

126 FERC ¶ 61,276
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 No. ER06-615-035
ER08-367-001

ORDER ON COMPLIANCE FILING

(Issued March 26, 2009)

1. This order conditionally accepts the January 2, 2009 compliance tariff revision of the California Independent System Operator Corporation (CAISO), as directed by the Commission's December 4, 2008 Order.¹

I. Background

2. On February 9, 2006, the CAISO submitted a revised tariff to the Commission designed to reflect the Market Redesign and Technology Upgrade (MRTU) changes to its existing tariff (MRTU Tariff).² The February 9, 2006 MRTU Tariff was submitted as a replacement of the currently effective tariff (the CAISO Tariff).

3. On September 21, 2006, the Commission issued an order conditionally accepting the MRTU Tariff.³

¹ *Cal. Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,262 (2008) (December 2008 Order).

² *Cal. Indep. Sys. Operator Corp. February 9, 2006 California Independent System Operator's Electric Tariff Filing to Reflect Market Redesign and Technology Upgrade.*

³ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 1 (2006), *order on reh'g*, 119 FERC ¶ 61,076 (2007); *see also Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,313 (2007).

4. Subsequently, on December 21, 2007, the CAISO submitted a Revised MRTU Tariff that it called a comprehensive, conformed version of the MRTU Tariff that incorporates all intervening amendments that were filed subsequent to the initial filing of and conditional acceptance of the MRTU Tariff on September 21, 2006.

5. The Commission accepted the CAISO revisions to the MRTU Tariff, subject to certain modifications.⁴ Therefore, on January 2, 2009, the CAISO filed its January 2009 Compliance Filing making revisions to the terms and/or definitions to conform to the new “Balancing Authority Area” terminology in the North American Electric Reliability Corporation and Western Electricity Coordinating Council glossaries of terms, addressing issues concerning the use of the term “zones,” adding the formula for weighted average rate for wheeling service to the tariff, specifying the details regarding any re-launch of MRTU, and outlining how a market participant receives access to confidential operating procedures through the non-disclosure agreement process.

6. The CAISO requests that in the event that MRTU is implemented more than 120 days after the submittal of its compliance filing, the Commission grant waiver of section 35.3 of the Commission’s regulations in order to permit the changes in the compliance filing to become effective as of the implementation date.⁵

II. Notices of Filing and Responsive Pleadings

7. Notice of the CAISO’s compliance filing was published in the *Federal Register*, 74 Fed. Reg. 3586 (2009), with comments due on or before January 26, 2009.

8. The Transmission Agency of Northern California (TANC), the City of Santa Clara, California (Santa Clara), the M-S-R Public Power Agency (MSR), the Western Power Trading Forum (WPTF) timely filed protests to the January 2009 Compliance Filing. EPIC Merchant Energy, L.P. (EPIC) and the California Department of Water Resources State Water Project (SWP) filed protests and comments out of time. The CAISO filed a motion for leave to answer and answer to protests and comments and filed

⁴ December 2008 Order, 125 FERC ¶ 61,262 at P 1.

⁵ 18 C.F.R. § 35.3 (2008).

a motion for extension of time to comply with paragraphs 58-61 of the Commission's December 2008 Order, which the Commission granted.⁶

III. Procedural Matters

9. Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R § 385.211 (2008), the Commission will accept EPIC's and SWP's late filed protests and comments given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

10. 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 because it aids us in our understanding of the issues raised in this proceeding.

IV. Discussion

11. The Commission accepts those provisions submitted by the CAISO in the January 2009 Compliance Filing that are not contested and not specifically discussed below, e.g., the use of the "Balancing Authority Area" terminology and the specification of details regarding re-launch of MRTU.

A. Weighted Average Rate For Wheeling Services Formula

12. In its January 2009 Compliance Filing, the CAISO added tariff language describing the weighted average rate for wheeling service formula. According to the CAISO, the new language captures all of the essential elements of the formula reflected in the business practice manual but without the mathematic symbols.⁷ The CAISO states that prior to the December 2008 Order, it developed proposed MRTU Tariff revisions adapted from the WPTF comments in this matter and posted them for stakeholder review and comment. The CAISO claims that its revisions included a description of the formula for determining the weighted average rate for wheeling service rather than a complete mathematical formula. The CAISO claims it received no objections to the posted

⁶ *Cal. Indep. Sys. Operator Corp.*, Docket Nos. ER08-367-000, ER06-615-016 (Jan. 7, 2009) (unpublished letter order). As a result of the extension granted the CAISO to consolidate the revisions directed by the Commission regarding voltage support and black start into its January 15, 2009 filing, the Commission addressed the voltage support and black start issues in Docket No. ER09-556-000, et al.

⁷ CAISO February 5, 2009 Answer, Docket Nos. ER08-367-001, ER06-615-035, at 4 (CAISO Answer).

proposed tariff revisions. Consequently, the CAISO proposes to incorporate that language into the MRTU Tariff. The CAISO submits that the proposed description of the formula for determining the weighted average rate for wheeling service is fully descriptive of the formula, consistent with the Commission's "rule of reason" in determining rates, terms, and conditions of service that must be incorporated into its tariff, and responsive to the comments of WPTF.

13. In its comments TANC claims that the CAISO failed to comply with the December 2008 Order because it failed to reinstate the formula for the weighted average rate for wheeling service in the MRTU Tariff as directed by the Commission in its December 2008 MRTU Order.⁸ Specifically, TANC states that the CAISO proposal does not include the mathematical computation that the Commission ordered and, instead, simply references the applicable business practice manual. TANC adds that the CAISO's argument, that it developed the proposal and posted it for stakeholder review and comment and received no objection, provides no justification for failing to comply with the Commission's December 2008 Order.

14. The CAISO responds that the description of the formula for weighted average for wheeling services proposed in the January 2009 Compliance Filing is sufficient. The CAISO contends that TANC is wrong in claiming that the CAISO's use of words instead of mathematical symbols diminishes the statement of the rate formula in the MRTU Tariff. The CAISO maintains there is no basis for the implication in TANC's protest that words cannot serve as a sufficient description of a formula. The CAISO contends that the statement of this formula in words is more understandable to the average reader without sacrificing any of the conceptual clarity of the description of the applicable rates.

15. The CAISO adds that the Commission is moving to implement the use of the "eTariff" approach to the maintenance of electronic versions of tariffs, and the use of mathematical symbols creates additional potential difficulty in administering a tariff in "eTariff" electronic format.

Commission Determination

16. In the December 2008 Order, the Commission found that the formula for weighted average rate for wheeling service should be included in the tariff because it significantly affects rates, terms and conditions of service and therefore required the CAISO to include that formula in the MRTU Tariff.⁹ In its January 2009 Compliance

⁸ Santa Clara and MSR state that they reviewed TANC's pleading and concur with its arguments and requests for relief.

⁹ December 2008 Order, 125 FERC ¶ 61,262 at P 67.

Filing, the CAISO proposed adding a description of the formula for weighted average for wheeling service to the MRTU Tariff rather than the full mathematical formula. The Commission finds that the CAISO's proposed written representation of the formula provides sufficient information concerning the formula to comply with the Commission's previous order. The language proposed by the CAISO contains sufficient information to understand the formula. Further, the CAISO cannot effectuate a change to the mathematical formula in the business practice manual without also revising the new tariff language. Therefore, the Commission accepts the CAISO's proposed written description of the formula for weighted average rate for wheeling service.

B. Access to Non-Public Information

17. In the January 2009 Compliance Filing, the CAISO proposes a new tariff section outlining the process for a market participant to receive access to non-public operating procedures through a non-disclosure agreement. The CAISO claims that the procedure to access non-public operating procedures is consistent with the CAISO's existing applicable publicly available operating procedure.

18. WPTF claims that the language proposed by the CAISO fails to comply with the Commission directive and also includes additional undefined economic and financial requirements for market participants to gain access to non-public operating procedures. WPTF contends that the proposal would deny market participants the right to obtain non-public operating procedures, if the CAISO determines that such a participant is merely economically or financially affected by the non-public operating procedure. EPIC adds that the CAISO's proposed new tariff provision includes unwarranted restrictions to a market participant's access to non-public operating procedures data.

19. WPTF claims that the CAISO has failed to provide any procedures for accessing non-public operating procedures. WPTF states that the proposed tariff language fails to provide the steps that a market participant must take to access the necessary information. WPTF also argues that the proposed tariff provision is vague and ambiguous, and invites denials and procedures without any restrictions.

20. WPTF asserts that the CAISO's failure to specify agreed upon controls creates ambiguity and is unjust and unreasonable. WPTF states that while it assumes that the intention of the clause "subject to agreed upon controls" in the proposed tariff provision refers to the non-disclosure agreement process governing the release of protected procedures, the proposed language does not specifically refer to that process.

21. WPTF and EPIC argue that the proposed tariff language is overbroad, vague, unreasonable and unduly discriminatory because it allows denial of access to non-public operating procedures on the basis that a participant is merely affected economically or financially. WPTF and EPIC claim that the Commission did not direct the CAISO to include any substantive restrictions regarding economic or financial impacts, and the

CAISO provided no basis for including such language. EPIC asserts that not only does the CAISO fail to justify why market participants that are only economically or financially affected should be denied access to this information, but also it fails to explain why an operating effect is the only condition where access to non-public operating procedures is warranted. EPIC contends that the effect of this unjustified restriction is that power marketing firms such as EPIC could be denied access to non-public operating procedures simply because they do not operate physical generating facilities or transmission facilities, while a traditional utility would seemingly have unfettered access to this information.

22. EPIC also requests that a time limit be placed on CAISO's actions. EPIC asserts that the CAISO should be required to act upon any request for access to non-public operating procedures within a reasonably short period of time, and if the CAISO denies access to this information, it should have to provide an explanation for its decision within a short period of time thereafter as well. EPIC suggests five and three business days, respectively.

23. SWP requests that the Commission ensure that all necessary persons, not just one person, in an organization affected by a confidential operating procedure may be informed of that operating procedure's contents. SWP also requests that the CAISO have the burden of identifying confidential operating procedures that affect the operations of a market participant, particularly insofar as such operating procedures may raise questions whether certain loads may not be receiving the same quality of firm CAISO service as other loads.

24. SWP claims that because the CAISO has declined to state whether SWP pump loads will receive the same quality of firm service as other loads, SWP must have access to confidential operating procedures that spell out treatment of its loads. To ensure non-discriminatory treatment between participating load and non-participating load, SWP contends it is critical that all the operating procedures are carefully developed and accessible by the participating load owners. SWP claims it has encountered difficulties in attempting to determine the contents of CAISO operating procedures impacting SWP pump loads. SWP maintains that without more clear language in the MRTU Tariff, it cannot independently confirm the treatment of its pump loads under confidential CAISO operating procedures.

25. SWP requests that the tariff language make clear the right of an organization to learn of CAISO operating procedure treatment (in full context) of its facilities. SWP is concerned that the proposed phrase, providing that the CAISO may "make nonpublic operating procedures or portions thereof available to a single representative of an entity" could preclude an organization such as SWP from becoming aware of the exact impact confidential CAISO operating procedures have on SWP facilities.

26. Therefore, SWP requests that the Commission order the modifications sought by WPTF and EPIC, ensure that all necessary persons in an organization affected by a confidential operating procedure may be informed of that operating procedure's contents and ensure that the CAISO shall have the initial burden of identifying non-public operating procedures that affect the operations of a market participant, particularly insofar as such operating procedures may raise questions whether certain loads may not be receiving the same quality of firm CAISO service as other loads.

27. The CAISO responds that it has complied with the Commission's directive to include a provision in the MRTU Tariff that outlines how a market participant receives access to non-public operating procedures through the non-disclosure agreement process. The CAISO maintains that since the Commission specifically found that the CAISO was not required to alter the proposed procedures that are currently in place, none of the requested changes are necessary.

28. The CAISO argues that, WPTF, EPIC, and SWP seek to expand the scope of these proceedings by debating the adequacy of the CAISO's process and challenging the merits of the CAISO's underlying policies regarding which operating procedures must be maintained on a confidential basis. The CAISO maintains that both debates go beyond the scope of the compliance filing directed by the Commission and are procedurally improper in these proceedings.

29. The CAISO maintains that limiting access to the non-public operating procedures to operationally affected market participants is necessary and fully consistent with tariff requirements, which require the CAISO to maintain the confidentiality of information and precludes a market participant from obtaining access to confidential information of another market participant. The CAISO asserts that WPTF, EPIC and SWP appear to believe that all market participants are entitled to have access to all procedures if they are willing to sign a non-disclosure agreement. The CAISO contends this is not and never has been the CAISO's process.

30. The CAISO concedes that the limitation it proposed, i.e. to limit access to "a single representative" of an entity, is too narrow. The CAISO offers to modify the tariff and the operating procedure to indicate that a finite number of identified employees of an affected entity with a need to know can have access to relevant confidential operating procedures subject to agreed upon controls.

31. Concerning the phrase "agreed upon controls," the CAISO claims it deliberately chose not to refer to a non-disclosure agreement, as other options may be available. The CAISO maintains that unless it were providing a hard or electronic copy of a procedure to be retained by the requesting entity, it may not be necessary to enter into a non-disclosure agreement in all circumstances. Consequently, the CAISO maintains it is appropriate to retain some discretion concerning determination of the necessary controls.

32. The CAISO argues that the Commission anticipated the very possibility that particular entities might have objections to the denial of access by the CAISO to particular confidential operating procedures. The CAISO notes that the Commission stated that in such cases “the market participants are free to bring the issue and specific facts to the Commission in the form of a complaint.”¹⁰

Commission Determination

33. In the December 2008 Order, the Commission encouraged the CAISO to provide all of the operating procedures necessary to the market participants that request them and satisfy other CAISO requirements, such as agreeing to a non-disclosure agreement.¹¹ However, the Commission found that the CAISO may consider each particular situation before providing access to non-public operating procedures.¹² Therefore, the Commission required the CAISO to include a provision in the MRTU Tariff outlining how a market participant receives access to non-public operating procedures through the non-disclosure agreement process.¹³ In its January 2009 Compliance Filing, the CAISO provides a general description of how a market participant requests access to non-public operating procedures by agreeing to a non-disclosure agreement or “other measures.” Therefore, the Commission finds the CAISO’s compliance filing provides the information required by the December 2008 Order and accepts the compliance filing subject to the modifications discussed below, effective March 31, 2009.

34. The CAISO may limit access to certain operating procedures based on system security, market sensitivity or proprietary concerns and may make non-public operating procedures available only to those entities that are operationally affected by the operating procedures.¹⁴ The CAISO proposes to exclude access to these non-public operating procedures if the market participant is only “economically” or “financially” affected. The Commission agrees with this restriction because under a locational marginal price-based market operation, virtually any market participant may claim to be economically or financially affected. The CAISO can reasonably confine access to information to market participants that are operationally affected only after a demonstration of need by those

¹⁰ CAISO Answer at 10 (citing December 2008 Order, 125 FERC ¶ 61,262 at P 92).

¹¹ December 2008 Order, 125 FERC ¶ 61,262 at P 92.

¹² *Id.*

¹³ *Id.*

¹⁴ CAISO Answer at 8 (citing CAISO Operating Procedure No. A-03).

market participants. However, the CAISO's proposed tariff provision does not provide a sufficient description of the criteria used to determine if a market participant is provided access to the non-public operating procedures. Accordingly, the Commission directs the CAISO to submit tariff sheets setting forth the criteria that the CAISO proposes to use to determine whether a market participant that is operationally affected may receive access to non-public operating procedures. Among other things, the tariff sheets should include an explanation of what constitutes being "operationally" affected. Also, the CAISO's description should 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.¹⁵ If properly designed, this procedure will prevent any market participant from gaining an unfair advantage in the marketplace by virtue of its access to restricted information. The CAISO should submit this information within 30 days of issuance of this order.

35. The Commission finds the CAISO's proposal in its answer to provide access to multiple parties and not just "a single representative" as proposed in its January 2009 Compliance Filing is reasonable and directs the CAISO to make such a filing on compliance within 30 days of issuance of this order.

C. Waiver Request

36. In the event that MRTU is implemented more than 120 days after the submittal of its compliance filing, the CAISO requests waiver of section 35.3 of the Commission's regulations in order to permit the changes in the compliance filing to become effective as of the implementation date.

37. In the event that MRTU is not implemented on March 31, 2009, the Commission will grant waiver of the requirements of section 35.3 and directs the CAISO to make an informational filing specifying the effective date of the tariff sheets being accepted herein prior to the implementation of MRTU.

The Commission orders:

(A) The January 2009 Compliance Filing is conditionally accepted, as discussed in the body of this order.

¹⁵ See, e.g., MRTU Tariff § 10.3.2.3 (requiring the CAISO to make certain information available in a timely manner).

(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.