

131 FERC ¶ 61,001
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

California Independent System
Operator Corporation

Docket No. ER08-1113-007

ORDER ON COMPLIANCE

(Issued April 1, 2010)

1. In this order the Commission accepts, subject to modification, the January 19, 2010 compliance filing¹ submitted by the California Independent System Operator Corporation (CAISO) concerning entering Market Efficiency Enhancement Agreements (MEEA).

I. Background²

2. On June 17, 2008, the CAISO filed a proposal to establish an integrated balancing authority area (IBAA) and to apply the IBAA model to price import and export transactions between the CAISO and the Sacramento Municipal Utility District (SMUD) and Turlock Irrigation District (Turlock) balancing authority areas. The proposal established a single hub for modeling and pricing all imports and exports between the CAISO and the IBAA rather than at the specific interconnection points that separate them.

3. As an alternative to the single hub pricing mechanism, the CAISO proposed to provide market participants the option to execute a MEEA. The CAISO stated that a market participant wishing to execute a MEEA would provide the CAISO with additional information sufficient to verify the specific location and operation of the external resource within the IBAA that is used to support interchange transactions in exchange for an alternative pricing and modeling arrangement. On September 19, 2008, the

¹ January 19, 2010 CAISO Compliance Filing ER08-1113-007 (January 19 MEEA Compliance Filing).

² For a more detailed description of this matter's background, see *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,271 (2008) (September IBAA Order).

Commission accepted the CAISO's proposal, subject to modification, and directed the CAISO to make a further compliance filing.

4. On November 25, 2008, the CAISO filed revised tariff language to comply with the Commission's September IBAA Order.³ The CAISO asserted that the revised tariff language would ensure that the CAISO's nodal pricing under Market Redesign and Technology Upgrade (MRTU) would reflect the impacts of interchange transactions between the CAISO and the SMUD and Turlock balancing authority areas and that those transactions would be priced at just and reasonable levels.

5. On March 6, 2009, the Commission accepted, subject to modification, the CAISO's proposed tariff language in the November 25 Compliance Filing.⁴ The Commission directed the CAISO to make a further compliance filing, modifying several parts of the proposed tariff language.

6. On May 12, 2009, the CAISO submitted its compliance filing, as required by the Commission's March 6 MEEA Order.⁵

7. On August 20, 2009, the Commission held a technical conference on issues concerning MEEAs. Parties filed comments regarding the technical conference on September 15, 2009 and filed reply comments on September 22, 2009.

8. On December 17, 2009, the Commission issued an order accepting in part the CAISO's May 12 Compliance Filing and directing an additional compliance filing.⁶ The CAISO submitted its January 19 MEEA Compliance Filing as required by the Commission. Parties filed protests, and the CAISO filed an answer to the protests.

II. Notice of Filing and Responsive Pleadings

9. Notice of the January 19 MEEA Compliance Filing was published in the *Federal Register*, 74 FR 5310 (2010), with comments, protests, or interventions due on or before

³ CAISO, November 25, 2008 Compliance Filing, Docket No. ER08-1113-002 (November 25 Compliance Filing).

⁴ *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,207 at P 1 (March 6 MEEA Order).

⁵ CAISO, May 12, 2009 Compliance Filing, Docket No. ER08-1113-005 (May 12 Compliance Filing). The CAISO sought and obtained an extension of time within which to file the compliance filing. See May 4, 2009 Notice of Extension of Time, Docket No. ER08-1113-002.

⁶ *Cal. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,241 (2009) (December 17 MEEA Order).

February 9, 2010. IBAA Entities⁷ and Western Area Power Administration (Western) timely filed comments.⁸ The CAISO filed an answer to the protests and comments.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will not accept the CAISO's answer because it does not provide information to assist us in our decision-making process.

B. Compliance Filing

1. Default Pricing

12. IBAA Entities and Western contend that the CAISO's proposed tariff language exceeds the Commission directives because the proposed tariff language would allow the CAISO to impose default pricing on MEEA signatories pending any challenge the CAISO raises against a signatory's self-certification.⁹ Parties oppose the CAISO's proposed tariff language applying default pricing for any period for which the CAISO challenges the use of Resource IDs under a MEEA until the dispute is resolved.¹⁰

13. IBAA Entities contend that the proposed tariff language also states that the CAISO reserves the right to audit data provided by a MEEA signatory by giving 10 days advance notice of its intent to conduct an audit and is given 180 days from that date to complete

⁷ IBAA Entities includes the Sacramento Municipal Utility District, Transmission Agency of Northern California, Turlock Irrigation District, Modesto Irrigation District, and the Cities of Santa Clara, Redding and Palo Alto.

⁸ Due to the weather-related closure of the Commission, the first business day the Commission was open following the comment date was February 12, 2010. 18 C.F.R. § 385.2007(a)(2) (2009).

⁹ IBAA Entities February 12, 2010 Comments and Protest at 2 (IBAA Entities Protest); Western February 9, 2010 Protest at 7 (Western Protest).

¹⁰ *Id.* at 3 (citing proposed section 27.5.3.2.2 of the compliance filing).

the audit. IBAA Entities contend that, these provisions give the CAISO a virtually unfettered ability to block MEEA pricing, without any prior requirement to show cause.

14. IBAA Entities claim that while the December 17 MEEA Order states that the CAISO can challenge a self-certification under section 206 of the Federal Power Act (FPA), there is no suggestion that during the pendency of the proceeding the Commission would implement the complainant's requested relief.¹¹ IBAA Entities add that such an outcome would turn the prospective nature of an FPA section 206 proceeding on its head.¹²

Commission Determination

15. The Commission finds that the CAISO's proposed tariff language imposing default pricing on a MEEA signatory pending any challenge by the CAISO to the MEEA signatory's self-certification is unnecessary. The CAISO has the right to audit the data supplied under a MEEA and has 180 days to complete the audit. Current protections under section 206 of the FPA and the FPA penalty process regarding market manipulation are sufficient to address any concerns by the CAISO that a MEEA signatory may improperly self-certify certain MEEA transactions. In the December 17 MEEA Order, the Commission states,

If a dispute arises concerning the certification provided and its supporting information, and the parties are unable to resolve such disputes through other existing processes, parties are free to bring the issue and specific facts to the Commission in the form of a complaint.^[13]

16. Further, the Commission references the FPA prohibition against market manipulation and the FPA penalty up to \$1 million per day for each day a violation continues.¹⁴ Neither the FPA section 206 process nor the FPA penalty process contemplates imposing a penalty upon a party prior to an actual finding of wrong-doing.

17. Thus, the Commission directs the CAISO to remove the subject proposed tariff language and to permit a MEEA signatory to receive MEEA pricing while the self-certification provided is challenged by the CAISO. The Commission directs the CAISO to make a compliance filing consistent with this direction within 30 days of the date of this order.

¹¹ IBAA Entities Protest at 3 (citing December 17 MEEA Order at P 50).

¹² *Id.*

¹³ December 17 MEEA Order at P 50.

¹⁴ *Id.* at P 50 n.31.

2. Supporting Information

18. IBAA Entities assert that the CAISO's proposed tariff language concerning the information used to support a self-certification in the event of an audit exceeds the Commission's December 17 MEEA Order direction.¹⁵

19. IBAA Entities claim that the CAISO's proposed tariff language, requiring that, "the MEEA signatory shall support its certification with information demonstrating that an MEEA signatory resource was dispatched to support the interchange transaction" is not in compliance with the December 17 MEEA Order.¹⁶ IBAA Entities argue that the CAISO's proposed requirement for proof that a resource was *dispatched* for the interchange transaction is qualitatively different from proof that a resource was *used* to support the interchange transaction. IBAA Entities claim that the *dispatch* requirement could eliminate the incentive for IBAA Entities to sell excess generation into the CAISO. IBAA Entities assert that even though excess generation could be *used* to support the interchange transaction with the CAISO, if it was not originally *dispatched* for that purpose, IBAA Entities contend the transaction would not be eligible for MEEA pricing.¹⁷

20. IBAA Entities claim that a requirement that an internal resource be incrementally dispatched to support an interchange transaction exceeds the information the Commission deemed sufficient to support a self-certification.¹⁸ Therefore, IBAA Entities request that the Commission direct the CAISO to replace the term "dispatched" with "used" in its proposed tariff language section 27.5.3.2.2.¹⁹

21. Also, IBAA Entities claim that the requirement that a MEEA signatory prove that its interchange transaction is not being supported by power "originating from the Pacific Northwest or other Balancing Authority Areas outside the IBAA" is, at best, redundant to the requirement that MEEA signatories verify that they have used their own resources to

¹⁵ IBAA Entities Protest at 5.

¹⁶ *Id.* at 6 (citing proposed tariff section 27.5.3.2.2).

¹⁷ *Id.* at 7.

¹⁸ *Id.*

¹⁹ *Id.* at 7-8.

support an interchange transaction. At worst, IBAA Entities claim the requirement is an invitation for open-ended dispute and an attempt to circumvent the Commission's bar on netting.²⁰

22. Western adds that it does not understand why the CAISO added a requirement that a MEEA signatory be able to demonstrate as part of a self-certification audit that the resource is solely from within the IBAA.²¹ Western contends that the December 17 MEEA Order is clear on what the CAISO should include in its compliance filing, and the CAISO provided no evidence to demonstrate that it needs this additional information to audit a MEEA signatory's self-certification.

23. IBAA Entities claim the CAISO does not attempt to define what proof would suffice to meet its requirement, allowing the CAISO to challenge any self-certification it chooses and avoid paying anything but the IBAA default price for an indefinite period.²² IBAA Entities add that the CAISO's proposed tariff language would be inconsistent with the Commission's prior rulings against netting, requiring transparency, noting MEEAs should not be left to open-ended negotiation and finding that agreements should concern eligibility and not exclusion.

24. IBAA Entities continue that the December 17 MEEA Order's footnote 37, stating "Also, the MEEA signatory must be able to demonstrate that the power is not originating from the Northwest," must be read in the context of the remainder of the order. Therefore, IBAA Entities argue there is no suggestion that there must be a separate, additional demonstration that energy supporting an interchange transaction does not originate in the Pacific Northwest or in a neighboring balancing authority area.

25. IBAA Entities claim that the text accompanying footnote 37 is unrelated to the self-certification process but rather relates to the type of historical data used to create a MEEA. IBAA Entities further note that the information that the Commission listed as relevant to address self-certification challenges already establishes that the MEEA signatory has relied on its own non-Pacific Northwest resources to support the interchange transaction.²³

²⁰ *Id.* at 8.

²¹ Western Protest at 6.

²² IBAA Entities Protest at 8.

²³ *Id.* at 9.

Commission Determination

26. The Commission's direction concerning self-certification was not intended to limit MEEA pricing eligibility solely to interchange transactions with the CAISO that use resources that were incrementally dispatched but to also include interchange transactions with the CAISO that would not have occurred but for the use of a MEEA resource, regardless of whether its dispatch was incremental. As the December 17 MEEA Order states, "there is information that can be used to determine when an IBAA entity's MEEA resources are *supporting* the IBAA's transaction with the CAISO."²⁴

27. The Commission agrees with the IBAA Entities that if a MEEA resource has excess generation, it may sell such generation into the CAISO and may be eligible to receive MEEA pricing. This is a legitimate and efficient use of excess energy and should be encouraged. In such a case, a MEEA signatory, as we stated in our prior order, must maintain sufficient information to support a self-certification that a MEEA resource supported the transaction with the CAISO.

28. The Commission finds that the CAISO's use of the word "dispatch" in the proposed tariff language does not limit eligibility for MEEA pricing to MEEA resources incrementally dispatched to support an interchange transaction with the CAISO. The CAISO appears to apply the word "dispatch" to mean the same as the word "use," which is consistent with the Commission's use of those words.²⁵ Therefore, the Commission finds the IBAA Entities' request that the CAISO replace the word "dispatched" with the word "used" in the proposed language under section 27.5.3.2.2 of its tariff unnecessary.

29. Further, the CAISO's additional restrictions included in the proposed tariff language are redundant and not required by the December 17 MEEA Order. The December 17 MEEA Order did not direct the CAISO to include provisions in the tariff requiring the MEEA signatory to demonstrate that the resource supporting the MEEA interchange transaction is not originating from the Pacific Northwest or other balancing authority areas outside the IBAA.

30. The proposed tariff language requiring such demonstrations is unnecessary as the provision requiring a MEEA signatory to be able to support its self-certification with information to determine that MEEA resources are supporting the interchange transaction

²⁴ December 17 MEEA Order at P 51 (emphasis added); *see also* December 17 MEEA Order at P 51 (stating "certification that the source was used in the interchange transaction with the CAISO is also necessary.").

²⁵ The CAISO Tariff's definition of "dispatch" does not indicate that it only means incrementally dispatched generation. *See* CAISO Tariff, Fourth Replacement Tariff Volume No. II, First Revised Sheet No. 858.

with the CAISO satisfies the Commission's directives.²⁶ The Commission directs the CAISO to make a compliance filing eliminating the requirement that "The MEEA signatory must also demonstrate that the resource supporting the MEEA interchange transaction is not originating from the Pacific Northwest or other Balancing Area Authorities outside the IBAA," from proposed section 27.5.3.2.2 of its tariff within 30 days of the date of this order.

3. Verification Requirement

31. Western and IBAA Entities contend that the last sentence in tariff section 27.5.3.2.2 retains the verification requirement that was removed from other portions of the tariff in response to the Commission's December 17 Order. IBAA Entities suggest that the verification language in the section may have been inadvertently retained. Thus, Western and IBAA Entities request that the tariff language be changed to remove the verification requirements.²⁷

32. IBAA Entities suggest that the last sentence be revised to read,

For any portion of an interchange transaction for which the MEEA Entity has not self-certified that the resources were used to support interchange transactions, the default IBAA price specified in Appendix C, Section G.1.1 will apply for the corresponding volume and time period.[²⁸]

Commission Determination

33. The last sentence in tariff section 27.5.3.2.2 is inconsistent with the Commission's December 17 MEEA Order, which determined that in order to receive a MEEA price "the MEEA signatory should be allowed to self-certify that a MEEA resource supported an interchange transaction and should be able to support its certification with information in the event its certification is audited or challenged."²⁹ The last sentence in tariff section 27.5.3.2.2 appears to refer to the CAISO's previously rejected verification requirements. Therefore, the Commission directs the CAISO to submit a compliance filing revising the final sentence of proposed tariff section 27.5.3.2.2 consistent with the IBAA Entities' proposed language within 30 days of the date of this order.

²⁶ It is this demonstration that the Commission refers to in December 17 MEEA Order, footnote 37.

²⁷ IBAA Entities Protest at 10; Western Protest at 8.

²⁸ IBAA Entities Protest at 10.

²⁹ December 17 MEEA Order at P 33.

4. MEEA Customers

34. IBAA Entities contest the CAISO's proposed language in tariff section 27.5.3.2.1 that states,

By applying a set of weighted distribution factors to a set of generator locations, an MEEA signatory is not required to associate a specific generator within a MEEA portfolio of resources with a specific customer of the MEEA signatory.

IBAA Entities argue that the use of the phrase "a specific customer of the MEEA entity" is inconsistent with the CAISO's post-technical conference comments and the December 17 MEEA Order.³⁰

35. IBAA Entities maintain that there has never been any discussion of looking through a MEEA signatory to make MEEA pricing or eligibility determinations at the MEEA signatory's customer level. However, IBAA Entities claim that use of the phrase "a specific customer of the MEEA signatory" suggests some interest in MEEA signatories' customers. Thus, IBAA Entities claim the provision should be modified to read "[b]y applying a set of weighted distribution factors to a set of generator locations, an MEEA signatory is not required to associate a specific generator within a MEEA portfolio of resources with a specific MEEA signatory."³¹

Commission Determination

36. The Commission finds that the proposed tariff language concerning the application of weighted distribution factors to a set of generator locations does not suggest that MEEA signatories must provide specific customer information in order to receive MEEA pricing. In fact, it states just the opposite. Thus, the Commission accepts the proposed tariff language.

5. Alternative Pricing Agreements

37. Parties oppose the proposed tariff language concerning alternatives to generation distribution factors.³² Parties contend that the proposed provision in section 27.5.3.2 requiring the MEEA entity to "establish[] that a different structure more accurately identifies the actual location of resources within the IBAA that support interchange

³⁰ IBAA Entities Protest at 10.

³¹ *Id.* at 11.

³² IBAA Entities Protest at 12; Western Protest at 8.

transactions” in order to negotiate another structure is too restrictive because it may be in the best interest of both the MEEA entity and the CAISO to use a different structure.

38. Also, IBAA Entities contend that the language is ambiguous because it is not apparent if the alternative needs to be more accurate than modeling without a MEEA, or if it needs to be more accurate than a method preferred by the CAISO. Also, IBAA Entities contend that nothing in the December 17 MEEA Order authorizes the CAISO’s proposed restriction on MEEA pricing.³³

Commission Determination

39. The Commission finds the proposed tariff provision ambiguous and unclear regarding to what “more accurately” refers. In the December 17 MEEA Order, the Commission directed the CAISO to file tariff language which addresses negotiating alternate structures for modeling the location of MEEA resources consistent with the clarification submitted by the CAISO following the August technical conference.³⁴ In the CAISO’s clarification following the technical conference, it is clear that “more accurately” refers to a comparison with historical average distribution factors.³⁵ However, out of context, that comparison is lost. The remainder of the proposed tariff language is consistent with the December 17 MEEA Order. Therefore, the Commission directs the CAISO to make a compliance filing clarifying that “more accurately” is meant as a comparison to historical average distribution of generation among the portfolio of MEEA resources in section 27.5.3.2 of its tariff within 30 days of the date of this order.

6. Marginal Cost Data

40. Parties claim that the CAISO’s proposed tariff language listing the data to support a self-certification includes “marginal cost information,” but fails to indicate that providing marginal cost data is optional.³⁶ IBAA Entities and Western note that the December 17 MEEA Order allowed IBAA Entities to use marginal cost data to support a certification, and it was clear that the CAISO could not require marginal cost data.³⁷

³³ IBAA Protest at 12.

³⁴ December 17 MEEA Order at P 78 (*citing* CAISO Technical Conference Comments, Attachment A).

³⁵ September 15, 2009 CAISO Comments on the Technical Conference attachment A.

³⁶ IBAA Entities Protest at 11; Western Protest at 5.

³⁷ IBAA Entities Protest at 11 (*citing* December 17 MEEA Order at P 51).

41. Parties contend that the CAISO proposed language does not reflect the voluntary nature of providing marginal cost data, and the CAISO should be required to revise the language to do so.³⁸

Commission Determination

42. In the December 17 MEEA Order, the Commission stated,

[T]he CAISO has acknowledged that if it was provided marginal cost information from the IBAA entities, it would provide MEEA pricing, therefore, we direct the CAISO to take cost information into account in the event that a MEEA signatory provides it. However, a MEEA signatory is not required to provide cost information.³⁹

43. The CAISO's proposed tariff language groups marginal cost information among the other information that may be used by a MEEA signatory to support a self-certification. Although the list of information included in the December 17 MEEA Order was only intended to be an example of types of information that could be used to support a self-certification, by grouping marginal cost information with other types of information it may create some confusion that a MEEA signatory is expected to provide marginal cost information in order to support its self-certification, when it is not. The Commission finds that the CAISO should clarify in the tariff language that a MEEA signatory is not required to provide marginal cost information and may support its self-certification with other information including the other information listed. The Commission directs the CAISO to make a compliance filing consistent with this direction within 30 days of the date of this order.

The Commission orders:

(A) The January 19 Compliance Filing is conditionally accepted, as discussed in the body of this order.

³⁸ *Id.*

³⁹ December 17 MEEA Order at P 51 (citations omitted).

(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.,
Secretary.