

129 FERC ¶ 61,241  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Suedeem G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

California Independent System Operator Corporation.	Docket Nos.	ER08-1113-004 ER08-1113-005 ER06-615-046
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ORDER ON REHEARING, MOTIONS FOR CLARIFICATION  
AND COMPLIANCE

(Issued December 17, 2009)

1. In this order, the Commission clarifies prior orders in response to Motions for Clarification and denies Requests for Rehearing on issues filed by parties in the above dockets concerning the Commission's March 6, 2009 Order on Compliance,<sup>1</sup> March 13, 2009 Order Addressing MRTU Readiness Certificate<sup>2</sup> and March 27, 2009 Order on Emergency Motion for Clarification.<sup>3</sup> In this order, the Commission also accepts, in partial compliance, the filing made by the California Independent System Operator Corporation (CAISO) as directed by the Commission's March 6 MEEA Order, as explained below.

2. Here, as it has previously determined, the Commission finds that if a Market Efficiency Enhancement Agreement (MEEA) signatory can demonstrate that its resources within the Integrated Balancing Authority Area (IBAA) supported a transaction with the CAISO, it may receive MEEA pricing for the transaction.<sup>4</sup> The CAISO's proposed exclusions and data requirements appear designed to exclude transactions rather than verify them. Therefore, the Commission directs the CAISO to permit MEEA signatories to self-certify that

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<sup>1</sup> *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,207 (2009) (March 6 MEEA Order).

<sup>2</sup> *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,221 (2009) (March 13 Readiness Order).

<sup>3</sup> *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,278 (2009) (March 27 Clarification Order).

<sup>4</sup> March 6 MEEA Order, 126 FERC ¶ 61,207 at P 61.

transactions are supported by a MEEA resource and to provide sufficient information to allow the CAISO to model the flows.

### **I. Background**<sup>5</sup>

3. On June 17, 2008, the CAISO filed a proposal to establish an IBAA and to apply the IBAA model to price import and export transactions through the Sacramento Municipal Utility District (SMUD) and Turlock Irrigation District (Turlock) balancing authority area. The proposal established a single hub for modeling and pricing all imports and exports through the CAISO and SMUD and Turlock balancing authority areas rather than at the interconnection points that separate them.

4. As an alternative to the single hub pricing mechanism, the CAISO proposed to provide market participants the option to execute a MEEA. The CAISO stated that a market participant wishing to execute a MEEA would provide the CAISO with additional information sufficient to verify the specific location and operation of the external resource within the balancing authority area that is used to support interchange transactions in exchange for an alternative pricing and modeling arrangement. The September IBAA Order accepted the CAISO's proposal, subject to modification and directed the CAISO to make a further compliance filing.

5. On November 25, 2008, the CAISO filed revised tariff language to comply with the Commission's September IBAA Order.<sup>6</sup> The CAISO asserted that the revised tariff language would ensure that the CAISO's nodal pricing under Market Redesign and Technology Upgrade (MRTU) would reflect the impacts of interchange transactions between the CAISO and the SMUD and Turlock balancing authority areas and that those transactions would be priced at just and reasonable levels.

6. In the Commission's March 6 MEEA Order, the Commission accepted, subject to modification, the CAISO's proposed tariff language in the November 25 Compliance Filing.<sup>7</sup> The Commission directed the CAISO to make a further compliance filing, modifying several parts of the proposed tariff language.

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<sup>5</sup> For a more detailed description of this matter's background, see *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,271 (2008) (September IBAA Order).

<sup>6</sup> CAISO, November 25, 2008 Compliance Filing, Docket No. ER08-1113-002 (November 25 Compliance Filing).

<sup>7</sup> March 6 MEEA Order, 126 FERC ¶ 61,207 at P 1.

7. In the March 13 Readiness Order, the Commission accepted the CAISO's filing that certified the readiness of the CAISO MRTU to go into effect on March 31, 2009.<sup>8</sup> On March 18, 2009, the Affected IBAA Entities<sup>9</sup> sought emergency clarification that the March 13 Readiness Order precluded the CAISO from implementing its IBAA proposal until (1) IBAA entities have been afforded a bona fide prior opportunity to complete IBAA training, and (2) the CAISO has in place MEEA tariff provisions compliant with the Commission's directives in the March 6 MEEA Order.

8. On March 27, 2009, the Commission found that parties had the option to enter into a MEEA for an interim period, the elements of which were set out in the MRTU Tariff and the Commission's prior order, and the Commission found that the CAISO had provided IBAA training, as directed by the Commission's March 13 Readiness Order.<sup>10</sup>

9. On May 12, 2009, the CAISO submitted its compliance filing, as required by the Commission's March 6 MEEA Order.<sup>11</sup>

10. On August 20, 2009, the Commission held a technical conference on issues concerning MEEAs. Parties filed comments regarding the technical conference on September 15, 2009 and filed reply comments on September 22, 2009.

## **II. Notice and Responsive Pleadings**

11. On April 6, 2009, requests for rehearing and motions for clarification of the March 6 MEEA Order, March 13 Readiness Order and the March 27 Clarification Order were filed by Modesto, TANC, the City of Redding, California (Redding), SMUD, Turlock, Imperial Irrigation District (Imperial) and the CAISO.

12. On April 21, 2009, Modesto and TANC filed answers to the CAISO's request for clarification. On May 6, 2009, the CAISO filed a response to

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<sup>8</sup> March 13 Readiness Order, 126 FERC ¶ 61,221 at P 2.

<sup>9</sup> The Affected IBAA Entities are Modesto Irrigation District (Modesto), Transmission Agency of Northern California (TANC), City of Redding, California, SMUD and Turlock.

<sup>10</sup> March 27 Clarification Order, 126 FERC ¶ 61,278 at P 1.

<sup>11</sup> CAISO, May 12, 2009 Compliance Filing, Docket No. ER08-1113-005 (May 12 Compliance Filing). The CAISO sought and obtained an extension of time within which to file the compliance filing. *See* May 4, 2009 Notice of Extension of Time, Docket No. ER08-1113-002.

Modesto's and TANC's answers. On May 21, 2009, TANC and Modesto filed an answer to the CAISO's response.

13. Notice of the May 12 Compliance Filing was published in the *Federal Register*, with interventions and protests due on or before June 2, 2009.<sup>12</sup> On June 2, 2009, Palo Alto filed a motion to intervene. Also, the Cities of Santa Clara and Palo Alto (Santa Clara and Palo Alto), Los Angeles Department of Water and Power (LADWP), Imperial, Redding, Western Area Power Administration (Western), SMUD, Modesto, Turlock and TANC filed timely comments. The CAISO filed an answer to the protests and comments on June 17, 2009, and SMUD, Western, Santa Clara, TANC and Modesto filed responses to the CAISO's answer.

14. On September 15, 2009, the Commission received comments on the August 20, 2009 technical conference from Turlock, TANC, SMUD, Modesto, Redding, CAISO, Santa Clara and Palo Alto, Western and Imperial. On September 22, 2009, the Commission received reply comments from Turlock, SMUD, Modesto, TANC, CAISO, Western, Santa Clara and Palo Alto, Imperial and Pacific Gas & Electric Company.

### **III. Discussion**

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

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a request for rehearing or protest unless otherwise ordered by the decisional authority. We will accept the answers and responses to the requests for rehearing because they provide information that assisted us in our decision-making process. However, we will not accept the CAISO's answer to the protests to its May 12 Compliance Filing and any responses to the CAISO's answer.

17. For a number of issues concerning MEEAs, the CAISO and other market participants raise related arguments in their filings requesting rehearing of the March 6 MEEA Order and regarding the May 12 Compliance Filing. Therefore, in order to reduce redundancy, the Commission addresses the related issues together below. Thus, certain protests and comments filed regarding the CAISO's

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<sup>12</sup> 74 Fed. Reg. 23686 (2009).

compliance filing and technical conference comments are addressed in the discussion on rehearing requests.

18. The CAISO's September 15 technical conference comments include an attachment with a list of clarifications that was developed by the CASIO, TANC, SMUD, Santa Clara and Palo Alto, Redding, Modesto and Turlock.<sup>13</sup> The CAISO represents that the parties to the clarification do not object to them.<sup>14</sup> Thus, the Commission accepts this list of clarifications unless stated otherwise below (e.g., data formatting clarification) and directs the CAISO to make a tariff filing consistent with these clarifications within 30 days of the date of this order.

## **B. Requests for Rehearing and Clarification**

### **1. Limitations on MEEA Pricing**

19. In the March 6 MEEA Order, the Commission rejected the CAISO's proposal to deny MEEA pricing for hours when a MEEA signatory simultaneously imports to and exports from the CAISO (commonly referred to as "netting").<sup>15</sup> The Commission also rejected the CAISO's proposed formulas to limit the quantities eligible for MEEA pricing.<sup>16</sup>

20. The CAISO requests rehearing of the March 6 MEEA Order on the rejected pricing limitations. The CAISO contends that the primary objective of the IBAA proposal is to avoid circumstances in which it would pay a premium for interchange schedules erroneously modeled as having a favorable impact on transmission constraints internal to the CAISO balancing authority area. The CAISO asserts that, if the generation from within the IBAA does not have a favorable impact on congestion, then the CAISO may still be required to re-dispatch other resources<sup>17</sup> in real time to manage transmission congestion. The

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<sup>13</sup> Western, September 15, 2009 Technical Conference Comments at 12 (stating that Western takes no position on the filed clarifications) (Western Technical Conference Comments).

<sup>14</sup> CAISO, September 15, 2009 Technical Conference Comments at 1 (CAISO Technical Conference Comments).

<sup>15</sup> March 6 MEEA Order, 126 FERC ¶ 61,207 at P 61, 62.

<sup>16</sup> *Id.*

<sup>17</sup> Most of the discussions and filings in this matter have been framed in terms of sources of energy within the IBAA and imports into the CAISO, and, therefore, the Commission discussion addresses those issues. However, the same logic applies to energy sinks within the IBAA and exports from the CAISO. Thus, the Commission commonly refers herein to energy "resources," which includes

CAISO claims that the verification process required of MEEA signatories ensures that the CAISO market participants actually receive the favorable congestion management impacts that MEEA pricing is intended to compensate.

21. Concerning the eligible quantity formulas, the CAISO claims that the formulas are necessary to determine the amount of energy sold or purchased pursuant to a MEEA, and the CAISO seeks rehearing of the Commission's direction to eliminate the provisions. The CAISO argues that the formulas are necessary because, in addition to controlling resources within the IBAA that may be used to support interchange transactions with the CAISO, IBAA entities may serve load within the IBAA, may engage in bilateral transactions, and may buy or sell energy between the IBAA and other balancing authority areas. The CAISO contends that for MEEA pricing to be appropriate, the CAISO must verify the resources dispatched to support an interchange transaction.

22. The CAISO notes that while the tariff sections use the term "eligible," the CAISO does not dictate or determine the amount of energy sold or purchased by a MEEA signatory. Rather, according to the CAISO, the transactions that receive MEEA pricing would be based on the MEEA signatory's own decisions regarding the use of its resources.

23. Concerning the simultaneous import/export exclusion, in its rehearing request, the CAISO agrees to remove certain restrictions on MEEA pricing but requests clarification that it may implement other restrictions.<sup>18</sup> The CAISO stated it would agree to revise its initial filing and proposed the following rules to the tariff under which a MEEA signatory would be excluded from receiving MEEA pricing:

- For imports to the CAISO system, the MEEA entity should be restricted from receiving MEEA-specific pricing in any period in which the MEEA signatory is: (i) selling energy to the CAISO system, *and* (ii) buying energy that originates from other balancing authority areas (exclusive of the CAISO balancing authority area) and is delivered to the SMUD-Turlock IBAA.
- For exports from the CAISO system, the MEEA entity should be restricted from receiving MEEA-specific pricing in any period in which a MEEA signatory is: (i) buying energy from the CAISO system, *and* (ii) selling energy from the SMUD-Turlock IBAA for export to other balancing authority areas (exclusive of the CAISO balancing authority area).

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energy sources and sinks.

<sup>18</sup> CAISO, April 6, 2009 Rehearing Request at 20.

24. The CAISO claims that these proposed restrictions are more narrow than the restriction on importing to and exporting from the CAISO in the same trading hour that the Commission rejected in the March 6 MEEA Order. The CAISO further claims the restriction will help ensure that CAISO ratepayers are not subject to inappropriate pricing for interchange transactions and will better reflect the actual resources used to implement interchange transactions with the IBAA.

25. The CAISO, in a subsequent filing, offers to clarify the proposed tariff language to state that the proposed restrictions could be overcome if the CAISO had the necessary information to verify that the resources identified in the MEEA were the resources dispatched to implement the interchange transaction.<sup>19</sup>

26. Parties claim that the CAISO's pricing limitations are founded on the assumption that leads to the maximum amount of energy being subject to the default pricing. Parties contend that the CAISO seeks to apply the default price for sales by a MEEA signatory to the extent the MEEA signatory also transacts with entities other than the CAISO. Parties assert that the CAISO's denial of MEEA pricing under these circumstances will preclude MEEA signatories from competing with the CAISO for resources or sales or the MEEA signatory would lose the actual price promised in the IBAA proposal. Therefore, parties contend it will be unlikely that transactions with the CAISO will be paid a comparable price as would be paid to any non-IBAA entity for a similar transaction.

27. Parties oppose the CAISO's claim that it should not provide certain transactions MEEA pricing because it requires a demonstration that the transaction did not add undue congestion to the CAISO-controlled grid. Parties contend that while the Northwest flows cause congestion on the CAISO-controlled grid, those flows are not CAISO imports. Rather, the Northwest flows are IBAA imports for the sole purpose of serving the IBAA load. Parties argue that the fact that the CAISO will bear the congestion from that IBAA import without recourse is due to the Amended Owners Coordinated Operation Agreement; just as the IBAA bears the cost of congestion due to CAISO imports from Northwest imports without recourse. Parties assert that the congestion costs associated with the Northwest import into the IBAA occur regardless of whether there is a simultaneous interchange transaction between the CAISO and the MEEA entity.

28. TANC argues that no entity other than an IBAA entity transacting with the CAISO faces default pricing. Thus, TANC contends that the imposition of the default price on an IBAA entity in circumstances where a non-MEEA entity will not receive a default price is unduly discriminatory.

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<sup>19</sup> CAISO, May 6, 2009 Response to TANC and Modesto Answer at 3.

29. According to Western, although the CAISO is required to provide evidence for its proposal, such as the need for data, it provided no probative evidence on how it can verify transactions based on a MEEA. Because not all IBAA entities will execute a MEEA, Western believes that, as a matter of physics, there is no way to conclusively determine which generators located in the IBAA are being used to serve which loads in the CAISO. As a result, Western concludes that the CAISO's proposal is flawed from the outset.

### **Commission Determination**

30. The Commission denies rehearing regarding the CAISO's formulas for determining the maximum quantities eligible for MEEA pricing. Also, the Commission denies rehearing regarding the CAISO's proposal to disallow MEEA pricing for hours when a MEEA signatory simultaneously imports to and exports from the CAISO and rejects the rules proposed by the CAISO in its rehearing request. As stated in our prior order, the Commission rejects all "verification" efforts that are effectively netting proposals.<sup>20</sup> As the Commission found in its prior orders, the CAISO's proposed verification process, including its eligible quantity formulas and import/export exclusions, are too focused on excluding transactions. Accordingly, the Commission denies rehearing on the limitations on MEEA pricing.

31. As the Commission stated in the March 6 MEEA Order,

[A]n entity may receive a more favorable pricing structure if it is willing to provide the CAISO with information that allows it to verify the location and operation of the resources used in interchange transactions between the CAISO-controlled grid and the SMUD-Turlock IBAA[citation omitted]. . . . Therefore, if the MEEA signatory can verify the location and operation of an import or export, then it should receive actual pricing for the interchange transactions. For example, if the MEEA signatory which imports and exports in the same hour and can verify the location and operation of an import, but not the export, it should be eligible for actual pricing for the import and default pricing for the export. [<sup>21</sup>]

The Commission retains this position and therefore denies rehearing.

32. The CAISO's newly proposed rules contained in its rehearing request are similar to the original proposal the Commission previously rejected in the March 6

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<sup>20</sup> March 6 MEEA Order, 126 FERC ¶ 61,207 at P 61, 62, 80, 81.

<sup>21</sup> *Id.* P 61.

MEEA Order. The new provisions, indeed, may be broader than the CAISO's previous provision,<sup>22</sup> and they are still focused on excluding transactions as opposed to verification. The Commission continues to oppose such exclusionary provisions.

33. The Commission disagrees with the parties' request that the Commission eliminate the verification process entirely. Although parties argue that any sales by a MEEA signatory to the CAISO would likely be supported by generation from within the MEEA signatory, the Commission acknowledged in previous orders and continues to acknowledge the importance of transactions being supported by resources within the IBAA and the CAISO being able to model the transaction.<sup>23</sup> Thus, as discussed below, the MEEA signatory should be allowed to self-certify that a MEEA resource supported an interchange transaction and should be able to support its certification with information in the event its certification is audited or challenged.

34. The Commission rejects the CAISO's attempts to require an obvious congestion management benefit in order for a transaction to receive MEEA pricing.<sup>24</sup> In the September IBAA Order, the Commission determined that the information that the CAISO gained from a MEEA entity was sufficient benefit and that no other "demonstrable benefit" was required for the actual MEEA price to be justified.<sup>25</sup>

35. A number of arguments raised by parties, including TANC's claim of discrimination and Western's claim regarding the basis of the IBAA proposal are beyond the scope of this order. Such claims concern the entire IBAA proposal and not the limited scope of this order on rehearing and compliance primarily concerning MEEAs. They are, therefore, beyond the scope of these proceedings and we dismiss them as such.

## **2. Data Requirement**

36. In the March 6 MEEA Order, the Commission found that the CAISO's proposed data requirements for the application of MEEA pricing appeared designed to implement the CAISO's pricing limitations, which the Commission rejected. The Commission directed the CAISO to either eliminate these data

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<sup>22</sup> TANC, September 15, 2009 Technical Conference Comments, Attachment A, Slides 10-13.

<sup>23</sup> March 6 MEEA Order, 126 FERC ¶ 61,207 at P 61.

<sup>24</sup> May 12 Compliance Filing at 2, 15, 18-19.

<sup>25</sup> September IBAA Order, 124 FERC ¶ 61,271 at P 185.

requirements or explain how they will allow it to verify the location and operation of resources used in interchange transactions.<sup>26</sup> The Commission's direction did not extend to the historical information the CAISO requires to develop a MEEA.

37. In its rehearing request, the CAISO claims that without the information requested to apply MEEA pricing, it will not be able to verify that the external resource dispatched to support an interchange transaction is the same as the external resource identified in the MEEA. The CAISO claims it must be able to confirm that bilateral sales or purchases by the MEEA signatory or imports/exports between the IBAA and other balancing authority areas are not substituted for the resources identified in the MEEA. Thus, the CAISO urges the Commission to grant rehearing on the data requirements for applying MEEA pricing.

38. The CAISO offers as explanation for the data requirements that the information will permit the MEEA signatory to demonstrate and the CAISO to verify that resources identified in the MEEA were operated to implement an interchange transaction. The CAISO contends that being unable to verify the resources would result in an impact on the CAISO-controlled grid with the same congestion management challenges posed by flows from beyond the Captain Jack location assumed in the IBAA default import pricing.

39. Imperial argues that the Commission should clarify that, for purposes of verifying the location of an external resource dispatched to implement an interchange transaction, the "minimum" information to be provided, pursuant to a MEEA, is an identification of the contract path and the source of generation for the sale. Imperial states that this would be similar to what is commonly required by a North American Electric Reliability Corporation (NERC) tag, which identifies the source, sink and transmission path for transactions.

40. Parties argue that the proposed data requirements are not designed to be the "minimum information" that the CAISO needs to more accurately model interchange transactions. Parties contend that the data that the CAISO is requesting for verification is the same data the CAISO requested to calculate the maximum eligible quantity for MEEA pricing, which the Commission directed the CAISO to eliminate, and the CAISO does not fully explain what it will do with the data.

41. Numerous parties contend that the CAISO's proposed requirement that there be a verification step for a transaction to receive MEEA pricing is unnecessary because of the economics and obligations of the IBAA entities. Santa

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<sup>26</sup> March 6 MEEA Order, 126 FERC ¶ 61,207 at P 81.

Clara and Palo Alto assert that the Commission's ratemaking policy recognizes native load should be served by the lowest-cost resources and that off-system sales should be priced at the utility's incremental costs. Multiple parties contend that, due to obligations to their customers, IBAA entities must serve their customers with the lowest cost energy, which is typically hydroelectric power from the Northwest, and that any opportunity sales made by IBAA entities off-system into the CAISO-controlled grid would then be made from the IBAA entities' higher-cost resources, which typically include local fossil fuel generators. Parties agree that when an IBAA entity imports Northwest energy into the IBAA it frees up IBAA generation to be sold into the CAISO. Thus, parties contend that when they are running internal resources they would only logically be exporting to the CAISO from their own resources because they would have no reason to resell to the CAISO market the less expensive resources and continue to use their own, more expensive resources to serve their own load.

42. Other parties claim the only information the CAISO needs to verify that a sale into the CAISO market is sourced from the IBAA entity's internal MEEA resources is that the IBAA entity had sufficient internal generation on line to support the transaction and that it had not tagged an import from the Northwest to make an off system sale into the CAISO market. Parties claim this information is sufficient because if an IBAA entity has not tagged an import as an off system sale its only reason to purchase such Northwest power would be to serve its native load. Santa Clara and Palo Alto even propose tariff language reflecting the limited verification proposals.<sup>27</sup> The proposed provisions would apply MEEA pricing if a MEEA signatory confirmed that a MEEA resource operated.

43. According to TANC, the information the CAISO needs to verify a transaction is a special Resource ID, certification from the scheduling coordinator and periodically updated generation information.<sup>28</sup> TANC states that a special Resource ID would be used by the MEEA entity to schedule MEEA transactions. TANC continues, the scheduling coordinator could certify that the MEEA resources operated when scheduling under the special MEEA Resource ID consistent with the tariff, subject to verification when questions arise.

44. Parties add that verification could be addressed by an affidavit like those the CAISO currently accepts for other data submissions under the CAISO tariff (e.g., Congestion Revenue Rights (CRRs) and marginal loss adjustments).

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<sup>27</sup> Santa Clara and Palo Alto, September 15, 2009 Technical Conference Comments at 15-17 (Santa Clara and Palo Alto Technical Conference Comments).

<sup>28</sup> TANC, Technical Conference Comments at 21 (citing TANC presentation slide 22).

45. Imperial requests that the Commission direct the CAISO to explicitly add the word “only” to section 27.3.5.2.2 of its tariff to make clear that “an MEEA signatory needs to provide the information specified only for those Settlement Intervals in which the MEEA signatory seeks the MEEA pricing.”

46. On reply, the CAISO argues that the elimination of an actual after-the-fact verification based on a MEEA signatory’s supply and demand resources would undermine any ability to ensure that the default price continues to apply for interchange transactions that are supported by power flows from the Northwest. Also, the CAISO argues that Santa Clara and Palo Alto’s proposed revisions are outside the scope of this proceeding.

47. The CAISO is unconvinced by arguments that IBAA entities have an obligation to maximize the purchase of cheaper power to serve their load and, therefore, the CAISO can assume as a tenet of good utility practice that supply resources not identified in a MEEA (e.g., imports from the Northwest) are used to serve native load within the IBAA and that MEEA resources are operated to support interchange transactions. The CAISO claims this suggestion ignores the importance of knowing the location of the resources dispatched in an LMP pricing regime. Moreover, the CAISO contends that the IBAA entities confirmed that the California-Oregon Transmission Project (COTP) is not fully loaded in most hours, which means that it is at times less expensive to operate IBAA generation or reliability needs may sometimes require the operation of IBAA generation. In either case, the CAISO asserts the operation of generation within the IBAA would not be available to support an interchange transaction with the CAISO.

48. The CAISO states that it recognizes that in other instances it has accepted affidavit-style verification mechanisms. However, it asserts that a distinguishing feature in the context of the IBAA is that the verification process is essential to ensure that MEEA resources actually operated to support the interchange transaction. With respect to CRRs, the CAISO states it accepted affidavits to verify the load metrics and the source verification, categories of historical information that are not dependent on actual use. For the purposes of CRRs the CAISO conducts similar verifications for internal entities as it does for external entities based on such affidavits. In contrast, the CAISO explains that for the purposes of actually settling energy internally, it also requests that its internal entities provide meter data or telemetry that is measurable and enables the CAISO to ensure the settlements of generation and load are based on the power actually delivered and consumed.

### **Commission Determination**

49. The Commission denies the CAISO’s rehearing request regarding its data requirements for the application of MEEA pricing. The Commission originally

stated, “we will require the CAISO to include tariff provisions that specify the minimum information it requires to accurately model interchange transactions.”<sup>29</sup> The CAISO’s proposed data requirements to apply MEEA pricing are included in the tariff to provide the data necessary for the CAISO to perform the netting and eligible quantity calculations it proposed. As discussed above, the Commission denies rehearing regarding such calculations, and thus the Commission also denies the CAISO’s rehearing request to require the information necessary to perform those calculations.

50. The Commission finds that a MEEA signatory should be able to self-certify that a MEEA resource was dispatched to support interchange transactions. As the CAISO and other parties have noted, the CAISO tariff relies on certifications for other elements of its system. Like other certification processes outlined in the CAISO tariff, if the certification is audited by the CAISO under the terms of the tariff or challenged by the Commission or other parties, the MEEA signatory should support its certification with information demonstrating that a resource was used to support the interchange transaction(s).<sup>30</sup> If a dispute arises concerning the certification provided and its supporting information, and the parties are unable to resolve such disputes through other existing processes, parties are free to bring the issue and specific facts to the Commission in the form of a complaint.<sup>31</sup>

51. As reflected in some parties’ comments, we find there is information that can be used to determine when an IBAA entity’s MEEA resources are supporting the IBAA’s transactions with the CAISO that do not require much of the non-resource-specific data the CAISO proposed (e.g., the total gross energy purchases made by a MEEA signatory within the IBAA). Relevant information includes: NERC tags, OASIS transmission reservation data,<sup>32</sup> day-ahead load and resource

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<sup>29</sup> September IBAA Order, 124 FERC ¶ 61,271 at P 182.

<sup>30</sup> CAISO Tariff Fourth Replacement Volume I, section 27.5.3.7.

<sup>31</sup> Rule 206 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.206 (2009); *see also* 16 U.S.C. § 824w (2006) (prohibiting energy market manipulation); 16 U.S.C. § 825o (2006) (providing the Commission certain penalty authority up to \$1 million per day); 16 U.S.C. § 824e (2006) (providing the Commission certain authority to order refunds).

<sup>32</sup> *See* SMUD, September 15, 2009 Technical Conference Comments at 10 (“As several IBAA representatives explained during the technical conference, any IBAA resale of a purchase from the Northwest directly into the CAISO market would be traceable. Under the terms of SMUD’s OATT, transmission that is not used to support SMUD native load must be posted as available for sale on SMUD’s OASIS site. Once posted, SMUD and others can purchase the transmission to help facilitate third party sales into Northern California. When

plans and power purchase agreements or contracts demonstrating “committed use”<sup>33</sup> of COTP transmission. In addition, the CAISO has acknowledged that if it was provided marginal cost information from the IBAA entities, it would provide MEEA pricing,<sup>34</sup> therefore, we direct the CAISO to take cost information into account in the event that a MEEA signatory provides it. However, a MEEA signatory is not required to provide cost information. Also, the certification should include an attestation, under oath, by an officer of the MEEA signatory seeking MEEA pricing with knowledge of its operations. Thus, the Commission directs the CAISO to make a compliance filing consistent with the above directions within 30 days of the date of this order.

52. The clarification submitted by the CAISO following the technical conference demonstrates that parties appear to be in general agreement regarding the CAISO’s proposal to use historical data provided by the IBAA entity to establish the location of MEEA resources and those resources’ operating histories.<sup>35</sup> The CAISO adds that it believes that there is no disagreement concerning the need for the information to be provided to establish a MEEA. Other parties, including TANC, Santa Clara and Palo Alto agree.<sup>36</sup> This historical data would also serve as a basis for setting the distribution factors used to determine appropriate MEEA pricing and would help the CAISO utilize information on historical flows to improve its full network model. Thus, the Commission directs the CAISO to file tariff language regarding the historical

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SMUD takes such action, the specific transmission used to support the sale is tagged with a unique identifier (OASIS number) making it easy to determine the transmission was used to support a third party sale and not SMUD native load.”).

<sup>33</sup> See Santa Clara and Palo Alto, Technical Conference Reply Comments at 10 (citing SMUD September 15, 2009 Technical Conference Comments at 10 n.9).

<sup>34</sup> May 12 Compliance Filing at 9.

<sup>35</sup> CAISO, Technical Conference Comments at 1, Attachment A at 1 (stating that IBAA entities could negotiate average/blended MEEA prices based on an agreed upon set of weights for the resources that comprise their resource portfolio. The CAISO agreed that historical data pertaining to the operation of the resources comprising the portfolio will be used to determine the weighting of the impact of the units on the CAISO for the purpose of MEEA pricing. In this regard the CAISO clarified that distribution factors may reflect seasonal, peak vs. off-peak, or other usage and may be periodically revised through bilateral negotiations using updated historical data of operations of the resources comprising the portfolio.).

<sup>36</sup> Santa Clara and Palo Alto, September 22, 2009 Reply Comments at 2; TANC Technical Conference Comments at 21.

information used to establish a MEEA, consistent with the post-technical conference clarification within 30 days of the date of this order.

53. Even without the verification data requirements the CAISO sought for the application of MEEA pricing, the CAISO still should be able to model flows. As discussed above, the MEEA signatory through the historical information used to establish a MEEA, the certification, the Resource ID and any other information provided should supply the CAISO information sufficient to model flows.<sup>37</sup> This information is to allow the CAISO to model these transactions and cannot be used by the CAISO for prohibited netting calculations. If parties agree that additional information should be provided for modeling, those agreements can be included in the individual MEEAs.

54. As the Commission finds the data requirements for providing MEEA pricing proposed by the CAISO to provide MEEA pricing should be changed to a self-certification process, the Commission does not need to address whether the CAISO should specify that it requires the information *only* in the settlement intervals in which a MEEA signatory seeks MEEA pricing.

55. The Commission finds unconvincing parties' arguments against confirming that a MEEA resource supported an interchange transaction. The Commission finds that the IBAA proposal does promote appropriate pricing by allowing the CAISO to model the resources actually used in interchange transactions, and if there is no interchange transaction with the CAISO, the IBAA proposal is not implicated. Therefore, determining that MEEA resources were dispatched to support the transaction is a key element for receiving MEEA pricing. The Commission finds that the contention that all the CAISO requires is confirmation that a MEEA signatory's resource was operated and produced quantities sufficient to support the MEEA transactions is inconsistent with the purpose of the IBAA proposal.<sup>38</sup>

56. The Commission finds that the tariff language requiring the CAISO to apply MEEA pricing if a MEEA signatory can confirm a MEEA resource operated as suggested by Santa Clara and Palo Alto in their filing following the technical conference is not acceptable. As discussed above, certification that the source was used *in the interchange transaction with the CAISO* is also necessary and must be able to be supported by appropriate information if such certification is challenged.

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<sup>37</sup> Also, the MEEA signatory must be able to demonstrate that the power is not originating from the Northwest.

<sup>38</sup> March 6 MEEA Order, 126 FERC ¶ 61,207 at P 61 (citing September IBAA Order, 124 FERC ¶ 61,271 at P 6).

57. The Commission denies Imperial's rehearing request that the only information necessary to apply MEEA pricing is the NERC tag information. The Commission recognizes that it is necessary to provide the parties to a MEEA flexibility to use multiple sources of information to support the certification of transactions showing that a resource operated and supported an interchange transaction with the CAISO.

### 3. MEEAs and Controlling Resources

58. In the March 6 MEEA Order, the Commission approved limiting the eligibility for executing a MEEA to any entity controlling (physically or contractually) resources within the IBAA.<sup>39</sup> Parties contend that the Commission erred in preventing entities that control only transmission within an IBAA from executing a MEEA. Parties seek clarification and alternatively they contend that if the March 6 MEEA Order is construed as precluding TANC, which is the majority owner of the COTP but does not control resources, from executing a MEEA, then they request rehearing.

59. Parties contend that since the COTP has a significant, beneficial, impact on the CAISO system, TANC should qualify to enter into a MEEA, regardless of whether it also controls supply resources.<sup>40</sup> Parties claim that this transmission affects the CAISO and that precluding such entities from executing a MEEA runs counter to a key purpose of the MEEA, which is to provide the CAISO with more data to model interchange transactions. TANC contends that the CAISO recognizes the "impact" of the COTP on the CAISO-controlled grid.<sup>41</sup>

60. TANC adds that the CAISO cited the interconnection of the COTP and the CAISO-controlled grid at Tracy as evidence of the impact of the IBAA on the CAISO and warranted creation of the IBAA.<sup>42</sup> TANC argues that the Commission cannot now deny evidence that the COTP impacts the CAISO system.

61. TANC also contends that the CAISO repeatedly stated its intent that entities such as TANC should have an opportunity to avoid default pricing by

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<sup>39</sup> *Id.* P 28, 29.

<sup>40</sup> TANC, April 4, 2009 Rehearing Request at 6 (TANC Rehearing Request).

<sup>41</sup> *Id.* at 8.

<sup>42</sup> *Id.*

negotiating and executing a MEEA.<sup>43</sup> TANC contends that the CAISO's statements reflected its intent that TANC would be eligible to execute a MEEA.

62. TANC adds that the tariff definition of the proposed MEEA does not limit eligibility to only those entities that control supply resources within an IBAA. TANC states that the term MEEA is defined, in pertinent part, as “[a]n agreement between the CAISO and the Balancing Authority of an IBAA, or any entity or group of entities that use the transmission system of an IBAA, which provides for an alternative modeling and pricing arrangement to the default IBAA modeling and pricing provisions provided in Section 27.5.3.”<sup>44</sup> Thus, TANC concludes the proposed definition of MEEA recognizes ownership of transmission facilities as a sufficient nexus to establish eligibility for a MEEA.

63. TANC contends that if an entity is subject to the default price, such an entity should be eligible to enter into a MEEA to avoid the default price. TANC states that by virtue of the application of the default price to all users of IBAA transmission facilities, the CAISO's model assumes that all IBAA transmission users have resources within an IBAA. TANC argues that for the CAISO to claim that entities that own or control resources and use IBAA transmission facilities to import such resources to the CAISO are not “within the IBAA” is arbitrary and discriminatory.

64. Parties contend that the heart of the CAISO's IBAA filing was the ability to avoid the unfavorable default price in exchange for certain information. TANC notes that in its original IBAA proposal, the CAISO represented that “any entity or group of entities that use the transmission system of an IBAA” would be able to execute a MEEA.<sup>45</sup> TANC claims the Commission previously recognized the right of an IBAA or any entity or group of entities that use the transmission system of an IBAA to enter into a MEEA.<sup>46</sup> Parties assert that the Commission appears to have departed from this ruling by limiting MEEA eligibility to entities that control resources within an IBAA.

65. With respect to claims for MEEA pricing for resources located outside the IBAA, multiple parties also contend that clarification is warranted to avoid the

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<sup>43</sup> *Id.* at 9 (quoting CAISO August 8, 2008 Answer, Docket No. ER08-1113-000 at 52-53).

<sup>44</sup> *Id.* at 11 (quoting CAISO November 25, 2008 Compliance Filing, Attachment B, App. A).

<sup>45</sup> *Id.* at 14 (quoting CAISO June 17, 2008 Filing, Attachment C, Definition of MEEA).

<sup>46</sup> *Id.*

situation whereby entities that use IBAA transmission facilities to transact with the CAISO from resources outside the IBAA would be subjected to default IBAA pricing, yet would be barred from MEEA eligibility because they choose to use a supply resource outside the IBAA for such interchange transactions.<sup>47</sup> TANC requests that the Commission grant clarification, or in the alternative, rehearing, to confirm that entities that use IBAA transmission facilities for interchange transactions with the CAISO are eligible to enter into MEEAs with the CAISO for those transactions, irrespective of whether the generation is sourced within or outside the IBAA.

66. Modesto states that it is concerned with the language limiting MEEA pricing to resources “identified in the MEEA.” Modesto contends that it is worried that resources identified in the MEEA would not consist of resources located in the CAISO’s balancing authority but would contemplate resources located within the IBAA entity’s service territory instead. Read this way, Modesto claims that no exports from the CAISO or wheel-throughs would qualify for MEEA treatment, which Modesto argues would run counter to the purpose of the MEEA of providing relief from default rate treatment.

67. Modesto contends that the Commission should clarify that wheel-throughs to serve an IBAA entity’s own load would not receive a price under a MEEA.<sup>48</sup> Modesto states that imports from the Northwest may be wheeled-through a short leg of CAISO transmission to the IBAA after it has already used IBAA transmission. In such a situation, Modesto requests clarification that it should receive the Tracy price for the import and the Westley price for the export, not a default price, as such resources would be going to serve Modesto’s own load.

### **Commission Determination**

68. The Commission denies rehearing regarding MEEA eligibility for parties that do not control resources within the IBAA. As the Commission has stated on multiple occasions, MEEAs must be entered between the CAISO and entities that control resources within the IBAA,<sup>49</sup> and this standard is consistent with the original IBAA proposal.<sup>50</sup> Parties’ claims concerning controlling resources within

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<sup>47</sup> TANC Rehearing Request at 12-13; Modesto Rehearing Request at 4; Imperial Rehearing Request at 14.

<sup>48</sup> Modesto, April 6, 2009 Rehearing Request at 4.

<sup>49</sup> September IBAA Order, 124 FERC ¶ 61,271 at P 160, 191; March 6 MEEA Order, 126 FERC ¶ 61,207 at P 28-29; July 30 Rehearing Order, 128 FERC ¶ 61,103, at P 61 (2009).

<sup>50</sup> CAISO, June 17, 2008, IBAA Proposal, Docket No. ER08-1113-000 at

the IBAA are untimely because these issues were present in the original IBAA proposal and addressed in the Commission's subsequent orders. Parties endeavor to raise issues that are out of time, and the Commission denies rehearing.<sup>51</sup>

69. Also, even if the Commission were to consider the merits of the rehearing request, the Commission would deny rehearing. As the Commission found in its March 6 MEEA Order, it is appropriate for the CAISO to limit MEEA eligibility to an entity controlling resources within the IBAA because an entity must contractually or physically control a resource to provide the CAISO operational information to enable more accurate modeling.<sup>52</sup>

70. Because one of the primary purposes of a MEEA is to provide the CAISO more information about the location of a resource, the entities that are entitled to MEEA pricing are the entities that control such a resource and, thus, can provide the information. Allowing entities that did not control resources within the IBAA and thus cannot provide the modeling information would not create better modeling and would lead to a system like the radial modeling system the IBAA proposal is designed to change.<sup>53</sup> Also, parties' emphasis on the significance of the COTP on the CAISO-controlled grid is misplaced. Although transmission over the COTP may have an impact on the CAISO-controlled grid, to the extent that that impact is the result of imports sourced in the Northwest, the default price correctly values those transactions. Accordingly, the Commission denies parties' rehearing request.

71. The CAISO's post-technical conference clarification addresses Modesto's concerns regarding whether exports from the CAISO would be excluded from MEEA pricing. The CAISO states that in the pertinent tariff section, "resources" do not include resources located in the CAISO, and therefore do not require verification. Also, the CAISO's comments clarify that a "resource" can include a load. Such a clarification should make clear that resources include sources and sinks. The Commission directs the CAISO to make a compliance filing within 30 days that reflects these clarifications contained in Attachment A of its post-technical conference comments.

72. We disagree with TANC that the definition of MEEA is inconsistent with the Commission's finding. The definition allows "any entity or group of entities that use the transmission system of an IBAA" to enter a MEEA, however, simply

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21 (IBAA Proposal); CAISO, July 23, 2008 Answer, ER08-1113-000 at 85.

<sup>51</sup> *Xcel Energy Serv., Inc.*, 118 FERC ¶ 61,071, at P 13 (2007).

<sup>52</sup> March 6 MEEA Order, 126 FERC ¶ 61,207 at P 29.

<sup>53</sup> September IBAA Order, 124 FERC ¶ 61,271 at P 34, *et seq.*

using the transmission system alone is not sufficient to enter a MEEA. This definition, when read in the context of the IBAA proposal and the Commission's subsequent order, does not provide that an entity that only controls transmission and not a resource can enter a MEEA. Further, the definition of MEEA alone is not meant to give an absolute and complete description of all the requirements parties must meet to enter into a MEEA.

73. Also, parties' concerns about non-IBAA entities that may be subject to the default price due to the location of their imports is not an issue for consideration in these proceedings. MEEA pricing is intended to apply to entities that control resources within the IBAA.<sup>54</sup> To the extent non-IBAA parties wish to exchange information with the CAISO, such data exchanges are encouraged, but they are not the subject of these proceedings. Further, for entities performing a wheel-through transaction for Northwest power, the Captain Jack default price is a reasonable assumed default price because it reflects the location of the resource and the impact on the CAISO-controlled grid.<sup>55</sup> To the extent wheel-through transactions meet the criteria to be subject to pricing under the IBAA, such transactions should be subject to the IBAA proposal.

#### 4. MEEA Pricing

74. In the March 6 MEEA Order, the Commission stated "'actual price' under a MEEA is to be reflective of the [Locational Marginal Pricing (LMP)] at the nodes at which the actual import or export of energy associated with a particular interchange transaction has been demonstrated to have taken place."<sup>56</sup> The Commission required the CAISO to clarify that "the price provided to a MEEA signatory will be reflective of the LMP at the nodes where a specific import or export between the SMUD-Turlock IBAA and the CAISO is demonstrated to be located."<sup>57</sup>

75. In its clarification request, the CAISO argues that the Commission's direction is reasonable if the Commission intends for MEEA pricing to reflect the location of the MEEA resources used to implement the interchange transaction.<sup>58</sup> However, if the Commission intends for MEEA pricing to be determined at the

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<sup>54</sup> IBAA Proposal at 21.

<sup>55</sup> September IBAA Order 124 FERC ¶ 61,271 at P 82.

<sup>56</sup> March 6 MEEA Order, 126 FERC ¶ 61,207 at P 34-35.

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

<sup>58</sup> CAISO, April 6, 2009 Rehearing Request at 27 (CAISO Rehearing Request).

location of the intertie scheduling points, then the CAISO requests rehearing of the Commission's determination.<sup>59</sup> TANC responds that the Commission's March 6 MEEA Order's direction would allow for pricing at the transaction intertie, not the location of the resource.<sup>60</sup>

76. Numerous parties assert that the CAISO's interpretation of MEEA pricing is inconsistent with the Commission's September IBAA Order and March 6 MEEA Order. Such parties contend that interchange transactions do not occur at the location of the resource, energy enters the CAISO's system at the interties, so the MEEA price should be set at the intertie. Because the CAISO did not seek rehearing of the September IBAA Order on this issue, parties contend that it cannot do so through this filing as such an action would subvert procedural due process and would reward the CAISO for its inaction.

### **Commission Determination**

77. The Commission agrees with the CAISO's interpretation of MEEA pricing and that interpretation is consistent with the March 6 MEEA Order and the July 30 Rehearing Order. As stated in the July 30 Rehearing Order, the relevant pricing point under a MEEA is the node where the interchange transaction is demonstrated to be located.<sup>61</sup> This point would not necessarily coincide with the intertie schedule.<sup>62</sup> This is because using scheduled locations rather than establishing MEEA prices reflecting the actual flows based on the location of the external resource would undermine the goal of the MEEA, which is to allow the CAISO to accurately model and price actual flows. MEEA pricing should reflect the congestion impacts and congestion costs on the CAISO-controlled grid.

78. In the clarification submitted following the technical conference, the CAISO notes that "MEEA pricing will typically be based on historical average distribution of generation among the portfolio of MEEA resources, using negotiated generation distribution factors, subject to revision to reflect changes in

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<sup>59</sup> *Id.*

<sup>60</sup> TANC, April 21, 2009 Answer at 8 (TANC Answer).

<sup>61</sup> *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,103 (2009), at P 188 (2009) (July 30 Rehearing Order) (citing September IBAA Order, 124 FERC ¶ 61,271 at P 105; March 6 MEEA Order, 126 FERC ¶ 61,207 at P 34) (stating "to use scheduled locations rather than to base the price on the actual location of the external resource would be to undermine the goal of the MEEA to allow the CAISO to accurately model and price actual flows.").

<sup>62</sup> *Id.*

usage.”<sup>63</sup> The CAISO further states that the parties to a MEEA could negotiate another pricing structure and that the process “will not require that a specific generator within the MEEA portfolio be associated with a specific MEEA customer.”<sup>64</sup> The Commission directs the CAISO to file tariff language consistent with this clarification within 30 days of the date of this order.

## 5. Resource IDs

79. The CAISO seeks clarification of the Commission’s direction that the CAISO clarify its definition of “Resource ID.” The CAISO states that the use of the term “Resource ID” is appropriate to facilitate adjustments to losses associated with imports that use the COTP and for which TANC and Western have charged for losses.<sup>65</sup>

80. The CAISO claims that the definition of “Resource ID” quoted in TANC’s December 16, 2008 protest, is in error and is actually the definition of a “Resource Adequacy Resource.” The CAISO claims the actual definition of “Resource ID” reads as follows:

Identification characters assigned by the CAISO to Generating Units, Loads, Participating Loads, System Units, System Resources, and Physical Scheduling Plants.

81. The CAISO claims that the correct definition of Resource ID indicates that it is an appropriate mechanism to use to track interchange transactions between the SMUD-Turlock IBAA and the CAISO balancing authority area that use the COTP and that face charges for losses from TANC or Western consistent with the September IBAA Order and the March 6 MEEA Order. The CAISO requests that the Commission accept this clarification. If the Commission does not accept this clarification then the CAISO requests that the Commission grant rehearing because its directive is based on an incorrect definition of the term “Resource ID.”

82. Also, Affected IBAA Entities state the Commission had directed the CAISO to clarify the definition of Resource IDs to ensure that any transactions that face charges for losses from TANC or Western could be tracked or by using another, more appropriate, defined term, but the CAISO was unable to provide the required clarification at the training session.<sup>66</sup> Affected IBAA Entities assert that

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<sup>63</sup> CAISO Technical Conference Comments, Attachment A.

<sup>64</sup> *Id.*

<sup>65</sup> CAISO Rehearing Request at 28.

<sup>66</sup> Affected IBAA Entities April 6, 2009 Rehearing Request at 10 (Affected IBAA Entities Rehearing Request) (citing March 6 MEEA Order, 126 FERC

clarification remains critical to TANC's understanding of how the IBAA will work with respect to the tracking of IBAA losses.

### **Commission Determination**

83. The Commission accepts the CAISO's clarification on this issue. The Commission agrees with the CAISO that the definition of "Resource ID" quoted by TANC was incorrect.<sup>67</sup> Further, the Commission finds the definition of "Resource ID" to be sufficient to ensure that any transaction that faces losses from TANC or Western could be traced. Also, the Commission notes that in the CAISO's post-technical conference comments, it clarifies that there can be special MEEA Resource IDs, which should address any concerns raised by other parties on this issue.<sup>68</sup> The Commission directs the CAISO to file tariff language consistent with this clarification within 30 days of the date of this order.

### **6. IBAA Approval Prior to MEEA Completion**

84. Numerous parties contend that the Commission erred in its March 6 MEEA Order, March 13 Readiness Order and March 27 Clarification Order by allowing the IBAA proposal to become effective prior to the finalization of all the MEEA elements of the IBAA proposal.<sup>69</sup> Therefore, parties request rehearing on the Commission's conclusion that, without complete MEEA provisions finalized and in the tariff, the CAISO's IBAA proposal would result in "just and reasonable" prices.

85. Imperial states that the Commission previously ruled that it is critical for IBAA entities to have the ability to avoid the potential negative consequence of the CAISO's default pricing mechanism by entering into a transparent and fairly-balanced MEEA.<sup>70</sup> Without that ability, Imperial contends, the CAISO's default pricing proposal is unjust and unreasonable.

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¶ 61,207 at P 160).

<sup>67</sup> See CAISO Tariff Fourth Replacement Volume II, First Revised Sheet No. 932.

<sup>68</sup> CAISO Technical Conference Comments, Attachment A at 2.

<sup>69</sup> Imperial, April 6, 2009 Rehearing Request at 11 (Imperial Rehearing Request); TANC Rehearing Request at 15-16; Affected Entities Rehearing Request at 3.

<sup>70</sup> Imperial Rehearing Request at 12 (citing September Order at P 83, 84, 120).

86. Parties argue that since the March 6 MEEA Order required the CAISO to submit a compliance filing to, among other things, make changes related to rates under a MEEA and the CAISO's data requirements, it was inappropriate for the Commission to allow the CAISO to implement the IBAA proposal, even on an interim basis.<sup>71</sup> Parties state the options outlined by the Commission with respect to data exchange obligations are internally contradictory and unworkable. Parties argue that the option to negotiate a MEEA based on "the data requirements set out in the CAISO's proposed MEEA" and based on the Commission's prior guidance is no option at all. Parties state that the "option" to disclose this data rather than adhere to the "more appropriate data requirements after the CAISO makes its compliance filing," is not salvaged by requiring the disclosure "on an interim basis."<sup>72</sup> In addition, parties claim that since the Commission's March 27 Clarification Order provided that the interim rates would be subject to the Commission's final order on compliance, such interim MEEA rates will not serve to protect ratepayers from the uncertainty in the rates they would be paying under the IBAA proposal. Parties argue that without knowing what data would be required under a MEEA, a potential MEEA entity would not know whether it would be willing or able to provide such information to receive pricing under a MEEA.

87. Parties contend that since no IBAA entity or MEEA-eligible entity requested an effective date prior to the resolution of the pending rate and term issues, the Commission erred in failing to order the CAISO to defer implementing the IBAA proposal until such time as the rates, terms and conditions pertaining to IBAA, including the integral MEEA components, had been accepted by the Commission.<sup>73</sup> Thus, parties claim they cannot reasonably assume that any MEEA they might execute would become effective retroactive to March 31, 2009.

88. Parties claim that the Commission's assertion that Affected IBAA Entities have had the option all along to negotiate a MEEA prior to March 31, 2009 cannot be squared either with its own pronouncements or the CAISO's behavior.<sup>74</sup> Parties claim that under the Commission's logic, parties could have negotiated a MEEA with the CAISO last June, after the CAISO made its IBAA filing, even though the Commission itself had later ruled that the filed MEEA provisions did not offer the means to develop a transparent and balanced agreement in a non-

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<sup>71</sup> TANC Rehearing Request at 17.

<sup>72</sup> Affected IBAA Entities Rehearing Request at 7 (citing March 27 Clarification Order, 126 FERC ¶ 61,278 at P 26).

<sup>73</sup> TANC Rehearing Request at 17-18.

<sup>74</sup> Affected IBAA Entities Rehearing Request at 7.

discriminatory manner. Parties question what standards would have guided those negotiations.

89. Affected IBAA Entities claim that without a MEEA option, IBAA entities would be forced to transact with the CAISO market at unfavorable default prices even though a MEEA was “integral” to the IBAA. Affected IBAA Entities argue that it is a fundamental principle of administrative law that there must be a “rational connection between the facts found and the choice made” by the agency.<sup>75</sup> Thus, Affected IBAA Entities allege there is no rational basis to conclude that, in the absence of compliant MEEA provisions, Affected IBAA Entities would have a bona fide option to execute a MEEA to avoid IBAA default pricing.

### **Commission Determination**

90. The Commission denies rehearing requests regarding its approval of the IBAA proposal prior to finalization of the MEEA tariff provisions. The Commission addressed similar claims regarding whether the IBAA proposal should have been implemented prior to the submission of all compliance filings regarding entering into MEEAs in its March 27 Clarification Order. In that order the Commission demonstrated that it had conditionally accepted the CAISO’s filing, subject to modification.<sup>76</sup> The Commission noted that accepted tariff language and the guidance in past Commission orders provide sufficient direction for negotiating and entering into a MEEA.<sup>77</sup> Further, the Commission stated that in section 27.5.3.2 of the CAISO Tariff, the CAISO provides that any entity controlling supply within the IBAA that provides the CAISO with the requisite information will be able to enter into a MEEA.<sup>78</sup> The Commission retains that position.

91. The framework is in place for entities to negotiate and enter into MEEAs. If the parties entered good-faith negotiations using the guidance already provided by the Commission, they could find agreement on MEEAs.<sup>79</sup> Any concerns

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<sup>75</sup> *Id.* at 4 (citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

<sup>76</sup> March 27 Clarification Order, 126 FERC ¶ 61,278 at P 23 (citing March 6 MEEA Order, 126 FERC ¶ 61,207 at P 1).

<sup>77</sup> *Id.* (citing *Southwest Power Pool, Inc.*, 100 FERC ¶ 61,248, at P 14 (2002) (stating that using provisions conditionally accepted by the Commission as a template for another agreement is reasonable.))

<sup>78</sup> *Id.* (citing CAISO tariff section 27.5.3.2).

<sup>79</sup> *See e.g.*, September IBAA Order, 124 FERC ¶ 61,271 at P 184, 185;

regarding rates, data requirements and the confidentiality of any interim disclosure could be addressed in such negotiations.

## 7. Commission Jurisdiction

92. In the March 6 MEEA Order, the Commission found that given the integral link between the MEEA and the jurisdictional IBAA proposal, the MEEA should be filed with the Commission pursuant to section 205 of the Federal Power Act (FPA).<sup>80</sup> The Commission noted that under the FPA it has jurisdiction over CAISO rates, terms and conditions of CAISO transmission and CAISO's energy markets. Since transactions that occur under a MEEA have an impact on the CAISO-controlled grid, the Commission determined that it had jurisdiction.<sup>81</sup> Some parties request rehearing, claiming that the Commission's March 6 MEEA Order improperly exercises jurisdiction over non-jurisdictional entities.

93. Turlock and Imperial argue that while the FPA does provide the Commission jurisdiction over CAISO transmission service and the CAISO markets, the FPA does not provide the Commission jurisdiction over all governmental entities' MEEA sales. Imperial notes that the tariff language filed by the CAISO explicitly references energy "sales" and the Commission's own orders contend that "the Affected IBAA Entities would be subject to just and reasonable rates under the default pricing" as well as "LMP pricing," applied to their sales by the CAISO.<sup>82</sup>

94. Turlock and Imperial contend that section 205 of the FPA is inapplicable to governmental entities and their sales because it contains no reference to non-public entities. Imperial contends that interchange transactions occur between markets, not within just one market. Imperial maintains that the Commission cannot assert general jurisdiction over the CAISO and its market to regulate sales rates charged by governmental entities, which are beyond the scope of the Commission's jurisdiction.<sup>83</sup>

95. Turlock and Imperial add that the Commission's jurisdiction over governmental entities' sales is limited under sections 201(f) and 206(e) of the

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March 6 MEEA Order, 126 FERC ¶ 61,207 at P 28, 34-35, 60-64, 80-84.

<sup>80</sup> March 6 MEEA Order, 126 FERC ¶ 61,207 at P 110.

<sup>81</sup> *Id.*

<sup>82</sup> Imperial Rehearing Request at 19 (citing March 27 Order, 126 FERC ¶ 61,278 at P 28).

<sup>83</sup> *Id.* at 20.

FPA.<sup>84</sup> Parties continue that under section 201(f) of the FPA, the Commission is only provided jurisdiction over governmental entities or their sales where the FPA “provision makes specific reference thereto,” otherwise the Commission has no jurisdiction under the provision.<sup>85</sup>

96. Turlock and Imperial claim that section 206(e) of the FPA is the only provision that provides the Commission jurisdiction over the rates of governmental entities’ sales and this jurisdiction is limited to a discrete set of sales by only large governmental entities.<sup>86</sup> Also, Turlock and Imperial note that section 206(e) of the FPA provides that the Commission has refund authority over only a limited subgroup of governmental entities’ sales, and claims the March 6 MEEA Order is arbitrary, capricious and an abuse of discretion because it expands the Commission’s jurisdiction beyond the section’s limitations. Turlock and Imperial assert that the March 6 MEEA Order not only subjects the rate for governmental entities’ MEEA sales to the Commission review, it also subjects the non-rate terms and conditions of these sales to Commission review.<sup>87</sup> Turlock contends that this is a direct violation of FPA section 206(e)(2).<sup>88</sup>

97. Turlock submits that even if governmental entities’ MEEA sales impact the CAISO markets and have an “integral link” with the IBAA proposal, those impacts and that link do not give the Commission jurisdiction to review and set the rates, terms and conditions of governmental entities’ MEEA sales.

98. Turlock and Imperial claim that the Commission’s finding that by voluntarily selling (under the MEEA) into the CAISO market, governmental entities’ waive or agree to the Commission’s jurisdiction, is erroneous.<sup>89</sup> The parties contend that the fact that the MEEA sales would be “voluntary” does not constitute a waiver of jurisdiction and cannot create jurisdiction for the Commission because entities cannot waive jurisdiction through contract or otherwise.<sup>90</sup>

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<sup>84</sup> Turlock April 6, 2009 Rehearing Request at 14 (Turlock Rehearing Request) (citing section 201(f) of the FPA (16 U.S.C. § 824(f))).

<sup>85</sup> *Id.* at 14 (citing section 201(f) of the FPA (16 U.S.C. § 824(f))).

<sup>86</sup> *Id.* (citing 16 U.S.C. § 824e(e)).

<sup>87</sup> *Id.* at 16.

<sup>88</sup> *Id.* (citing *Western Resources, Inc.*, 74 FERC ¶ 61,070, at 61,198 n.11 (1996)).

<sup>89</sup> *Id.* at 17 (citing March 6 MEEA Order, 126 FERC ¶ 61,207 at P 110).

<sup>90</sup> *Id.* (citing *Bonneville Power Admin.*, 422 F.3d 908, 924 (9<sup>th</sup> Cir. 2005);

99. Turlock contends that the Commission's finding that because governmental entities retain control of their facilities, the Commission can exercise jurisdiction over their MEEA sales is erroneous. Turlock states that whether governmental entities retain control of their facilities in making their MEEA sales has no bearing on the Commission's statutory jurisdiction because parties cannot waive or contract into jurisdiction.<sup>91</sup>

100. Turlock argues that the Commission's contention that it is not setting or regulating the governmental entities' MEEA sales but instead is only regulating CAISO transmission service and the CAISO Markets, if accepted would erroneously authorize the Commission to do indirectly what it cannot do directly.

### **Commission Determination**

101. The Commission denies rehearing concerning Commission jurisdiction. The Commission addressed many of the arguments concerning its jurisdiction in its prior orders, including the July 30 Rehearing Order.<sup>92</sup> The Commission explained that it has jurisdiction over the CAISO and its tariff under the FPA, and the regulation of proposals concerning the CAISO's tariff is within that core authority,<sup>93</sup> and the IBAA proposal is a request by the CAISO to alter its tariff.<sup>94</sup> As the Commission demonstrated, such a request is within the Commission's jurisdiction.<sup>95</sup> Also, many of the issues upon which parties base their jurisdictional rehearing request were evident in the September IBAA Order and the parties either already raised the issue on rehearing or failed to raise it and attempt to raise the issue here.<sup>96</sup> Since the Commission has established its

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*Columbia Gas Transmission Corp. v. FERC*, 404 F.3d 459, 463 (D.C. Cir. 2005)); Imperial Rehearing Request at 22.

<sup>91</sup> *Id.* at 21.

<sup>92</sup> July 30 Rehearing Order, 128 FERC ¶ 61,103 at P 20-25.

<sup>93</sup> 16 U.S.C. § 824d (2006).

<sup>94</sup> July 30 Rehearing Order, 128 FERC ¶ 61,103 at P 20-25.

<sup>95</sup> *Id.* (citing *Cal. Indep. Sys. Operator*, 119 FERC ¶ 61,076, at P 485 (2007); *Nat'l Assoc. of Regulatory Utility Comm'rs v. FERC*, 475 F.3d 1277, 1280 (D.C. Cir. 2007)).

<sup>96</sup> *See e.g.*, September IBAA Order 124 FERC ¶ 61,271 at P 188 (concerning filing MEEAs with the Commission); *see also* July 30 Rehearing Order 128 FERC ¶ 61,103 at P 20-25.

jurisdiction in prior orders, many of the jurisdictional arguments raised here have been addressed and are improper.<sup>97</sup>

102. Regardless, even if the Commission were to again consider such arguments, as the Commission has already established, the CAISO tariff applies to transactions that impact the CAISO-controlled grid, and if a party chooses to participate in the CAISO market that party is choosing to operate under the CAISO tariff.<sup>98</sup> Just as a non-jurisdictional entity may choose to participate in a settlement agreement that is submitted to the Commission, a non-jurisdictional entity may choose to participate in the CAISO market, which is governed by the CAISO tariff.<sup>99</sup>

103. Efforts to claim that the Commission is acting beyond its jurisdiction as described in section 206(e)(3) of the FPA are incorrect. The critical element of the IBAA proposal and the March 6 MEEA Order concerns the impact of energy on the CAISO-controlled grid. It is that impact that the Commission's orders concern and that triggers the Commission's authority.

104. Turlock's claim that the March 6 MEEA Order is improper because it requires that MEEAs entered into between governmental entities and the CAISO be filed with the Commission is incorrect. As the Commission previously explained, the MEEA is a key component of the entire IBAA proposal, which governs charges applicable in the CAISO energy markets and sets a rate for voluntary interchange transactions under the CAISO Tariff that impact the CAISO-controlled grid, and are thus subject to the CAISO's pricing.<sup>100</sup> Because the MEEA and the IBAA proposal are integrally linked, the MEEA must be filed with the Commission.

105. Further, claims that filing an agreement between an Independent System Operator and a non-jurisdictional entity with the Commission is a violation of Commission jurisdiction are also incorrect. The Commission has broad jurisdiction concerning rates.<sup>101</sup> Since the entered MEEAs will directly affect energy pricing, CAISO markets and the CAISO-controlled grid, the Commission's

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<sup>97</sup> See e.g., *Tampa Elec. Co.*, 113 FERC ¶ 61,159, at P 28 (2005); see also July 30 Rehearing Order P 20-25.

<sup>98</sup> July 30 Rehearing Order, 128 FERC ¶ 61,103 at P 23.

<sup>99</sup> *San Diego Gas & Electric Co.*, 119 FERC ¶ 61,296, at P 27 (2007).

<sup>100</sup> March 6 MEEA Order, 126 FERC ¶ 61,207 at P 110.

<sup>101</sup> 16 USC § 824d (2008). Also, the Commission may exercise jurisdiction over a practice if there is a significant effect on jurisdictional rates and services. See, *Cal. Indep. Sys. Operator*, 119 FERC ¶ 61,076, at P 551 (2007).

jurisdiction is proper. In previous orders, the Commission has reviewed agreements between a non-jurisdictional entity and an Independent System Operator when the agreement affected the Independent System Operator's rates.<sup>102</sup>

106. Additionally, although some parties claim that the voluntary nature of non-jurisdictional entities choosing to enter a MEEA should not affect any jurisdictional issues and that whether governmental entities retain control of their facilities is immaterial to the question of Commission authority, the Commission has previously addressed these issues when similar jurisdictional questions were raised.<sup>103</sup> The Commission found,

As for [a parties'] assertion that the Commission lacks jurisdiction to approve a tariff filing under FPA section 205 that dictates rates, terms or conditions of service applicable to a government utility's use of its own transmission facilities, we are not authorizing the CAISO to charge [a non-jurisdictional entity] for the use of its own facilities. Rather, we are allowing the CAISO to charge [a non-jurisdictional entity] for services the CAISO is providing under the MRTU Tariff, and for use of CAISO-controlled facilities. . . . While we agree with [a non-jurisdictional entity] that we lack jurisdiction to force a governmental utility to transfer any control over its transmission facilities to the CAISO, we are not requiring. . . [any] non-jurisdictional entity to transfer its facilities to the CAISO.<sup>104</sup>

Similarly, in the present matter, the Commission is operating within its jurisdiction.

107. Since the Commission's orders are well within its authority, Turlock's claim that the Commission is endeavoring to do indirectly what it cannot do directly is incorrect. As discussed above and in prior orders, the IBAA Proposal and subsequent orders concern the impact on the CAISO-controlled grid and that falls well within the Commission's jurisdiction.<sup>105</sup>

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<sup>102</sup> *Braintree Elec. Light Dep't*, 120 FERC ¶ 61,097, at P 12 (2007).

<sup>103</sup> *Cal. Indep. Sys. Operator*, 119 FERC ¶ 61,076, at P 485 (2007).

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* (stating that allowing the CAISO to charge a non-jurisdictional entity for use of the CAISO-controlled facilities under the MRTU Tariff is within Commission jurisdiction).

## 8. Training Provided by the CAISO

108. Affected IBAA Entities request rehearing, claiming that the Commission's conclusion in the March 27 Clarification Order that IBAA training conducted on March 19, 2009 was sufficient to satisfy its prior training requirement was arbitrary and capricious. Affected IBAA Entities state that the Commission's March 13 Readiness Order noted TANC's concern that "the CAISO has not provided sufficient training regarding IBAA pricing and has not explained questionable pricing results" and "direct[ed] the CAISO to offer training on IBAA implementation to the market participants *prior to the implementation of IBAA.*"<sup>106</sup>

109. Affected IBAA Entities argue, to the extent its March 27 Clarification Order was intended to define what the Commission meant by prior training, it adopted a definition so malleable as to render the requirement for prior training entirely illusory. Affected IBAA Entities assert that at the CAISO's training session, it was unable to answer questions posed about the MEEA provisions and how the IBAA will operate between MRTU start up and when MEEA provisions compliant with the Commission's March 6 MEEA Order would become effective. Affected IBAA Entities claim the CAISO's representatives said it would be willing to negotiate a MEEA before the compliance filing was made or ruled upon. Affected IBAA Entities add that when asked what MEEA provisions would govern the negotiations, the answer given to stakeholders was: "That's a good question, we'll have to discuss that with the IBAA entity." Affected IBAA Entities contend that if the MEEA is the means to avoid default prices, but the CAISO does not know and has not considered what provisions will govern MEEA negotiations, then the training provided Affected IBAA Entities no useful or helpful information.

110. Affected IBAA Entities also note that, while the CAISO had promised it would post the relevant business practice manuals, they were not available until after the training session. Affected IBAA Entities contend that complete IBAA training should have allowed Affected IBAA Entities a prior opportunity to review and ask questions about the business practice manuals. Affected IBAA Entities further contend that the CAISO was asked a number of written questions by TANC members, but failed to answer them prior to, or during, the training session. Affected IBAA Entities also claim that the questions have still not been answered.

111. Affected IBAA Entities claim that while the Commission recounts some of these points in its March 27 Clarification Order, it fails to address them on the

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<sup>106</sup> Affected IBAA Entities Rehearing Request at 8-9 (citing March 13 Readiness Order, 126 FERC ¶ 61,221, at P 81) (emphasis added by Affected IBAA Entities).

merits, a failure that renders the Commission's Orders arbitrary and capricious. Affected IBAA Entities also contend that there was no logical basis to conclude that training which fails to address the key issues outlined above could be deemed adequate.

### **Commission Determination**

112. The Commission denies rehearing requests regarding whether the CAISO provided training with respect to the IBAA, consistent with the requirements of our March 13 Readiness Order. The CAISO provided training consistent with the Commission's March 13 Readiness Order. The CAISO's response that determining the provisions that would govern the negotiation of a MEEA during the period prior to Commission acceptance of the MEEA tariff provisions would be discussed individually with the IBAA entity is reasonable. MEEAs are intended to be flexible to fit the individual circumstances of individual IBAA entities. Thus, it is reasonable that prior to entering into negotiations for a MEEA, the CAISO and the IBAA entity would discuss and determine the negotiation parameters. If parties have operational questions for the CAISO, they are encouraged to ask them.

113. As the Commission stated in its March 27 Clarification Order, we will continue to hold the CAISO to its commitment to continue to provide support to those engaging in IBAA transactions after the launch of MRTU.<sup>107</sup> For instance, we understand another stakeholder meeting was held on May 8, 2009 concerning IBAA implementation and related issues.<sup>108</sup>

## **9. Data Format**

114. In the March 6 MEEA Order, the Commission directed the CAISO to clarify that the Western Electricity Coordinating Council (WECC) format is an acceptable form for data submissions.<sup>109</sup>

115. Following the technical conference, the CAISO filed clarification stating that the type of data used by the MEEA signatory for its own business purposes will be sufficient for it to use to verify whether a resource identified in a MEEA actually supported an interchange transaction between the CAISO and the IBAA, so long as the data is provided in a format compatible with the CAISO's market

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<sup>107</sup> March 27 Clarification Order, 126 FERC ¶ 61,278 at P 39.

<sup>108</sup> May 6, 2009 Notice of FERC Staff Attendance, ER06-615-000, ER07-1257-000, ER08-1113-000 (concerning CAISO stakeholder conference call on Integrated Balancing Authority Area tariff language).

<sup>109</sup> March 6 MEEA Order, 126 FERC ¶ 61,207 at P 82.

systems.<sup>110</sup> The CAISO states it is willing to modify the tariff language to reflect this change.

116. Parties contend that the CAISO's proposed clarification that it does not require Settlement Quality Meter Data but that the data must be compatible with the CAISO's market systems negates the agreement to use data in the format used by the MEEA entity and thereby forces the MEEA entity to undertake the burden of converting data from the standard WECC format to a proprietary format used in the west solely by the CAISO. Parties argue that this is unjust, unreasonable and unduly burdensome, and the Commission should direct the CAISO to accept data in the form used by the MEEA entity providing it is in the form accepted by WECC.

117. Parties assert that a more standard WECC format would consist of NERC tags and that, while NERC tags do not identify specific generation resources, they do specify the system involved. Parties request that the Commission deny the CAISO's proposal as not being in conformance with the March 6 MEEA Order and direct that NERC tags be used as the "standard electronic format" required.

118. On reply, the CAISO states that NERC tags do not provide the required information, regardless of their format. The CAISO contends that though it is possible that transaction data and applicable NERC tags may be used to identify the quantity of simultaneous purchases and sales from other balancing authority areas, this data reflects only part of the CAISO's data requirements needed to verify that IBAA generation supported the interchange transaction. The CAISO claims that use of NERC tags as a substitute for meter data would be a fundamental change to the standards and industry business practices for the use of NERC tags, which it contends cannot be accomplished through this proceeding.

### **Commission Determination**

119. The Commission finds that clarification provided by the CAISO adds ambiguity to its proposed tariff language by including "so long as the data is provided in a format that is compatible with the CAISO systems." The CAISO is directed to remove the proposed phrase and add "so long as the data is provided in a format that the WECC accepts or other commonly used data format." As long as the information the MEEA signatory provides comes in a format that the WECC accepts or other commonly used data format (e.g., comma separated value), the CAISO should be able to employ the information. The Commission directs the CAISO to make a compliance filing reflecting these changes within 30 days of the date of this order.

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<sup>110</sup> CAISO Technical Conference Comments at 4, Attachment A at 2.

120. The Commission finds that some parties' contentions over data formats seem to be based more in the type of data that they would like to provide rather than the data format. Although information in a NERC tag may be among the information a MEEA signatory uses to support its certification of the operation and location of a source used in an interchange transaction, NERC tag information alone is insufficient since it does not identify a resource. Therefore, a NERC tag alone cannot qualify as the singular appropriate format for information submission.

### **Compliance Filing**

121. The CAISO's May 12 Compliance Filing addressed the Commission's March 6 MEEA Order's directions, including directions to eliminate the processes outlined in the proposed tariff language to exclude transactions from MEEA pricing; to either remove certain data requirements to determine the application of MEEA pricing *or* explain how the data requirements the CAISO proposed verified the location and operation of imports and exports between the IBAA and the CAISO; and to clarify that WECC format is acceptable for data submissions. The CAISO claims that it removed the exclusionary formulas and provided explanation for certain data requirements. The CAISO states it does not consider its verification process to be a netting process. It contends that after-the-fact verification is essential to application of MEEA pricing, without which there would be an unraveling of the Commission's prior approval of the IBAA structure.

122. Numerous parties raise concerns regarding the CAISO's May 12 Compliance Filing. Parties contend that the CAISO's proposed tariff language has failed to comply with the directives of the March 6 MEEA Order. Parties argue that the proposed tariff language continues to exclude transactions rather than verify the use of MEEA resources to support an interchange transaction. Parties add that all the CAISO has done is remove the explicit formulaic limitations rejected by the Commission and replaced them with effective limitations under the guise of verifying resources. Further, many parties contend that the proposed tariff language that would exclude portions of transactions from MEEA pricing constitutes a "netting" proposal similar to that disapproved by the March 6 MEEA Order.

### **Commission Determination**

123. The CAISO compliance filing is partially compliant with the Commission's March 6 MEEA Order, and all compliance filing provisions submitted in the May 12 Compliance Filing that are not addressed in this order are accepted, including the proposed tariff provisions concerning confidential treatment and audit rights. However, the Commission rejects the compliance filing to the extent it fails to conform with the Commission's prior direction. For instance, portions of the

CAISO compliance filing, including its proposed tariff language on import/export exclusions, data requirements to determine the application of MEEA pricing with its “verification” explanation for the data, and data format requirements are non-compliant. As discussed above, the Commission denied rehearing and clarification on the formulas and limitations on MEEA pricing and data requirements for applying MEEA pricing. The CAISO’s “verification” explanation for its data requirements is unconvincing as it is premised on excluding transactions. Therefore, the CAISO’s efforts to insert substantively similar provisions in the tariff in its May 12 Compliance Filing are likewise rejected. Accordingly, the Commission directs the CAISO to refile its tariff language consistent with the discussion in this order within 30 days of the date of this order.

### C. Miscellaneous

#### 1. Stakeholder Process

124. Multiple parties, including TANC, Turlock and Western are critical of the stakeholder process that preceded the May 12 Compliance Filing.

125. TANC claims that the Commission’s March 6 MEEA Order suggested that the CAISO consult with affected parties in preparing its compliance filing.<sup>111</sup> However, parties submit that there was only minimal opportunity for stakeholder comment. Parties claim that on April 20, 2009, the CAISO posted draft tariff language for stakeholder comment, and that once the Commission granted the CAISO a one week extension to make its compliance filing, the CAISO proposed a conference call on the compliance filing.

126. TANC and Turlock claim the conference call was highly structured, which limited its value to the CAISO. TANC submits that during the conference call, TANC and others expressed concerns with the CAISO’s proposal, but the opportunity for meaningful interaction was impaired by the limited opportunity for a full discussion of the issues.

127. Turlock argues that the short notice provided to stakeholders, coupled with the stilted agenda, could not be considered either effective or inclusive. Also, Turlock claims that as is demonstrated by all of the parties’ protests to the CAISO’s filing, it is undisputed that a consensus was not reached on the issues

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<sup>111</sup> TANC June 2, 2009 Protest at 27 (citing March 6 Order, 126 FERC ¶ 61,207 at P 16 n.13).

raised. Accordingly, it would be inappropriate for the Commission to give the “outcome” of the CAISO IBAA stakeholder process any deference whatsoever.<sup>112</sup>

128. Western contends that on May 5, 2009, the CAISO posted a notice of a stakeholder meeting. The CAISO stated the meeting would be on May 8, 2009, but due to the short notice, Western explains that its key personnel working on MEEA-related issues were unable to attend the meeting. The CAISO made its compliance filing on May 12, 2009, two business days after the meeting.

### **Commission Determination**

129. The Commission notes that the March 6 MEEA Order suggested that a stakeholder process could be helpful, and it appears that the parties did discuss certain matters.<sup>113</sup> Furthermore, since the stakeholder process was not required by the March 6 MEEA Order, the extent of the stakeholder process is beyond the scope of this order, and the Commission does not address it here. The Commission also notes that the parties have been aware of the IBAA concept for over two years and have had as much time to discuss the issues and engage in stakeholder and bilateral settlement discussions with the CAISO.

## **2. Portfolio Resources**

130. Parties seek clarification that parties that are Western Base Resource customers or employ a portfolio of resources may enter MEEAs.

131. The CAISO anticipates that a MEEA would provide that the resource portfolio operates to implement interchange transactions based on negotiated distribution factors. Among the agreed upon items in the post-technical conference clarification was a clarification that entities controlling a portfolio of resources could enter MEEAs.<sup>114</sup>

### **Commission Determination**

132. As demonstrated in the CAISO’s post-technical conference comments, Western and its customers were understood to have sufficient control over resources to be eligible to enter a MEEA.<sup>115</sup> Therefore, the Commission directs

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<sup>112</sup> Turlock June 2, 2009 Protest at 26 (citing *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 51,163, at P 26 (2004)).

<sup>113</sup> March 6 MEEA Order, 126 FERC ¶ 61,207 at P 16 n.13.

<sup>114</sup> CAISO Technical Conference Comments, Attachment A at 1.

<sup>115</sup> *Id.*

the CAISO to submit tariff language consistent with this agreement within 30 days of the date of this order.

### **3. PJM Comparisons**

133. The CAISO argues, in part, that the PJM Interconnection (PJM) pricing system supports the data requirements and the pricing exclusion it seeks to include in the IBAA proposal.

134. The CAISO contends its proposed approach is consistent with similar market rules developed by PJM and accepted by the Commission.<sup>116</sup> The CAISO asserts that PJM's pricing rules require IBAA-type entities to provide a greater level of data to qualify for alternative pricing than the CAISO is requesting under a MEEA. Furthermore, it claims that PJM's market rules also disqualify an entity (with limited exceptions) from alternative pricing during any hour in which the entity engages in: (a) purchases from other external areas outside of its balancing authority area or sub-area at the same time that energy sales from its balancing authority area or sub-area are being imported into PJM; or (b) purchases from PJM for delivery into its balancing authority area or sub-area at the same time sales from its balancing authority area or sub-area are being made to other external balancing authority areas. The CAISO concludes that PJM's rules are more stringent than what the CAISO has proposed and that the Commission's orders addressing interface pricing in PJM should guide the Commission's orders with respect to the IBAA and MEEA proposal.

135. Many parties claim that the PJM system should not be a factor in the IBAA proposal and thus should not be considered. Parties maintain that the Commission previously rejected the CAISO's reliance on PJM as support for its proposed limitation on actual pricing for entities that agree to a MEEA. Parties state that the CAISO failed to show how the PJM and CAISO circumstances are sufficiently similar to warrant consideration, and it lacks the supporting precedent the Commission found lacking in rejecting the CAISO's arguments in its March 6 MEEA Order.

136. Further, multiple parties demonstrate that there are significant differences between the IBAA proposal and the PJM system. Parties claim that neighboring balancing authority areas are provided preferred pricing under certain circumstances in the PJM system when making simultaneous imports and exports. Also, parties contend that the process of determining pricing under the PJM system is different than the IBAA proposal, and parties assert that the stakeholder

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<sup>116</sup> May 12 Compliance Filing at 14-15 (citing *PJM Interconnection, LLC*, 127 FERC ¶ 61,101 (2009)).

process for developing the PJM system was more extensive than the stakeholder process for developing the IBAA proposal.

### **Commission Determination**

137. We reject the CAISO's reliance on comparisons to the PJM system in support of its proposal. There are significant differences between the manner in which the CAISO and PJM address potential inertia modeling and pricing issues. Therefore, the CAISO cannot simply rely on specific processes from the PJM system to provide justification for the CAISO proposal.<sup>117</sup>

138. The PJM mechanism contains key differences from the CAISO's IBAA proposal, including the ability to obtain certain exceptions from default pricing and a voluntary element that the CAISO's proposal lacks. We disagree with the CAISO's claim that its proposed disqualification from MEEA pricing in periods when an IBAA imports from, or exports to, an external area is consistent with PJM's market rules that the Commission has approved. The referenced PJM market rule has exceptions – e.g., for “delivery of external designated network resources or such other exceptions specifically documented for such area or sub-area in the PJM Manuals...”<sup>118</sup> In contrast, the CAISO has not provided any such exceptions in its proposal. Also, our approval of the IBAA proposal was conditioned upon the MEEA being a viable option. Further, the IBAA proposal represents an entirely new pricing system, and IBAA entities were not afforded the option to continue to use a pre-existing pricing system like in the PJM system. Thus, participation in the CAISO's proposal is not voluntary for IBAA entities. Also, the pre-existing proxy pricing method under the PJM mechanism is calculated as a consolidation of 12 pricing nodes stretching from the Great Lakes to the North Carolina coast versus the single point pricing for imports and exports under the CAISO's proposal.

139. Also, as the Commission discussed in previous orders, the IBAA proposal here is applicable to balancing authority areas that are uniquely situated with the

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<sup>117</sup> *PJM Interconnection, LLC.*, 119 FERC ¶ 61,063, at P 39 (2007) (stating that the Commission has permitted different just and reasonable rate designs reflective of particular system characteristics and stakeholder input and has deferred to regional preferences and approved rate designs for different regional markets); *see also*, *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,222, at 57 (2006) (stating that a proposal voted on by stakeholders and having different markets at different states of maturity compared to other ISOs/RTOs may require slightly different policies).

<sup>118</sup> *See* PJM FERC Electric Tariff, Sixth Revised Volume 1, Fifth Revised Sheet No. 374A.

CAISO.<sup>119</sup> The Commission accepted the CAISO's proposal to include the SMUD and Turlock balancing authority areas as an IBAA because they have unique interconnections and integration with the CAISO.<sup>120</sup> Accordingly, here the design of the IBAA proposal is more narrow and tailored to address the needs of the CAISO and the affected parties, including the ability to obtain MEEA pricing with an agreement with the CAISO. The CASIO's current proposal does not reflect all of these design elements of the PJM mechanism. We have nonetheless found it, as adjusted, to be just and reasonable.<sup>121</sup>

The Commission Orders:

- (A) Rehearing is hereby denied, as discussed in the body of this order.
- (B) The Commission hereby provides clarification as discussed in the body of this order.
- (C) The CAISO is hereby directed to submit a compliance filing within 30 days of the date of this order as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>119</sup> September IBAA Order at P 208-214; July 30 Rehearing Order, 128 FERC ¶ 61,103 at P 217-221.

<sup>120</sup> *Id.*

<sup>121</sup> A proposal by the CAISO that fully implements all elements of the PJM mechanism might similarly meet the just and reasonable standard.