

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

California Independent System Operator
Corporation

Docket No. ER05-1081-001

ORDER DENYING REHEARING

(Issued December 2, 2005)

1. In this order, the Commission denies rehearing of its order accepting Amendment No. 71 to the tariff of the California Independent System Operator Corporation (CAISO). Amendment No. 71 allows the CAISO to (1) disclose to the Commission confidential or commercially sensitive information when requested by the Commission during the course of an investigation or otherwise, and (2) share critical operating information, system models and planning data with other Western Electricity Coordinating Council (WECC) Reliability Coordinators, without providing notice of the request to affected market participants in advance of either disclosure.

Background

2. On June 6, 2005, the CAISO filed Amendment No. 71 to its tariff to change its obligations regarding confidential data by adding the following two new sections, 20.3.4.(c)(i) and (c)(ii):

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

(i) If the [Federal Energy Regulatory Commission (FERC)], or its staff, 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 ISO shall take action consistent with 18 C.F.R §§ 1b.20 and 388.112, and request that the information be treated as confidential and non-public by the FERC and its staff and that the information be withheld from public disclosure. The ISO shall notify an

affected Market Participant within a reasonable time after the ISO is notified by 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 ISO and the affected Market Participant may respond before such information would be made public; or

(ii) In order to maintain reliability operation of the ISO Control Area, the ISO may share critical operating information, system models, and planning data with other WECC Reliability Coordinators,^[1] who have executed the Western Electricity Coordinating Council Confidentiality Agreement for Electric System Data, or are subject to similar confidentiality requirements.

3. The CAISO asserted that it required the ability to disclose confidential or commercially sensitive information to the Commission without first having to notify affected market participants in order to effectively support the Commission's investigative and market monitoring functions. It further stated that it required the ability to exchange information with other WECC reliability coordinators without notifying affected market participants to enable timely communication among the region's reliability coordinators so as to ensure continued reliable operation of the WECC grid.

4. In an order issued on June 29, 2005, the Commission accepted Amendment No. 71.² The Cities of Redding and Santa Clara, California and the M-S-R Public Power Agency (collectively, Cities/MSR) filed a timely request for rehearing.

Discussion

5. Cities/MSR seeks rehearing of the Commission's acceptance of both section 20.3.4(c)(i) and section 20.3.4(c)(ii). The Commission denies rehearing of both sections, on the basis that Cities/MSR has made no compelling argument for the Commission to revisit its earlier reasoning.³

¹ The three reliability coordinators of the Western Electricity Coordinating Council (WECC) region are the CAISO, the Rocky Mountain Desert Southwest Reliability Center (RDRC) in Loveland, CO and the Pacific Northwest Security Coordinator (PNSC) in Vancouver, WA.

² *California Independent System Operator Corporation*, 111 FERC ¶ 61,500 (2005) (June 29 Order).

³ We note here that on June 29, 2005, the California Public Utilities Commission (CPUC) filed a motion to intervene out of time in this proceeding. We hereby grant that motion.

A. Section 20.3.4.(c)(i) (provision of information to Commission staff)

6. In the June 29 Order, with regard to the provision of confidential or commercially sensitive information to Commission staff upon request, we stated that:

The Commission agrees with the CAISO that the additional tariff language filed here will allow the Commission to act more promptly to review system events or supply issues, investigate potential instances of market gaming and/or violations of Market Behavior Rules, and expeditiously resolve any of these concerns. The Commission finds it necessary that in order to take timely action to address market power or other market problems, the Commission must be able to obtain data from the CAISO in as immediate a fashion as possible.^[4]

We further noted that the provisions proposed by the CAISO were comparable in most respects to those contained in other Independent System Operator (ISO) or Regional Transmission Organization (RTO) tariffs.⁵

7. The Commission recognized that market participants had raised meaningful concerns regarding the accuracy and safe handling of confidential information supplied by the CAISO to the Commission. We pointed out, however, with regard to accuracy, that "the Commission always attempts to verify any confidentially received information,"⁶ and with regard to safe handling, that it "has significant and proper procedures in place to safeguard the handling of confidential information by its staff."⁷ With regard to both the concern regarding accuracy and the concern regarding safe handling, we stated that, since proposed new section 20.3.4(c)(i) required the CAISO to "notify an affected Market Participant within a reasonable time after the ISO is notified

⁴ June 29 Order at P 12.

⁵ *Id.* at P 15. To make the CAISO tariff language fully consistent with the language of the New York Independent System Operator (NYISO), ISO New England (ISO-NE), and PJM Interconnection (PJM) tariffs, we required the CAISO to make a compliance filing adding the following tariff language to section (c)(i): "The CAISO shall provide the requested information to the FERC or its staff within the time provided for in the request for information." The CAISO made that filing, which was accepted by letter order in Docket No. ER05-1081-002 on September 19, 2005.

⁶ June 29 Order at P 13.

⁷ *Id.* at P 14.

by 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 ISO and the affected Market Participant may respond before such information would be made public,” a market participant would have an opportunity to timely challenge any information provided by the CAISO to the Commission.⁸

8. In its request for rehearing, Cities/MSR asserts that the Commission did not engage in reasoned decision-making in approving proposed section 20.3.4.(c)(i), in that it did not provide a compelling reason for departing from the traditional policy of requiring a transmission organization to notify an affected market participant before disclosing confidential information, and it did not balance the Commission's interest in timely obtaining this information with the interests of market participants in protecting proprietary information. Cities/MSR asks the Commission to reconsider its approval of section 20.3.4(c)(i) and instead to review the disclosure process to facilitate faster transfer of confidential information to the Commission without compromising market participants' interest in protecting such information. Cities/MSR also states that requiring the CAISO to make electronic notification to affected market participants would not be overly burdensome. Alternatively, if the Commission does not reconsider its approval of section 20.3.4(c)(1), Cities/MSR asks the Commission to require the CAISO to provide an after-the-fact notification to affected market participants of what data was requested.

9. The Commission denies rehearing of its acceptance of section 20.3.4(c)(1). Cities/MSR states that the Commission's traditional policy is to require a transmission organization to notify affected market participants before providing confidential information to Commission staff; yet, it does not address the fact that, as noted above, NYISO, ISO-NE and PJM all currently contain similar provisions in their tariffs allowing the transmission organization to provide confidential information to the Commission without notifying market participants. Contrary to Cities/MSR's allegation, the Commission did balance the Commission's (and the public's) interest in timely obtaining the information necessary to investigate potential instances of market manipulation with interest of market participants in ensuring the accuracy and confidential treatment of data transmitted to the Commission. And, as noted above, the Commission concluded that its procedures to ensure accuracy and confidential treatment – namely, the requirements that staff attempt to verify all such data, and that staff be trained in the handling of confidential information, in addition to the fact that a market participant would have the opportunity to challenge or seek to correct any information provided by the CAISO to the Commission before that information was made public – addressed market participants' concerns in this regard. As to requiring electronic disclosure, the Commission will not impose this requirement on the CAISO without any showing of the specific costs and benefits of such a procedure, and notes that Cities/MSR may, if it wishes, use the

⁸ *Id.*

stakeholder process available to it to seek to develop a record to support such a requirement.

10. With regard to the provision in section 20.3.4(c)(1) that the CAISO may disclose information "[i]f the FERC, or its staff, during the course of an investigation *or otherwise*, requests information that is confidential or commercially sensitive,"⁹ Cities/MSR requests clarification on the use of the term "or otherwise" and asks that the CAISO identify specific instances in which confidential information would be provided to Commission staff other than in the course of an investigation. The Commission disagrees that it is necessary to provide greater specificity. The Commission is already granted broad authority to obtain the records of public utilities by the Federal Power Act (FPA).¹⁰ Additionally, as noted in the June 29 Order, the NYISO, ISO-NE and PJM tariffs contain similar provisions regarding the disclosure of confidential information, and all of those provisions contain similar "or otherwise" language.¹¹ The Commission therefore denies Cities' request for clarification as to the "or otherwise" language.

⁹ Section 20.3.4(c)(1), emphasis added.

¹⁰ See FPA section 301(b), 16 U.S.C. § 825(b)(2005):

The Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of licensees and public utilities, and it shall be the duty of such licensees and public utilities to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require.

¹¹ NYISO FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 373A ("If the FERC or its staff, during the course of an investigation *or otherwise*, requests information from the ISO that is otherwise required to be maintained in confidence pursuant to this Section . . ."); ISO New England, FERC Electric Tariff No. 3, Attachment D, Original Sheet No. 9417 ("if the FERC or its staff, during the course of an investigation *or otherwise*, requests information from the ISO that is Confidential Information . . ."); PJM Interconnection, LLC, Third Revised Rate Schedule FERC No. 24, Substitute First Revised Sheet No. 61, section 18.17.3 ("if the FERC or its staff, during the course of an investigation *or otherwise*, requests information from the Office of the Interconnection that is otherwise required to be maintained in confidence pursuant to this Agreement . . .). Emphasis is added throughout.

B. Section 20.3.4(c)(ii) (exchange of information with other WECC reliability coordinators)

11. In its June 29 Order, the Commission accepted proposed section 20.3.4(c)(ii), allowing the CAISO to share critical operating information, system models, and planning data with other WECC reliability coordinators, on the basis that "this action will allow a more efficient and reliable grid operation in the WECC" and "will allow the Commission to act more promptly to review system events and expeditiously resolve market concerns."¹² In doing so, we relied on the representations by the CAISO that

the other two regional coordinators in the western interconnection routinely exchange information, and that [the prior version of the] CAISO's tariff limits its ability to participate and reciprocate in the sharing of information (e.g., individual unit operating performance and facility outage information) unless there is a legal obligation to do so. This, in turn, can hinder reliability efforts since it is not possible to create a real-time grid analysis of regional operations for the entire western interconnection. The CAISO states that, in order to promote reliable grid operations for both California and the western interconnection in summer 2005 and beyond, it must be able to share critical operating information, system models, and planning data with the other WECC reliability coordinators.^[13]

12. After stating these benefits to the public interest that would occur from enabling this timely exchange of information, the Commission further acknowledged the necessity of minimizing the risk of harm that could occur through unauthorized disclosure of critical operating information, and noted that this problem was addressed by the fact that the CAISO proposed to limit the information exchange to parties "who have executed the Western Electricity Coordinating Council Confidentiality Agreement for Electric System Data, or are subject to similar confidentiality requirements."¹⁴ The Commission stated that "[t]his aspect of the CAISO proposal squarely addresses the concerns raised by [a protester] with regard to this issue."¹⁵

13. Cities/MSR, in its rehearing petition, states that the Commission in its June 29 Order failed to provide a compelling reason for giving the CAISO the discretion to share

¹² June 29 Order at P 20.

¹³ *Id.* at 16.

¹⁴ *Id.* at 20.

¹⁵ *Id.*

a market participant's critical information without that participant's knowledge, and again states that the Commission failed to balance market participants' interest in protecting their confidential information with the CAISO's interest in timely submission of data to other reliability coordinators. Cities/MSR does not, however, in any way address the Commission's reasons for granting that discretion: namely, that the CAISO has made convincing representations that this discretion is necessary to enable it fully to participate in timely information exchange with its fellow reliability coordinators, and so, in turn, to create the real-time grid analysis of regional operations for the WECC that is necessary to maintain reliability. Further, the Commission specifically addressed market participants' concern regarding the necessity of keeping critical information confidential by noting that information could only be exchanged among parties who have executed the WECC Confidentiality Agreement for Electric System Data or are subject to similar confidentiality requirements. Thus, the Commission fully addressed and balanced the interests of all parties, and denies rehearing as to this issue.

The Commission orders:

Cities/MSR's petition for rehearing is denied, as discussed above.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.