

143 FERC ¶ 61,174  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

California Municipal Utilities Association, *et al.*

Docket No. EL09-38-001

vs.

California Independent System Operator Corporation

ORDER DISMISSING REQUEST FOR REHEARING AND  
PROVIDING CLARIFICATION

(Issued May 28, 2013)

1. This order addresses a request for rehearing or clarification of a March 31, 2009 order which rejected California Municipal Utilities Association's (CMUA) complaint, filed jointly with other parties,<sup>1</sup> and which found that CMUA had failed to demonstrate that the California Independent System Operator Corporation's (CAISO) Market Redesign and Technology Upgrade (MRTU) tariff was unjust and unreasonable.<sup>2</sup> The Western Area Power Administration (Western) filed a request for rehearing and clarification of that order. This order dismisses as moot Western's request for rehearing but grants clarification, as discussed below.

**I. Background**

2. On March 31, 2009, CAISO's MRTU tariff went into effect. Prior to the scheduled implementation of MRTU, on March 3, 2009, CMUA filed a complaint proposing last minute changes to the MRTU tariff. CMUA argued that CAISO should revise the MRTU tariff to include an interim payment option that would function as a safety net to allow scheduling coordinators to defer payment of invoices exceeding

---

<sup>1</sup> Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California, the City and County of San Francisco, Northern California Power Agency, Sacramento Municipal Utility District, Modesto Irrigation District, Transmission Agency of Northern California (jointly with CMUA, CMUA or Complainants).

<sup>2</sup> *Cal. Mun. Utils. Ass'n*, 126 FERC ¶ 61,315 (2009) (March 2009 Order).

200 percent of an invoice from a comparable prior year pending investigation of those high charges. CMUA explained that there were higher-than-historical charges observed during MRTU market simulations, and expressed concern that the implementation of MRTU would result in excessive charges to market participants, rendering MRTU unjust and unreasonable without the interim payment option.<sup>3</sup>

3. Western intervened and expressed concern about implementing MRTU before CAISO's proposed Integrated Balancing Authority Area (IBAA) amendments were solidified. Additionally, Western argued that the Commission should delay MRTU launch given the anomalous prices that occurred during market simulations. Western expressed concern about the potential impact on customers and about securing adequate appropriations in light of the unknown costs associated with MRTU. Specifically, Western stated that MRTU could not require Western to violate various federal laws including the Reclamation Laws and the Anti-Deficiency Act. With regard to the proposed interim payment option, Western argued that the threshold was too high and should be capped at 125 percent rather than 200 percent.

4. In the March 2009 Order addressing the complaint, the Commission determined that neither CMUA nor the interveners had demonstrated that the MRTU tariff was unjust or unreasonable.<sup>4</sup> Specifically, the Commission explained that Western's argument regarding the IBAA proposals was outside the scope of the proceeding.<sup>5</sup> Additionally, the Commission found that Western's concerns about pricing and its claim that MRTU was inconsistent with federal laws governing Western's activities were a collateral attack on the Commission's prior orders accepting MRTU.<sup>6</sup> The Commission noted that Western had ample opportunity to raise the potential price inconsistency but failed to do so in a timely manner.<sup>7</sup> Accordingly, the Commission denied the complaint and allowed CAISO to proceed with the launch of MRTU on March 31, 2009.

## **II. Request for Rehearing and Clarification**

5. On April 29, 2009, Western filed a request for rehearing or clarification of the March 2009 Order. Western argues that the Commission erred by failing to "articulate a

---

<sup>3</sup> March 2009 Order, 126 FERC ¶ 61,315 at PP 6-9.

<sup>4</sup> *Id.* P 2.

<sup>5</sup> *Id.* P 88.

<sup>6</sup> *Id.* P 89; *see Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 1254 (2006).

<sup>7</sup> March 2009 Order, 126 FERC ¶ 61,315 at P 89.

rationale [sic] connection between the evidence and its decision.”<sup>8</sup> Specifically, Western alleges that the Commission erred in finding that Western’s concerns over both potential price increases after MRTU implementation and Western’s ability to comply with federal law constituted a collateral attack on the Commission’s prior orders.

6. Western also seeks clarification of the March 2009 Order to the extent the Commission failed to expressly acknowledge that the CAISO tariff recognizes federal agencies’ obligations to comply with federal law. Western states that it raised and preserved its concern that the MRTU tariff cannot require a federal agency to violate federal law throughout the MRTU proceedings. Western asks the Commission to clarify and to continue to acknowledge that Western’s obligations under MRTU are limited by federal law, as recognized in section 22.9 of CAISO’s tariff.

### **III. Discussion**

7. We dismiss Western’s request for rehearing as having been overtaken by subsequent events and now moot. MRTU was implemented in 2009 and the market has performed as designed without any major market disruptions. Further, we grant clarification; pursuant to section 22.9 of CAISO’s tariff, CAISO’s tariff by its own terms cannot compel Western to violate federal laws.<sup>9</sup>

#### The Commission orders:

(A) Western’s request for rehearing is hereby dismissed as moot, as discussed in the body of this order.

---

<sup>8</sup> Western’s Rehearing Request at 4 (filed April 29, 2009).

<sup>9</sup> Section 22.9 of CAISO Tariff expressly provides:

Nothing in the CAISO Tariff shall compel any person or federal entity to: (1) violate federal statutes or regulations; or (2) in the case of a federal agency, to exceed its statutory authority, as defined by any applicable federal statutes, regulations, or orders lawfully promulgated thereunder.

(B) Western's request for clarification is hereby granted, as discussed in the body of this order.

By the Commission.

(SEAL)

Nathaniel J. Davis, Sr.,  
Deputy Secretary.