

147 FERC ¶ 61,200
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket No. ER14-1729-000

ORDER ACCEPTING IMPLEMENTATION AGREEMENT

(Issued June 13, 2014)

1. On April 16, 2014, the California Independent System Operator Corporation (CAISO) filed an Implementation Agreement between itself and NV Energy setting forth the terms under which CAISO will modify and extend its existing real-time energy market systems to provide energy imbalance market service to NV Energy.¹ This will include imbalance services to transmission customers taking transmission service under NV Energy's open access transmission tariff (OATT).

I. Implementation Agreement²

A. Project Scope and Schedule

2. According to CAISO, the Implementation Agreement establishes the scope and schedule of implementing the energy imbalance market service and requires both CAISO and NV Energy (collectively, Parties) to complete a variety of project tasks necessary for development and implementation of an energy imbalance market in which NV Energy and its OATT customers can participate by October 1, 2015. CAISO explains that the Parties chose this date to allow for completion of all necessary activities based on the size, complexity, and compatibility of NV Energy. CAISO notes that the Implementation

¹ On April 22, 2014, CAISO filed an Errata, in which it included the final version of the NV Energy-ISO Energy Imbalance Market Economic Assessment submitted as Attachment C and enumerated inconsistencies between both versions submitted, none of which impacted the benefits cited in the original transmittal letter.

² In addition to the provisions discussed below, the Implementation Agreement includes a variety of provisions including confidentiality; limitations of liability; representations and warranties; general provisions such as notices and amendments; governing law and venue; communication; and dispute resolution. Transmittal Letter at 5; Implementation Agreement, sections 5-11.

Agreement is modeled after the CAISO-PacifiCorp implementation agreement previously approved by the Commission.³ CAISO also notes that its proposed tariff amendment to implement the energy imbalance market is currently pending before the Commission, and NV Energy will initiate its own necessary tariff amendments following Commission approval of the Implementation Agreement.⁴

3. According to the Implementation Agreement, either party may propose a change in the project scope or the implementation date (as set forth in Exhibit A to the Implementation Agreement). Such a proposed change would trigger a 30-day negotiation period between the Parties in an attempt to reach agreement as to the proposal and any necessary changes to the scope and schedule, provided that any such change must be mutually agreed to by the Parties.⁵ Any changes beyond Exhibit A (i.e., other than the project scope and schedule), shall be reflected in an executed amendment to the Implementation Agreement and filed with the Commission.⁶ The Implementation Agreement also provides for, at least, monthly meetings of the Parties' executives, or their designees, to discuss the continued appropriateness of the project scope and to ensure that the project can meet the implementation date.⁷

B. Implementation Fee

4. The Implementation Agreement specifies that NV Energy will pay to CAISO a fixed implementation fee of \$1.1 million, subject to the completion of specified milestones.⁸ CAISO states that this fee will be charged to NV Energy through five milestone payments for the recovery of the portion of the costs attributable to CAISO's configuration of its real-time energy market to function as an energy imbalance market available to NV Energy and its transmission customers. CAISO explains that the amount of the implementation fee is based on NV Energy's portion of the estimated

³ See *Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,298 (2013).

⁴ Transmittal Letter at 5.

⁵ Transmittal Letter at 5; Implementation Agreement, section 3.

⁶ Implementation Agreement, section 3(c).

⁷ *Id.*, section 3.

⁸ The agreed-upon milestones are: a detailed project management plan by June 1, 2014; expansion of CAISO's full network model to include NV Energy by November 14, 2014; system implementation program improvements, including CAISO providing to NV Energy all final technical specifications by May 15, 2015; construction, testing and training in preparation for market simulation by August 7, 2015; and system deployment and "go live" by September 30, 2015. *Id.*, section 4 and Exhibit A.

\$18.3 million cost CAISO would incur if it were to configure its real-time energy market to function as an energy imbalance market available to all balancing authority areas in the Western Electricity Coordinating Council (WECC).⁹ In addition, CAISO maintains that it confirmed the reasonableness of the implementation fee by comparing it to an estimate of the costs CAISO projects it will incur to configure its real-time energy market to function as an energy imbalance market that serves both CAISO and NV Energy, prior to expansion to include other entities.¹⁰

5. Section 4(b) of the Implementation Agreement provides that the implementation fee shall be subject to adjustment only by mutual agreement of the Parties in either of two circumstances: (1) if the Parties agree to a change in the project scope, schedule or implementation date, and the Parties agree that an adjustment to the fee is warranted in light of such change; or (2) CAISO provides notice to NV Energy that the sum of its actual costs and its projected costs to accomplish the balance of the project exceed the implementation fee. Similarly, under section 2 of the Implementation Agreement, NV Energy may provide a notice to terminate the agreement and CAISO must discontinue work on the project and will not invoice NV Energy for any subsequent milestone payments. In such case, after 30 days' good faith negotiations, CAISO will invoice NV Energy for any milestones completed but not already invoiced.

C. Other Key Principles

6. CAISO notes that it developed the energy imbalance market rules through a stakeholder process in which NV Energy participated, and it has filed an amendment to its tariff to implement the energy imbalance market that is currently pending before the Commission.¹¹

7. Section 12 of the Implementation Agreement provides the opportunity for CAISO and NV Energy to work with customers in the NV Energy balancing authority area, or

⁹ CAISO states that it derived a rate that would allocate the projected \$18.3 million to potential entrants into the energy imbalance market according to their proportionate share of the total WECC load (excluding CAISO's load) using data reported to WECC. CAISO explains that it applied this amount to NV Energy's share of the WECC load to obtain the implementation fee amount. Transmittal Letter at 3-4.

¹⁰ See Implementation Agreement, Attachment B, Declaration of Michael K. Epstein, April 16, 2014. We note that CAISO has stated that it will not incur the entire cost of expanding the energy imbalance market up front, but instead will incur these costs incrementally *if and when* the imbalance energy activity from additional balancing authority areas is incorporated into the market. See *id.* at 23-24.

¹¹ Transmittal Letter at 2. See Docket No. ER14-1386.

with other third parties, to ensure accommodation of their interests when the energy imbalance market is implemented.¹² Section 13 provides that both Parties will continue to comply with their respective compliance obligations, including WECC and NERC Reliability Standards.¹³

8. Section 2(a) of the Implementation Agreement allows either of the Parties to terminate the agreement for any reason, provided it has first entered into good faith discussions for 30 days in an effort to resolve differences.¹⁴ The Parties also acknowledge that CAISO is required to file a notice of termination with the Commission.¹⁵

II. Notice of Filing and Party Filings

9. Notice of CAISO's filing was published in the Federal Register, 79 Fed. Reg. 23,342 (2014) with interventions or protests due on or before May 7, 2014. Notice of CAISO's Errata filing was published in the Federal Register, 79 Fed. Reg. 24,702 (2014), with interventions or protests due on or before May 13, 2014. Timely motions to intervene were filed by Western Power Trading Forum, Western Area Power Administration, Transmission Agency of Northern California, Electric Power Supply Association, Modesto Irrigation District, Morgan Stanley Capital Group Inc., Northern California Power Agency, the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California, California Department of Water Resources State Water Project, California Municipal Utilities Association, Balancing Authority of Northern California, Nevada Cogeneration Associates #2, Deseret Generation & Transmission Co-operative, Inc., the Cities of Santa Clara and Redding, California and the M-S-R Public Power Agency, and Bonneville Power Administration. Motions to intervene out-of-time were filed by Powerex Corp., Cargill Power Markets, LLC, and the Public Utilities Commission of Nevada.

10. Timely motions to intervene and comments were filed by Truckee Donner Public Utility District (Truckee), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SoCal Edison), and Nevada Power Company and Sierra Pacific Power Company (NV Energy). United States Senator Harry Reid submitted comments on May 20, 2014 and Governor Edmund G. Brown, Jr. of California and Governor Brian Sandoval of Nevada submitted joint comments on June 2, 2014.

¹² Implementation Agreement, section 12.

¹³ *Id.*, section 13.

¹⁴ *Id.*, section 2(a).

¹⁵ *Id.*, section 2(g).

11. Sacramento Municipal Utility District (SMUD) filed a timely Motion to Intervene and Request for Hold Harmless Conditions, and Utah Associated Municipal Power Systems (UAMPS) filed a timely Motion to Intervene, Comments, Request for Suspension and Hearing, and Motion to Consolidate.

12. On May 15, 2014, CAISO filed an answer.

III. Comments, Protests and Answers

13. A number of commenters support the goal of further expansion of the energy imbalance market. PG&E supports the inclusion of NV Energy as the second entity to join the energy imbalance market, as well as CAISO's efforts to examine the benefits of the expanded energy imbalance market as contemplated in the Implementation Agreement.¹⁶ SoCal Edison supports NV Energy joining the energy imbalance market as it notes that with the increasing amount of intermittent renewable generation available, there are additional benefits of diversity that can be achieved with a larger resource mix to integrate these resources.¹⁷

14. Truckee contends that CAISO has failed to demonstrate that the allocated \$1.1 million implementation fee based on usage is a reasonable measure of benefits to NV Energy.¹⁸ Truckee maintains that even if CAISO made a showing that load was a viable measure of expected benefits that PacifiCorp would enjoy from energy imbalance market participation, no such showing has been made here vis-à-vis NV Energy.¹⁹

15. Truckee also urges the Commission to be clear that its order in this proceeding is of narrow scope, and does not constitute approval of the NV Energy-ISO Energy Imbalance Market Economic Assessment, NV Energy's participation in the energy imbalance market, NV Energy's ability to recover its costs of energy imbalance market participation, or any other OATT modifications in connection with such participation.²⁰

16. PG&E argues that CAISO's costs to meet its obligations to NV Energy under the Implementation Agreement should be borne by NV Energy and not by existing customers in CAISO.²¹ SoCal Edison points out that the implementation agreement currently

¹⁶ PG&E Comments at 3.

¹⁷ SoCal Edison Comments at 2.

¹⁸ Truckee Comments at 3.

¹⁹ *Id.*

²⁰ *Id.* at 4.

²¹ PG&E Comments at 3.

includes a provision indicating that “all costs necessary to implement the Project not provided for in this Agreement shall be borne separately by each Party and recovered through rates as may be authorized by their respective regulatory authorities.”²² SoCal Edison argues that it would be inappropriate to require current CAISO market participants to pay for the incremental costs caused by NV Energy’s service area being included in the energy imbalance market, and the Commission should direct CAISO to modify the Implementation Agreement to allow NV Energy the option to pay the additional costs or to withdraw from the energy imbalance market.²³ SoCal Edison also argues that the implementation fee should be viewed as an estimate and trued up based on actual costs, or refunded in the case of excess payments.²⁴

17. SMUD argues that CAISO’s proposal eliminates rate pancaking solely for real-time energy transactions in the energy imbalance market, but not for other real-time transactions, and this will result in a transmission rate subsidy for real-time energy transactions in the energy imbalance market and will create an artificial incentive to move transactions from existing day ahead and real-time trading to the energy imbalance market.²⁵ SMUD requests that the Commission require the participating public utility transmission providers accept an at risk condition, so that transmission revenue short falls do not fall on transmission customers not utilizing the energy imbalance market, and require CAISO to file a revised rate reflecting such changes with the Commission by October 2015.²⁶

18. Similarly, SoCal Edison notes that CAISO will not consider an energy imbalance transfer to be an export, and therefore the transfer will not incur a CAISO wheeling transmission charge.²⁷ SoCal Edison suggests the Commission direct CAISO to immediately begin a stakeholder process to resolve transmission cost recovery and implement it before NV Energy enters the energy imbalance market.²⁸

19. NV Energy asserts that the expanded energy imbalance market will provide benefits for its customers through more efficient dispatch of least-cost resources available

²² SoCal Edison Comments at 2-3. Implementation Agreement, section 4(g).

²³ SoCal Edison Comments at 3.

²⁴ *Id.*

²⁵ SMUD Comments at 2-3.

²⁶ *Id.* at 3.

²⁷ SoCal Edison Comments at 4.

²⁸ *Id.* at 5.

to meet demand, and more efficient utilization of NV Energy's generation and transmission resources.²⁹ NV Energy further contends that the expanded energy imbalance market will provide regional benefits by capturing diversity benefits and increasing the pool of resources available to obtain imbalance energy.³⁰ NV Energy contends that the justness and reasonableness of the implementation fee is supported by CAISO's estimate of the costs CAISO will incur, as well as the anticipated quantitative and qualitative benefits of the expanded energy imbalance market.³¹

20. UAMPS requests that the Implementation Agreement be suspended and set for hearing, asserting that questions of the proportionality of costs and benefits under the Implementation Agreement would be better explored at hearing.³² UAMPS also moves to consolidate this docket with Docket Nos. ER14-1386 and ER14-1578 and states this will allow the three dockets to inform each other and the Commission's analysis.³³

21. In its answer, CAISO argues that Truckee's argument regarding the allocation of the implementation fee is inconsistent with judicial and Commission precedent finding that a party's usage of a wholesale market is a reasonable basis for allocating the costs of establishing and administering that market.³⁴ CAISO notes that Truckee does not identify any contrary authority indicating otherwise.³⁵ CAISO asserts that the issues before the Commission in this proceeding are limited to the justness and reasonableness of the terms of the Implementation Agreement.³⁶

22. CAISO also argues that no provision of the Implementation Agreement establishes a rate authorizing the ISO to charge any costs of that effort to its existing customers; the implementation fee that would be charged to NV Energy in the Implementation

²⁹ NV Energy Comments at 5.

³⁰ *Id.*

³¹ *Id.* at 6.

³² UAMPS Comments at 5.

³³ *Id.*

³⁴ CAISO Answer at 4 (citing *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1370-71 (D.C. Cir. 2004); *Cal. Indep. Sys. Operator Corp.*, 103 FERC ¶ 61,114, at PP 25-26 (2003)).

³⁵ *Id.*

³⁶ CAISO Answer at 3.

Agreement is the only fee at issue in this proceeding.³⁷ CAISO notes that it has addressed other administrative costs associated with the energy imbalance market that are not specific to accommodating the participation of NV Energy and PacifiCorp in the filing of its tariff amendment, and will address any adjustments to those costs in its broader Grid Management Charge proceeding.³⁸

23. CAISO contends that the transmission rate pancaking and reciprocal transmission service are issues outside the scope of this proceeding, and the Commission will determine whether such rate proposals are just and reasonable in the proceedings on CAISO's and PacifiCorp's tariff amendments to implement the energy imbalance market.³⁹

IV. Discussion

A. Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant the late-filed motions to intervene of Powerex Corp., Cargill Power Markets, LLC, and the Public Utilities Commission of Nevada given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer filed in this proceeding because it has provided information that assisted us in our decision-making process.

B. Commission Determination

26. The Implementation Agreement is a bilateral agreement between CAISO and NV Energy that sets forth the terms under which CAISO will modify and extend its existing real-time energy market systems to provide energy imbalance service to NV Energy and

³⁷ CAISO Answer at 8-9.

³⁸ *Id.* See Docket No. ER14-1386-000; see also Budget and Grid Management Charge Materials for the April 17, 2014 Stakeholder Meeting, available at <http://www.caiso.com/informed/Pages/StakeholderProcesses/Budget-GridManagementCharge.aspx>.

³⁹ CAISO Answer at 11-12.

its OATT customers. The Implementation Agreement also provides for NV Energy to pay CAISO a fixed implementation fee of \$1.1 million, subject to the completion of specified milestones. We find that the Implementation Agreement is just, reasonable, and not unduly discriminatory or preferential. Accordingly, we accept the Implementation Agreement, effective June 16, 2014, as requested.

27. CAISO has stated that the implementation fee is based on its estimate of the costs it would incur if it were to configure its real-time energy market to function as an energy imbalance market available to all balancing authority areas in WECC. The implementation fee allocates a portion of that projected overall cost to NV Energy in an amount proportionate to NV Energy's benefits from the energy imbalance market, as measured by usage. We disagree that CAISO failed to demonstrate that usage is a reasonable measure of benefits to NV Energy. CAISO has provided the cost support to confirm that the implementation fee amount is comparable to the estimate of the costs CAISO projects it will incur to configure its real-time energy market to function as an energy imbalance market that serves both CAISO and NV Energy.

28. We agree with CAISO that the Implementation Agreement does not contain any provision authorizing it to charge any costs of the expanded energy imbalance market effort with NV Energy to existing CAISO customers. As such, we find the cost allocation issues raised by PG&E and SoCal Edison are beyond the scope of this proceeding and should be addressed if CAISO seeks to recover costs from other customers. Any CAISO-proposed recovery of costs associated with section 4(g) of the Implementation Agreement should be included in a broader Grid Management Charge proceeding and subsequently ruled on by the Commission. Stakeholders will have an opportunity to share concerns in the stakeholder process leading up to these filings and in the proceedings themselves. The Implementation Agreement provides for adjustment of the fixed implementation fee by mutual agreement of the Parties in the event CAISO's actual or expected costs exceed the estimate that forms the basis of the implementation fee. We expect that if CAISO approaches the cap, it will raise the issue with NV Energy. At that time NV Energy can agree to pay an increased implementation fee or CAISO can terminate the agreement, as provided in section 2 of the agreement. In either instance, under the terms of the Implementation Agreement, a filing with the Commission will be required to reflect such a change.⁴⁰ Thus, we find that a true-up provision, as requested

⁴⁰ Implementation Agreement, section 2(g) ("The Parties acknowledge that the ISO is required to file a timely notice of termination with FERC"); section 3(c) ("Changes that require revision of any provision of the Agreement other than Exhibit A shall be reflected in an executed amendment to the Agreement filed with FERC for acceptance").

by SoCal Edison, is not necessary, and we find that the implementation fee is just and reasonable in the absence of a true-up provision.

29. Commenters' concerns about wheeling access charges and transmission cost recovery are beyond the scope of this proceeding. The Implementation Agreement correctly recognizes that the ultimate design of the expanded energy imbalance market will be determined through CAISO's filing of tariff modifications to implement the energy imbalance market, currently before the Commission, and the Commission's ruling on that filing. We find that nothing in the Implementation Agreement prejudices or predetermines any market design issues or future OATT modifications.

30. Finally, we deny the requests to consolidate Docket No. ER14-1578-000 with Docket No. ER14-1386-000. Although the proceedings are closely related, they present separate factual and legal issues as to the justness and reasonableness of distinct filings. Furthermore, we are satisfied that the parties have had sufficient opportunity to review the filings in conjunction and address issues relevant to each filing in the separate dockets. We also deny the request for hearing as we find there is not a material factual issue in dispute, and it is possible to assess the reasonableness of the Implementation Agreement on the existing record.⁴¹

The Commission orders:

The Implementation Agreement is hereby accepted for filing, effective June 16, 2014, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴¹ A party requesting an evidentiary hearing must specify what factual issues it proposes to develop at the hearing. *See New Orleans Public Service Inc. v. FERC*, 659 F.2d 509, 515 (5th Cir. 1981); *see also Citizens for Allegan County Inc., v. FPC*, 414 F.2d 1125, 1128 (D.C. Cir. 1969). Even where material facts are disputed, the Commission has the discretion to deny a hearing so long as the disputes can be adequately resolved through written submissions. *See Union Electric Co.*, 93 FERC ¶ 61,158, at 61,528 (2000), *citing Amador Stage Lines, Inc. v. United States*, 685 F.2d 333, 335 (9th Cir. 1982).