

**BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Promote)
Policy and Program Coordination and)
Integration in Electric Utility Resource)
Planning)
_____)

R.04-04-003

**OPENING COMMENTS OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ON THE DRAFT DECISION OF ALJ WETZELL REGARDING INTERIM
OPINION ON RESOURCE ADEQUACY FILED OUT OF TIME**

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The California Independent System Operator Corporation (“CAISO”) respectfully submits its comments on Administrative Law Judge (“ALJ”) Wetzell’s draft decision entitled “Interim Opinion Regarding Resource Adequacy,” mailed August 31, 2004, in the above-referenced proceeding (“Draft Decision”).¹ These comments are being filed two days out of time with permission from ALJ Wetzell, pursuant to Rule 48 of the Commission’s Rules of Practice and Procedure.²

I. Introduction

While there is little likelihood the Draft Decision will ultimately be compared

¹ Rule 77.3 of the Commission’s Rules of Practice and Procedure provides that comments in “major generic investigations” may not exceed 25 pages. The CAISO believes that this proceeding constitutes a major generic investigation and therefore allows for comments up to 25 pages in length.

² The CAISO’s comments were timely served on the parties on September 20, 2004. However, the comments were not accepted for filing by the Commission’s Docket Office until September 21, 2004, one day out of time. Accordingly, pursuant to Commission Rule 48, the CAISO sought, and received, permission from ALJ Wetzell to file the comments out of time. Other than referencing Rule 48 procedures, the body of the comments is identical to that served on September 20, 2004. The only other changes from the September 20 version are found in Appendix 1. These changes were required to correct for the inadvertent omission of the “redlined” modifications suggested by the CAISO to the Draft Decision.

with Neil Armstrong's first step on the moon, the Draft Decision nevertheless represents a "giant leap" in California's progress towards enhancing grid reliability and stabilizing its electricity markets. The CAISO commends the efforts of ALJ Wetzell and Commission staff and strongly advocates that the Draft Decision be adopted by the Commission with only minor modifications and clarifications, as discussed further below and set forth in Appendix 1.

The CAISO has consistently asserted that a comprehensive resource adequacy requirement is needed to (1) provide, in the long-term, a platform for investment in California's electric infrastructure, (2) support, in the shorter-term, reliable system operation, and (3) mitigate the amount and effect of market power by encouraging load serving entities ("LSEs") to enter into long-term contracts as well as by facilitating approval by the Federal Energy Regulatory Commission ("FERC") of more effective local market power mitigation measures. The Draft Decision, if adopted, will substantially advance these objectives. It does so by explicitly endorsing specific improvements to the Commission's prior *Interim Order* (D.04-01-050) on resource adequacy, including:

- Clarification that the 15-17% planning reserve requirement applies throughout the entire year and not just the May to September summer months;
- Acceleration of the phase-in to June 2006 for achieving full implementation of the planning reserve margin;
- Adoption of an obligation for LSEs to meet 100% of their planning reserve margin one month ahead of the operating month;³

- Imposition of a requirement that eligible capacity be made available to the CAISO either through LSE self-scheduling or bids into Day-Ahead markets;
- Recognition of the need for enforcement mechanisms and rational *ex ante* reporting guidelines; and
- Acceptance of the CAISO’s deliverability baseline analysis and the creation of a local reliability requirement as an integral part of resource adequacy.

The CAISO expressly and emphatically supports the foregoing elements of the Draft Decision. However, the CAISO does not attempt to discuss each issue addressed in the Draft Decision. To the extent the CAISO omits a discussion of a particular issue in these comments, it represents the CAISO’s assessment that the Draft Decision reached the optimal outcome on that issue or, if not the optimal outcome, then a reasonable and viable solution given the competing positions of the various interested parties.

Notwithstanding the CAISO’s strong support for the Draft Decision, the CAISO proposes the following modifications or clarifications:

- Dispatchable demand response and interruptible loads considered “resources” should not be exempted from the baseline for procurement of reserves and must be compatible with CAISO procedures and protocols;
- The quantity of load covered by Firm Liquidated Damages (“Firm LD”) contracts should be capped;
- All contracts, even those that are unit-specific, executed after the Commission’s decision and with a term extending beyond June 1, 2006, must include a provision requiring incorporation of any pro forma contractual terms adopted in Phase 2.

³ The Draft Decision states that “[w]hile we institute the month-ahead obligation for reasons of reliability, price stability, and revenue adequacy, *we remain open to exploring alternative forward commitment time frames.*” (Draft Decision, mimeo at 35 [emphasis added].) The CAISO agrees that it may be possible to subsequently fine tune the forward obligations imposed on LSEs. However, such fine-tuning should be based only on data regarding the actual market effects of the month-ahead obligation collected over a substantial period of time. Thus, the CAISO strongly opposes any implication that the month-ahead obligation is transitory or remains open to debate prior to implementation of the overall resource adequacy requirement.

- LSEs should acquire a mix of resources capable of satisfying the number of hours for each month that coincident loads are within 10% of the monthly system peak;
- There must be an explicit requirement that LSE's submit compliance filings on their month-ahead 100% capacity obligation; and
- Phase 2 tasks should be assigned to specific participants to this proceeding.

II. Improvements in the Draft Decision Are Critical to Maintaining Year-Round Reliability, Ensuring Supplier Revenue Adequacy and Supporting the CAISO's Efforts to Secure Meaningful Local Market Power Mitigation

The Draft Decision correctly recognizes that anything short of a year round reserve requirement and reliance on short-term markets for capacity needs will inevitably lead to a suboptimal and inadequate assurance of grid reliability.⁴ While certain parties may assume that adequate resources will be available for the non-peak months, there is no assurance of this outcome because resources may not be locked-up to serve California consumers. Not establishing a year-round reserve requirement could unnecessarily expose consumers to high spot market prices and potential curtailments. Blackouts can occur, and have occurred, during the off-peak winter months. Further price spikes regularly can occur –and have occurred – during the shoulder months, especially when there are heat waves, low hydro levels, and/or significant levels of capacity offline for scheduled outages.

The Draft Decision also reflects an understanding of the critical linkages between resource adequacy and the CAISO's overall market design and addresses deficiencies in the Commission's prior ruling in D.04-01-050. During California's efforts to develop

⁴ Draft Decision, mimeo at 9.

competitive electricity markets, local market power has been a chronic and widespread problem. One or more suppliers in transmission constrained areas frequently become pivotal to supplying the local load or addressing local reliability needs, thereby resulting in markets that are insufficiently competitive to discipline bids and ensure just and reasonable rates. The CAISO has repeatedly requested that FERC approve effective local market power mitigation measures as a component of its comprehensive market redesign⁵ and a complement to adoption of locational marginal pricing (“LMP”).⁶ To date, FERC has been reluctant to grant the CAISO’s requests, stating recently:

The Commission believes that the various elements of a regional market should work well together to produce an efficient, well-functioning wholesale market for the benefit of customers over the long-term. There are important inter-relationships among such wholesale elements as the energy market design, the system of congestion management, resource adequacy provisions, and means for mitigating market power. Achieving an appropriate balance among these factors is critical to a well-functioning wholesale market. As part of this balance, market power mitigation should address market power concerns without undermining incentives for new entry and long-term resource adequacy. And, as we have previously observed, the “resource adequacy measures adopted by the region must work together with the region’s market power mitigation measures to ensure that there are appropriate incentives to invest in sufficient infrastructure to maintain reliable and reasonably priced service to customers in the region.” [footnote omitted]⁷

Simply put, FERC desires to ensure that there are sufficient revenues from market operations (*i.e.*, “revenue adequacy”) both to support a supplier’s going- forward costs and attract additional investment in the system. In FERC’s view, given the presence of a

⁵ The CAISO’s market redesign efforts are subsumed within a larger project currently known as the “Market Redesign and Technology Upgrade” project or “MRTU.”

⁶ Locational marginal pricing “LMP” itself can address certain existing abuses that result from local market power. For example, an LMP pricing and congestion management scheme would eliminate the viability of the so-called “DEC” game.

⁷ *Further Order on the California Comprehensive Market Redesign Proposal*, 105 FERC ¶ 61,140 (Oct. 28, 2003), at ¶ 274.

mitigated spot energy market, a viable resource adequacy mechanism is necessary to ensure that suppliers have other means (*e.g.*, capacity payments) to recover their fixed costs.

Three elements of the Draft Decision are particularly important in ensuring revenue adequacy and the ongoing enhancement of California's electricity markets and the ultimate well being of California consumers. As such, these elements must remain inviolate in the Commission's final decision. The first critical element is the Draft Decision's clarification that the 15-17% planning reserve margin applies to the entire year (although the 90% forward commitment applies to the summer months of May through September). The second critical element is the Draft Decision's adoption of a month-ahead 100% capacity obligation. In support of the month-ahead commitment requirement, the Draft Decision notes, "[e]nsuring that sufficient capacity is committed to California should also enable California to avoid costly mechanisms, aimed at ensuring generator 'revenue adequacy,' that FERC is otherwise poised to impose on the CAISO market design."⁸ The third critical element is the Commission's commitment to imposing a local capacity requirement. These elements of the Draft Decision are fundamental to promoting revenue adequacy and obtaining meaningful local market power mitigation.

Obtaining adequate tools to mitigate local market power constitutes a critical objective of the CAISO's MRTU project. The CAISO believes that the directives articulated in the Draft Decision will satisfy FERC's concerns regarding supplier revenue adequacy and will justify FERC granting the CAISO effective local market power mitigation measures as part of MRTU.

⁸ Draft Decision, mimeo at 36.

Although the CAISO believes the Draft Decision forms a viable and solid framework for ensuring revenue adequacy in the market, the CAISO also believes that it may be necessary to develop a “backstop” mechanism to ensure that the CAISO can address concerns regarding the exercise of local market power (and thereby promote bilateral contracting) and the availability of critical resources – especially those in certain local areas – when needed by the CAISO for reliability. To that end, the CAISO is presently considering the development of new form of reliability tool that may either augment or succeed the existing Reliability-Must-Run (“RMR”) contracts. While the RMR contract has been a reasonably effective means to address certain of the issues discussed above (*e.g.*, local market power), the RMR Contract is not the ideal operational tool (*e.g.*, it cannot be used to address all operational requirements/needs) and does not establish a standardized or certain means to address local market power. Of course, as part of its deliberation on whether and how to move forward with this supplemental reliability tool, the ISO must consider how this tool will fit into, and be consistent with, the Commission’s larger resource adequacy framework.

III. The Record in this Proceeding Fully Supports Accelerating the Phase-in of the Planning Reserve Margin

The Draft Decision finds that “maintaining and enhancing grid reliability in the near term by accelerating the [planning reserve margin] requirement is of overriding importance.”⁹ The CAISO agrees and commends the Draft Decision’s adoption of June 1, 2006 as the date to achieve full implementation of the 15-17% planning reserve margin. This outcome is sound, and further protracted argument on this point is unnecessary. However, the CAISO notes that recent testimony by the IOUs on their

⁹ Draft Decision, mimeo at 14.

long-term resource plans confirms the feasibility of an early phase-in. For example, Mr. Fong Wan, witness for PG&E, corroborated CAISO's frequent contention that market conditions are currently favorable for procurement activities: "We certainly believe that we have been in an environment that's, pricing wise, quite favorable."¹⁰ Similarly, Mr. Robert Anderson of SDG&E acknowledged that an early phase-in would not result in modification of SDG&E's procurement strategy given that they anticipate being in compliance with the planning reserve margin by 2006.¹¹

IV. Full Phase-in Prior to Adopting Local Obligations Will Not Impose a Hardship on LSEs

As noted above, the CAISO strongly supports the Draft Decision's acceleration of the full phase-in of the planning reserve margin. The CAISO also applauds the Draft Decision's commitment to imposing a locational capacity requirement as an integral component of each LSE's resource adequacy obligation. The Draft Decision correctly observes that adoption of a local reliability requirement is fully consistent with prior Commission decisions.¹² Equally important, as discussed above, the commitment to implementing a local capacity requirement constitutes an essential predicate to ensuring an efficient market and the ability to secure effective local market power mitigation tools. Despite the irrefutable need for local reliability requirements, the CAISO understands the

¹⁰ R.04-04-003, Reporters Transcript, Vol. 4 at 598:16-18.

¹¹ R.04-04-003, Reporters Transcript, Vol. 1 at 124:18-26.

¹² See, D.04-01-050, mimeo at 129 [the Commission explicitly directed "the utilities to include a local reliability component in their next procurement plan."]; *Assigned Commissioner's Ruling and Scoping Memo*, (June 4, 2004) mimeo at Attachment A p. 9 "[f]inally, assume that in addition to a general service area-wide requirement, LSEs must satisfy a resource adequacy requirement for any load pockets in their service areas."; D.04-07-028, mimeo at 14 [stated the Commission's "intention to address local resource adequacy and deliverability."].

rationale for deferring development of the specific details of the local capacity requirement until other basic Phase 2 details are finalized. In this regard, the Draft Decision contemplates finalizing local reliability issues by the September 2006 compliance filings for 2007 summer months, after full implementation of the planning reserve margin on June 1, 2006.

The decision to stagger the commencement dates for the full planning reserve margin and local capacity requirements may trigger criticism or coordination concerns. Indeed, the CAISO noted in its comments on the *Administrative Law Judge's Ruling Requesting Additional Comments on Resource Adequacy Issues* that "if locational procurement requirements and an estimate of minimum quantities are not considered concurrently with LSEs' aggregate capacity procurement activities, the possibility of over procurement or inefficient procurement exists."¹³ It was on this basis that the CAISO advocated the immediate development of local capacity requirements to permit LSEs to incorporate those requirements in complying with the June 1, 2006 full implementation date. Notwithstanding the CAISO's prior comments, the CAISO believes that the schedule laid out in the Draft Decision is viable and should not lead to undue inefficiencies in LSE procurement.

Several factors support the CAISO's conclusion. First, LSEs possess substantial flexibility in their capacity procurement strategies. The Draft Decision grants LSEs the ability and the opportunity to fill-in 10% of needed capacity between the 90% year-ahead showing and the 100% month-ahead obligation. Accordingly, in the near-term, LSEs can

¹³ *Response of the California Independent System Operator to the Administrative Law Judge's Ruling Requesting Additional Comments on Resource Adequacy Issues*, R.04-04-003 (July 22, 2004) at 9-10.

secure capacity utilizing short-term transactions to minimize or eliminate the threat of stranded costs resulting from subsequently imposed locational capacity requirements. Second, the Draft Decision recognizes that the adopted year-ahead September 30 reporting date may not be appropriate or practical for identifying resources under LSE control for summer 2006. The Draft Decision, therefore, grants latitude to move the initial year-ahead showing closer to summer 2006.¹⁴ It is probable, therefore, that with the extension of time to procure and demonstrate compliance for summer 2006, sufficient progress in defining the parameters of local capacity requirements will have been made to allow LSEs to reasonably estimate the MWs potentially subject to any local capacity requirement. This, in turn, will allow LSEs to allocate this quantity of MWs to transactions with terms of one-year or less. Third, such a short-term strategy would be consistent with the near-term procurement plans as outlined by the IOUs in their long-term procurement plans.¹⁵ Thus, any claim that an accelerated phase-in is incompatible with adoption of local capacity requirements is exaggerated and should be disregarded.

V. Concern that Past Energy Efficiency Programs Were Not Designed for Resource Adequacy Does Not Diminish Their Value

The CAISO supports, in part, and opposes, in part, the Draft Decision's treatment of energy efficiency and demand response programs and resources. The CAISO agrees that any reduction in load forecasts based on energy efficiency programs requires

¹⁴ Draft Decision, mimeo at 14 ["As discussed further below, in Phase 2 we direct parties to develop a package of reporting requirements and an initial filing date that reveals resources under the LSEs' control for 2006. We expect that the second year's filing requirements, i.e. September 2006 filings for Summer 2007, may be enhanced to more fully reflect our long-term resource adequacy requirements."].

¹⁵ See, e.g., Southern California Edison Company's 2004 Long-Term Procurement Plan, R.04-04-003 (July 9, 2004), Vol. 2, at 1:14-16 ["SCE will not consider contract terms in excess of three years for nonrenewable resources due to debt equivalence limitations."]; Pacific Gas and Electric Company's Prepared Testimony, R.04-04-003 (July 9, 2004), Chapter 1, 9:6-8 ["PG&E's strategy over the next four years is to contract with existing market resources under short to mid-term contracts."].

threshold assurance that the programs are funded or otherwise bound by a clear legal obligation and that sufficient information exists on the programs to accurately assess their impacts. In regard to the latter requirement, the Draft Decision properly finds that the end-uses and pattern of hourly impacts must be specified for candidate programs.¹⁶ Although most, if not all, energy efficiency programs are designed to shave consumption during peak periods, the CAISO submits that the Draft Decision should clarify that only programs demonstrated to affect load during the expected top 10% of monthly system peak load conditions will be eligible to reduce the load forecast. Programs expected to reduce load during other periods remain valuable to LSEs in terms of minimizing energy costs. However, such programs should not be considered as reducing load for resource adequacy purposes, which focuses on ensuring sufficient capacity during those hours in which the system is within 10% of each monthly peak.

The Draft Decision classifies demand response programs as being either dispatchable or non-dispatchable. It places limits on the quantity of dispatchable capacity that can qualify for resource adequacy. The CAISO agrees that qualifying capacity from dispatchable demand response programs must satisfy a minimal seasonal performance level of 48 hours and that such resources can only account for .89% of the monthly system peak.¹⁷ These limitations are especially critical given the Draft Decision's conclusion that load forecasts should be net of non-dispatchable demand response programs and tariffs, including price responsive demand, and that dispatchable demand

¹⁶ Draft Decision, mimeo at 17-18.

¹⁷ *Id.*, mimeo at 24-25. It should be noted that such a limitation is an appropriate protection for reliability purposes because 2-hour products should not qualify for use beyond their designed duration. The CAISO analysis, set forth in Appendix G of the Workshop Report, showed that the top two hours of the system peak duration equates to .89% of the system peak load.

response programs, although treated as a resource, need not be backed by reserves.

The dichotomy set up by the Draft Decision potentially creates an undesirable incentive for LSEs to recruit primarily for the non-dispatchable programs that do not come with comparable limitations on total capacity. However, the potentially negative impact on reliability of such an incentive will admittedly be mitigated to the extent the expected performance of such non-dispatchable programs corresponds with actual performance. Accordingly, the Commission's commitment that all demand response programs be tested and verified is critically important to ensure the ability of LSEs to accurately predict the load reduction from such programs.

The CAISO disagrees with the Draft Decision's conclusion that dispatchable demand response will be "penalized" unless excluded from reserve requirements. The CAISO currently calls on load products, such as the existing interruptible programs, that clearly fit into the category of dispatchable load. However, the full amount of load "dispatched" from these programs does not exit the system and the CAISO must provide operating reserves to meet reliability criteria. To further explain, the many existing customer interruption programs were originally developed as extreme capacity relief measures to be used infrequently to address system emergencies resulting from forced outages or other contingencies. Thus, the routine forward procurement of resources should be measured against a "true" forecasted load value, not one distorted/discounted by rarely invoked programs. Moreover, demand response and interruptible loads operationally behave as a resource. Like traditional resources, demand response products can have "forced outages." For example, during Operating Reserve deficiencies the price may not be high enough for a particular demand response product to trigger and the load

would remain on the system. In such circumstances, the CAISO would be required to have sufficient energy and operating reserves to serve that price responsive load. Finally, LSEs traditionally do not explicitly categorize a portion of their load forecast as interruptible. Today, all loads in the control area are treated as firm and reserves are procured by the CAISO in compliance with the WECC Minimum Operating Reserve Criteria (“MORC”). Accordingly, the CAISO continues to recommend that dispatchable demand response and interruptible loads should be counted as a resource for which reserves must be procured.

Finally, for the CAISO to fully utilize dispatchable demand response programs, certain minimum requirements will need to be established, such as the load must meet an appropriate level of visibility for the CAISO Energy Management System, submit load bids and/or schedules consistent with the CAISO market design, respond to CAISO dispatch instructions, have interval metering and comply with applicable CAISO procedures and protocols. The Draft Decision should include in its direction to the inter-agency staff team supporting R.02-06-001, or its successor, that these minimum requirements be included in developing the guidelines and tariffs for such programs.

VI. Use of Firm LD Contracts Should be Capped

The Draft Decision properly restricts the ability of intra-control area system (or Firm Liquidated Damages of Firm LD) contracts to satisfy an LSE’s resource adequacy obligation. In particular, the Draft Decision provides that “no intra-control area system contracts written after 2004 should be eligible to count as qualified capacity in satisfaction of forward commitment obligations.”¹⁸ The CAISO agrees with the Draft

¹⁸ Draft Decision, mimeo at 21.

Decision that an absolute disallowance of existing Firm LD contracts would represent a hardship to LSEs and suppliers and that “grandfathering” existing contracts is therefore appropriate. However, the Commission should either (1) reconsider and adopt the proposal advanced by PG&E, ORA and TURN to impose a cap on the percentage of load, *i.e.*, 25%, that may be covered by Firm LD contracts or (2) advance to October 1, 2004, the final date for entering into eligible Firm LD contracts.

The CAISO is concerned that without some additional curb on the quantity of eligible capacity acquired through Firm LD contracts, LSEs and suppliers will rush to execute such contracts prior to the grandfathering deadline. As repeatedly emphasized by the CAISO throughout the Phase 1 workshops, and acknowledged by the Draft Decision, the inability to link a Firm LD contract to a specific physical resource virtually precludes applying a deliverability analysis to those contracts. The Draft Decision contemplates that after applying the relevant counting conventions, deliverability will form a secondary basis for potentially discounting the capacity value of a resource. Thus, an incentive exists for LSEs and sellers to enter into capacity transactions through Firm LD contracts, thereby defeating the ability to enforce deliverability requirements and the possibility of lowering a resource’s qualifying capacity.

By granting LSEs until the end of the year to execute Firm LD contracts, this threat is real. In Decision 03-12-062 on the IOU’s short-term plans, the Commission authorized the IOUs to enter into contracts in 2004 with terms up to five years, provided that delivery began in 2004.¹⁹ Further, the IOUs’ long-term procurement plans confirm the intent to meet resource needs in the near and intermediate term through 2008 by

¹⁹ See, D.03-12-062 (Dec. 18, 2003), Ordering Paragraphs 1-24.

means of power purchase agreements with existing suppliers. Indeed, the practical inability to develop new resources requires reliance on contract power during this period. Any potential complexity introduced by the 2004 delivery requirement can likely be surmounted by creative contractual terms. Alternatively, the 2004 delivery limitation could be removed by the Commission in response to SCE's pending petition requesting elimination of the 2004 delivery requirement.²⁰ The CAISO believes that SCE's requested modification is reasonable. However, as noted by the Draft Decision, the "[f]ailure of a resource to be deliverable undercuts the whole concept of resource adequacy."²¹ Thus, in order to preserve the efficacy of the Commission's proposed resource adequacy requirement, while permitting the flexibility requested in SCE's petition, the CAISO supports either grandfathering only Firm LD contracts in existence as of October 1, 2004,²² or imposing a cap on the percentage of load covered by such contracts.

VII. Contracts Entered Into After the Decision in this Proceeding and Prior to Completion of Phase 2 Must Explicitly Include a Provision Incorporating Phase 2 Pro Forma Contract Language

As noted above, the CAISO strongly supports the Draft Decision's adoption of a policy that requires qualifying capacity be made available to the CAISO through "[a] sequence of requirements to first be scheduled by the LSE, then bid into the Day-Ahead markets if not scheduled, and then be subject to RUC if the bid is not accepted."²³

²⁰ *Southern California Edison Company's Petition for Modification of Decision (D.) 03-12-062, R.01-10-024 (Feb. 19, 2004).*

²¹ Draft Decision, mimeo at 46, Finding of Fact 14.

²² The October 1, 2004 date is based on the premise that the Draft Decision put LSE's on notice that Firm LD contracts are disfavored, while providing time to finalize any pending negotiations.

²³ Draft Decision, mimeo at 39.

However, the next sentence of the Draft Decision is problematic. That sentence provides: “Contracts executed after completion of Phase 2 proceedings on this topic should include such provisions in order to be eligible to count as qualified capacity in satisfaction of forward commitment obligations.” The potential implication is that contracts executed prior to completion of Phase 2 need not include such provisions to nevertheless qualify as eligible capacity. Given that Phase 2 is not anticipated to conclude prior to mid-2005, this presents an enormous and highly damaging loophole.

The CAISO submits that this inadvertent gap can be filled by specifying that all contracts, even those that are unit-specific, executed after the Commission’s decision and with a term extending beyond June 1, 2006, must include a provision requiring incorporation of the contractual terms adopted in Phase 2. The CAISO recognizes that this may complicate negotiations among LSEs and suppliers. However, the Draft Decision, if adopted, provides sufficient guidance to permit parties to build into their transactions the necessary flexibility to accommodate the future provisions. The Draft Decision correctly notes “[i]t is pointless to create a body of resource adequacy requirements that create contractual obligations for generators to serve load, and then not require generators to do so.”²⁴ Unless the foregoing loophole is filled, the Commission’s resource adequacy requirements may be “pointless” and the policy goal adopted in Section 3.8.2 significantly undermined.²⁵

²⁴ *Id.*

²⁵ The CAISO recognizes that its concerns may be mitigated by Commission rejection of pending petitions by SCE and PG&E to modify D.03-12-062 and D.04-01-050, respectively. It is the CAISO’s understanding that if the petitions to modify are rejected that contracts entered into in the first three quarters of 2005 may not exceed one year.

VIII. Issues for Clarification

A. The Monthly Hour Requirement Requires Clarification

The CAISO supports the Draft Decision’s determination to base the LSEs’ resource adequacy obligation on a certain quantity of hours proximate to the CAISO’s system coincident monthly peak. However, the Draft Decision requires that, in order to meet this obligation, LSEs “acquire a mix of resources capable of satisfying the number of hours for each month that *their loads are within 10% of their maximum contribution to monthly system peak.*”²⁶ At worst, this statement conflicts with the accepted coincident peak analysis and the consensus understanding of the parties, as described in the Workshop Report and adds undue complexity that enhances LSE gaming opportunities. At best, the precise application of the statement is unclear and should be clarified.

The Draft Decision clearly requires that a coincidence adjustment for each LSE’s load forecasts be conducted and that the resulting LSE load at the time of monthly system peak serve as the basis for forward commitment obligations.²⁷ This properly provides that an LSE’s contribution to coincident system peak will determine the *quantity* of an LSE’s capacity obligation. But the number of hours the obligation must apply is not contingent on an LSE’s particular contribution to system peak or, more precisely, the number of hours the specific LSE’s load is within 10% of its maximum contribution to system peak. Rather, because the object of resource adequacy is to ensure reliable system operation, the LSE’s obligation is based on the duration that the system load is within 90% of the system coincident monthly peak.

²⁶ Draft Decision, mimeo at 10 [emphasis added].

²⁷ *Id.*, mimeo at 14-15.

The Workshop Report confirms that the “parties agreed that the number of hours per month a unit must be available to be counted should be based on the 1998-2003 average monthly number of hours that system load exceeded 90% of the monthly system peak, rounded to the nearest ten.”²⁸ The CAISO agreed to perform this calculation and concluded that for the summer peak season, the resource adequacy obligation came to 210 hours. This calculation was not set forth in Appendix G of the Workshop Report, as stated by the Draft Decision, but rather in the table on page 25 of the Workshop Report and it is that calculation that the CAISO should be instructed to perform for each month of the year. Further, it was not intended that the number of hours would vary from LSE to LSE or even from year-to-year. Indeed, hinging an LSE’s temporal obligation on the interplay between its own load forecast and the system forecast would unnecessarily increase administrative complexity and add an incentive for LSEs to manipulate its idiosyncratic load analysis.

However, under the Draft Decision’s formulation, an LSE’s obligation may change over time depending on changes in the characteristics of its load profile. The CAISO considers such an approach counterproductive. Variability in the number of hours associated with an LSE’s resource obligation will inject uncertainty that will work against the Commission’s objective to encourage long-term investment in infrastructure development or the Commission’s potential intent to adopt an explicit multi-year forward commitment. Accordingly, the CAISO recommends that Section 3.1 and Finding of Fact 1 of the Draft Decision be modified as set forth in Appendix 1.

²⁸ *Workshop Report on Resource Adequacy Issues*, R.04-04-003 (June 15, 2004), at 24-25.

B. Reporting Requirements for Monthly Obligation

The Draft Decision identifies the following as a Phase 2 topic on reporting requirements:

Resource tabulations showing how load forecasts and planning reserve requirements are satisfied for the hours of each month with loads 90% or greater than peak of the month, tabulations of the qualifying capacity of each resource under contract or the control of the LSE that is deliverable to load for each of these hours, and appropriate documentation.²⁹

The CAISO is confident that the foregoing statement acknowledges and encompasses a reporting obligation on LSEs to demonstrate compliance with the 100% month-ahead capacity obligation. Nevertheless, the Draft Decision's discussion adopting the 100% month-ahead forward capacity obligation fails to mention a concomitant reporting obligation.³⁰ Moreover, the Draft Decision's Conclusion of Law No. 27 states that "[w]e do not intend to conduct any prudency reviews as part of the annual RAR compliance filings."³¹ The CAISO believes that this conclusion, in the context of other statements and omissions in the Draft Decision regarding reporting requirements, creates ambiguities regarding (1) whether compliance filings will be mandated for the month-ahead capacity obligations and, if so, (2) whether a prudence review will be conducted for those monthly compliance filings. These ambiguities should be eliminated. The Draft Decision should explicitly direct LSEs to make monthly compliance filings to the Commission, which will be made equally available to the CAISO, and clarify that such filings will be subject to the same *ex ante* guidelines applicable to the yearly filings.

²⁹ Draft Decision, mimeo at 43.

³⁰ *Id.*, mimeo at 35-37.

³¹ *Id.*, mimeo at 51.

Without a month-ahead reporting requirement, the reliability, price stability and revenue adequacy benefits of the resource adequacy requirement largely evaporate. As recognized by the Commission in D.04-01-050, the benefits from resource adequacy accrue only if “capacity is available when and where it is needed.”³² The year-ahead 90% forward commitment does not by itself ensure that sufficient capacity will be available for reliable system operation. The procurement of the incremental 10% capacity is necessary to achieve this objective. Yet, absent a reporting requirement, no effective enforcement mechanism can be implemented to ensure compliance with this aspect of the resource adequacy obligation. It is imperative that the Commission and the CAISO have some means of ascertaining what resources will be available and whether LSEs have met their capacity requirements. Indeed, in its role as control area operator, the CAISO must have advanced information regarding resources that will be offered to satisfy loads to determine whether supplementary action is needed to ensure sufficient resources will, in fact, be available. Access to the monthly reports by the CAISO will also assist the Commission in monitoring LSE compliance with capacity obligations. Finally, if monthly reporting requirements are imposed, it is reasonable to treat such filings similarly to the yearly compliance filing by confirming that prudence reviews will not be conducted.

C. How to Apply Deliverability Screens to DWR Contracts

The Draft Decision allows the long-term contracts executed by the California Department of Water Resources (“DWR”) during 2001 to “be eligible” as a resource, “but that their qualifying capacity be determined by application of the deliverability

³² D.04-01-050, mimeo at 10-11.

screens that are ultimately adopted by this Commission.”³³ The CAISO supports this approach and the Commission’s unwillingness to “risk California’s grid reliability by ignoring contract features, such as deliverability, that can impact reliability.”³⁴ However, the CAISO notes that certain DWR contracts are not unit specific, but rather are Firm LD contracts “grandfathered” by the Draft Decision in Section 3.5.2 and to which application of the CAISO’s deliverability tests are incompatible. Therefore, the CAISO assumes, but believes it should be explicitly stated in the Draft Decision, that the non-unit specific DWR contracts will be treated or counted similarly to other Firm LD contracts and that the CAISO currently proposed deliverability tests are not intended to apply to all DWR contracts.

IX. Phase II Workshops Should Be Promptly Scheduled With Specific Assignments Directed to Particular Parties

In addition to the indispensable threshold policy and structural guidance provided by the Draft Decision, which the CAISO agrees advances the resource adequacy process “down the right path,” the Draft Decision defers critical implementation details and decisions to Phase 2 workshops. The Draft Decision recognizes that completion of Phase 2 by mid-2005 is necessary to achieve the full implementation milestone of June 1, 2006. The CAISO urges the Commission to commit to the mid-2005 timeline and establish a schedule to achieve that objective. In this regard, the CAISO makes several recommendations:

1. Schedule a realistic number of workshops to address the issues. The Draft Decision identifies a non-exhaustive list of 11 Phase 2 issues. Many of

³³ Draft Decision, mimeo at 27.

³⁴ *Id.*

these issues are complex and highly technical. Given that each issue realistically requires more than a single day to discuss and resolve, the Commission should be prepared to schedule a minimum of 20 workshops, starting in October 2004.


2. The Phase 1 workshops were more effective when the Presiding ALJ assigned specific workshop participants the task of developing “straw” proposals with regard to each issue. The Draft Decision has done this for some issues, but not all. The Draft Decision should be amended to do so or the subsequent Assigned Commissioner or Administrative Law Judge Ruling should assume this responsibility. These straw proposals should be distributed prior to the first workshop on the relevant topic.³⁵

X. Conclusion

For the foregoing reasons, the CAISO respectfully requests that the Commission adopt the Draft Decision with the modifications and clarifications discussed above and as set forth in Appendix 1.

September 22, 2004

Respectfully Submitted:

By: 
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³⁵ The CAISO appreciates that the Commission does not have jurisdiction to compel certain entities, i.e., Independent Energy Producers’ Association, to participate in its proceedings. Nevertheless, each of the parties listed on page 8 of the Draft Decision actively participated in the Phase 1 workshops and should be expected to be equally active in Phase 2. Accordingly, the CAISO recommends that straw proposals be assigned as set forth in Appendix 2 to these comments.

Appendix 1

PROPOSED CHANGES TO INTERIM OPINION REGARDING RESOURCE ADEQUACY

Section 3.1

Original at p. 10 – Modify

Thus, we will require LSEs acquire a mix of resources capable of satisfying the number of hours for each month that ~~coincident system their~~ loads are within 10% of ~~their maximum contribution to the~~ monthly system peak. To provide guidance about the general number of hours to be expected in each month, we ask that the CAISO repeat its analysis of historical data provided in ~~the table on page 25 Appendix G~~ of the Workshop Report for each month ~~of the year May through September.~~

Section 3.5.2

Original at p. 21 – Modify

Thus, no intra-control area system contracts written after October 1, 2004 should be eligible to count as qualified capacity in satisfaction of forward commitment obligations.

Or

Thus, no intra-control area system contracts written after 2004 should be eligible to count as qualified capacity in satisfaction of forward commitment obligations. However, we also agree with ORA, TURN and PG&E that the quantity of load exposed to such contracts written up through the end of 2004 should be capped at 25%.

Section 3.5.6

Original at p. 24 – Modify

Demand response has two fundamental issues that we address here: (1) whether to include it as a resource and how, and (2) determining the amount that can be included as qualifying capacity.

Earlier, we decided that demand response should be split between those non-dispatchable programs and tariffs that ought to be debited from load forecasts and dispatchable resources which will count as qualifying capacity. ~~We believe that demand response considered as a resource should not be penalized simply because it is not debited from load forecasts. All loads in the control area are treated as firm and reserves are procured by the CAISO in compliance with the WECC Minimum Operating Reserve Criteria (“MORC”). Accordingly, reserves must be procured for all dispatchable demand response and interruptible loads that are counted as a resource. Thus we direct that reserve requirements should not be imposed for demand response counted as resources. In other words, we do not impose reserve requirements on reserves.~~

Original at p. 25 – Modify

We direct the inter-agency staff team supporting R.02-06-001, or its successor, to assist in developing and/or reviewing assessments of these programs and developing practical guidelines for these programs and tariffs. In this regard, the inter-agency staff team, or its successor, must work with the CAISO to ensure

that any guidelines and tariffs developed for these programs are compatible with CAISO protocols and procedures.

Section 3.7.2

Original at p. 35 – Modify

We establish as month-ahead forward commitment and reporting obligation.

Section 3.8.2

Original at p. 39 – Modify

Contracts executed after completion of Phase 2 proceedings on this topic should include such provisions in order to be eligible to count as qualified capacity in satisfaction of forward commitment obligations. All contracts, even those that are unit-specific, executed after the Commission's decision and with a term extending beyond June 1, 2006, must include a provision requiring incorporation of any pro forma contractual terms adopted in Phase 2.

Section 4.1

Add at bottom of p. 43

In order to expedite the Phase 2 workshops and facilitate a decision on Phase 2 issues by mid-2004, the Commission assigns particular tasks to particular parties as set forth in Appendix 2. The Commission appreciates that it may not have jurisdiction to compel certain entities to participate in its proceedings. Nevertheless, each of the parties listed in Appendix 2 actively participated in the Phase 1 workshops and can be expected to be equally active in Phase 2.

Findings of Fact

1. Allowing LSEs to acquire a mix of resources capable of satisfying the number of hours for each month that coincident system their loads are within 10% of their maximum contribution to the monthly system peak.

Conclusions of Law

2. LSEs should acquire a mix of resources capable of satisfying the number of hours for each month that coincident system their loads are within 10% of their maximum contribution to the monthly system peak.

15. Intra-control area system contracts with liquidated damage provisions as compensation for performance failure written after October 1, 2004 should not be eligible to count as qualified capacity in satisfaction of forward commitment obligations.

Or

15. Intra-control area system contracts with liquidated damage provisions as compensation for performance failure written after 2004 should not be eligible to count as qualified capacity in satisfaction of forward commitment obligations. However, the quantity of load exposed to such contracts written up through the end of 2004 should be capped at 25%.

19. Because demand response considered as a resource should not be penalized simply because it is not

~~debited from load forecasts, reserve requirements should not be imposed for demand response counted as resources.—All loads in the control area are treated as firm and reserves are procured by the CAISO in compliance with the WECC Minimum Operating Reserve Criteria (“MORC”). Accordingly, reserves must be procured for all dispatchable demand response and interruptible loads that are counted as a resource.~~

22. The long-term contracts executed by DWR should be eligible as resources even if certain features would otherwise exclude a non-DWR contract with the same terms and conditions, but the deliverability screens that will be developed in this proceeding should be applied to them to the maximum extent possible and in accordance with the treatment of other intra-control area system contracts executed prior to 2004.

24. A 100% month-ahead forward commitment and reporting obligation is adopted for all LSEs.

26. We adopt this as our policy a sequence of requirements to first be scheduled by the LSE, then to bid into Day-Ahead markets if not scheduled, and then be subject to RUC if the bid is not accepted. All contracts, even those that are unit-specific, executed after the Commission’s decision and with a term extending beyond June 1, 2006, must include a provision requiring incorporation of any pro forma contractual terms adopted in Phase 2.

27. We do not intend to conduct any prudency reviews as part of the annual or month-ahead RAR compliance filings.

Appendix 2

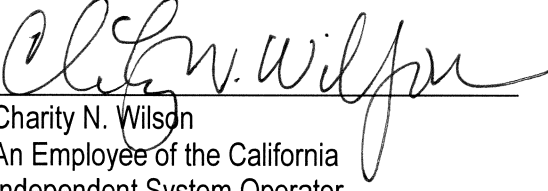
STRAW PROPOSAL ASSIGNMENTS

TOPIC	PARTY
Determination of number of hours for each month (excluding summer) loads are within 10% of monthly system peak (§ 3.1.)	CAISO
Reporting requirements (§4.1)	SCE, PG&E, SDG&E, AREM
Coincidence and energy efficiency and demand response impact allocation adjustment for LSE load forecasts (§3.4.1.)	CEC, CEERT,
Transmission loss methodology (§ 3.4.4.)	SCE
Development of typical patterns of energy production by classes of customers (§ 3.4.6.)	CEC and California Cogeneration Council
Quantification of demand response programs (§3.5.6.)	Inter-agency staff team supporting R.02-06-001
Counting generating facilities under construction	CEC and CAISO
Deliverability baseline analysis (§3.6.1)	CAISO
Import allocations (§3.6.1.)	CAISO and PG&E
Development of contract provisions (§3.8.2)	CAISO, SCE, PG&E and SDG&E and AREM
Methods for determining qualifying capacity of wind and solar without gas backup generators (§3.5.3.)	CEERT, TURN

CERTIFICATE OF SERVICE

I hereby certify that I have served, by electronic mail, a copy of the foregoing Opening Comments of The California Independent System Operator Corporation on Administrative Law Judge Wetzell Regarding Interim Opinion on Resource Adequacy Filed Out of Time to each party in Docket No. R.04-04-003.

Executed on September 22, 2004, at Folsom, California.


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