

116 FERC ¶61,297
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Independent Energy Producers Association

v.

Docket No. EL05-146-001

California Independent System Operator Corporation

ORDER ON CLARIFICATION

(Issued September 27, 2006)

1. On July 20, 2006, the Commission issued an order on the complaint (Complaint) and the contested offer of settlement (Offer of Settlement) filed in this proceeding concerning the justness and reasonableness of the must-offer obligation under the California Independent System Operator Corporation (CAISO) tariff.¹
2. On August 1, 2006, the CAISO filed a request for clarification, or in the alternative rehearing, and for expedited action of the July 20 Order. On August 8, 2006, Powerex Corp. (Powerex) filed a request for clarification or, in the alternative, rehearing of the July 20 Order. On August 9, 2006, the Northern California Power Agency (NCPA) filed a response to the CAISO's request for clarification and a request of its own for clarification the July 20 Order. On August 21, 2006, as amended on August 25, 2006, the Public Utilities Commission of the State of California (CPUC), on behalf of itself, Pacific Gas and Electric Company (PG&E), and Southern California Edison Company (SoCalEd) (together, the Joint Parties), filed a joint request for clarification, or in the alternative, request for rehearing of the July 20 Order. In this order, the Commission grants the clarification requests of the CAISO, Powerex, NCPA, and the Joint Parties, as discussed herein.

¹ *California Independent System Operator Corporation*, 116 FERC ¶ 61,069 (2006) (July 20 Order).

I. Background

3. In the Complaint filed August 26, 2005, the Independent Energy Producers Association (IEP) alleged that the existing must-offer obligation under the CAISO tariff is flawed and no longer just and reasonable. The Complaint also requested that the Commission direct the CAISO to replace the existing must-offer obligation and related minimum load cost compensation tariff provisions with an interim set of tariff provisions.

4. In the July 20 Order, the Commission found that the compensation to generators under the must-offer obligation is no longer just and reasonable. The Commission also found that the rates and cost allocation mechanism under the Offer of Settlement have not been shown to be just and reasonable. Therefore, the July 20 Order established paper hearing procedures to review evidence on whether the rates and cost allocation under the Offer of Settlement or some other rates and cost allocation are just and reasonable with respect to the must-offer obligation. The July 20 Order also established a refund effective date.

5. In addition, the July 20 Order permitted each seller of Eligible Capacity as defined under the terms of the Offer of Settlement, at its election, to collect the Offer of Settlement rates from the date of this order, so long as such seller agrees that all of these revenues will be subject to refund, even if they are collected after the statutory refund period ends. The Commission directed each seller making this election to inform the Commission in writing of its intention to do so within 15 days of the date of the July 20 Order.

II. Responsive Pleadings and Motion for Intervention

6. On August 4, 2006, the Commission issued a Notice Shortening Answer Period for responses to the CAISO's request for clarification, requiring answers by August 11, 2006. On August 8, 2006, Reliant Energy Services, Inc. (Reliant) filed a motion to intervene out-of-time. On August 11, 2006, Six Cities² filed a response to the CAISO's request for clarification. On August 21, 2006, PG&E filed a motion for leave to answer and answer to response and request for clarification of NCPA.

² Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California.

III. Discussion

A. Procedural Matters

7. The Commission grants Reliant's motion to intervene out-of-time given its interests in this proceeding. We also grant PG&E's motion for leave to answer because it has provided information that assisted us in our decision-making process.

B. The Motions for Clarification of the CAISO, the Joint Parties and Powerex

8. In its request for clarification, the CAISO requests that the Commission clarify a number of issues, as discussed herein. The Joint Parties and Powerex request clarification of similar and related issues, also as discussed herein. In its response to the CAISO's request for clarification, NCPA states that it takes no position at this time on the issues raised by the CAISO, although it is sympathetic to some of the CAISO's positions.

1. Commission Authority to Implement the Offer of Settlement

9. The CAISO requests that the Commission clarify (a) its authority under Section 206 of the Federal Power Act or otherwise to implement the settlement or impose Offer of Settlement rates on an interim basis subject to refund; and (b) how such settlement terms or rates should be implemented (e.g., a compliance filing or filing under Section 205 of the Federal Power Act).

Commission Determination

10. The Complaint and Offer of Settlement were filed under Section 206 of the Federal Power Act (FPA). As explained in the July 20 order, the Offer of Settlement is contested by a number of parties on a number of issues. We are implementing the Offer of Settlement rates on an interim basis, pursuant to Rule 602(h) of our regulations. The Commission has broad authority and discretion under Rule 602(h) to address contested settlements.³ Under Rule 602(h)(1)(ii)(B), the Commission may take other appropriate action if the Commission finds that the record lacks substantial evidence or that the contesting parties or issues cannot be severed.⁴ We emphasize that the amounts collected by sellers are subject to refund in accordance with our determinations after conclusion of

³ 18 C.F.R. § 385.602(h) (2006).

⁴ See 18 C.F.R. § 385.602(h)(1)(ii)(B) (2006). In *Arctic Slope Regional Corp. v. FERC*, 832 F.2d 158, 164 (D.C. Cir. 1987), the court observed that "the breadth of discretion trumpeted by Rule 602(h)(1)(ii)(B) is manifest."

paper hearing procedures. We direct the CAISO to make a compliance filing to implement the Offer of Settlement rates as directed by the July 20 order and as clarified herein.

2. **Implementation of the Offer of Settlement and Seller Notice to CAISO**

a. **The CAISO's and the Joint Parties' Clarification Request**

11. The CAISO requests that the Commission clarify whether it has authorized the CAISO to implement the Offer of Settlement as a whole pending a final ruling on the Complaint and Offer of Settlement or, if not, specify which Offer of Settlement rates or other terms of the Offer of Settlement that it has authorized subject to refund: Must Offer Capacity Payment rates, Reliability Capacity Services Tariff (RCST) rates in the event the CAISO were to designate a unit under the Significant Event provisions of the settlement, RCST rates in the event the CAISO were to designate a unit as a result of a deficiency in monthly resource adequacy showings, the payment to frequently mitigated units, a combination of these rates, or any other terms of the Offer of Settlement, including, for example, reporting and evaluation, a revised Automatic Mitigation Procedure price screen, and exclusion of cost-based bids from Reliability Must Run Condition 2 units in the Ancillary Services bid evaluation process. Similarly, the Joint Parties request that the Commission clarify what provisions of the Offer of Settlement the July 20 Order was intended to implement. The Joint Parties further state that if the Commission clarifies that the Offer of Settlement is to be implemented with all of its material terms intact, the Joint Parties do not contest the July 20 Order.

12. The CAISO also requests that the Commission order sellers that elect to collect the Offer of Settlement rates to provide notice to the CAISO at the same time the seller notifies the Commission of its election.

b. **Powerex's Clarification Request**

13. Powerex notes the July 20 Order permits each seller of Eligible Capacity, at its election, to collect the Offer of Settlement rates, subject to a refund condition. Powerex contends that under the Offer of Settlement, it could receive payments if its System Resources receive a System RCST Designation. However, Eligible Capacity is defined under the Offer of Settlement, in part, as capacity of generating units located within the CAISO. Powerex states that while it is not clear if or when the CAISO might make System RCST designations, Powerex wishes to preserve its rights to compete for and receive those designations. Powerex requests that the Commission clarify that all potential sellers of capacity under the RCST, including System Resources, rather than just sellers of Eligible Capacity, can make an election to collect the Offer of Settlement rates, as and when those rates are paid.

Commission Determination

14. Upon approval of appropriate interim tariff sheets, we clarify that the CAISO will be authorized to implement all the terms of the Offer of Settlement relating to the sale of capacity, and that all potential sellers of capacity under the RCST can collect the Offer of Settlement rates, if such an election has been made pursuant to the July 20 Order, as clarified herein. Specifically, this includes provisions of the Offer of Settlement establishing must-offer capacity payment rates, RCST rates due to designation resulting from a Significant Event, RCST rates due to designation resulting from deficiency in Resource Adequacy showings, and payments to frequently mitigated units. With regard to Powerex's request for clarification, we clarify that sellers of System Resources can make an election to collect the Offer of Settlement rates, as and when those rates are paid. Sellers of System Resources must make such an election, as required by the July 20 order and as clarified herein, within 15 days of the date of this order.

15. Additionally, the interim tariff sheets should include the cost allocation methodologies as proposed in the Offer of Settlement. We also note that the interim tariff sheets should include all reporting and procedural requirements set forth in the Offer of Settlement. We are not authorizing the CAISO to implement the provisions in the Offer of Settlement relating to AMP and Ancillary Services on an interim basis.⁵ The burden on the CAISO and stakeholders to implement these provisions outweighs the benefits of implementing them on an interim basis subject to refund.

16. We clarify that the election of sellers to collect the Offer of Settlement rates is a one-time event. Additionally, because the CAISO is responsible for processing payments associated with the election to collect these rates, sellers must provide notice to the CAISO in order to receive payment. However, if a generator did not give notice to CAISO at the same time that it notified the Commission, its ability to collect pursuant to the directives of the July 20 Order, as clarified herein, will not be impaired, as a result of the failure to notify the CAISO of its election, if it has since notified the CAISO or if it notifies the CAISO within 10 days of the date of this order.

3. Allocation of Offer of Settlement Rates

17. The CAISO notes that while the July 20 Order authorizes the sellers of Eligible Capacity to collect the Offer of Settlement Rates, it does not specifically authorize the CAISO's recovery of those payments or determine the manner in which the CAISO is to allocate to market participants the amounts paid out. The CAISO explains that under

⁵ Sections 5.1 and 9.2.

section 11.16.1 of the CAISO Tariff, the CAISO can only pay out amounts that it has collected, except to the limited degree that it can employ the reserve account. Thus, according to the CAISO, it cannot pay the Offer of Settlement rates to sellers of Eligible Capacity unless it has in place a mechanism to recover those costs from market participants. Accordingly, the CAISO requests that the Commission clarify the authority and manner of the CAISO's recovery of payments under the Offer of Settlement Rates.

Commission Determination

18. Upon approval of appropriate interim tariff sheets, we clarify that the CAISO will have the authority to recover costs incurred through the payment of RCST charges according to the cost allocation methodologies set forth in the Offer of Settlement. As discussed above, upon approval of appropriate interim tariff sheets, all potential sellers of capacity under the RCST can collect the Offer of Settlement rates, if such an election has been made pursuant to the July 20 Order, as clarified herein.

4. Refund Effective Date

19. The CAISO requests that the Commission clarify that the refund effective date does not prejudice, but merely establishes the outside limit of, the effective date of any rates or programs that the Commission subsequently approves in this proceeding.

Commission Determination

20. Where, as in this proceeding, the Commission institutes a section 206 investigation on complaint, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date of the filing of such complaint nor later than 5 months after the filing of such complaint. Consistent with our policy, we have established the refund effective date in the earliest date possible. However, we clarify that the refund effective date does not prejudice, but rather it merely establishes the outside limit of the effective date of any rates or programs that we may subsequently approve in this proceeding. The FPA grants the Commission discretion in ordering refunds.⁶ The establishment of a refund effective date does not constitute a determination that refunds will be ordered or how such refund amounts and refund period will be determined.

⁶ Both FPA § 205(e), 16 U.S.C. § 824d(e) and FPA § 206(b), 16 U.S.C. § 824e(b), indicate the Commission "may" order refunds. *See also* FPA § 309, 16 U.S.C. § 825h.

5. Allocation of 2007 RCST Costs

21. The CAISO notes that the Offer of Settlement did not propose an allocation of RCST costs incurred in 2007. Instead, the CAISO states that it anticipated making a Section 205 filing upon conclusion of its stakeholder process to be held following the CPUC's and local regulatory authority's imposition of local capacity requirements. The CAISO requests that the Commission clarify whether it intends to establish the allocation of 2007 RCST costs in this proceeding.

Commission Determination

22. We clarify that the paper hearing process will address whether the rates and cost allocation under the Offer of Settlement or some other rates and cost allocation are just and reasonable with respect to the must-offer obligation. Because the Offer of Settlement did not propose a method for allocating RCST costs in 2007, the paper hearing will not address the 2007 allocation of these costs.

C. NCPA's and Six Cities' Request for Clarification

23. NCPA requests that the Commission clarify that if NCPA is adversely affected by the Offer of Settlement the issue of the appropriate criterion for the 2006 local area reliability needs (LARN) study is to be addressed by the Settling Parties,⁷ and that evidence that the criterion is in error may be introduced. Alternatively, NCPA requests that the Commission clarify where else it will address that issue prior to a final order in this case.

24. NCPA asserts that its generation is made available to the CAISO at a fraction of the carrying cost, and that this generation is being inappropriately credited to PG&E. NCPA further asserts that if the paper hearing is to be effective and rapid, the Settling Parties should address the issue directly.

25. PG&E answers that NCPA's concern regarding 2006 LARN is moot. PG&E points out that on April 28, 2006, the Settling Parties filed comments in this docket stating that the CAISO completed its review of resources available through other mechanisms for local reliability, and found no need for an initial designation of resources for local purposes under the RCST. PG&E further responds that the Offer of Settlement does not give PG&E the authority sell capacity from NCPA's reliability must-run units, nor is PG&E offering to sell any capacity from NCPA's reliability must-run units.

⁷ The Settling Parties are IEP; the CAISO; the CPUC; PG&E; San Diego Gas & Electric Company; and SoCalEd.

26. Six Cities states that to ensure market participants are not subjected to irreversible charges as a result of the interim implementation of the Offer of Settlement, the Commission should clarify that all payments and charges are during the interim application of the Offer of Settlement will be subject to refund and allocation.

Commission Determination

27. As PG&E notes, on April 28, 2006, the Settling Parties filed joint comments requesting that the Commission's approval of the Settlement be conditioned upon the removal of the provisions related to the 2006 local RCST designation. Therefore, issues relating to 2006 local RCST designations, including the criteria for the 2006 LARN study, are no longer at issue in this proceeding and will not be addressed in the paper hearing. We will address issues relating to local designations when such a proposal has been filed with the Commission.

28. We clarify that all issues relating to cost allocation under the Offer of Settlement will be addressed in the paper hearing, and that cost allocation issues include how generation made available to the CAISO under reliability must-run contracts is credited against RCST charges. Additionally, we again clarify that all charges made during the interim application of the Offer of Settlement will be subject to potential refund and allocation, pursuant to the directives of the July 20 Order.

The Commission orders:

The parties' requests for clarification are hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.