum Load and Start-Up Costs only as *components* of the overall total Bid Cost. As noted above, BCR Costs include the Start-Up Cost, Minimum Load Cost, Energy Bid Cost, Pump Shut-Down Cost, Pumping Cost, Ancillary Services Bid Cost, and RUC Availability Payment. Energy Bid Cost is an amount equal to the integral of the Energy Bid for resources that have been selected through the IFM or RTM, *above PMin – i.e.*, above that amount of the Energy Bid that would be associated with Minimum Load and Start-Up.

Thus, BCR Uplift Payments are more analogous to the compensation currently paid to out-of-sequence dispatches – the as-bid price – or to the current Bid Cost Recovery mechanism applied to accepted Real-Time Energy Bids than to the Minimum Load and Start-Up Cost payments made to must-offer Generators. The bid costs recovered under these current mechanisms have embedded within them Minimum Load and Start-Up costs, comparable to the Bid Costs recovered through IFM BCR Uplift Payment costs. The only difference is that in today’s market Minimum Load and Start-Up costs are not explicitly identified as components of the bid. Under the current ISO Tariff provisions, as approved by the Commission,¹³ the portion of accepted bids costs above the Market Clearing Price (“MCP”) but below the Maximum Price¹⁴ is allocated to load-following MSSs *based on net metered Demand, i.e.*, in the same manner as the CAISO proposed to allocate tier 2 IFM BCR Uplift Payment costs to load-

¹³ *Cal. Indep. Sys. Operator Corp*, 105 FERC ¶¶ 61, 091 at P 99 (2003).

¹⁴ This is analogous to IFM BRC Uplift Payment costs, which may be described in simplified form as the net positive difference between Bid Cost and Market Revenue.

following MSSs.¹⁵ Yet, nothing in the MSSA has prevented this current allocation. Under these circumstances, it would be anomalous if the MSSA were deemed to preclude allocation of tier 2 IFM BCR Uplift Payment costs to load-following MSSs on the basis of net measured demand.

Third, the nature of an MSS's election not to receive Minimum Load and Start-Up cost recovery from the CAISO will work differently under MRTU than under the current market structure by eliminating the need for a one-time annual election. This difference will provide greater flexibility to MSSs as well as to other Scheduling Coordinators. As explained in the CAISO's Reply Comments, the Self-Scheduling provisions eliminate any need for a formal election by the MSS to receive or forego Start-Up and Minimum Load cost recovery, thus liberating the MSS entity from having to abide by a single annual election that applies for all hours of the year.¹⁶ More importantly, the Self-Scheduling provisions automatically provide the correct linkage between the eligibility of the MSS's Generators to receive BCR payments and the responsibility of its Load for BCR Uplift charges, as reflected in the CAISO's submitted tariff language (Section 11.8.6.4, 11.8.6.5 and 11.8.6.6). In the IFM, for example, an MSS Generator that submits a Self-Schedule for a portion of its capacity "elects" to receive neither Start-Up and Minimum Load cost recovery for the resource nor Energy BCR for the amount of its Energy Self-Schedule, while an equal amount of MSS Load in that settlement interval is exempt from allocation of tier 1 IFM BCR Uplift. At the same time, any remaining capacity of the Generator above its Energy Self

¹⁵ ISO Tariff Section 11.2.4.2.2.2.

¹⁶ See June 20 Order at P 147.

Schedule (plus any Ancillary Services Self Provision) can offer Energy Bids into the IFM and will, if dispatched, be eligible for Energy BCR and therefore will not count towards reducing the responsibility of the MSS's Load for Tier 1 IFM Uplift. Thus, the Self-Scheduling approach affords the MSS much greater flexibility than an annual election to use its generating capacity to either follow its Load or to participate in the CAISO market. Similarly, in the Real-Time Market, an MSS Generator for which the CAISO accepts a submitted Real-Time load-following Self Schedule or load-following instructions "elects" not to receive neither Start-Up and Minimum Load cost recovery nor Energy BCR for the amount of its Energy Self-Schedule or load following instructions, while an equal amount of the MSS's Real-Time Load will be exempt from the Real-Time BCR Uplift, as reflected in the modified NNUD calculation the CAISO has revised to comply with the Commission's order.¹⁷ The CAISO believes that this treatment of the Real-Time BCR Uplift and the use of Self-Scheduling and Real-Time Load following dispatch provisions to effect the "election" concept of the MSSA reflect an appropriate adaptation of the language of Section 13.10.2 for the MRTU context, focused narrowly and appropriately on the Real-Time Market only. As a result there is no disagreement between the MSSs and the CAISO regarding the Real-Time BCR Uplift cost allocation under MRTU.

Fourth, load-following by an MSS is properly viewed as a Real-Time activity and as such does not provide a permissible basis for discrimination in the allocation of IFM-related BCR Uplift costs. In particular, there is no cost-causation basis for discriminating between MSSs, load-following or otherwise,

¹⁷ *Id.* at P 152.

and other Scheduling Coordinators with regard to the allocation of tier 2 IFM BCR Uplift costs.

Although the Commission did not appear to rely explicitly upon such arguments, NCPA has contended that cost causation principles embodied in the MSSA prohibit the CAISO's proposed allocation of tier 2 IFM BCR Uplift Payment costs. Section 3.5.2.1 of the MSSA provides:

Cost Causation: The intent of the Parties is that ISO charges will be charged to the Scheduling Coordinator for the MSS Operator, based on the principle of cost causation, with due regard for historic considerations, timing and transition issues, and other relevant factors.

On the face of this provision, cost causation must take into account many factors, not just an assertion by an MSS that it is to be exempt from "socialized" costs. Indeed, the Commission has repeatedly made clear that cost causation principles do not just reflect "but for" causation, but involve determination of the parties that are benefiting from the service provided.¹⁸ In this case, as the CAISO explained, the tier 2 IFM BCR Uplift Payments are associated with CAISO actions such as committing generating resources to resolve congestion and ensure the reliability of the entire CAISO grid, which benefit *all* users of the CAISO controlled grid.¹⁹ This is the same reasoning that the Commission accepted in approving the current allocation of above-MCP bid costs according to measured demand (net in the case of a load-following MSS), as discussed

¹⁸ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 103 FERC ¶ 61,114 at P 26 (2003); *W. Mass. Elec. Co.*, 66 FERC ¶ 61.167 (1994), *aff'd W. Mass. Elec. Co. v. FERC* 165 F.3d 922 (D.C. Cir. 1999).

¹⁹ See *June 20 Order* at P 148.

above.²⁰ There is no reason to apply cost causation principles differently here. In particular, there is nothing in the activity of a load-following MSS that reduces the benefit the MSS receives.

Even if one considers only “but-for” causation, load-following does not justify an exemption from IFM BCR Uplift costs. Load-following is a Real-Time activity, does not reduce the IFM BCR costs the CAISO would otherwise have incurred. Any reduction of CAISO forward costs by the MSS will be accurately reflected in the linkage discussed above, between the MSS’s (or any other SC’s) Self-Scheduling of its supply resources and the calculated responsibility of its Load for tier 1 of the IFM BCR Uplift or the RTM BCR Uplift.

²⁰ 105 FERC ¶ 61, 091 at P 99.

V. CONCLUSION

For the reasons discussed above, the CAISO asks that the Commission provide guidance as to the appropriate allocation of tier 2 IFM BCR Uplift Payments costs to load-following MSSs. If the Commission intended that load-following MSSs be completely exempt from such costs, or be charged based on their NNUD, or be charged only for the Minimum Load and Start-Up elements of those costs, the CAISO requests that the Commission reverse that determination and accept the CAISO's proposal as reflected in the previously submitted Tariff Section 11.8.6.4(ii).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service lists in the 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 at Washington, D.C., this 21st day of July, 2008.

/s/ Bradley R. Miliauskas
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