

128 FERC ¶ 61,148
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket Nos. ER06-615-048
ER08-367-005

ORDER ON COMPLIANCE FILING

(Issued August 7, 2009)

1. This order conditionally accepts the April 23, 2009 compliance tariff revision¹ of the California Independent System Operator Corporation (CAISO), as directed by the Commission's March 26, 2009 order.²

I. Background³

2. On December 21, 2007, the CAISO submitted a Revised Market Redesign and Technology Upgrade (MRTU) Tariff that it called a comprehensive, conformed version of the MRTU Tariff that incorporates all intervening amendments that were filed subsequent to the filing of and conditional acceptance of its initial MRTU Tariff.

3. The Commission accepted the CAISO's revised MRTU Tariff, subject to certain modifications.⁴ Therefore, on January 2, 2009, the CAISO filed its compliance filing.⁵

¹ Cal. Indep. Sys. Operator Corp. April 23, 2009 Compliance Filing, Docket Nos. ER06-615-048, ER08-367-005 (April 2009 Compliance Filing).

² *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,276 (2009) (March 2009 Compliance Order).

³ For a more complete description of the history of this matter, *see Cal. Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,262 (2008).

⁴ *Id.* P 1.

⁵ CAISO January 2, 2009 Compliance Filing, Docket Nos. ER08-367-001, ER06-615-035 (January 2009 Compliance Filing).

4. On March 26, 2009, the Commission conditionally accepted the CAISO's January 2009 Compliance Filing, directing the CAISO to provide on compliance a sufficient description of the criteria to be used in determining if a market participant is provided access to the non-public operating procedures.⁶

II. Notices of Filing and Responsive Pleadings

5. Notice of the CAISO's compliance filing was published in the *Federal Register*, 74 Fed. Reg. 21799 (2009), with comments due on or before May 15, 2009.

6. The California Department of Water Resources State Water Project (SWP), Southern California Edison Company (SoCal Edison) and Modesto Irrigation District (Modesto) timely filed protests and comments to the April 2009 Compliance Filing. The CAISO filed a motion for leave to answer and answer to the protests and comments, and Modesto filed an answer to the CAISO's answer.

III. Procedural Matters

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) (2008), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. The Commission finds that good cause exists in this proceeding to allow the CAISO's answer and Modesto's answer because they aid us in our understanding of the issues raised in this proceeding.

IV. Discussion

8. In the March 2009 Compliance Order, the Commission directed the CAISO to submit tariff sheets setting forth the criteria that the CAISO would use to determine whether an operationally affected market participant may receive access to non-public operating procedures. The Commission directed that the tariff sheets should include an explanation of what constitutes being "operationally affected," and a description of the timeline for providing access to the non-public operating procedures or an explanation for its denial of access to such operating procedures.⁷ The Commission also agreed with the CAISO's proposal to include, on compliance, a provision allowing multiple parties and not just "a single representative" to access non-public operating procedures.

⁶ March 2009 Compliance Order, 126 FERC ¶ 61,276 at P 34.

⁷ See, e.g., MRTU Tariff § 10.3.2.3 (requiring the CAISO to make certain information available in a timely manner).

A. “Operationally Affected”

9. The CAISO submits that under the proposed tariff language, as set forth in section 22.11.3, an entity is “operationally affected” by an operating procedure if: (1) the entity is a party to the Transmission Control Agreement or is a neighboring balancing authority and the operating procedure directs the entity to operate transmission equipment; or (2) the operating procedure directs an interruption in transmission service to facilities interconnected to the CAISO-controlled grid, which are operated by the entity requesting access to the operating procedure.⁸ The CAISO claims that its proposed description focuses on the operation of and access to the CAISO-controlled grid, which the CAISO contends is consistent with the CAISO’s definition of “operating procedures.” The CAISO adds that the description of whether an entity is operationally affected excludes those instances when an entity is only economically or financially affected.

Protests and Comments

10. SWP requests that revised tariff section 22.11.3 be clarified so that a CAISO operator’s or dispatcher’s ability to use an entity’s facilities as *authorized*—as opposed to directed—in a confidential operating procedure suffices to make the operator of such facilities eligible to review such operating procedure. SWP contends that an operating procedure is likely to offer CAISO dispatchers or operators a range of options to solve a given problem, to be selected based on resource availability and other factors applicable at the time. In such circumstances, SWP asserts that an operating procedure may not necessarily *direct* an interruption of transmission to or other adjustment of generation or loads, but could *authorize* an operator or dispatcher to take such action.

11. SWP claims that an operator should also be able to know if a confidential operating procedure calls not only for a curtailment of transmission service but also for a change in energy or reactive power consumption or production to address a particular problem.⁹ SWP contends that the proposed tariff language would not, for instance, permit it to know whether a confidential CAISO operating procedure authorizes an increase in SWP pumping, as occurs in times of overgeneration. SWP claims that this is important because with MRTU, the CAISO has employed language in operating procedures to comply with the requirement that use of SWP resources must be on a purely voluntary basis. SWP claims that it is essential that it be able to monitor confidential operating procedures to ensure that there is no improper authorizing use of SWP resources.

⁸ April 2009 Compliance Filing at 2.

⁹ SWP May 19, 2009 Comments, Docket Nos. ER08-367-005, ER06-615-048 at 2 (SWP Comments).

12. Therefore, SWP asserts that tariff section 22.11.3 should be revised to state,

For purposes of this tariff section an entity is “operationally affected” by a CAISO operating procedure if either (1) the entity is a party to the Transmission Control Agreement or is a neighboring Balancing Authority and the operating procedure directs the entity to operate transmission equipment; or (2) the operating procedure authorizes an interruption in transmission service to or an adjustment to the operating level of facilities interconnected to the CAISO Controlled Grid which are operated by the requesting entity.¹⁰

13. Modesto claims that there are more ways in which it could be “operationally” affected than by interruptions to transmission service.¹¹ Modesto contends that a CAISO operating procedure could affect interconnection service. For example, Modesto argues, an operating procedure could create import or export limitations, which, as an owner of interconnection facilities linked to the CAISO-controlled grid, Modesto claims it has a right to see. Modesto maintains that such issues are not curtailment issues, but they are operational issues. Likewise, Modesto states that a CAISO operating procedure could affect not only the physical capability of a transmission line, but the reliability of transferring power, which could include voltage and frequency concerns.

14. With the limitations that the CAISO proposes, Modesto submits that market participants could be affected by a CAISO action and not know why (or have their ability to seek recourse impaired if the CAISO’s concealment of the operating procedure prevents explanation of the controversy), even if the market participant is legitimately, operationally affected by the operating procedure.¹²

15. The CAISO responds to claims that its proposed explanation of whether an entity is operationally affected is too narrow, stating that the Commission has already determined that the CAISO may deny access to non-public operating procedures if a market participant is only economically or financially affected.¹³

¹⁰ *Id.* at 4.

¹¹ Modesto May 15, 2009 Protest, Docket Nos. ER08-367-005, ER06-615-048 at 3 (Modesto Protest).

¹² *Id.*

¹³ CAISO, May 29, 2009 Answer, Docket Nos. ER08-367-005, ER06-615-048 at 2 (CAISO Answer) (citing March 2009 Compliance Order, 126 FERC ¶ 61,276 at P 34).

16. The CAISO continues that, consistent with the Commission's direction, it intends to allow access to non-public operating procedures subject to agreed-upon controls if an entity has a legitimate need to review those operating procedures. However, in light of the protests, the CAISO states that it is willing to modify its explanation of whether an entity is operationally affected in proposed tariff section 22.11.3 to read as follows:

For purposes of this section, an entity is "operationally affected" if (1) the entity is a party to the Transmission Control Agreement, a neighboring Balancing Authority or a Market Participant and (2) the operating procedure, if implemented, would require a change outside of the CAISO Markets in the operation of that entity's facilities that are part of or interconnected to the CAISO Controlled Grid.¹⁴

17. The CAISO submits that this change would continue to allow parties to the Transmission Control Agreement and neighboring balancing authorities access to non-public CAISO operating procedures, if the operating procedures require a change in the operation to those entities' facilities.¹⁵ Further, according to the CAISO, this change would also expand the right of access to market participants to review non-public operating procedures, if the operating procedures require a change in the operation of those entities' facilities outside of the CAISO's market. The CAISO claims this change would address Modesto's concerns that it should have a right to review non-public CAISO operating procedures that, if implemented, require a change in the operation of interconnection facilities linked to the CAISO-controlled grid.

18. The CAISO also claims that the change should address SWP's claims that the CAISO should expand its definition of whether an entity is operationally affected to include (1) instances in which an operating procedure reflects that the CAISO is authorized to use an entity's facilities; and (2) instances in which an operating procedure requires adjustments of generator or load operating levels.¹⁶ The CAISO states that the proposed language would permit a requesting entity to review a non-public operating procedure to the extent the entity has authorized the CAISO to use its facilities outside of the CAISO Markets and the operating procedure, if implemented, would require a change in the operation of those facilities. The CAISO contends that to the extent an entity has already submitted a bid into the CAISO market that would involve the operation of those

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ *Id.* at 3-4.

facilitates, the requesting entity's need to review the non-public operating procedure would only be for an economic or financial purpose, which the Commission has already acknowledged is an insufficient reason to obtain access to non-public CAISO operating procedures.

19. In its answer, Modesto states that it believes that the language CAISO proposes in its answer is sufficient to meet Modesto's concerns and requests that the Commission approve the CAISO's proposed tariff language regarding non-public operating procedures.¹⁷

Commission Determination

20. The Commission directed the CAISO to explain what it means for an entity to be "operationally affected" under the terms of the subject tariff provision. The CAISO's proposed tariff language, as modified by its May 29, 2009 Answer, provides a definition of "operationally affected" that balances access to operating procedures to the most affected and the security of the non-public operating procedures. Therefore, the Commission accepts the proposed tariff sheets regarding the definition of "operationally affected," as modified by the May 29, 2009 Answer, effective March 31, 2009, and directs the CAISO to make such a filing consistent with the CAISO's answer on compliance within 30 days of issuance of this order.

B. Process for requesting access, the timeline for response and the criteria

21. The CAISO contends that the proposed tariff language explains: (1) the process for requesting access to a CAISO non-public operating procedure, (2) the timeline for the CAISO to respond to a written request for access, (3) and the criteria the CAISO will use to determine whether to provide access to the non-public operating procedure.¹⁸ The CAISO states that the proposed tariff language provides that the CAISO shall respond in writing to a request for access to a non-public operating procedure or portion thereof within ten (10) business days after receipt of the request. In such response, the CAISO will state whether it will allow access to review the non-public operating procedure and under what set of proposed controls.¹⁹ The CAISO proposes that, if it determines the entity is operationally affected by the operating procedure or portion thereof, the CAISO

¹⁷ Modesto June 15, 2009 Answer, Docket Nos. ER08-367-005, ER06-615-048 at 3-4.

¹⁸ April 2009 Compliance Filing at 3.

¹⁹ *Id.*

will, subject to agreed-upon controls, provide access to the non-public operating procedure within thirty (30) days.²⁰

22. The CAISO contends that it will determine whether to provide access to review the non-public operating procedure based on whether the entity is operationally affected as a result of implementation of the operating procedure or a portion thereof. The CAISO continues that if it determines that the entity is not operationally affected by the operating procedure or portion thereof, the CAISO will explain the reason for its determination in its written response.

Protests and Comments

23. SWP claims that either proposed tariff section 22.11.3 should be revised to require the CAISO to produce all operating procedures that authorize adjustment of operating levels of the requestor's facilities or the CAISO should be directed to specify on its website each operating procedure that authorizes adjustment of operating levels of any facilities, which might be loads, generators, or transmission facilities.²¹ SWP maintains that, as proposed, section 22.11.3 provides that a party seeking access to confidential operating procedures impacting its facilities must pre-identify to the CAISO the precise confidential operating procedures that do so.

24. SWP states that the difficulties of being asked to identify a document that one has never seen before are substantial.²² Further, SWP claims that reliance on the CAISO's index of operating procedures is not a feasible approach for those seeking to learn whether or how CAISO operators/dispatchers may use certain loads or other facilities. SWP contends that operating procedure names comprise at most a short phrase that does not disclose the facilities to be used or the nature of such use.

25. SoCal Edison claims that the CAISO provides no method for resolving any disputes arising from its determination that an entity is not operationally affected.²³ SoCal Edison proposes the following addition to the CAISO's proposed language:

²⁰ *Id.*

²¹ SWP Comments at 4.

²² *Id.* at 5.

²³ SoCal Edison May 15, 2009 Comments, Docket No. ER08-367-005, ER06-615-048, at 1 (SoCal Edison Comments).

If the CAISO determines that the entity is not operationally affected by the operating procedure or portion thereof, the CAISO will explain the reason for its determination in its written response. If the entity wishes to dispute the CAISO's decision, it must do so in writing, citing the specific reason(s) why the entity believes it is operationally affected. CAISO will arrange a discussion with the concerned parties, if necessary, to review the dispute prior to making a final determination.²⁴

26. SWP argues that certain timeframes in section 22.11.3 require clarification. While SWP generally supports the timeframes the CAISO has laid out, SWP claims that there is some ambiguity whether access will be provided within 30 days of the initial request, within 30 days of the CAISO's written response to the requesting party, or within 30 days of some other event.²⁵ SWP requests that the sentence in section 22.11.3 that reads, "If the CAISO determines the entity is operationally affected by the operating procedures or a portion thereof, the CAISO will, subject to agreed-upon controls, provide access to the non-public operating procedures within thirty (30) days," should be revised to read, "If the CAISO determines the entity is operationally affected by the operating procedure or portion thereof, the CAISO will, subject to agreed-upon controls, provide access to the non-public operating procedure within thirty (30) days of the CAISO's receipt of the request for access to a non-public operating procedure or portion thereof."²⁶

27. The CAISO, in its answer, argues that SWP's proposal to allow a requesting entity to ask for all operating procedures that authorize adjustments to the requesting entity's facilities or direct the CAISO to specify on its website each operating procedure that authorizes adjustment of the operating levels of any facilities exceeds the scope of the Commission's directives in the March 2009 Compliance Order and is unnecessary.²⁷

28. The CAISO, in its answer, also maintains that the Commission directed it to provide a description of the timeframe for providing access to non-public operating procedures or an explanation of its denial of access to such operating procedures. The CAISO states that it has specified such a process in proposed tariff section 22.11.3.²⁸ The CAISO submits that it is reasonable to require a requesting entity to specify the

²⁴ *Id.* at 1-2.

²⁵ SWP Comments at 5-6.

²⁶ *Id.* at 5-6.

²⁷ CAISO Answer at 5.

²⁸ *Id.* at 6.

operating procedure to which it is requesting access. The CAISO contends that the proposed process for requesting access to a non-public operating procedure balances the needs of the requesting entity to review non-public information with the needs of the CAISO to address any such requests through a manageable process.

29. In its answer, the CAISO also claims that its proposed process permits SWP to monitor the CAISO's operating procedures to ensure that those operating procedures only authorize use of SWP's resources with SWP's consent. The CAISO submits that it has held multiple discussions with SWP staff to discuss the contents of its operating procedures and whether and how they relate to SWP's generation resources or pump loads. The CAISO states that it remains willing to hold additional discussions with SWP as necessary.

30. The CAISO responds to SoCal Edison's proposal that the CAISO add tariff language to specify how an entity may dispute a CAISO determination that an entity is not operationally affected by a non-public CAISO operating procedure. The CAISO contends that its proposed tariff language states that it will respond in writing to any request and, if the CAISO determines that the requesting entity is not operationally affected by the operating procedure, explain the reason for its determination in its written response. The CAISO adds that if an entity believes the CAISO's determination is in error, it may initiate dispute resolution procedures with the CAISO under section 13 of the tariff. The CAISO argues that it is not necessary to include additional tariff language in proposed section 22.11.3 to specify dispute resolution procedures if an entity wishes to dispute the CAISO's determination. The CAISO continues that to the extent the Commission believes it is appropriate to clarify the dispute resolution procedures available to a requesting entity as part of tariff section 22.11.3, the CAISO is willing to include the following language on further compliance:

If the CAISO denies a request for access to a non-public operating procedure or portion thereof, the requesting entity shall have the right to invoke the CAISO ADR Procedures in Section 13.²⁹

31. Also, the CAISO acknowledges SWP's comment that the proposed tariff language should identify the triggering event for the 30 day timeframe for the CAISO to provide access to non-public operating procedures. Therefore, the CAISO states that it is willing to modify proposed tariff section 22.11.3 to include the following language on further compliance:

²⁹ *Id.* at 7.

If the CAISO determines that the entity is operationally affected by the operating procedure or portion thereof, the CAISO will, subject to agreed upon controls, provide access to the non-public operating procedure within thirty (30) days of the entity's written request.³⁰

Commission Determination

32. The Commission's March 2009 Compliance Order did not direct the CAISO to permit any requesting entity to receive all operating procedures that authorize adjustment of operating levels for that entity or identify on its website each operating procedure authorizing such adjustments. Such a direction would be too broad and potentially burdensome for the CAISO and could jeopardize the security of certain confidential operating procedures. Further, the Commission finds SWP's request to be beyond the scope of the March 2009 Compliance Order.

33. Similarly, the Commission did not require the CAISO to add any provisions to provide additional formal procedures for handling a disputed denial of access to confidential operating procedures. As the CAISO notes, the tariff already describes certain dispute resolution procedures in section 13 of the tariff. However, the CAISO's proposal to add a reference to section 13 of the tariff provides additional clarity with respect to parties' procedural rights. Accordingly, the Commission directs the CAISO to make a filing consistent with the revision within 30 days of issuance of this order.

34. The Commission directed the CAISO to include a description of the timeline for providing access to the non-public operating procedures or an explanation for its denial of access to such operating procedures. The CAISO provides such a timeline, however, as SWP notes, the proposed provision lacks a "triggering event" to start the process. The Commission finds that the CAISO proposed tariff revision, included in its May 29, 2009 Answer, which addresses the triggering event concerns and is largely identical to SWP's suggested language, is acceptable and directs the CAISO to make a filing consistent with this revision within 30 days of issuance of this order.

C. Multiple Parties

35. The CAISO states that its proposed tariff language provides that employees or representatives, acting as agents of a requesting entity may obtain access to non-public operating procedures subject to agreed upon controls to limit access, disclosure and use of non-public information.³¹

³⁰ *Id.* at 6.

³¹ April 2009 Compliance Filing at 2.

Protests and Comments

36. SoCal Edison claims that the CAISO's proposed language fails to define "agreed-upon controls."³² SoCal Edison states that it is unclear whether such controls would be agreed-upon once and then used for all subsequent requests, whether they would be standardized for all entities, or all similarly-situated entities, and what happens if the parties are unable to settle upon mutually agreeable controls. SoCal Edison asserts that the CAISO should be required to provide these details prior to Commission approval.

37. The CAISO responds that SoCal Edison's concerns regarding the phrase "agreed upon controls" exceed the scope of the Commission's directives in the April 2009 Compliance Filing.³³ Thus, the CAISO does not believe SoCal Edison's comments require changes to its proposed tariff language. However, the CAISO states that it intends to treat all similarly situated entities alike and, where possible, will seek to employ a standard agreement to implement any controls related to access, disclosure and use of nonpublic operating procedures. The CAISO also reiterates that to the extent a requesting entity and the CAISO cannot agree upon controls for access to non-public information contained within an operating procedure, the requesting entity may invoke dispute resolution procedures under section 13 of the tariff.

Commission Determination

38. SoCal Edison's argument regarding the precise definition of "agreed upon controls" was raised in prior filings in this matter.³⁴ The Commission did not direct the CAISO to provide additional precision to the definition. This approach is to allow the parties flexibility in specific circumstances when determining how to provide access to non-public operating procedures and the controls applied. The Commission maintains that position and does not direct the CAISO to provide a narrow definition for "agreed upon controls" here. Also, the Commission accepts the CAISO's proposal to allow multiple representatives of operationally affected entities to access operating procedures.

³² SoCal Edison Comments at 2.

³³ CAISO Answer at 4-5.

³⁴ See March 2009 Compliance Order, 126 FERC ¶ 61,262 at P 20.

The Commission orders:

(A) The April 2009 Compliance Filing is conditionally accepted, as discussed in the body of this order, effective March 31, 2009, as requested.

(B) The CAISO is directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of the order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.