

126 FERC ¶ 61,149
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket Nos. ER08-1059-001
ER06-615-031
ER07-1257-009
ER08-519-003

ORDER ACCEPTING COMPLIANCE FILING

(Issued February 19, 2009)

1. In this order, we accept for filing proposed tariff revisions related to the California Independent System Operator Corporation's (CAISO) congestion revenue rights (CRRs) that comply with the Commission's July 29, 2008 order.¹

Background

2. On May 30, 2008, pursuant to section 205 of the Federal Power Act (FPA),² the CAISO filed proposed revisions to its CAISO Open Access Transmission Tariff (CAISO Tariff) and Market Redesign and Technology Upgrade Open Access Transmission Tariff (MRTU Tariff)³ to: (1) the CRR release rules relating to the tracking of monthly CRR eligibility for load serving entities serving loads without verifiable load forecasts and changes to the exemptions from the 30-day rule; (2) the CRR credit policy; and (3) reflect a delayed MRTU implementation date (May 30, 2008 Filing).⁴

¹ *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,107, at P 62-70 (July 29, 2008 Order).

² 16 U.S.C. § 824d (2006).

³ In this order, "tariff section" refers to both the CAISO Tariff and the MRTU Tariff, unless specified otherwise.

⁴ CAISO May 30, 2008 Filing, Docket No. ER08-1059-000, *et al.*

3. In the May 30, 2008 Filing, the CAISO also proposed revisions to the MRTU Tariff to include exemptions to the 30-day rule for scheduling transmission outages (30 day rule) found in CRR Business Practice Manual (BPM) section 10.3.1, as directed by the Commission.⁵ Also, in compliance with the Commission's directive,⁶ the CAISO provided an explanation about how the CRR Contingency Plan will affect the priority nomination process.

4. On July 29, 2008, the Commission issued an order which, with the exception of the 30-day rule, conditionally accepted, subject to modification, the proposed revisions to the CAISO Tariff to become effective July 30, 2008.⁷ The Commission also conditionally accepted, subject to modification, the proposed revisions to the MRTU Tariff to become effective upon the date of MRTU implementation.⁸ Finally, the Commission found that the CAISO had satisfactorily complied with the Commission's directive⁹ to explain how the CRR Contingency Plan will affect the priority nomination process.¹⁰ The Commission directed the CAISO to make compliance filings with the Commission on various matters.¹¹

Filing

5. On August 28, 2008, the CAISO filed revised tariff sheets in compliance with the Commission's directives in the July 29, 2008 Order (Compliance Filing). In the Compliance Filing, the CAISO submitted revised tariff language related to: (1) the effective date of the 30-day rule; (2) the inclusion in MRTU Tariff section 9.3.6.3.2 of a reference to the twenty-four hour exemption to the 30-day rule; (3) the CAISO's commitment in MRTU Tariff section 36.4 to create in collaboration with participating transmission owners a list of facilities rated at 200 kV and below and list them in the Operating Procedures; (4) the CAISO's commitment in CAISO Tariff and MRTU Tariff section 12.6.3.1(c) to provide a written explanation of the reasons for requesting

⁵ *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271, at P 68 and 69 (2008).

⁶ *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,296, at P 39 (2008) (March 31, 2008 Order).

⁷ July 29, 2008 Order, 124 FERC ¶ 61,107.

⁸ *Id.*

⁹ March 31, 2008 Order, 122 FERC ¶ 61,296 at P 39.

¹⁰ *Id.*

¹¹ *Id.*

additional financial security from a market participant as a result of a change in CRR value that is not related to an adjustment due to monthly CRR auction price or an adjustment related to historical expected value; and (5) affiliate disclosure requirements set forth in CAISO Tariff sections 12.1.1 and 12.1.1.1 and Appendix BB, Part M, section 39.9 and MRTU Tariff sections 12.1.1, 12.1.1.2, and 39.9. The CAISO requests that the proposed revisions to the CAISO Tariff and the MRTU Tariff be effective on July 30, 2008 and upon implementation of MRTU, respectively.

Notice of Filing and Responsive Pleadings

6. Notice of the Compliance Filing was published in the *Federal Register*, 73 Fed. Reg. 52,347 (2008), with protests and interventions due on or before September 18, 2008. Morgan Stanley Capital Group, Inc. (Morgan Stanley) filed a timely motion to intervene and comments. The CAISO filed an answer.

Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), a timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the CAISO's answer and will, therefore, reject it.

B. Compliance Filing

9. We find that the CAISO has satisfactorily complied with the Commission's directives in the July 29, 2008 Order. Accordingly, the proposed revisions to the CAISO Tariff and the MRTU Tariff are accepted to become effective on July 30, 2008 and upon implementation of MRTU, respectively. Below, we address the comments filed in response to the Compliance Filing.

Affiliate Disclosure Requirements

10. In the May 30, 2008 Filing, the CAISO filed proposed revisions to its CAISO Tariff and MRTU Tariff to enhance the CRR credit policy.¹² In particular, it claimed that, to enhance its monitoring of CRR holdings and CAISO market activity for

¹² July 29, 2008 Order, 124 FERC ¶ 61,107 at P 4.

anomalous market behavior, gaming or the exercise of market power, the CRR holder affiliate disclosure requirement needed to be broadened to account for every CRR holder, candidate CRR holder and affiliate.¹³ To this end, the CAISO proposed to apply the disclosure requirements to candidate CRR holders and require the disclosure of all affiliates, not only affiliates that are CRR holders or market participants.¹⁴ These revisions are indicated in MRTU Tariff section 39.9 and CAISO Tariff, Appendix BB, Part H, section 39.9.¹⁵ The CAISO also proposed revising tariff section 12.1.1.1 to indicate that information disclosed pursuant to tariff section 39.9 will be one of the qualitative factors used by the CAISO to calculate unsecured credit limits.¹⁶

11. Commenters claimed that requiring the disclosure of all entities that are affiliates or become affiliates of a CRR holder or candidate CRR holder would impose unduly burdensome reporting requirements that would not solve the CAISO's concerns.¹⁷ In its Answer, the CAISO proposed several modifications to its initial proposed revisions.¹⁸ First, the CAISO proposed to modify tariff section 39.9 to state that each CRR holder or candidate CRR holder must notify the CAISO of all affiliates that are CRR holders, candidate CRR holders or market participants and their guarantors and any affiliate participating in an organized electricity market in North America.¹⁹ Second, the CAISO proposed to modify tariff section 12.1.1 to state that the CAISO has the authority to obtain from a market participant that requests an unsecured credit limit financial and/or other information concerning all of the market participant's affiliates.²⁰ Third, the CAISO proposed to modify CAISO Tariff section 12.1.1.1 and MRTU Tariff section 12.1.1.2 to state that the CAISO will use such information as one of the qualitative factors it considers in determining the market participant's or a guarantor's unsecured credit limit.²¹

¹³ *Id.* P 62.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* P 64-66.

¹⁸ *Id.* P 68.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*; *see also* Answer at 16.

12. In the July 29, 2008 Order, the Commission accepted the CAISO's proposed CRR affiliate disclosure requirement, subject to the CAISO making the revisions proposed in its Answer.²² The Commission found that the CAISO proposal to require entities to disclose affiliates participating in organized electricity markets is a reasonable requirement that will potentially benefit all CAISO market participants by limiting the credit risks associated with CRR holders defaulting on their CRR obligation payments and that the disclosure requirement, with the revisions proposed in the Answer, was not unduly burdensome.²³ Separately, the Commission agreed with the CAISO that in some cases it may be appropriate to consider affiliate relationships as one of the qualitative factors when determining unsecured credit limits.²⁴ Accordingly, the Commission directed the CAISO to make a compliance filing revising tariff sections 39.9 and 12.1.1, CAISO Tariff section 12.1.1.1 and MRTU Tariff section 12.1.1.2 consistent with the additional modifications proposed in its Answer.²⁵

13. In the Compliance Filing, the CAISO modified CAISO Tariff sections 12.1.1, 12.1.1.1 and Appendix BB, Part M, section 39.9 and MRTU Tariff sections 12.1.1, 12.1.1.2 and 39.9 to include the language regarding affiliate disclosure requirements contained in its Answer.

14. In its comments, Morgan Stanley first raises concerns with the revisions to CAISO Tariff and MRTU Tariff section 12.1.1, which sets forth the factors the CAISO uses to calculate unsecured credit limits. In the Compliance Filing, the CAISO added language to tariff section 12.1.1 indicating that each market participant or firm transmission right bidder was responsible for the timely submission of the latest financial statements and other information, "including but not limited to information concerning all entities that are Affiliates or become Affiliates." Morgan Stanley complains that, while tariff section 39.9 was revised to require only CRR holders to disclose the identities of their affiliates (not affiliate financial statements or other information), tariff section 12.1.1 imposes ongoing affiliate disclosure requirements on market participants and firm transmission right bidders as well as CRR holders and candidate CRR holders without any ties to managing congestion market risk. Morgan Stanley contends that this approach expands the scope of the affiliate disclosure requirement beyond that contemplated in the May 30, 2008 Filing. Morgan Stanley also claims that, contrary to the July 29, 2008 Order, tariff section 12.1.1 makes it seem that market participants must proactively provide affiliate

²² July 29, 2008 Order, 124 FERC ¶ 61,107 at P 70.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

information, regardless of whether the CAISO has requested or demonstrated a need for that information. Morgan Stanley argues that tariff section 12.1.1 should make clear that CRR holders or candidate CRR holders seeking an unsecured credit limit must disclose information on affiliates only upon CAISO request and only when the CAISO can show that such information is reasonably needed to calculate an unsecured credit limit and manage credit risk arising from the congestion markets. Morgan Stanley proposes replacement language for tariff section 12.1.1.

15. Morgan Stanley then raises a concern about the interplay between tariff sections 12.1.1, 39.9 and 12.1.2. Morgan Stanley believes that the affiliate disclosure requirements in tariff sections 12.1.1 and 39.9 apply only if the CRR holder, candidate CRR holder or CAISO market participant is seeking an unsecured credit limit. It adds that, if the CRR holder, candidate CRR holder or CAISO market participant is posting financial security of the type set forth in tariff section 12.1.1, then there is no obligation to submit affiliate information to the CAISO. Morgan Stanley concludes that, therefore, in accordance with tariff section 12.1.2.1, a market participant that is relying on a corporate guaranty would have no obligation to provide financial or other information on affiliates because the information from the guarantor would be sufficient. As such, Morgan Stanley argues that that tariff section 39.9 should be revised to state that “[e]ach CRR Holder or Candidate CRR Holder that is relying on an Unsecured Credit Limit as contemplated by Section 12.1.1 must notify the CAISO of the identity of any Affiliate that is a CRR Holder, Candidate CRR Holder, or Market Participant, any Affiliate that participates in an organized electricity market in North America, and any guarantor of any such Affiliate.”

Commission Determination

16. We find that Morgan Stanley’s arguments are misplaced. Compliance filings must be limited to the specific directives ordered by the Commission.²⁶ The CAISO’s revisions to CAISO Tariff and MRTU Tariff section 12.1.1 and 39.9 are the same as the revisions proposed in its Answer and directed by the Commission in the July 29, 2008 Order.²⁷ Morgan Stanley’s concerns should have been raised on rehearing of the July 29, 2008 Order.²⁸ We reject Morgan Stanley’s requests to alter the CAISO’s compliance filing as untimely and a collateral attack on the July 29, 2008 Order.

²⁶ *Entergy Services, Inc.*, 117 FERC ¶ 61,055, at P 22 (2006), *reh’g denied*, 119 FERC ¶ 61,187 (2007); *NorthWestern Corp.*, 113 FERC ¶ 61,215, at P 9 (2005).

²⁷ *See* Answer at 16; July 29, 2008 Order, 124 FERC ¶ 61,107, at P 68.

²⁸ *See* Rule 713 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.713 (2008); *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61, 240, at P 13 (2007).

17. We also disagree with Morgan Stanley's assertion that the revisions to tariff section 12.1.1 are contrary to the July 29, 2008 Order. Morgan Stanley points for support to the Commission's statement that it agreed with the CAISO that "in some cases it may be appropriate to consider affiliate relationships as one of the qualitative factors when determining unsecured credit limits."²⁹ This Commission statement only related to the revisions to CAISO Tariff section 12.1.1.1 and MRTU Tariff section 12.1.1.2 proposed in the CAISO's Answer because those sections concern the use of qualitative factors in determining unsecured credit limits. In that statement, the Commission was accepting the CAISO's proposal to add the consideration of affiliate information to the list of qualitative factors that the CAISO may consider in determining unsecured credit limits. For this reason, we reject Morgan Stanley's assertion. Additionally, we disagree with Morgan Stanley's assertion that tariff section 39.9 applies only to entities seeking an unsecured credit limit. As explained in the July 29, 2008 Order, the Commission found the disclosure of "affiliates participating in organized electricity markets" to be a reasonable requirement that was not unduly burdensome.³⁰ Therefore, tariff section 39.9 applies to market participants generally. For these reasons, we reject Morgan Stanley's assertions.

C. Waiver Request

18. Order No. 614 requires accurate tariff sheet designation, including the effective date,³¹ and section 35.9 of the Commission's regulations³² concerns identification and numbering of tariffs.

19. The CAISO states that it has filed MRTU Tariff sheets without indicating a proposed effective date because it is not able to announce a new proposed MRTU implementation date until it is confident that the MRTU software is operating successfully. As a result, the CAISO requests waiver of Order No. 614 and applicable provisions of section 35.9 of the Commission's regulations.

²⁹ Morgan Stanley Sept. 18, 2008 Comments at 5 (quoting July 29, 2008 Order, 124 FERC ¶ 61,107 at P 70).

³⁰ July 29, 2008 Order, 124 FERC ¶ 61,107 at P 70.

³¹ *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).

³² 18 C.F.R. § 35.9(a) (2008).

Commission Determination

20. In light of the recent change in the MRTU implementation date,³³ we will grant waiver of the requirements of Order No. 614 and section 35.9 of the Commission's regulations. We also direct the CAISO to make an informational filing specifying the effective dates of the tariff sheets being accepted herein prior to the implementation of MRTU.

The Commission orders:

(A) The proposed revisions to the CAISO Tariff are hereby accepted for filing, to be effective July 30, 2008, as discussed in the body of this order.

(B) The proposed revisions to the MRTU Tariff are hereby accepted for filing, to be effective upon the date of MRTU implementation, as discussed in the body of this order.

(C) We hereby grant waiver of the requirements of Order No. 614 and section 35.9 of the Commission's regulations, as discussed in the body of this order.

(D) The CAISO is hereby directed to make an informational filing specifying the effective date of the MRTU tariff sheets being accepted herein prior to the implementation of MRTU, as discussed in the body of this order.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

³³ See Compliance Filing at 5.