

142 FERC ¶ 61,069
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

California Independent System
Operator Corporation

Docket No. ER13-404-000

ORDER ACCEPTING TARIFF AMENDMENT

(Issued January 29, 2013)

1. On November 16, 2012, the California Independent System Operator Corporation (CAISO) filed a tariff amendment regarding information sharing with the Commodity Futures Trading Commission (CFTC) to fulfill a condition of a CFTC proposed order exempting regional transmission organizations (RTOs) and independent system operators (ISOs) from certain requirements of the Commodity Exchange Act.¹ This order accepts CAISO's proposed tariff amendment, effective January 30, 2013, as requested.

I. CAISO's Proposed Tariff Amendment

2. CAISO states that the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank)² expanded the authority of the CFTC to include regulation of "swaps," which, according to CAISO, "have been defined broadly in a way that could be construed to cover certain transactions in the CAISO market."³ CAISO explains that, on February 7, 2012, a group of ISOs and RTOs, including CAISO, jointly petitioned the CFTC to exempt transactions in their markets from the CFTC's jurisdiction. CAISO states that in response, on August 28, 2012, the CFTC issued a proposed order that would

¹ 7 U.S.C. § 1 *et seq.* (2006), as amended by Pub. L. No. 111-203, 124 Stat. 1376 (2010).

² Pub. L. No. 111-203, 124 Stat. 1376 (2010).

³ CAISO November 16, 2012 tariff filing at 1.

grant the requested exemption on certain conditions.⁴ One of the conditions is that RTO/ISO tariffs may not include any requirement that an RTO/ISO notify any member prior to providing information to the CFTC in response to a subpoena or other information request. Specifically, the CFTC's proposed order provides as follows:

4. Conditions. The exemption provided by this Order is expressly conditioned upon the following:

...

b. Notification of requests for information: With respect to each [RTO/ISO], neither the tariffs nor any other governing documents of the particular RTO or ISO pursuant to whose tariff the agreement, contract or transaction is to be offered or sold, shall include any requirement that the RTO or ISO notify its members prior to providing information to the [CFTC] in response to a subpoena or other request for information or documentation.⁵

3. To satisfy this condition of the CFTC's proposed order, CAISO proposes to amend section 20 of its tariff to provide the same treatment to information requests from the CFTC or its staff as is currently provided to requests from the Commission, as follows (with proposed amendments highlighted):

20.4 Disclosure

Notwithstanding anything in this Section 20 to the contrary,

...

(c) The CAISO may disclose confidential or commercially sensitive information, without notice to an affected Market Participant, in the following circumstances:

(i) If the FERC, the Commodity Futures Trading Commission ("CFTC"), or ~~the~~its staff of one of those agencies, during the course of an investigation or otherwise, requests information that is confidential or commercially sensitive. In providing the information to FERC or its staff, the CAISO shall take action consistent with 18 C.F.R. §§ 1b.20 and 388.112, or to the CFTC or its staff, the

⁴ See Proposed Order and Request for Comment on a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act, 77 Fed. Reg. 52,137 (August 28, 2012).

⁵ *Id.* at 52,166.

CAISO shall take action consistent with 17 C.F.R. §§ 11.3 and 145.9, and request that the information be treated as confidential and non-public by the ~~agency~~FERC and its staff and that the information be withheld from public disclosure. The CAISO shall provide the requested information to the ~~agency~~FERC or its staff within the time provided for in the request for information. The CAISO shall notify an affected Market Participant within a reasonable time after the CAISO is notified by the ~~agency~~FERC or its staff that a request for disclosure of, or decision to disclose, the confidential or commercially sensitive information has been received, at which time the CAISO and the affected Market Participant may respond before such information would be made public[.]

II. Notice of Filing and Responsive Pleadings

4. Notice of CAISO's filing was published in the *Federal Register*, 77 Fed. Reg. 71,410 (2012), with interventions and protests due on or before December 7, 2012. Motions to intervene were filed by Pacific Gas and Electric Company and Southern California Edison Company. No comments or protests were filed.

III. Discussion

A. Procedural Matters

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Commission Determination

6. We find CAISO's proposed tariff amendment to be just and reasonable and not unduly discriminatory. We will therefore accept the tariff amendment effective January 30, 2013.

7. The Commission addressed the right of others to obtain market or trading data from the RTOs/ISOs without notice to affected market participants in Order No. 719.⁶ Pursuant to Order No. 719's directives, CAISO's currently-effective tariff requires that CAISO notify affected market participants if it receives a request seeking confidential or

⁶ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281, at PP 455-56, 459 (2008), *order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

commercially sensitive information. However, this notification requirement does not apply to information requests from the Commission or its staff.⁷

8. As noted above, one of the conditions of CFTC's proposed exemption is that RTO/ISO tariffs may not include any requirement that an RTO/ISO notify any member prior to providing information to the CFTC in response to a CFTC subpoena or other information request. The proposed tariff amendment thus provides similar treatment to information requests by the CFTC and its staff as is provided to the Commission and its staff.⁸

The Commission orders:

CAISO's proposed tariff amendment is hereby accepted, effective January 30, 2013, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁷ See CAISO, OATT, § 20.4(c)(i).

⁸ We note that the Commission and the CFTC are working to finalize arrangements for information sharing between the two agencies. Notwithstanding these discussions, the Commission must rule on CAISO's tariff proposal by January 29, 2013 pursuant to section 205 of the Federal Power Act, 16 U.S.C. § 824d (2006), and 18 C.F.R. Part 35 (2012).