119 FERC ¶ 61,164
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 No. ER07-648-000

ORDER CONDITIONALLY ACCEPTING TARIFF AMENDMENTS, SUBJECT TO MODIFICATIONS

(Issued May 18, 2007)

1. On March 22, 2007, the California Independent System Operator Corporation (CAISO) filed a proposal to revise the methodology for assigning transmission import capability into the CAISO Control Area to Load Serving Entities (LSEs) for resource adequacy reporting and compliance purposes (Import Capability Assignment Amendments). Under this methodology, the CAISO proposes an accounting mechanism to assign import capability on the basis of load ratio share while respecting contractual transactions in order to maintain reliability of the CAISO-controlled grid. In this order, the Commission conditionally accepts the Import Capability Assignment Amendments, subject to modifications, effective May 22, 2007, as requested.

I. Background

2. On February 9, 2006, the CAISO filed its Market Redesign and Technology Upgrade (MRTU) Tariff proposal, including a methodology for assigning resource adequacy import capacity. In its September 21, 2006 Order, the Commission directed Commission staff to convene a technical conference to further develop the CAISO's proposed resource adequacy import capacity methodology.[1] On December 11, 2006, the CAISO made an informational filing with the Commission that enumerated a process for the allocation of resource adequacy import capacity, which was built on the methodology

[1] *California Independent System Operator Corporation*, 116 FERC ¶ 61,274, at P 1226 (2006) (September 2006 Order), *order on reh'g*, 119 FERC ¶ 61,076 (2007).

that the Commission approved as part of the CAISO's Interim Reliability Requirements Program (IRRP).[2]

3. As directed, Commission staff held a technical conference on February 1, 2007. The CAISO states that the technical conference identified certain areas of consensus, including: (1) parties generally agreed that the IRRP amendments, rather than the present MRTU Tariff, are the best foundation for the allocation methodology; (2) the CAISO can improve the IRRP amendments by applying a "load share" cap of some kind; (3) questions focused on honoring existing resource commitments, future resource commitments, and trading need to be addressed by the CAISO; and (4) parties and Commission staff supported an expedited filing process in order to meet the procurement deadlines for 2008.

4. On March 22, 2007, the CAISO filed a proposal to amend its resource adequacy import capacity allocation methodology.

Overview of the CAISO Proposal

5. In its proposal, the CAISO states that the "underlying objective of resource adequacy is to ensure that sufficient resources are available when needed to reliably operate the transmission system and serve Load."[3] The CAISO is establishing the Import Capability Assignment Amendments under CAISO tariff section 40.5.2.2 to allow it to assess and account for the deliverability of imports. The CAISO notes that the Import Capability Assignment Amendments do not affect physical transmission capability of the CAISO-controlled grid, transmission rights, or the manner in which transmission service is obtained under the CAISO tariff. Rather, the amendments only apply to the right to "count" resources that require import capability over the interties for resource adequacy reporting obligations as part of a forward planning process.

6. The CAISO proposes a 13-step process under section 40.5.2.2.1 for assigning resource adequacy import capability. Under the 13-step process, the CAISO will account for available import capability on the various individual transmission lines or branch groups into the CAISO Control Area first to holders of existing transmission contracts and other transmission ownership rights.[4] Once those existing transmission contracts and transmission ownership rights have been reserved, the CAISO will account for

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[2] *California Independent System Operator Corporation*, 115 FERC ¶ 61,172 (2006), *order on* reh'g, 118 FERC ¶ 61,045 (2007).

[3] CAISO March 22, 2007 Transmittal Letter, Docket No. ER07-648-000, at 3.

[4] For purposes of discussion, this order will refer to both existing transmission contracts and transmission ownership rights as existing contracts.

contractual resource commitments in place as of March 10, 2006. The CAISO defines these as pre-resource adequacy commitments. All import capability remaining after accounting for existing transmission contracts, transmission ownership rights, and pre-resource adequacy commitments will be assigned to load-serving entities (LSEs) on a load ratio share basis.[5] However, the CAISO will cap the accounting of this capability at the greater of the capability received through existing contracts and pre-resource adequacy commitments or the load ratio share of the LSE seeking an assignment. LSEs can then assign the import capability received under this step to desired branch groups.

7. In instances where a branch group is oversubscribed, whether at the contract/commitment stage or later remainder import capability accounting stage, the available capability will be accounted for based on load ratio share. The CAISO will perform the accounting on an annual basis and it will be valid for a one-year term. The CAISO notes that the Import Capability Assignment Amendments allow for the transfer of import capability after completion of the CAISO's assignment process.

II. Notices and Interventions

8. Notice of the CAISO filing was published in the *Federal Register*, 72 Fed. Reg. 15,133 (2007), with interventions, comments, and protests due on or before April 12, 2007. The California Electricity Oversight Board, Williams Power Company, Inc. (Williams), Sacramento Municipal Utility District (SMUD), Modesto Irrigation District (Modesto), Western Area Power Administration (Western), Pacific Gas & Electric Company (PG&E), the Alliance for Retail Energy Markets (AReM), Six Cities,[6] the City of Santa Clara doing business as Silicon Valley Power (SVP), California Municipal Utilities Association (CMUA), Powerex Corporation (Powerex), Northern California Power Agency (NCPA), Constellation,[7] NRG Companies,[8] the California Public Utilities Commission (CPUC), and Southern California Edison Company (SoCal Edison) filed motions to intervene. On April 27, 2007, the CAISO and NCPA filed answers.

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[5] Load ratio share is the measure of an LSE's load in relation to the total coincident peak load of the CAISO Control Area.

[6] Six Cities include the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California.

[7] Constellation includes Constellation New Energy, Inc. and Constellation Energy Commodities Group, Inc.

[8] NRG Companies include NRG Power Marketing, Inc., Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Power LLC, and Long Beach Generation LLC.

III. Discussion

Procedural Issues

9. 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 the entities that filed them parties to this proceeding.

10. 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 the decisional authority. We will accept CAISO and NCPA's answers because they have provided information that assisted us in our decision-making process.

Substantive Issues

11. The Commission conditionally accepts the Import Capability Assignment Amendments, subject to the modifications discussed below. The CAISO's proposal provides for the assignment of import capability for resource adequacy purposes on the basis of load ratio share while respecting contractual transactions in order to maintain reliability of the CAISO-controlled grid. The CAISO proposes to assign import capability on the basis of the size of a LSE's needs and the way that costs are contributed to the transmission grid, while at the same time acknowledging historic usage. Therefore, we find that this process is just, reasonable, and not unduly discriminatory. Below, we address specific concerns and comments raised by intervenors.

A. Transfer of Import Capability

12. The CAISO states that the Import Capability Assignment Amendments explicitly provide for the transfer of import capability after completion of the CAISO's assignment process. The CAISO proposes to implement a registration process, under tariff section 40.5.2.2.2, that relies on decentralized bilateral transfers of import capability among market participants that are reported to the CAISO.

13. The CAISO states that, to be eligible to transfer, holders of import capability must first register with the CAISO by providing their names and contact information. The CAISO would then make this information available on its website and update the information on a monthly basis to facilitate the identification of potential trading partners. For each transfer, the Scheduling Coordinator for the LSE or market participant receiving the import capability must report to the CAISO the following information: (1) identity of the parties to the transfer; (2) megawatt (MW) quantity; (3) branch group on which the transferred import capacity has been assigned; (4) classification of import capability; (5) term of the transfer; and (6) price per MW. The CAISO proposes that this information

not be published, but instead be included in reports to the Commission on at least a semi-annual basis.

14. The CAISO argues that the protections in CAISO tariff section 40.5.2.2 adequately mitigate against potential abuses while not requiring additional modifications to the CAISO systems. Given the CPUC's resource adequacy program deadlines for the 2008 compliance year, the CAISO maintains that it must implement the Import Capability Assignment Amendments no later than July 2007. It asserts that this time constraint precludes any solution requiring new CAISO computer programming or other complex business process that may negatively affect implementation of MRTU. The CAISO also argues that its proposed reporting requirements for Scheduling Coordinators receiving import capability, which would ultimately be submitted to the Commission, provide sufficient regulatory oversight of the bilateral market. Finally, the CAISO notes that transfers of import capability are not an assignment of actual transmission rights or financial instruments such as financial transmission rights or congestion revenue rights.

Comments

15. CMUA, NCPA, and Six Cities express concerns about allowing LSEs to transfer or trade import capability. CMUA asserts that two LSEs in the CAISO Control Area represent approximately 80 percent of the load, and that, under the Import Capability Assignment Amendments, it is reasonable to assume that these LSEs will have a proportionate share of uncommitted import capability. CMUA argues that the potential for these LSEs to control most of the unused import capability may create opportunities for the exercise of market power and competitive advantages over other LSEs that may seek additional import capability. CMUA argues that, given this potentially dangerous market design flaw, "it is not consistent with the CAISO's burden to show that its filing is just and reasonable to point [to] software limitations."[9] Furthermore, CMUA argues that, despite the CAISO's reporting requirements, any anti-competitive behavior will already have done its damage by the time the transfers are reported by market participants, the CAISO performs its analysis, the results are submitted to the Commission, and the Commission is able to act.

16. NCPA argues that import capability is the functional equivalent or an essential attribute of transmission service because a failure to obtain import capability can mean that an existing resource that was previously relied upon to serve load is no longer countable for resource adequacy purposes and must be replaced with something else. NCPA concludes that any sales of import capability are subject to the Commission's jurisdiction under the Federal Power Act (FPA) and that a bilateral, unregulated market in these rights and their resale would violate FPA requirements. NCPA supports the

[9] CMUA April 12, 2007 Motion to Intervene and Protest, Docket No. ER07-648-000, at 6.

development of a platform where LSEs can post unused import capability and make it available to other LSEs, or even return it to the CAISO, but submits that these transfers should not be for financial gain.

17. Six Cities assert that allowing LSEs to sell import capability that they do not need to serve their own customers on any terms they choose, rather than establishing specified conditions for release of unneeded assignments back to the CAISO for reassignment to LSEs that need them, is inappropriate and will create opportunities for unjust, unreasonable, and unduly discriminatory exercise of market power. They argue that the administrative convenience cited by the CAISO does not constitute a lawful basis for accepting tariff terms that will allow abuses of market power, while *post hoc* reporting of information on trades does not provide an effective remedy against potential abuses of market power. Six Cities contend that, if the Commission allows a market for sale of import capability, it must conduct an analysis to determine whether such a market will be workably competitive or impose safeguards to prevent the exercise of market power.

18. Six Cities maintains that the Commission should require the following modifications. First, the Commission should cap the prices for sales of import capability at a reasonable level that will provide some economic incentive for LSEs to release unneeded import capability without imposing an undue burden on LSEs that seek additional import capability. Second, the CAISO should publish information to identify which branch groups have import capability that is not being used for resource adequacy purposes by the LSEs to which it was assigned and which LSEs are holding unused import capability. Six Cities contend that potential buyers of import capability have no assurance that they can assign the import capability they purchase through trading to any particular branch group. Third, Six Cities states that the Import Capability Assignment Amendments should be implemented only on an interim basis to allow for a reevaluation and potential modification of the import assignment process in advance of assignments for the 2009 resource adequacy year.

19. The CPUC argues that LSEs should not be permitted to transfer import capability associated with existing contracts, transmission ownership rights, or pre-resource adequacy import commitments, which the CPUC indicates appears to be provided for in step 8 and CAISO tariff section 40.5.2.2.2.1. The CPUC contends that the CAISO's proposal has afforded these arrangements a preferential status due to the reliance of the contracting parties upon these agreements. The CPUC asserts that this preferential status should not transfer to parties that did not rely upon the original agreement.

20. AReM argues that the price for import capability transfers should not be reported to the CAISO. It contends that the price of a transfer is irrelevant to resource adequacy counting or compliance and that publishing the price will reduce market efficiencies. AReM contends that LSEs holding an assignment in excess of their needs will be stuck with an unused asset if the price is too high.

Answers

21. The CAISO responds that concerns over trading are misplaced. It submits that the reasonableness of the initial allocation methodology, which is based in large part on the Commission-approved IRRP methodology, serves as the primary protection against the exercise of market power in the secondary market. The CAISO also asserts that the instant proposal is consistent with the approach under MRTU not to limit concentration levels of congestion revenue right (CRR) ownership and instead require all market participants to register changes in CRR holdings through the CAISO's secondary registration system.[10]

22. Furthermore, the CAISO maintains that the Commission's decision in Order No. 890 to lift the price cap for the reassignment of transmission capacity[11] supports the CAISO's approach. According to the CAISO, the Commission found, in Order No. 890, that a price cap in the secondary market was not necessary to ensure just and reasonable rates given: (1) the continued regulation of rates for primary transmission capacity; (2) reporting reforms, combined with enforcement proceedings, audits and other regulatory controls; and (3) competition among reassigning customers.[12] The CAISO contends that, in the instant proceeding, LSEs are similarly allocated, without cost, an appropriate share of import capability based on a regulated, Commission-approved process. The CAISO submits that it has provided for quarterly reports on transactions in the secondary market to assist the Commission in assessing the effectiveness of market forces and regulatory requirements to mitigate any exercise of market power. Finally, the CAISO argues that the import capability assignment process will lead to a significant number of LSEs holding import capability that could be available in the secondary market, thus offsetting to some degree the concentration of import capability in the two largest investor-owned utilities.

23. In response to the CPUC, the CAISO contends that step 8 does not provide for the transfer of import capability initially assigned based on existing contracts or pre-resource adequacy commitments. The CAISO explains that step 8 only provides for the transfer of remaining import capability, which is defined as the quantity of total import capability assigned to an LSE after the assignment of existing contract and pre-resource adequacy commitment import capability. The CAISO adds, however, that tariff section

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[10] *Citing* September 2006 Order, 116 FERC ¶ 61,274 at P 871.

[11] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *reh'g pending*.

[12] *Citing* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 809-11.

40.5.2.2.2.1 may still suggest that any type of import capability may be transferred under step 8 and therefore proposes clarifying language to remove any ambiguity.

24. On the larger question posed by the CPUC as to whether existing contract and pre-resource adequacy import capability should be transferable, the CAISO proposes to revisit the issue to the extent a substantial volume of such import capability changes hands.

25. In its answer, NCPA disputes the CPUC's characterization of rights based upon contracts existing before development of the resource adequacy program as due to "preferential status." It states that, rather than awarding special status, the CAISO is merely honoring contract obligations. NCPA states that the CPUC has no basis for distinguishing between allocations made on the basis of existing contracts and those made on the basis of load ratio share. It contends that, if the CPUC is advocating that rightsholders should lose the right to obtain an allocation for the same contractual right in next year's allocation round, the proposal is not acceptable. NCPA asserts that the CAISO's proposal to make rights transferable is a sensible means to ensure that unused capacity is available to the market.

26. NCPA asserts that these allocations for resource adequacy purposes function as transmission rights and are very important attributes of transmission rights, without which a particular generation resource can be rendered undeliverable. NCPA notes that the Commission has already found that the minimum resource adequacy requirements set forth in the MRTU Tariff have a significant effect on jurisdictional rates and services, and the terms for rights to count an imported resource will impact the cost of transmission in interstate commerce for the resources in question and the overall price for getting the power transmitted to load. NCPA states that this situation is similar to that found in *United Distribution Cos. v. FERC*.[13] According to NCPA, in *United Distribution*, petitioners contended that the resales of pipeline capacity were not sales of transportation service itself, but of the initial recipients' rights to transportation services, and therefore not within the Commission's jurisdiction.[14] NCPA states that the court found this distinction not to be a meaningful one. It states that, regardless of what format the Commission chooses to regulate transfers of allocated import capacity, the Commission cannot sanction bilateral transactions that are simply identified to the CAISO. In order for transfers to occur at just and reasonable rates, NCPA states that the CAISO must at least publicly post available capacity.

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[13] *United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996)(*United Distribution*).

[14] *Id.* at 1152.

Commission Determination

27. The Commission accepts as reasonable the CAISO's proposed transfer process for import capability, subject to modification as discussed below. We find that the CAISO's proposal is a rational approach that maximizes the use of import capability for resource adequacy purposes, by creating an efficient mechanism to transfer unused import capability among market participants. We concur with Six Cities that the prices for sales of import capability for resource adequacy purposes must be sufficient to provide an economic incentive for LSEs to release unneeded import capability and therefore reject NCPA's argument that entities should not be able to receive compensation for the transfer of import capability.

28. We find that neither a price cap nor a market power analysis is necessary to ensure just and reasonable rates for the transfer of import capability. As noted by the CAISO, in a similar situation, the Commission, in Order No. 890, lifted the price cap for the reassignment of transmission capacity. The Commission found that the price cap "served to reduce customer's transmission options and impaired the development of a secondary market for transmission capacity."[15] Order No. 890 also rejected the need for a market power analysis and instead relied on continued regulation of the rates for primary capacity, competition among reassigning customers, and enhanced regulatory oversight of the secondary capacity market.[16] We assess each of these safeguards in sequence below.

29. The "primary market" in the CAISO's proposed import capability assignment process is the initial assignment of import capability, which is performed on a load ratio basis and in a manner that respects contractual obligations. As noted above, we find the import capability assignment to be just and reasonable as it corresponds to the way that costs are contributed to the transmission grid while acknowledging historic usage. On the issue of competition, we find that the assignment method will ensure that import capability is distributed widely and therefore provide multiple opportunities for LSEs to trade. With respect to oversight, we believe that the CAISO's proposed registration process and reports to the Commission offer a good starting point for the establishment of an effective monitoring and oversight program. We will, however, require additional measures to ensure that participants do not exercise market power.

30. We direct the CAISO to post all bilateral transfers of import capability when they are submitted to the CAISO by the market participant receiving the transfer. Each transaction, including transfers in step 8 of section 40.5.2.2.1 and section 40.5.2.2.2, shall include the identity of the counter-party(ies), MW quantity, branch group assigned (if

[15] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 808.

[16] *Id.* P 809, 818.

applicable), term of transfer, and price per MW basis.[17] We reject AReM's suggestion to omit any price information regarding the posting of transfers. We find that full disclosure of information on reassigned import capability is necessary to effectively monitor transactions. We also believe that disclosure will promote competition, allow for efficient market operation, and provide customers with price transparency to aid them in making informed decisions. Further, as the Commission noted in Order No. 890, "With regard to confidentiality concerns, the Commission finds that the disclosure of reassigned capacity information is necessary for the Commission and market participants to effectively monitor transactions for undue discrimination and preference."[18] Given the implementation timeline for MRTU, we will not require the development of a platform for trading as NCPA suggests, but instead direct the CAISO to report on the feasibility and/or progress of such an option as part of its reports to the Commission.

31. We note that section 40.5.2.2.2.2 states that the CAISO will submit to the Commission a report of import capability transactions by Scheduling Coordinator on "at least a semi-annual basis." The CAISO's answer, however, refers to the submission of quarterly reports. We accept the CAISO's commitment to file quarterly reports. These quarterly informational reports shall include data on transfers received under step 8 in section 40.5.2.2.1 as well as under section 40.5.2.2.2.2. We believe that the transaction posting requirements directed above, together with the quarterly reports to the Commission, should address CMUA's concern that the CAISO's proposed monitoring program is insufficient to effectively monitor potential market power abuse.[19] We direct the CAISO to file amended tariff sheets reflecting these revisions within 30 days of the issuance of this order.

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[17] We note that the CAISO's proposed tariff language includes dates by which the LSEs must notify the CAISO of any transfers. We expect the CAISO to promptly post any information it receives in accordance with the proposed tariff language.

[18] *Id.* P 822. In Order No. 890, the Commission noted that its decision to require the disclosure of information was consistent with Order No. 2001 where similar concerns regarding information disclosure were raised, but the Commission found that the "disclosure would promote competition and make the market operate more efficiently." *Id.* (*citing Revised Public Util. Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, at P 94-129, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003)).

[19] We note that Order No. 890 provides similar provisions on monitoring and oversight. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 815, 817.

32. Six Cities request that the CAISO publish additional information as to which branch groups have import assignments that are *not* being used for resource adequacy purposes by the LSEs to which they are assigned. We believe that LSEs should be provided as complete information as is practical in order to assist them in obtaining additional import capability for resource adequacy purposes. This is especially important given that we are not requiring the use of a trading platform at this time, and all import capability transfers will be executed bilaterally. We direct the CAISO to post the recipient and quantity of assigned import capability by branch group and to indicate whether the assigned import capability is being used for resource adequacy purposes. We direct the CAISO to file amended tariff sheets reflecting these revisions within 30 days of the date of this order.

33. Six Cities also request that the Import Capability Assignment Amendments be implemented on an interim basis to allow for further reevaluation. We note that the CAISO developed the Import Capability Assignment Amendments for resource adequacy compliance year 2008 and beyond based on its experience with the 2007 IRRP; the CAISO also proposed modifications to the 2007 IRRP in response to stakeholder input. Furthermore, we believe that the posting of transfer data and the quarterly reports to the Commission provide sufficient monitoring and oversight. Accordingly, we find that Six Cities has not justified the need to implement the Import Capability Assignment Amendments on an interim basis.

34. The CPUC argues that import capability assigned on the basis of existing contracts and pre-resource adequacy commitments should not be traded. In order to maximize the use of import capability for resource adequacy purposes and to provide additional opportunities for trading, we will not impose such a restriction. We also note that any pre-resource adequacy commitment will be deemed to terminate and lose its priority status upon expiration of the agreement's original term, regardless of any renewal provision; this should mitigate to some extent the CPUC's concern. We, however, direct the CAISO to identify the initial basis for each import capability assignment that is transferred (e.g., existing contract, pre-resource adequacy commitment, remaining capacity) in its quarterly reports to the Commission. We also agree with the CAISO's suggested clarifying language to section 40.5.2.2.2.1 and direct the CAISO to make this change as part of a compliance filing within 30 days of the issuance of this order.

B. Oversubscription of Branch Groups

35. The CAISO states that all pre-resource adequacy import commitments that participated in the IRRP assignment process for the 2007 resource adequacy compliance year were accommodated, but that a small number of pre-resource adequacy import commitments may exist that were not used during the 2007 resource adequacy compliance year and therefore were not reflected as part of that year's assignment process. To the extent that in the future import capability on a particular branch group is

insufficient to accommodate all pre-resource adequacy import commitment requests, the CAISO proposes to assign available import capability in step 4 based on the import capability load share ratios of each LSE submitting pre-resource adequacy import commitments on the branch group.

36. The CAISO also indicates that under the IRRP assignment process for the 2007 resource adequacy compliance year, available import capability remained unassigned following the iterative process in steps 9-12. As a result of stakeholder urging to include a means to obtain the unassigned import capability on a first-come-first-served basis, the CAISO states that it has incorporated a new step 13. Under step 13, the CAISO proposes to honor requests for residual unassigned import capability until such capability is exhausted in priority of the time the requests are received, without regard to a requesting LSE's load share ratio.

Comments

37. NCPA objects to using the load ratio share as a cap on import capability assignments to the extent that any branch group is oversubscribed with more requests than can be met. NCPA notes that oversubscription also could occur due to changes in system conditions. It asserts that the cap could inflict disproportionate costs on small LSEs because there are real limits on how small a resource or contract may become before it will no longer be viable. According to NCPA, limiting small LSEs to their load ratio shares at over-requested branch groups will inevitably result in the discounting of their generation assets or contracts for resource adequacy counting purposes. It argues that large LSEs with more extensive portfolios can more easily diversify their assets and contracts over different branch groups to stay within their load ratio share. NCPA suggests that the problem of an oversubscribed branch group should instead be handled by assigning all LSEs requesting at one branch group a *pro rata* share of the import capability based on their requests. NCPA adds that the same principle can be applied in step 9 when remaining import capability is assigned by branch group. SVP supports NCPA's comments.

38. The CPUC cites three concerns with the following language from the second paragraph of step 13 of section 40.5.2.2.1:

> If the request [for unassigned import capability] is not honored because the branch group requested was fully assigned, the request will be deemed withdrawn and the Scheduling Coordinator will be required to submit a new request for unassigned import capability on a different branch group.

39. First, the CPUC contends that the specification that the request may not be honored because the requested branch group was already fully assigned implies that there may be other reasons for the request to be denied. The CPUC therefore requests that the

tariff make clear whether the CAISO intends to deny requests for import capability for reasons other than full subscription of the branch group. Second, the CPUC requests that the CAISO change the term "deemed denied" to "rejected" or otherwise clarify whether there is any additional implication in the term "deemed denied." Finally, the CPUC requests that the CAISO make the Scheduling Coordinator's submission of a supplemental request optional rather than a requirement, or in the alternative, explain why the Scheduling Coordinator is required to submit a new request if its prior request was denied.

Answers

40. In response to NCPA, the CAISO contends that pre-resource adequacy commitments will be provided a priority in the assignment of import capability and therefore will likely be honored. With respect to remaining import capability, the CAISO argues that absent an auction, there is no way to determine the relative value placed on a branch group by LSEs. The CAISO concludes that its proposal to assign import capability in proportion to the relative size of the LSEs is the most equitable method and subject to the least potential gaming, and corresponds to need and contribution to the cost of the transmission grid.

41. In its answer, the CAISO also responds to each of the CPUC's concerns. First, on the issue of whether there might be other reasons for the CAISO to deny a request other than a branch group was over-requested, the CAISO disagrees with the CPUC and states that the language simply defines the only reason for the rejection. Second, the CAISO states that the terms "deemed withdrawn" is meant to have the same meaning as "rejected." The CAISO offers to change this language if so ordered by the Commission. Third, the CAISO notes that the CPUC does not understand why the Scheduling Coordinator would be "required" to submit a new request, rather than allowed to do so if it wants additional import capability. The CAISO states that it agrees with the CPUC that this is the intent of the language. Therefore, the CAISO proposes to modify this language to read:

> If the request is not honored because the branch group requested was fully assigned, the request will be deemed withdrawn and the Scheduling Coordinator, if it still seeks to obtain unassigned Available Import Capability will be required to submit a new request for unassigned Available Capability on a different branch group.

Commission Determination

42. We disagree with NCPA's proposal to assign import capability by branch on a *pro rata* basis. As noted by the CAISO, pre-resource adequacy commitments already receive a priority in the assignment of import capability in step 4 and should be honored. We

further reiterate that the import capability assignment process proposed by the CAISO is just and reasonable as it corresponds to the size of an LSE's needs and the way that costs are contributed to the transmission grid while acknowledging historic usage. We therefore reject NCPA's suggestion.

43. We next turn to the CPUC's requested clarifications in step 13. We agree with the CAISO that, on the issue of whether there might be other reasons for it to deny a request other than a branch group was over-requested, the proposed language merely defines the only reason for the rejection. Therefore, we find that there is no need to direct the CAISO to make any changes to its proposal regarding this issue. However, for the sake of clarity, we direct the CAISO to replace "deemed withdrawn" with "rejected" and otherwise incorporate the modification that the CAISO proposes in its answer. We direct the CAISO to file amended tariff sheets making these revisions within 30 days of the issuance of this order.

C. Assignment Preference for Future Resource Commitments

44. The CAISO states that it elected not to provide future resource commitments with an assignment priority similar to that accorded pre-resource adequacy import commitments. It states that the CPUC is currently examining the issue of multi-year resource adequacy obligations and requested that the CAISO forego adoption of elements in the import capability assignment process that might limit the flexibility of its deliberations. In addition, the CAISO submits that, absent the loss of respective load share, a LSE can be assured on a year-in-year-out basis that it will receive import capability in accordance with its load share.

Comments

45. SoCal Edison and PG&E urge the Commission to direct the CAISO to work in conjunction with stakeholders to develop a methodology that addresses the need to support longer-term contracting of resource adequacy import resources. They argue that assignments of import capability should match the term of resource commitments and support commitments to new generation. PG&E and SoCal Edison contend that LSEs should have the ability to obtain long-term resource adequacy import counting certainty on a branch group for new resource investments.

Commission Determination

46. We agree with the CAISO that, given the current CPUC proceedings on the issue of multi-year resource adequacy obligations, it would be premature to incorporate any such process into the Import Capability Assignment Amendments at this time. However, we also agree with SoCal Edison and PG&E that the potential for development of a methodology to address the need to support longer-term contracting of resource adequacy

import resources deserves further consideration. Therefore, we direct the CAISO to revisit this issue at the conclusion of the CPUC's proceedings on multi-year resource adequacy and work in conjunction with stakeholders to consider possible modification to the amendments.

D. Miscellaneous Issues

Comments

47. The CPUC urges the Commission to direct the CAISO to include tariff language that would allow for a change in the CPUC's resource adequacy program compliance period. The CPUC states that it is considering changing the compliance year for its resource adequacy program from January through December to a May through April compliance period in order to better coordinate with the California Energy Commission's load forecast procedures. It submits that the proposed tariff language that provides for an assignment of import capability on an annual basis for a one-year term appears to foreclose the CPUC's ability to change the timing. The CPUC explains that the shift to a May through April compliance period would result in the need to assign import capability for a period other than a one-year term at the time the shift in compliance period takes place.

48. The CPUC also argues that the definition of "RA Entity Load Share Percentage" in Appendix A of the tariff would perpetually permit the assignment of import capability based on 2005 LSE load shares. The CPUC suggests that the definition should be changed to refer to the most recent available data. This term could be defined in a business practice manual to permit the CAISO, the CPUC, and other Local Regulatory Authority to determine the appropriate data set as their respective resource adequacy programs develop.

49. The CPUC expresses concern about section 40.5.2.2.1, which provides that, to the extent that the CAISO's identifies a LSE that relies on import capability in an amount greater than the quantity assigned to the LSE, the CAISO will inform the CPUC or appropriate Local Regulatory Authority. The CPUC requests that the CAISO clarify that it is the duty of the CPUC to evaluate whether a LSE under its jurisdiction has complied with or violated the CPUC's criteria for excessive reliance on import capability to satisfy its resource adequacy requirements.

50. AReM is concerned about the CAISO's statement that eight LSEs are assigned import capability representing 240 percent of their load-ratio shares in aggregate. AReM argues that each excess assignment disadvantages other LSEs and their customers who are paying the embedded costs of the system but not receiving the commensurate benefits for that payment. It requests that the Commission order the CAISO to provide the total quantity of the excess import capability assignment in megawatts for each year until the

last contract terminates. AReM further suggests that, if the excess assignments persist for more than five years, the Commission consider ordering a phase-out mechanism that would provide adequate notice to the affected LSEs and allow for equal treatment for all LSEs in a reasonable time frame.

Answers

51. In its answer, the CAISO agrees with the CPUC that the coordination of resource adequacy programs is essential. It concurs that flexibility is necessary to accommodate a potential one-time extension of the CPUC compliance period to account for the redefinition of the CPUC's compliance year. The CAISO proposes to amend CAISO tariff section 40.5.2.2.1 to state:

> For Resource Adequacy Plans covering any period after December 31, 2007, total Available Import Capability will be assigned on an annual basis for a one-year term to Load Serving Entities serving Load in the ISO Control Area and other Market Participants through their respective Scheduling Coordinators, as described in the following sequence of steps. However, should the CPUC as part of CPUC proceeding R.05-12-013 modify by decision in 2007 its compliance period from January to December of the calendar year to May through April of the calendar year, the CAISO shall extend the effectiveness of the assignment for 2008 Compliance Year through April 2009.

52. The CAISO does not agree with the CPUC's concern about the definition of "RA Entity Load Share Percentage." Instead, the CAISO notes that this definition is not used for either the Import Capability Assignment Amendments or the import capability process. Instead, the definition is used in the context of the CAISO tariff provisions related to the Reliability Capacity Services Tariff (CAISO tariff section 43.7.2.3.1). As a result, it asserts that no change is needed to allow for the appropriate function of the import capability assignment process under the Import Capability Assignment Amendments.

53. The CAISO does not agree with the CPUC that the CAISO tariff should indicate that it is the duty of the CPUC to evaluate whether a LSE under its jurisdiction has met the CPUC's criteria for excessive reliance on import capability to satisfy its resource adequacy requirements. Instead, the CAISO states that, while it strongly agrees with the division of responsibility reflected in the CPUC's comments, it does not agree that it should amend the CAISO tariff as a result. It notes that the CAISO tariff governs the scope of the CAISO's affirmative authority. The CAISO tariff does not and should not indicate the duty of the CPUC or outline the scope of the prohibitions to CAISO action.

Commission Determination

54. The Commission agrees that coordination between the CAISO and the CPUC on resource adequacy issues is essential and, therefore, we accept the CAISO's proposal to amend tariff section 40.5.2.2.1 to commit to redefine the compliance year if modified by the CPUC. We direct the CAISO to submit tariff sheets modifying this provision within 30 days of the date of this order.

55. Given that the definition of "RA Entity Load Share Percentage" is unrelated to the Import Capability Assignment Amendments, we deny the CPUC's request to alter this definition.

56. We agree with the CAISO that its tariff delineates the affirmative duties of the CAISO. We further find that it is not necessary or appropriate to delineate the responsibilities and affirmative duties of the CPUC in the CAISO tariff. Therefore, we deny the CPUC's request.

57. While we do not take a position as to AReM's argument that excess assignments may disadvantage other LSEs and their customers, we believe the information that AReM requests will help all LSEs plan their future resource commitments. Therefore, we direct the CAISO to post on its website the total quantity of the excess import capability assignment in megawatts by branch group for each year until the last contract terminates. We further note that, if AReM continues to be concerned in the future about the excess assignments, it can file a complaint with the Commission regarding this matter.

The Commission orders:

The Commission hereby conditionally accepts the proposed amendments, subject to the modifications directed within the body of this order, effective May 22, 2007, as requested.

By the Commission.

(S E A L)

Kimberly D. Bose
Secretary