121 FERC ¶ 61,120
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation	Docket Nos. ER07-613-002 and ER07-613-001

ORDER DENYING REQUESTS FOR REHEARING AND CLARIFICATION, AND ACCEPTING FOR FILING COMPLIANCE FILING

(Issued October 31, 2007)

1. In this order, we deny requests for rehearing and clarification of a May 8, 2007 order[1] which conditionally accepted for filing, subject to modifications, the California Independent System Operator Corporation's (CAISO) proposed tariff amendments to incorporate certain provisions of the conditionally approved Market Redesign and Technology Upgrade (MRTU) Tariff[2] into the currently effective CAISO tariff. In this order, we also accept for filing a compliance filing submitted by the CAISO to reflect tariff revisions directed in the May 2007 Order.

I. Background

2. In the May 2007 Order, the Commission conditionally accepted for filing tariff modifications to incorporate certain provisions of the conditionally approved MRTU Tariff into the currently effective CAISO Tariff, to allow for an earlier effective date, prior to MRTU implementation. These tariff modifications address Transmission Rights and Transmission Curtailment (TRTC) Instructions for Existing Transmission Contracts (ETCs), Transmission Ownership Rights (TORs) and Converted Rights; certain Congestion Revenue Rights (CRRs) provisions and certain other miscellaneous MRTU provisions. In the May 2007 Order, the Commission directed the CAISO to submit a further compliance filing reflecting certain modifications. Some of these tariff

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[1] *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,124 (2007) (May 2007 Order).

[2] *See Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006) (September 2006 Order).

modifications were proposed by the CAISO in the original proceeding in response to comments and protests filed by intervenors; other modifications were directed by the Commission.

3. On May 23, 2007, in Docket No. ER07-613-001, the CAISO submitted a compliance filing, as directed by the May 2007 Order.

4. On June 13, 2007, in Docket No. ER07-613-002, the following parties submitted requests for rehearing and/or clarification of the May 2007 Order: Imperial Irrigation District (Imperial), the City of Santa Clara, California, doing business as Silicon Valley Power (SVP), and the California Department of Water Resources State Water Project (State Water Project).

II. Requests for Clarification and/or Rehearing

5. SVP seeks clarification of the May 2007 Order's directive for the CAISO "to consider whether modifications are necessary to section 16.4.5 to reflect flexibilities inherent in certain contracts, if the underlying contracts so provide."[3] Specifically, SVP requests that the Commission clarify that the CAISO must consider whether modifications are necessary to section 16.4.5 to account for ETCs that provide flexibility with respect to where power may come from (sources) and where it may be delivered (sinks). SVP explains that clarification is necessary because the CAISO's compliance filing fails to address the Commission's directive to consider whether or not its TRTC Instruction requirements needed to be modified to reflect ETCs impacted by the requirement to identify sources and sinks.[4]

6. On rehearing, State Water Project argues that the May 2007 Order failed to respond to its argument that requiring pre-identification of all generating units and loads potentially associated with ETC service denies State Water Project its contractual entitlement to flexible, network-like transmission service. State Water Project contends that the TRTC Instructions serve to restrict the use of ETCs to only pre-identified generating units and load at physical sources and sinks, which, in the State Water Project's opinion, is inconsistent with and thus violates State Water Project's contractual rights. According to State Water Project, TRTC Instructions determine ETC transmission rights and transmission curtailment, and, as such, the new information requirements directly affect the continued use of those rights. State Water Project states

[3] May 2007 Order, 119 FERC ¶ 61,124 at P 26.

[4] SVP also protests jointly with M-S-R Public Power Agency (MSR) the compliance filing, discussed below.

that although the May 2007 Order recognized that there may be some contracts for which the CAISO should provide special consideration, this recognition, according to State Water Project, does not cure the May 2007 Order's failure of reasoned decision making.

7. State Water Project also argues that the May 2007 Order determinations are not based on substantial evidence because the Commission failed to address the submitted affidavit showing that State Water Project has long used its ETC to deliver power to or from physical sinks or sources and it has not been required to pre-identify all physical generators or end users. State Water Project further states that the record developed in the Docket No. ER04-928 proceeding demonstrates that the ETCs do not require pre-identification of all possible "eligible physical resources" and "eligible physical sinks," as the new TRTC information requirements approved by the Commission would provide. State Water Project argues that these informational requirements limit the flexibility of its transmission service under its ETC.

8. Additionally, State Water Project argues that the new TRTC informational requirements result in an involuntary loss of its highest priority flexible firm transmission rights in support of a new form of MRTU financial transmission rights. State Water Project argues that the new informational requirements preclude the continued use of ETCs for deliveries to and from a variety of points and, as a result, force conversion of its ETC rights to financial rights in contravention of the Energy Policy Act of 2005 (EPAct 2005).[5]

9. Imperial requests that the Commission clarify that it intended to grant Imperial's protest and require the CAISO to amend its tariff to permit external load-serving entities (LSEs) to nominate trading hubs as CRR sources. In the alternative, Imperial states that if the Commission did not intend to grant Imperial's protest, Imperial seeks limited rehearing. Imperial explains that, by excluding external LSEs from nominating trading hubs for CRR allocation, the CAISO has given significant advantage to internal LSEs in the CRR allocation and nomination process. Imperial states that trading hub nominations allow LSEs to allocate CRRs in the early stages of the auction and allocation process and if internal LSEs are alone allowed to nominate trading hubs, then a significant amount of transmission capacity will be allocated to internal LSEs in the early rounds prior to participation by the external LSEs. Imperial states that this process is unduly discriminatory and will limit the available capacity that external LSEs are able to acquire.

[5] Pub. L. No. 109-58, 119 Stat. 594 (2005).

Commission Determination

10. In the May 2007 Order, the Commission concluded that the additional information sought by the CAISO "[would] allow the CAISO to incorporate the exact nature and use of [ETCs] into its market design."[6] The Commission further concluded that the additional information the CAISO proposed to collect is, "necessary for the CAISO to accurately reflect … existing rights."[7] We believe that by reflecting the parameters of the contract (as established by the contract provisions) in the TRTC Instructions preserves the contract rights within the CAISO's market design. Under MRTU, the CAISO's treatment of ETCs, TORs and Converted Rights is based on the specific contract provisions, and because most of the contracts are based on transmission principles that rely on the specification of physical sources and sinks, the May 2007 Order concluded that the identification of generating units and system resources and loads for appropriate points of receipt and points of delivery should not be burdensome for the majority of rights holders.[8] The May 2007 Order, however, recognized that some contracts warrant special consideration and directed the CAISO to consider whether additional modifications were necessary to reflect such flexibilities, if the contracts so provide.[9] As explained further below, the CAISO in its compliance filing proposes a modification to its data collection to specifically account for such flexibilities.

11. We also disagree with State Water Project that the identification of generating units and system resources limits its contractual rights. Rather, State Water Project must work with a Participating Transmission Owner (PTO) and the CAISO, if necessary, to develop the TRTC Instructions which are consistent with the terms of the existing contract. The additional data collection proposed in section 16.4.5(5) is necessary to preserve these rights so that the specified amount of transmission service from those specified sources and specified sinks receive priority scheduling and reversal of locational marginal pricing - related congestion charges. TRTC Instructions may also be changed or updated on an as needed or as required basis, as determined by the parties to

[6] May 2007 Order, 119 FERC ¶ 61,124 at P 24.

[7] *Id*.

[8] *Id*. at P 21.

[9] *Id.* at P 26.

the existing contracts.[10] For these reasons, we find that the additional data collection by the CAISO does not preclude use of transmission under the ETC and therefore deny State Water Project's request for rehearing.

12. SVP seeks clarification with respect to section 16.4.5. SVP argues that section 16.4.5 should account for ETCs that provide more flexible use of transmission. In its compliance filing discussed and accepted below, the CAISO amended section 16.4.5 to recognize such flexibilities therefore, SVP's request is denied as moot. [11]

13. We also deny Imperial's request for clarification as moot. Subsequent to the May 2007 Order, the Commission, in addressing the CAISO's proposal for offering long-term transmission rights, agreed with interveners that external LSEs should be permitted to nominate short-term and long-term, hub-sourced CRRs in the CRR allocation process.[12] The Commission further directed the CAISO to submit a compliance filing in that proceeding.[13]

III. Compliance Filing

14. The CAISO's compliance filing includes revisions to certain MRTU Tariff provisions which will be incorporated as Appendix BB to the currently effective CAISO tariff. [14] We have reviewed the CAISO's proposed tariff modifications submitted in the instant compliance filing and find that the CAISO has complied with the directives of the

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[10] Updates or changes may be reflected through a revised set of TRTC Instructions on an as needed or as required basis as determined by the parties to the existing contracts. The CAISO will implement such change as soon as practicable by no later than seven days after receipt. *See* section 16.4.6.

[11] *See supra* n.10.

[12] *See Cal. Indep. Sys. Operator Corp.*, 120 FERC ¶ 61,023, at P 46 (2007).

[13] On July 20, 2007, in Docket No. ER07-869-001, the CAISO submitted a compliance filing addressing this and other Commission directives. The compliance filing is currently pending before the Commission.

[14] As noted in the May 2007 Order, because the CAISO proposed to incorporate certain provisions of the MRTU tariff to allow for an earlier effective date prior to MRTU implementation, the provisions are included in the CAISO tariff as Appendix BB, Parts A through G. *See* May 2007 Order, 119 FERC ¶ 61,124 at P 8.

May 2007 Order.[15] Accordingly, the CAISO's compliance filing is hereby accepted for filing. Below we discuss the proposed modifications that have been contested or commented on by parties to this proceeding.

A. Notice of Compliance Filing and Responsive Pleadings

15. Notice of the May 23, 2007 compliance filing was published in the *Federal Register*, 71 Fed. Reg. 31,312 (2007), with interventions or protests due on or before June 13, 2007. The Northern California Power Agency (NCPA) filed comments to the CAISO's compliance filing. SVP and MSR (collectively, SVP/MSR) filed comments and protest. The CAISO filed an answer to SVP/MSR's protest.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the CAISO's answer since it has assisted us in our decision-making process.

B. Incorporation of TRTC Instructions into the CAISO Tariff

17. In the May 2007 Order, the Commission recognized the CAISO's need to consider contracts based on a more flexible use of physical rights and its intent not to dispute assertions by any party that its rights warrant special consideration. Because the information required under section 16.4(5) was not designed to account for such unique contract features, the Commission directed the CAISO to consider whether additional modifications are necessary to the section to reflect flexibilities inherent in certain contracts, if the underlying contracts so provide.[16]

18. In the compliance filing, the CAISO states that although it believes that TRTC Instructions, as designed, are the appropriate vehicle to provide the information that it needs to implement the contract, it proposes to add section 16.4(5)(14) to the information required from the PTO to enable the CAISO to carry out its functions under MRTU. According to the CAISO, a PTO should be required to include specification of any contract requirement in the ETC that warrants special consideration in the implementation of the physical rights under the ETC.

19. With respect to scheduling deadlines, the CAISO states that section 16.4.5(9) allows the PTO to capture any flexibility that may exist under the ETCs with respect to

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[15] The CAISO submitted a separate compliance filing in response to a further directive in the May 2007 Order in Docket No. ER07-613-003. This compliance filing will be addressed separately.

[16] *Id*. at P 26.

scheduling deadlines. According to the CAISO, this section will provide the CAISO with sufficient information as to the scheduling deadlines permitted under the ETC to enable the CAISO to implement its "perfect hedge" proposal for honoring Existing Rights.[17] The CAISO states that no additional changes to section 16.4.5 are necessary to address issues related to ETC scheduling rights.[18]

Comments

20. SVP/MSR state that the CAISO's compliance filing fails to address the Commission's directive to consider whether or not its TRTC Instruction requirements need to be modified to reflect ETCs that will be impacted by the requirement to identify physical sources and sinks. According to SVP/MSR, the CAISO did not respond directly to the Commission's requirement to consider whether additional modifications to section 16.4.5 are necessary to reflect flexibilities inherent in certain ETCs relating to the requirement to identify physical sources and sinks. Therefore, SVP/MSR request that the Commission deem the CAISO's compliance filing deficient with respect to this issue and order the CAISO submit a further compliance filing, which is to consider whether modifications are necessary to section 16.4(5) to account for ETCs that provide flexibility with respect to where power may come from (sources) and where it may be delivered (sinks).

21. In response, the CAISO states that its compliance filing fully responds to the Commission's directive because it has proposed a modification to section 16.4.5 stating that "specification of any contract requirements in the ETC that warrants special consideration in the implementation of the physical rights under the ETC." The CAISO thus concludes that no further changes to section 16.4.5 are warranted and compliance filing should be accepted.

Commission Determination

22. We find that the additional modification to section 16.4.5 proposed by the CAISO complies with our directive in the May 2007 Order. We therefore accept for filing the proposed tariff modification, effective May 9, 2007. We find that the TRTC Instructions

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[17] For more detail on the "perfect hedge" mechanism *see* September 2006 Order, 116 FERC ¶ 61,274 at P 931-955.

[18] We note that in the May 2007 Order, the Commission stated that "[i]n addition, if as Imperial suggests, its contract permits schedule changes up to 20 minutes before real time, it may in conjunction with the PTO reflect that information in the TRTC Instructions addressing allowable time frames for submitting schedules changes." *See* May 2007 Order, 119 FERC ¶ 61,124 at P 26.

set forth reasonable informational requirements for PTOs. The information required will enable the CAISO to incorporate and account for ETCs under the MRTU. We find that the additional provision specifically recognizes that certain contracts warrant special consideration by the CAISO. We also continue to find that the additional information is necessary for the CAISO to accurately account for these contracts and reflect the impact of preserving the contracts in the market.

C. CRR Entity Agreement for Non-Jurisdictional Entities

23. In the May 2007 Order, the Commission accepted the CAISO's commitment to address the concern raised by NCPA regarding the agency relationship between NCPA and its members with respect to a CRR Entity Agreement and directed the CAISO to submit the agreement in a compliance filing.[19]

24. The CAISO submitted new tariff sheets which contain a *pro forma* Metered Subsystem Aggregator CRR Entity Agency Agreement (MSS Agreement) that applies to the CAISO and any MSS Aggregator, including but not limited to NCPA. The agreement addresses specific business requirements of MSS Aggregators that are authorized by their individual member LSEs in the CRR allocation process.

NCPA's Comments

25. NCPA states that the MSS Agreement executed between the CAISO and NCPA has satisfied NCPA's concern that it be able to fulfill the role of managing CRRs for its pool members.

Commission Determination

26. We accept for filing the *pro forma* MSS Agreement as filed.

The Commission orders:

(A) Requests for rehearing and clarification of the May 2007 Order are hereby denied for the reasons stated in the body of this order.

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[19] *Id*. at P 87.

(B) The CAISO's compliance filing in Docket No. ER07-613-001 is hereby accepted for filing for the reasons stated in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.