

143 FERC ¶ 61,298  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent Operator Corporation

Docket No. ER13-1372-000

ORDER ACCEPTING IMPLEMENTATION AGREEMENT

(Issued June 28, 2013)

1. On April 30, 2013, the California Independent System Operator Corporation (CAISO) filed an Implementation Agreement between itself and PacifiCorp 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 PacifiCorp. This will include imbalance services to transmission customers taking transmission service under PacifiCorp's open access transmission tariff (OATT).

**I. Implementation Agreement<sup>1</sup>**

**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 PacifiCorp (collectively, Parties) to complete a variety of project tasks necessary for development and implementation of an energy imbalance market in which PacifiCorp and its OATT customers can participate by October 1, 2014. CAISO explains that the Parties chose this date to allow for completion of all necessary activities because it is outside of the summer peak operational period. CAISO states it developed the timeline for its current stakeholder process to allow for stakeholder input in developing the market design and rules, so that CAISO could file necessary tariff changes in time for a Commission decision in early 2014. CAISO notes that the necessary tariff revisions and

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<sup>1</sup> 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, amendments, etc.; governing law and venue; communication; and dispute resolution. Transmittal Letter at 9; Implementation Agreement, sections 5-11.

service agreements will be the subject of the stakeholder process regarding the energy imbalance market design and rules.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup> 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.

#### **B. Implementation Fee**

4. The Implementation Agreement specifies that PacifiCorp will pay to CAISO a fixed implementation fee of \$2.1 million, subject to the completion of specified milestones.<sup>5</sup> CAISO states that this fee will be charged to PacifiCorp 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 PacifiCorp and its transmission customers.<sup>6</sup> CAISO explains that the amount of the implementation fee is based on PacifiCorp's portion of the estimated \$18.3 million

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<sup>2</sup> Transmittal Letter at 5.

<sup>3</sup> Transmittal Letter at 5; Implementation Agreement, section 3.

<sup>4</sup> Implementation Agreement, section 3(c).

<sup>5</sup> The agreed-upon milestones are: a detailed project management plan by July 1, 2013; expansion of CAISO's full network model to include PacifiCorp by November 22, 2013; system implementation program improvements, including CAISO providing to PacifiCorp all final technical specifications by April 8, 2014; construction, testing and training in preparation for market simulation by July 1, 2014; and system deployment and "go live" by October 1, 2014. Implementation Agreement, section 4 and Exhibit A.

<sup>6</sup> On March 20, 2013, CAISO's Board of Directors authorized CAISO to enter into the Implementation Agreement and increase its 2013 capital budget by \$2.1 million to account for the anticipated associated revenues. Transmittal Letter at 5.

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).<sup>7</sup> 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 PacifiCorp, prior to expansion to include other entities.<sup>8</sup>

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 PacifiCorp 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, PacifiCorp may provide a notice to terminate the agreement and CAISO must discontinue work on the project and will not invoice PacifiCorp for any subsequent milestone payments. In such case, after 30 days' good faith negotiations, CAISO will invoice PacifiCorp for any milestones completed but not already invoiced.

### **C. Key Principles**

6. The Implementation Agreement notes that CAISO will develop the energy imbalance market rules through a stakeholder process in which PacifiCorp will participate.<sup>9</sup> Section 14 of the Implementation Agreement states that CAISO and PacifiCorp recognize and acknowledge that adjustments in the project may be required by input received from stakeholders, conditions imposed or questions raised in the

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<sup>7</sup> 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 PacifiCorp's share of the WECC load to obtain the implementation fee amount. Transmittal Letter at 5-6.

<sup>8</sup> See Attachment B, Declaration of Michael K. Epstein, April 30, 2013. We note that CAISO has stated that it will not incur the entire costs 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 2.

<sup>9</sup> Implementation Agreement, Recital C.

regulatory approval process of the energy imbalance market rules,<sup>10</sup> and analyses CAISO and PacifiCorp may perform or information they receive or develop in the course of implementing the market through the stakeholder process or otherwise.

7. Acknowledging such expected adjustments, CAISO states that section 14 of the Implementation Agreement incorporates several agreed-upon key principles including: (1) the new energy imbalance market rules shall be contained in a discrete part of the CAISO tariff; (2) initial governance and market rule oversight of the energy imbalance market shall be consistent with existing CAISO governance, allow for voluntary participation and expansion of participants and market activities, and evolve based on stakeholder feedback; (3) the Parties shall consider in the energy imbalance market stakeholder process whether and how to account for transmission service; (4) the energy imbalance market shall include an appropriate means to identify transactions associated with California specific greenhouse gas compliance obligations; (5) the energy imbalance market shall be implemented in a manner compatible with existing and emerging market initiatives including the Northwest Power Pool reserve sharing program and the Commission's Order No. 764; and (6) other entities will have an opportunity to participate in the energy imbalance market within a timeframe to be determined by CAISO if the entities agree to fund their share of implementation costs pursuant to a Commission-accepted implementation agreement.<sup>11</sup> CAISO underscores that these principles are necessarily dependent on the outcome of the market design and development process, including input from stakeholders.<sup>12</sup>

8. Section 12 provides the opportunity for CAISO and PacifiCorp to work with customers in the PacifiCorp balancing authority area, or with other third parties, to ensure accommodation of their interests when the energy imbalance market is implemented. Section 13 provides that both Parties will continue to comply with their respective compliance obligations, including WECC and NERC Reliability Standards.<sup>13</sup>

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<sup>10</sup> The timeline attached to the Implementation Agreement provides for CAISO and PacifiCorp to file tariff changes to the Commission in time for a Commission decision by September 30, 2014. Implementation Agreement, Exhibit A: Project Scope and Schedule.

<sup>11</sup> Transmittal Letter at 7 and 8.

<sup>12</sup> *Id.* at 6-7.

<sup>13</sup> *Id.* at 8.

#### **D. Framework to Resolve Differences**

9. CAISO states that 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.<sup>14</sup> The Parties also acknowledge that CAISO is required to file a notice of termination with the Commission.<sup>15</sup>

#### **E. Obtaining Stakeholder Input**

10. CAISO explains that following Commission acceptance of the Implementation Agreement, CAISO will continue its stakeholder process and initiate activities necessary to incorporate PacifiCorp into the energy imbalance market.<sup>16</sup> The Implementation Agreement allows for the termination of the Implementation Agreement upon Commission acceptance of the energy imbalance market rules and the associated tariff amendments and service agreements, which CAISO hopes to file subsequently.<sup>17</sup>

#### **II. Notice of Filing and Party Filings**

11. Notice of CAISO's filing was published in the *Federal Register*, 78 Fed. Reg. 28, 210 (2013), with interventions or protests due on or before May 21, 2013. Timely motions to intervene were filed by Transmission Agency of Northern California, Xcel Energy Services, Inc., the cities of Santa Clara and Redding, California and the M-S-R Public Power Agency, Bonneville Power Administration, Turlock Irrigation District, Portland General Electric Company, Alliance for Retail Energy Markets, Northern California Power Agency, J.P. Morgan Ventures Energy Corporation, Modesto Irrigation District, and California Department of Water Resources State Water Project. Motions to intervene out-of-time were filed by Arizona Public Service Company and the Northwest and Intermountain Power Producers Coalition.

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<sup>14</sup> Implementation Agreement, section 2(a) and section 11.

<sup>15</sup> Implementation Agreement, section 2(g).

<sup>16</sup> CAISO notes that, in parallel with its process, implementation of the energy imbalance market may require modifications to PacifiCorp's OATT. CAISO states it recognizes that PacifiCorp will be working with its transmission customers and other interested parties to facilitate implementation of the energy imbalance market. Transmittal Letter at 9.

<sup>17</sup> *Id.*

12. The Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities) filed a timely motion to intervene and protest. Timely motions to intervene and comments were filed by Morgan Stanley Capital Group, Inc., Southern California Edison Company (SoCal Edison), Valley Electric Association, Inc. (Valley Electric), Powerex Corporation (Powerex), Calpine Corporation, Pacific Gas and Electric Company (PG&E), PacifiCorp, Utah Associated Municipal Power Systems (UAMPS), and the Western Power Trading Forum. On June 5, 2013, both CAISO and PacifiCorp filed answers.

### **III. Comments, Protests and Answers**

13. Several of the commenters objected to section 2 (Termination) and section 4 (Implementation Charges, Invoicing and Milestone Payments) of the Implementation Agreement. Six Cities and PG&E both claim that the Implementation Agreement is not just and reasonable because section 4 imposes all the risk of overruns for estimated development costs on CAISO market participants.<sup>18</sup> Six Cities argues that since the expanded energy imbalance market will be based on CAISO's existing real-time market systems, which were funded by market participants, the entities that will benefit from the implementation of the expanded energy imbalance market should be responsible for the full incremental costs of the modifications.<sup>19</sup>

14. SoCal Edison also argues that it would not be appropriate to require CAISO market participants to pay the incremental costs associated with extending CAISO's systems to include PacifiCorp's service area. SoCal Edison asserts that the Implementation Agreement should be modified to require PacifiCorp to pay these implementation costs.<sup>20</sup> Both SoCal Edison and PG&E contend that the implementation fee should be viewed as an estimate and tried up based upon actual costs.<sup>21</sup>

15. In its answer, CAISO notes that no party challenges CAISO's evidence supporting the estimated implementation costs.<sup>22</sup> According to CAISO, whether the implementation fee is based on a reasonable estimate of costs is the primary issue before the Commission

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<sup>18</sup> Six Cities Protest at 3; PG&E Comments at 4.

<sup>19</sup> Six Cities Protest at 3.

<sup>20</sup> SoCal Edison Comments at 2-3.

<sup>21</sup> SoCal Edison Comments at 3; PG&E Comments at 6-7.

<sup>22</sup> CAISO Answer at 3. PacifiCorp also asserts that no party challenges the reasonableness of CAISO's estimated costs. PacifiCorp Answer at 2.

and no party contested the reasonableness of the estimates.<sup>23</sup> In response to the request for a true-up based on the actual costs, CAISO argues that fixed fees have long been accepted by the Commission. Moreover, according to CAISO, the possibility that the stated rate might diverge from the actual costs does not render the rate unjust and unreasonable so long as sufficient justification is provided for the level of the rate.<sup>24</sup>

16. CAISO contends that the Implementation Agreement is an initial rate because it is a new service to a new customer. Thus, CAISO argues that these initial rates are appropriately based on projected costs. Furthermore, even if the Implementation Agreement is characterized as a change in rate, CAISO asserts that the stated rate can be based on projected costs if the projections are reasonable when made.<sup>25</sup>

17. With regard to the potential allocation of implementation costs to CAISO market participants, CAISO notes that no provision of the Implementation Agreement establishes a rate authorizing CAISO to charge any costs of its implementation efforts to its existing customers.<sup>26</sup> Thus, CAISO contends that these cost allocation issues are beyond the scope of this proceeding and should be addressed if CAISO seeks to recover costs from other customers.<sup>27</sup> Finally, CAISO also disputes the commenters' contention that they will not benefit from the implementation of the expanded energy imbalance market.<sup>28</sup> Similarly, PacifiCorp contends that the commenters are asking the Commission to ignore the anticipated benefits of the expanded energy imbalance market to CAISO market participants and prematurely preclude these beneficiaries from bearing costs associated with those benefits.<sup>29</sup>

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<sup>23</sup> CAISO Answer at 3-4.

<sup>24</sup> *Id.* at 5.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 6.

<sup>27</sup> *Id.* at 7. CAISO notes that it has committed to address costs associated with enabling the broader energy imbalance market in the proceeding where it will seek authority to implement the expanded energy imbalance market and the broader Grid Management Charge proceeding.

<sup>28</sup> *Id.* at 7-8.

<sup>29</sup> PacifiCorp Answer at 9.

18. Six Cities similarly objects to section 2, arguing that allowing PacifiCorp to terminate the agreement and avoid any costs that CAISO has not invoiced PacifiCorp for as of the termination date means that CAISO market participants are at risk for any commitments that cannot be cancelled following PacifiCorp's termination.<sup>30</sup> Six Cities asserts that PacifiCorp should be responsible for all necessary and unavoidable costs arising from the development of an expanded energy imbalance market.<sup>31</sup>

19. Six Cities and PG&E also assert that the Commission should require CAISO to publish periodic reports on the costs incurred to date, plus updated estimates for total anticipated costs for developing and implementing the expanded energy imbalance market.<sup>32</sup> According to Six Cities, the report also should include a breakdown of costs allocated to PacifiCorp and any implementation costs CAISO proposes to allocate to future energy imbalance market participants.<sup>33</sup> PG&E also proposes that CAISO be required to submit a progress report if the total costs to complete the project reach \$4.2 million.<sup>34</sup>

20. UAMPS contends that the filing is premature and represents possibly imprudent expenditures by PacifiCorp in light of other regional proposals under development.<sup>35</sup> According to UAMPS, the execution of the Implementation Agreement is not necessary to CAISO's efforts to create an expanded energy imbalance market.<sup>36</sup> UAMPS also asserts that the filing is deficient because CAISO fails to address how the other \$16.2 million in development costs will be recovered if no other participants join the expanded energy imbalance market.<sup>37</sup>

21. UAMPS also is concerned about the ratemaking effects of PacifiCorp's payments to CAISO, and objects to the lack of information regarding the effects on PacifiCorp's

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<sup>30</sup> Six Cities Protest at 4.

<sup>31</sup> *Id.*

<sup>32</sup> Six Cities Protest at 4-5; PG&E Comments at 8-9.

<sup>33</sup> Six Cities Protest at 4-5.

<sup>34</sup> PG&E Comments at 8.

<sup>35</sup> UAMPS Comments at 4.

<sup>36</sup> *Id.* at 5.

<sup>37</sup> *Id.* at 6.

wholesale transmission customers of the implementation of the energy imbalance market and the anticipated implementation fee payments.<sup>38</sup> UAMPS notes that there is no provision for a downward adjustment of the implementation fee should the development costs come in under budget.<sup>39</sup> Finally, UAMPS contends that CAISO failed to submit any evidence establishing the benefits of developing the expanded energy imbalance market.<sup>40</sup> UAMPS requests that the Commission reject the filing as premature, or, in the alternative, clearly state that the Commission's acceptance of the agreement does not constitute approval of PacifiCorp's participation in the expanded energy imbalance market or approval of the recovery of any associated costs from PacifiCorp's transmission customers.<sup>41</sup>

22. In its answer, CAISO contends that UAMPS' concerns are beyond the scope of this proceeding. CAISO asserts that UAMPS' speculation regarding what other parties might do is not relevant to the reasonableness of the Implementation Agreement.<sup>42</sup> Furthermore, according to CAISO, if UAMPS believes that the expenditures are imprudent, it can pursue that issue when PacifiCorp seeks to recover its costs.<sup>43</sup> Similarly, CAISO asserts that since CAISO is not proposing a broader energy imbalance market at this time, UAMPS' complaint that CAISO has failed to specify how it will recover the costs of implementing a broader energy imbalance market are outside the scope of this proceeding.<sup>44</sup> PacifiCorp also disputes UAMPS' contention that the execution of the Implementation Agreement is unnecessary, arguing that the Implementation Agreement provides a starting point for the detailed work involved with the development of an expanded energy imbalance market.<sup>45</sup>

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<sup>38</sup> *Id.* at 4.

<sup>39</sup> *Id.* at 7.

<sup>40</sup> *Id.* at 8-9.

<sup>41</sup> *Id.* at 13.

<sup>42</sup> CAISO Answer at 9. PacifiCorp states that its execution of the Implementation Agreement does not mean that it will no longer participate in other energy imbalance market efforts. PacifiCorp Answer at 7.

<sup>43</sup> CAISO Answer at 9.

<sup>44</sup> *Id.* at 9-11.

<sup>45</sup> PacifiCorp Answer at 5.

23. Morgan Stanley asserts that fundamental elements of the market design remain undefined. Both Morgan Stanley and Powerex support CAISO's request for acceptance of the Implementation Agreement, but ask the Commission not to prejudge the merits of the proposal to be developed.<sup>46</sup>

24. Powerex supports the initiation of a stakeholder process to develop the expanded energy imbalance market and suggests that the Commission provide guidance regarding key issues to be considered in the stakeholder process.<sup>47</sup> Specifically, Powerex contends that the parameters of the expanded energy imbalance market should be narrowly proscribed to provide only energy and generator imbalance service.<sup>48</sup> Powerex also contends that transmission pricing and transmission seams are important design issues.<sup>49</sup> Finally, both Powerex and Calpine are concerned that the "key principles" set forth in the Implementation Agreement were not developed by a stakeholder process and requests that the Commission state that the Implementation Agreement does not dictate the parameters of the expanded energy imbalance market.<sup>50</sup>

25. In its answer, CAISO avers that the Implementation Agreement unambiguously recognizes that the ultimate design of the expanded energy imbalance market will be determined through the stakeholder process and subsequent authorization and approval by the Commission and specifically acknowledges that the market rules may deviate from the principles set forth in the Implementation Agreement.<sup>51</sup>

26. Valley Electric contends that the Implementation Agreement should be accepted by the Commission because expansion of CAISO's real time dispatch market outside CAISO's footprint will be beneficial to all CAISO market participants and may be beneficial to the entire Western Interconnection.<sup>52</sup> Valley Electric asserts that participants will benefit from the diversified market created by the development of the expanded energy imbalance market and that it will facilitate the integration of large-scale

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<sup>46</sup> Morgan Stanley Comments at 3-4; Powerex Comments at 1-2.

<sup>47</sup> Powerex Comments at 5-6.

<sup>48</sup> *Id.* at 7.

<sup>49</sup> *Id.* at 8-9.

<sup>50</sup> Powerex Comments at 13-14; Calpine Comments at 2-3.

<sup>51</sup> CAISO Answer at 10-11. *See also*, PacifiCorp Answer at 10.

<sup>52</sup> Valley Electric Comments at 3-4.

renewable solar energy in Nevada.<sup>53</sup> Valley Electric believes that entities that may be skeptical of a regional energy imbalance market will be more willing to consider participation in an incremental model, and thus, the incremental model proposed has a greater chance of success than the creation of a comprehensive model.<sup>54</sup>

27. PacifiCorp asserts that the expanded energy imbalance market will produce benefits to PacifiCorp's customers through improved dispatch and operation of PacifiCorp's generation fleet and through efficient use of transmission facilities. PacifiCorp 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.<sup>55</sup> According to PacifiCorp, the expanded energy imbalance market will also improve the ability to integrate and manage variable resource deviations, smooth power flows, and strengthen grid reliability.<sup>56</sup> PacifiCorp 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.<sup>57</sup>

28. WPTF contends that the design of the expanded energy imbalance market should include open access, comparable transmission fee treatment, transparency, proper cost allocation, recognition of capacity burdens and benefits, and careful treatment of greenhouse gas impacts. WPTF also asserts that the market design must be workable for other western market participants and not simply focus on PacifiCorp.<sup>58</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

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

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<sup>53</sup> *Id.* at 4.

<sup>54</sup> *Id.*

<sup>55</sup> PacifiCorp Comments at 4-5.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 6.

<sup>58</sup> WPTF Comments at 3-5.

to Rule 214(d) of the Commission's Rules of Practice Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant late-filed motions to intervene of Arizona Public Service Company and the Northwest and Intermountain Power Producers Coalition given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

30. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

### **B. Commission Determination**

31. The Implementation Agreement is a bilateral agreement between CAISO and PacifiCorp 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 PacifiCorp and its OATT customers. The Implementation Agreement also provides for PacifiCorp to pay CAISO a fixed implementation fee of \$2.1 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 will accept the Implementation Agreement, effective July 1, 2013, as requested.

32. CAISO has stated that the implementation fee is based on CAISO's 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 PacifiCorp in an amount proportionate to PacifiCorp's benefits from the energy imbalance market, as measured by usage. In addition, CAISO has confirmed 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 PacifiCorp, even without expansion to include other entities in WECC. No party has contested the reasonableness of the estimate on which the implementation fee is based. Accordingly, we find the proposed implementation fee for developing the energy imbalance market for PacifiCorp is reasonable.

33. We disagree with SoCal Edison and PG&E that the Implementation Agreement should provide for a true-up of the implementation fee. 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 PacifiCorp. At that time PacifiCorp 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, a filing with the Commission will be required to reflect such a change.<sup>59</sup> Thus, we find that the failure to provide a true-up provision does not demonstrate that the fee is unjust and unreasonable. Similarly, we disagree with UAMPS' contention that the Implementation Agreement must include a provision for a downward adjustment of the implementation fee should the development costs come in under budget.

34. With regard to Six Cities' concern that CAISO market participants are at risk for any commitments that cannot be cancelled if PacifiCorp terminates the Implementation Agreement, we note that the Implementation Agreement does not contain any provision authorizing CAISO to charge any costs of the expanded energy imbalance market effort to its existing customers. As such, these cost allocation issues are beyond the scope of this proceeding and should be addressed if CAISO seeks to recover costs from other customers.<sup>60</sup> Similarly, Six Cities, PG&E and SoCal Edison's concerns over potential allocation to CAISO customers of costs incurred in connection with the Implementation Agreement are premature. The issue is more appropriately addressed at this time in the stakeholder process.

35. We find unavailing UAMPS' assertion that CAISO failed to address how the remaining \$16.2 million in development costs will be recovered if no other participants join the expanded energy imbalance market.<sup>61</sup> The expansion of the energy imbalance market and the resulting costs beyond PacifiCorp involvement is not being proposed at this time, so we agree with CAISO that UAMPS's concern is outside the scope of this proceeding. Morgan Stanley and Powerex's concern that the Implementation Agreement will foreclose certain energy imbalance market design issues is unfounded. According to

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<sup>59</sup> 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."

<sup>60</sup> CAISO notes that it has committed to address costs associated with enabling the broader energy imbalance market in the proceeding where it will seek authority to implement the expanded energy imbalance market and the broader Grid Management Charge proceeding. Implementation Agreement, section 4(c).

<sup>61</sup> As previously noted, CAISO has stated that it will not incur the entire costs of expanding the energy imbalance market up front, but will incur these costs incrementally if and when the imbalance energy activity from additional balancing authority areas is incorporated into the market. *See* Attachment B, Declaration of Michael K. Epstein at 2.

CAISO's representations, the Implementation Agreement correctly recognizes that the ultimate design of the expanded energy imbalance market will be determined through a stakeholder process, the resulting section 205 filing to 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.

36. Finally, we disagree with those commenters who recommend that CAISO make available periodic reports on the status of its implementation of the expanded energy imbalance market. We expect CAISO will keep participants informed of relevant changes through the ongoing stakeholder process. We also note that, as acknowledged in section 3(c) of the Implementation Agreement, any changes other than the project scope and schedule shall be reflected in an executed amendment to the Implementation Agreement and filed with the Commission.

The Commission orders:

The Implementation Agreement is hereby accepted for filing, effective July 1, 2013, as requested, as discussed in the body of this order.

By the Commission. Chairman Wellinghoff is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,  
Deputy Secretary.