UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	**)** **)**	**Docket No. ER14-1442-000**
California Independent System Operator Corporation	**)** **)**	**Docket No. ER14-1440-000**
Indicated CAISO Suppliers	**)**	**Docket No. ER14-1428-000**
		(Not consolidated)

JOINT ANSWER AND MOTION FOR LEAVE TO ANSWER OF THE CAISO INDICATED SUPPLIERS TO THE ANSWER OF THE CAISO

Indicated CAISO Suppliers (the NRG Companies,[1] the Dynegy Companies,[2] the CalPeak Entities,[3] La Paloma Generating Company, LLC ("La Paloma"), and Shell Energy North America (US), LP ("Shell Energy") (the "Indicated CAISO Suppliers") hereby submit this brief response to the "Motion to Intervene and Protest of the California Independent System Operator Corporation in Response to the Indicated Suppliers' Request for Waiver" (the "CAISO Answer") in the hopes that it will alleviate

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[1] For purposes of this filing, the NRG Companies are: NRG Power Marketing LLC ("NRG-PMI"), GenOn Energy Management, LLC ("GEM"), Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Energy Center LLC, El Segundo Power, LLC, NRG Delta LLC, NRG Marsh Landing LLC, NRG California South LP, High Plains Ranch II, LLC, Long Beach Generation LLC, Agua Caliente Solar, LLC, NRG Solar Alpine LLC, NRG Solar Borrego I LLC, NRG Solar Blythe LLC, NRG Solar Roadrunner LLC, Solar Partners I, LLC, Solar Partners II, LLC and Solar Partners VIII, LLC.

[2] For purposes of this filing, the Dynegy Companies are: Dynegy Marketing and Trade, LLC ("DMT"), Dynegy Moss Landing, LLC, Dynegy Morro Bay, LLC and Dynegy Oakland, LLC.

[3] For purposes of this filing, the CalPeak Entities are: CalPeak Power-Panoche LLC, CalPeak Power-Vaca Dixon LLC, CalPeak Power-Enterprise LLC and CalPeak Power-Border LLC.

several of the CAISO's concerns about the Supplier's Waiver Request and allow the CAISO to support the waiver as a commonsense means of ensuring that generators are not required to operate at a loss.

I. Answer

First, the good news: the CAISO and Indicated Suppliers are not as far apart as it might seem at first blush. Three points of agreement are immediately apparent from the pleadings:

- ✓ Both parties acknowledge that the existing tariff rules governing natural gas cost recovery leave generators dangerously exposed to sharp movements in natural prices.
- ✓ Both parties agree that the CAISO's Emergency Waiver Requests only partly keep generators whole for unavoidable intra-day gas procurement or gas disposal costs – even when those generators are just following the CAISO's directions.
- ✓ Both parties suggest that the flaws in the registered and proxy cost methodologies are of sufficient magnitude to warrant some level of emergency Commission action.

Where the parties appear to disagree is whether the CAISO's proposal to staunch *some* of the losses experienced by generators constitutes sufficient Commission action. We argue that it is not enough, and that a more comprehensive backstop, such as that proposed by Indicated CAISO Suppliers is necessary *in addition to* the CAISO's Emergency Waivers to avoid the manifestly unjust outcome of forcing generators to operate at a loss.

Indicated Suppliers file this short Answer to further allay several of the concerns raised by the CAISO Answer.

A. Immediate Action is Warranted as the Natural Gas Situation Remains Grave.

Timely Commission action is critical. Today, Thursday March 13, 2014 and again for Friday March 14, 2014, Southern California's natural gas pipeline system ("SoCalGas") has issued Operational Flow Orders ("OFO") that threaten to impose add additional costs to generators who burn less than 70% of their day-ahead nominations, or more than 110% of their day-ahead nominations. The SoCalGas OFO states that:[4]

> SoCalGas will limit all receipt point nominations up to the total System Capacity for Intraday 1 (Cycle 3) and Intraday 2 (Cycle 4).
>
> Customers must ensure that all deliveries into the SoCalGas system are within 110% of expected usage. SoCalGas will assess Buy-Back charges in accordance with its Rules and Tariffs to those customers who deliver more than 110% of their actual gas usage on the OFO day.

Should the CAISO continue its pattern of dispatching and de-committing generating units in an unpredictable manner, it is impossible for generators to accurately estimate and control their natural gas burns in the "sweet spot" of 70 – 110% of their day-ahead nominations.[5] Because of the massive penalties – up to $100/MMBTU – imposed by SoCalGas during these constrained system conditions, generators are one again exposed over the next several days to potentially experience millions of dollars in additional costs that are entirely unrecoverable under the existing regime.

B. Acknowledgement of Unrecoverable Costs is a Reason to Grant Supplier's Waiver Request – Not to Dismiss It.

Indicated Suppliers are gratified to see the CAISO acknowledge that there are many legitimate natural gas procurement costs for which the existing CAISO tariff –

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[4] Available at: https://scgenvoy.sempra.com/ebb/attachments/ofo_declared_Cycle2_03_13_2014.pdf.

[5] Of course, it is easier to estimate predicted burns by baseloaded combined cycle units than for less economical units, who are subject to less predictable dispatch.

even should the Commission grant the CAISO's Emergency Waiver – provide no recovery:[6]

> Indicated Suppliers do specifically request that the Commission allow generators to recover "disposal costs" associated with the gas procured to respond to ISO dispatches . . . . [including] gas imbalance charges and costs incurred for selling gas procured but not burned at prices below procurement costs. **ISO tariff does not, however, provide for the direct recovery of such charges through its bid cost recovery mechanisms**, which allows for recovery of production costs such as start-up and minimum load costs for resources committed by the ISO.

CAISO suggests that the Commission should dismiss Indicated Supplier's waiver request because it attempts to address this problem by allow generators to bill the CAISO for natural gas expenses, including disposal costs. Our Waiver Request is "guilty as charged." Rather than a flaw in its waiver request, Indicated CAISO Suppliers see the acknowledgement that generators can indeed incur costs for which there is no allowance in the existing CAISO tariff as all the more reason that Commission action on Indicated Supplier's Waiver Request is desperately needed.[7]

While the Commission may have found this imperfection tolerable before the gas volatility of this past winter, the losses incurred by generators this winter are impossible to ignore and waiver of the existing rules prohibiting recovery of these costs is warranted. In short – the facts on the ground have materially changed and it is entirely reasonable for the Commission to take emergency action.

C. CAISO's Suggestion that Generators Can Self-Manage Gas is Puzzling in Light of their Own Waiver Request.

[6] CAISO Answer at p. 10 (emphasis added).

[7] While it is gratifying to see the CAISO admit that there are legitimate natural gas procurement and disposal costs for which generators have no ability to bid into the market or to recover through other means, it is equally frustrating that the CAISO has not addressed this manifest injustice on its own.

The CAISO Answer's second argument against the Indicated Supplier's Waiver Request is that "it is reasonable to expect that generators will manage their gas imbalance risks through hedging and existing ISO tariff mechanisms, including the registered cost option[.]" This is a puzzling assertion for the CAISO to make, given that it just filed a pair of emergency waiver requests of its own, specifically because the registered cost option was *not* sufficient to protect against run up in gas costs:

> Likewise, [the February 5th price spikes] were not directly reflected in the costs of those resources utilizing the registered cost option on this date because such resources are limited to bidding commitment costs no greater than 150 percent of their projected proxy costs calculated on a monthly basis. As a result, a number of generators expressed concerns to the ISO regarding their ability to adequately recover their production costs as a result of the February natural gas spike.

The CAISO cannot reasonably argue, one the one hand, that the Commission should reject Indicated Supplier's waiver because the tariff addresses the problem, while on the other hand seeking an emergency waiver to fix the same problem.

Nor do the CAISO's Emergency Waiver Requests address the issue. NRG, one of the Indicated Suppliers, sponsored an affidavit from natural gas trading expert Seabron Adamson explaining how the identical problems exist in the CAISO's registered cost methodology even if the CAISO's Emergency Waivers are granted. Indeed, he estimated that even if the waiver is granted, generators would still be exposed to significant losses.

Moreover, it should not come as a surprise to the CAISO that its proposed waiver requests go only a short way towards solving the forced-to-run-at-a-loss problem. Many of the Indicated Suppliers (and others) filed extensive comments during the CAISO's abbreviated stakeholder process explaining that the CAISO's proposed waiver still leaves generators unprotected in a variety of circumstances. While Mr. Adamson's testimony was not available for CAISO review prior to the filing of the CAISO Answer, none of its contents should come as a surprise and indeed, most of the calculations included are readily reproducible to anyone familiar with the CAISO's markets.

D. Suppliers Will Happily Submit their Natural Gas Costs to the CAISO for Review.

The CAISO Answer expresses consternation that granting Indicated Supplier's Waiver Request could open the door for recovery of unlimited or illegitimate natural gas-related costs. As Indicated Suppliers indicated in the original Waiver Request, we are only asking to recover the undisputed costs associated with standard gas commodity, transportation, and balancing costs associated with operating a natural gas power plant in California at the CAISO's direction. These include:

- ✓ Verifiable gas purchases taken from actual invoices for gas purchased in response to a CAISO dispatch;
- ✓ Verifiable sales of natural gas that was procured to meet a CAISO dispatch and then sold if the CAISO de-committed the unit; and
- ✓ Verifiable penalties imposed by a pipeline for natural gas procured in response to a CAISO dispatch instruction that could not have been avoided by a prudent market participant.

We fully anticipate that the CAISO would have complete discretion to review and verify any invoices submitted to recover costs. Hopefully this clarifications with convince the CAISO that the Indicated Supplier's waiver is indeed narrowly tailored and eminently reasonable.

E. Rumblings about Unspecified "Gaming" Opportunities should by Dismissed.

The CAISO Answer makes several vague references to "gaming" opportunities that could arise should the Commission grant Indicated Supplier's waiver request. The CAISO puts no meat on the bones of this particular scarecrow and the Commission should dismiss these unfounded suggestions.

While no gaming concerns are immediately apparent, should the CAISO detect unethical conduct by a market participant, it would be well within its rights to both deny any invoice for improper natural gas recovery costs *and* refer the market participant to the Commission's Office of Enforcement for further inquiry.

F. The PJM and NYISO Orders are Directly on Point.

The CAISO Answer also suggests that the NYISO and PJM orders are inapposite. The problem there was that constraints hard-wired into the tariffs were preventing generators from recovering their fuel costs, as they are entitled to an opportunity to do under the FPA and the U.S. Constitution. The suggestion in the CAISO Answer that those orders are irrelevant in a case where constraints hard-wired into the CAISO tariff are likewise preventing generators from recovering fuel costs would be laughable if it were not so disturbing. Much as the CAISO might want to imagine otherwise, generators in California have exactly the same rights to an opportunity recovery fuel costs as do generators in New York or PJM. It is disturbing to Indicated Suppliers that the CAISO would suggest otherwise.

G. The CAISO's Other Legal Roadblocks are Quickly Dismantled.

The Commission can dispose of the CAISO's twin arguments that (i) the waiver request was legally deficient as a preliminary matter or (ii) that the waiver represents a collateral attack on the CAISO's Commission-approved natural gas bidding rules, as quickly and easily as Russia bypassed the Crimean border. The first concern is baseless, in that the Commission's Rules and Regulations do not establish any particular requirements for the filing of a waiver. It seems hard to argue that Indicated Suppliers' waiver request is missing a required element when there are no required elements.

Instead, Suppliers made a good faith attempt to identify a concrete problem, propose a limited solution, for an extremely limited period of time.

The CAISO's second stated concern, that the waiver request represents a collateral attack on the existing tariff, is equally puzzling. Both parties now openly acknowledge that the existing rules proved insufficient to protect generators in the face of the extreme conditions in the natural gas market. In the sense that the waiver requests were filed in recognition that the existing rules were insufficient, both the CAISO itself and Suppliers are indeed "collaterally attacking" the approved tariff. But given that all parties recognize that the existing rules are not working, it is not clear why a waiver request to correct an obvious injustice is legally deficient just because the waiver is not reducible to a particular tariff cite. While we do not address them here, the Commission should likewise dismiss the CAISO Answer's remaining legal arguments as baseless.

Respectfully submitted,

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