

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

California Independent System Operator Corp. Docket No. ER05-80-000

ORDER ACCEPTING FOR FILING AN UNEXECUTED
METER SERVICE AGREEMENT

(Issued January 19, 2005)

1. In this order, we accept for filing an unexecuted Meter Service Agreement (MSA) for California Independent System Operator Corporation (CAISO) Metered Entities between the CAISO and the City of Azusa, California (Azusa), effective October 27, 2004, as requested. In addition, we grant waiver of the Commission's 60-day prior notice requirement.¹ This order benefits customers because it clarifies the terms and conditions of the MSA and ensures that the CAISO receives quality metering in order to provide fair and accurate settlement of its markets.

I. Background

2. On June 25, 2004, Azusa applied for 28 MW of Wholesale Distribution Service pursuant to the Wholesale Distribution Access Tariff (WDAT) from the CAISO controlled grid at Southern California Edison's (SoCal Edison) RIO Hondo substation to Azusa's system at the proposed new Kirkwall substation. SoCal Edison agreed to provide the requested service and build the Kirkwall substation. In Docket No. ER04-667-000, SoCal Edison filed an unexecuted Kirkwall substation agreement and a revised service agreement for Wholesale Distribution Service with Azusa under its WDAT on March 22, 2004. As originally filed, the agreements require Azusa to enter into an MSA with the CAISO for metering facilities to be owned, operated, and maintained by SoCal Edison on behalf of Azusa.

¹ 18 C.F.R. § 35.3 (2004).

3. Azusa filed a Motion to Intervene and Protest in the proceeding in Docket No. ER04-667-000 on April 12, 2004 stating that it should not be required to enter into an MSA with the CAISO, because the MSA contained obligations that Azusa could not perform since SoCal Edison owned and controlled the meters.²

4. In an order issued May 21, 2004 in Docket No. ER04-667-000, the Commission found that CAISO certified meters should be provided by SoCal Edison under the terms of its WDAT, but that SoCal Edison should not be liable for penalties associated with metering facilities it installed on Azusa's behalf.³ The Commission also ordered a hearing to resolve "material issues of fact regarding Azusa's ability to meet obligations imposed on it by the CAISO."⁴ The hearing was held in abeyance pending settlement judge procedures.

5. On October 1, 2004, SoCal Edison filed an offer of settlement in Docket No. ER04-667-000⁵ Under the settlement, the CAISO agreed to file the unexecuted MSA in a separate proceeding. This commitment led to the filing of the unexecuted MSA at issue in the instant proceeding. On October 27, 2004, in the instant docket, the CAISO filed an unexecuted MSA. Pursuant to section 35.11 of the Commission's regulations,⁶ the CAISO requests waiver of the Commission's 60-day prior notice requirements to permit an effective date of October 27, 2004 for the MSA.

II. Notice of Filing and Interventions

6. Notice of the CAISO's filing was published in the *Federal Register*, 69 Fed. Reg. 65,167 (2004), with comments, protests and motions to intervene due on or before

² Docket No. ER04-667-000 Azusa Protest at 14-15.

³ *Southern California Edison Co.*, 107 FERC ¶ 61,179 (2004) (May 21 Order).

⁴ *Id.* at P 40-41

⁵ The settlement was accepted at *Southern California Edison Co.*, 109 FERC ¶ 61,339 (2004) (Settlement Order). The settlement requires SoCal Edison to file a revised WDAT Service Agreement reflecting the May 21 Order and the settlement.

⁶ 18 C.F.R. § 35.11 (2004).

November 17, 2004. The Cities of Azusa, Banning, and Riverside, California (the Cities) filed a timely motion to intervene and protest.⁷ SoCal Edison filed a timely motion to intervene and comments.

7. On December 2, 2004 SoCal Edison filed a motion for leave to answer and answer to the Cities' protest. Also on December 2, 2004, the CAISO filed a motion for leave to answer and answer to the Cities' protest.

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2) (2004), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We will accept both SoCal Edison's answer and the CAISO's answer because they have provided information that assisted us in our decision-making process.

B. Responsive Pleadings

10. In its protest the Cities argue that the CAISO *pro forma* MSA imposes duties and obligations on Azusa that it is incapable of performing because SoCal Edison will own and operate the meters that provide service to Azusa pursuant to the WDAT. Furthermore, the Cities state that it is unjust and unreasonable to require Azusa to enter into the *pro forma* MSA as long as SoCal Edison retains ownership and control of the facilities at issue.

⁷ The Cities state that because they are not interconnected directly with the CAISO controlled grid, the Cities purchase Wholesale Distribution Service from the SoCal Edison under its WDAT. Although the MSA at issue in this proceeding only applies to Azusa, the Cities state that Banning and Riverside are similarly situated to Azusa in that they may be required by the CAISO to enter into the CAISO's *pro forma* MSA and would be incapable of performing all of the obligations contained therein.

11. The Cities assert that Azusa is not able to fully comply with the reporting obligations as set forth in Article 3.2 of the MSA. Specifically, the obligations at issue would require Azusa to provide the CAISO with data and information pertaining to the metering facilities and access to the facilities under sections 3.2.1, 3.2.2, and 3.2.3, respectively.

12. The Cities state that Azusa is unable to comply with the requirement to submit meter data to the CAISO because Azusa is dependant on SoCal Edison for access to this information. For example, the Cities assert that if a problem develops with metering facilities, Azusa will not necessarily be aware of it immediately and have no ability to correct it so long as SoCal Edison owns and controls the meters.

13. In addition, the Cities argue that Azusa is unable to grant or provide the CAISO with access rights to the metering facilities located on SoCal Edison-owned property as required under the MSA. The Cities also argue that Azusa is unable to fully comply with the requirement that the CAISO be a third party beneficiary to any future agreements between the CAISO metered entity and any other party relating to the metering facilities. They argue that, since SoCal Edison owns and controls the metering facilities, Azusa will be the contracting party for any future agreements relating to those facilities.

14. The Cities request that the Commission direct the CAISO to eliminate the obligations of the MSA that Azusa cannot perform. The Cities assert that the CAISO is properly a third party beneficiary to the WDAT and the Commission should require the CAISO to seek enforcement of the substantive obligations against SoCal Edison as a third party beneficiary of the WDAT.

15. In its comments, SoCal Edison states that it agrees with the CAISO that a MSA is necessary for the metering facilities at the Kirkwall substation and that Azusa should not be exempt from the requirement. SoCal Edison also notes that the Commission has already stated that SoCal Edison should not be responsible for any potential liabilities or penalties associated with the metering facilities installed on Azusa's behalf. SoCal Edison further states that it is not appropriate for SoCal Edison and its rate payers to be liable for any liabilities or penalties associated with being a CAISO Metered Entity under the CAISO Tariff.

16. In its Answer to the Cities' protest, SoCal Edison states that Azusa chose to have SoCal Edison construct, own, and operate the metering equipment and knew this would place the metering facilities outside of Azusa's direct control. SoCal Edison also argues that during the development of the Kirkwall Substation project, Azusa was aware that it would have to enter into an MSA with the CAISO. SoCal Edison states that in Docket No. ER04-667-000 regarding maintenance, testing, and certification of CAISO metering facilities, it has offered and continues to offer to abide by the CAISO's terms and

conditions.⁸ SoCal Edison further states that it has informed Azusa that it is willing, and plans to incorporate, that commitment into the WDAT Service Agreement when it files an amendment to reflect the charges associated with CAISO metering, as set forth in the offer of settlement in Docket No. ER04-667-000.

17. SoCal Edison states that Azusa's argument that it may be exposed to unfair liability under the MSA is misplaced, and SoCal Edison's responsibility under the WDAT protects Azusa from misfeasance by SoCal Edison. SoCal Edison further argues that Azusa should be liable for any costs associated with the metering that are not a result of SoCal Edison's failure to comply with its responsibilities under the WDAT.

18. In reference to the Cities' argument that Azusa does not have control over access rights set forth in section 3.2.4 of the MSA, SoCal Edison states that it has agreed to grant reasonable access rights to the CAISO. Additionally, SoCal Edison states that it has recently executed a set of procedures with Azusa for Azusa's rights to access equipment owned by Azusa within the Kirkwall substation.⁹

19. SoCal Edison states that the Cities' statement that Azusa cannot comply with section 3.3.2 of the MSA, which requires the CAISO to be a third party beneficiary to any future agreements between the CAISO Metered Entity and any other party involving the metered facilities, is erroneous. SoCal Edison contends that since the MSA only applies on its face to any contracts entered into between the Metered Entity, which is Azusa, and another party, Azusa can fully comply.

20. In its answer to the Cities' protest, the CAISO states that without an MSA, the CAISO would not be able to ensure that the metering data provided by market participants would be of the same nature and quality required by the CAISO Tariff, and that it would therefore lack the ability to protect the integrity of CAISO settlements. The CAISO argues that it cannot adequately protect the integrity of CAISO settlements by virtue of having to assert a claim against SoCal Edison through the WDAT. The CAISO further states that it does not have the resources to pursue uncertain litigation with SoCal Edison through the WDAT.

21. The CAISO states that it does not take a position on whether Azusa or SoCal Edison (or some combination of the two) should be responsible for the maintenance and accuracy of the metering at issue, so long as some entity is responsible. The CAISO further states that the Commission has held that SoCal Edison should not be responsible

⁸ SoCal Edison Comment at 5.

⁹ Although SoCal Edison owns the Kirkwall substation, Azusa owns some equipment within the substation.

for any penalties or liabilities for metering facilities installed by SoCal Edison on Azusa's behalf, and that the metering service in question should be provided pursuant to the MSA.¹⁰

22. Additionally, the CAISO states that SoCal Edison and Azusa both participated in the proceeding in Docket No. ER98-1499, *et al.*, which resulted in the settlement adopting the *pro forma* MSA. The CAISO further asserts that it would be improper to allow a group of market participants to evade the requirements of the MSA by virtue of particular metering ownership arrangements.

C. Commission Determination

23. We accept the unexecuted MSA, effective October 27, 2004.¹¹ We agree with the CAISO that it should not be left without an entity responsible for the maintenance and accuracy of revenue metering. Absent an MSA, the CAISO would have no way to ensure that metering data provided by market participants would be the same quality and nature as that directed by the CAISO Tariff.

24. We noted in the May 21 Order that updated metering equipment is important to facilitate our findings in *California Independent System Operator Corporation*,¹² where the Commission found that, in order for the CAISO to operate an efficient and reliable transmission grid effectively, it is essential for parties to comply with metering requirements as described in the CAISO Open Access Transmission Tariff (OATT).¹³ We agree with the CAISO, Azusa cannot evade the requirements of the MSA by virtue of the metering ownership arrangements it elected. We find that the *pro forma* MSA is just and reasonable even though SoCal Edison retains ownership and control of the facilities at issue.

25. Regarding the Cities' assertion that Azusa is not able to fully comply with the reporting obligations of Article 3.2 of the MSA, the Commission notes that Azusa was aware of the necessity to enter into the MSA and the obligations under Article 3.2 prior to construction of the metering facilities. The metering ownership arrangements are a direct

¹⁰ CAISO Answer at 4.

¹¹ We find good cause to grant waiver of the Commission's 60-day prior notice requirement to permit the effective date requested by the CAISO. *See* Central Hudson Gas & Elec. Corp., *et al.*, 60 FERC ¶ 61,106 at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

¹² 103 FERC ¶ 61,260 (2003).

¹³ *Southern California Edison*, 107 FERC ¶ 61,179 (2004) at P 41.

result of Azusa's decision to have SoCal Edison construct, own, operate and maintain the metering facilities. In fact, Azusa was presented with three alternatives for construction of the facilities, one of which was to construct, own, operate and maintain the facilities itself. It appears that Azusa is in its current position as a result of the economic decision to have SoCal Edison construct the metering facilities on Azusa's behalf. We will not allow Azusa, or any other entity, to bypass the CAISO's metering obligations merely by contracting with another entity to own, operate, and maintain metering facilities designed for its sole use and benefit.

26. We understand the Cities' concerns pertaining to the accurate and timely reporting of data to the CAISO and exposure to potential liabilities and penalties due to SoCal Edison's ownership of the metering facilities. However, we note there will always be some degree of potential risk in the course of doing business. For example, the risk of routine equipment failure, acts of nature, and other similar events should be borne by the party utilizing the facilities for its sole benefit.

27. Azusa was aware of the dependence on SoCal Edison for the reporting of data to the CAISO under the current ownership arrangements. The metering facilities were built at Azusa's request for its sole use and benefit, and, as we stated in the May 21 Order, SoCal Edison should not be liable for penalties associated with metering facilities it installed on Azusa's behalf. Additionally, we note that SoCal Edison has proposed to add language to the WDAT Service Agreement with Azusa reflecting SoCal Edison's agreement to abide by the CAISO's terms and conditions pertaining to maintenance, testing, and certification of CAISO-certified metering facilities.¹⁴ SoCal Edison states that if it fails to properly maintain the facilities, Azusa will have full recourse against it under the WDAT Service Agreement and will, therefore, be "protected from potentially *unfair* liability."¹⁵ The Commission believes that this commitment should alleviate the Cities' concerns and minimize potential liabilities. We will therefore require SoCal Edison to incorporate this commitment into the WDAT Service Agreement within 30 days of the issuance of this order.

28. In regard to the Cities' concern pertaining to granting the CAISO access to the metered facilities, the requirement only calls for the use of best efforts to gain access. SoCal Edison states that it has agreed to grant reasonable access rights to the CAISO and has already executed a set of procedures with Azusa for Azusa's rights to access Azusa-owned equipment within the Kirkwall substation.¹⁶ We will also require SoCal

¹⁴ SoCal Edison Answer at 8.

¹⁵ *Id.*

¹⁶ *Id.* at 12.

Edison to incorporate this commitment into the WDAT Service Agreement within 30 days of the date of this order. In light of these facts, we find that Azusa should be able to comply with the requirements for granting the CAISO access to the metering facilities.

29. The Cities also argue that Azusa has no ability to comply fully with section 3.3.2 of the MSA, which requires that “[t]he ISO shall be a third party beneficiary to any future agreement between the ISO Metered Entity and any other party relating to the Metering Facilities of the ISO Metered Entity.” They claim that “[b]ecause [SoCal Edison] will own and control the Metering Facilities, it will be the contracting party for any subsequent contracts relating to the Metering Facilities.”¹⁷ We disagree. Azusa, not SoCal Edison, is the ISO Metered Entity under the MSA. Section 3.3.2, on its face, does not apply to all future agreements relating to the metering facilities. It only applies to future agreements between Azusa and any other party relating to the metering facilities. Therefore, Azusa can comply with this provision on its face.

The Commission Orders:

(A) The MSA is accepted, effective October 27, 2004, as discussed in the body of this order.

(B) The CAISO’s request for waiver of the Commission’s notice requirement, 18 C.F.R. § 35.3 (2002) is hereby granted, as discussed in the body of this order.

(C) SoCal Edison is directed to incorporate the commitment to abide by the CAISO’s terms and conditions pertaining to maintenance, testing, and certification of CAISO-certified metering facilities into the WDAT Service Agreement within 30 days of the date of this order.

(D) SoCal Edison is directed to incorporate the commitment to grant reasonable access rights to the CAISO into the WDAT Service Agreement within 30 days of the date of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

¹⁷ Cities at 8.