

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

California Independent System Operator Corporation)))	Docket Nos. ER08-367-001 ER06-615-035
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**MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE CALIFORNIA
INDEPENDENT SYSTEM OPERATOR CORPORATION TO PROTESTS AND
COMMENTS**

The California Independent System Operator Corporation (“CAISO”) hereby requests leave to answer and submits this answer to protests and comments in these proceedings.¹ These protests and comments address the CAISO’s January 5, 2009 filing in compliance with the Commission’s December 4, 2008 order in these proceedings.² In the December 4 Order, the Commission accepted all provisions of the CAISO’s filing of its revised version of its Market Redesign and Technology Upgrade (“MRTU”) tariff in these dockets, with the exception of the matters addressed in the CAISO’s compliance filing.

The protests and comments address two aspects of the CAISO’s compliance filing. First, the protest of TANC (and Santa Clara/M-S-R) complains that the CAISO has used words instead of mathematical symbols in complying with the Commission’s directive that the CAISO restore the formula for the

¹ The CAISO files this motion for leave to file an answer and answer pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213 (2008). This answer addresses the following protests and comments: January 21, 2009 protest of the Transmission Agency of Northern California (“TANC”); January 21, 2009 protest of the City of Santa Clara, California, and the M-S-R Public Power Agency (“Santa Clara/M-S-R”); January 26, 2009 protest of the Western Power Trading Forum (“WPTF”); January 28, 2009 motion to file protest two days out-of-time and protest of Epic Merchant Energy, L.P. (“Epic”); and February 3, 2009 supporting comments of the California Department of Water Resources State Water Project (“SWP”).

² *California Independent System Operator Corporation*, 125 FERC ¶ 61,262 (2008) (“December 4 Order”).

weighted average rate for wheeling service to the MRTU tariff.³ Second, the protests and comments of WPTF, Epic, and SWP complain that the CAISO should modify the process for providing access to confidential operating procedures in response to the Commission's directive to incorporate a description of its existing process into the MRTU tariff.

In neither case do the protests and comments have any merit. Nevertheless the CAISO is willing to expand the access to confidential operating procedures to identified employees of an affected entity with a need to know. In addition, the CAISO has provided contact information for entities to initiate a request for access to such procedures on its web page dedicated to operating procedures.⁴ The Commission should accept the CAISO's compliance filing subject to the proposed tariff modification to expand access.

I. ANSWER

A. The Use of Words Instead of Mathematical Symbols in Specifying a Rate Formula Is Entirely Appropriate and Consistent with the Commission's Orders Accepting Other Provisions of the MRTU Tariff.

TANC asserts that the CAISO has failed to reinstate the formula for the weighted average rate for wheeling service because the CAISO does not use the "mathematical computation" that previously existed in Appendix H of the MRTU tariff in its restoration of that formula.⁵ However, TANC is wrong in claiming that

³ As Santa Clara/M-S-R simply adopts the substance of the protest of TANC, this answer will just address the substance of TANC's protest.

⁴ The list is available at the following Internet address:
<http://www.caiso.com/1bbc/1bbcbcd323830.pdf>.

⁵ TANC protest at 4.

the CAISO's use of words instead of mathematical symbols somehow diminishes the statement of this rate formula in the MRTU tariff.

As an initial matter, the definition of "formula" in a well-known dictionary provides that it is "an established form of words or symbols for use in a ceremony or procedure."⁶ There is no basis for the implication in TANC's protest that words cannot serve as a sufficient description of a formula. The CAISO's use of words instead of mathematical symbols to specify the formula for the weighted average rate for wheeling service is fully descriptive of that formula and is also consistent with the Commission's "rule of reason" in determining rates, terms, and conditions of service that must be incorporated into the MRTU tariff. The Commission has rejected all prior complaints by TANC and others that the "formulas" for the CAISO's rates set forth in the MRTU tariff must be stated by use of mathematical symbols instead of words.⁷ TANC is simply repeating arguments that have already been rejected by the Commission. It offers no new reasons why the particular formula for the weighted average rate for wheeling service has to be specified differently than any other formula for the CAISO's rates.

The formula that the CAISO replaced with words and that TANC seeks to preserve was previously stated in the MRTU tariff as follows:

⁶ The American Heritage Dictionary of the English Language.

⁷ See, e.g., *California Independent System Operator Corporation*, 122 FERC ¶ 61,271 (2008).

The weighted average rate payable for Wheeling over joint facilities at each Scheduling Point shall be calculated as follows, applying the formula separately to the applicable Wheeling Access Charges:

$$\text{WBAC} = \sum \left(P_n \times \frac{Q_n}{\sum Q_n} \right)$$

Where:

WBAC = Weighted-average Wheeling Access Charge for each CAISO Scheduling Point

P_n = The applicable Wheeling Access Charge rate for a TAC Area or Participating TO_n in \$/kWh as set forth in Section 26.1.4 of the CAISO Tariff and Section 5 of the TO Tariff.

Q_n = The Available Transfer Capacity (in MW), whether from transmission ownership or contractual entitlements, of each Participating TO_n for each CAISO Scheduling Point which has been placed within the CAISO Controlled Grid. Available Transfer Capacity shall not include capacity associated with Existing Rights of a Participating TO as defined in Section 16 of the CAISO Tariff.

n = the number of Participating TOs from 1 to n

In the January 5 compliance filing, the CAISO has incorporated the following alternative statement of that formula in words:

The weighted average rate payable for Wheeling over joint facilities at each Scheduling Point shall be calculated as the sum of the applicable Wheeling Access Charge rates for each applicable TAC Area or Participating TO as these rates are weighted by the ratio of the Available Transfer Capability for each Participating TO at the particular Scheduling Point to the total Available Transfer Capability for the Scheduling Point. The calculation of this rate is set forth in more detail in the applicable Business Practice Manual.

The words of the CAISO's version of this formula state essentially the same thing without retaining the use of mathematical symbols potentially confusing to non-expert readers. The statement of this formula in words is more understandable to the average reader without sacrificing any of the conceptual clarity of the description of the applicable rates. At the end of the new provision, the CAISO has referred more informed readers to the statement of the applicable formula in

its Business Practice Manuals to permit readers with specialized knowledge of the CAISO's settlements processes to review the manner in which the settlements equations will be applied, just as it has done for every other settlements formula.⁸ The CAISO has simply chosen to use words rather than symbols to comply with the Commission's directive.

One other practical consideration favors the use of words rather than mathematical symbols in the specification of this formula in the MRTU tariff. The Commission is moving to implement the use of the "eTariff" approach to the maintenance of electronic versions of tariffs, and the use of mathematical symbols creates additional potential difficulty in administering a tariff in "eTariff" electronic format. The CAISO urges the Commission to permit it to avoid additional complications in the conversion to the "eTariff" format that could result from a requirement to retain mathematical symbols in the subject formula.

Finally, as the CAISO explained in the transmittal letter for its compliance filing, the proposed MRTU tariff revisions submitted by the CAISO are adapted from comments by WPTF and were posted for stakeholder review and comment without receiving any objections. It is noteworthy that WPTF was the only other party to file comments on this matter in response to the CAISO's original filing and that WPTF takes no issue with the CAISO's current approach in the protest it has filed on the CAISO's compliance filing. The Commission should reject the isolated protest of TANC (and Santa Clara/M-S-R) and accept the version of the formula as filed by the CAISO without revision.

⁸ Unless otherwise defined herein, terms used with initial capitalization have the meanings set forth in the Master Definitions Supplement, Appendix A to the CAISO tariff.

B. The Provisions for Access to Confidential Operating Procedures Are Compliant with the December 4 Order Subject to the Proposed Modification

The CAISO has complied with the Commission’s directive “to include a provision in the MRTU Tariff that outlines how a market participant receives access to confidential operating procedures through the non-disclosure agreement process”⁹ The Commission specifically found that the CAISO was not required “to alter the proposed confidential procedures” that are currently in place.¹⁰ In response, the CAISO did just that, incorporating new Section 22.11.3 outlining the existing process as reflected in the applicable publicly available operating procedures.¹¹

In their protests and comments, WPTF, Epic,¹² and SWP¹³ seek to expand the scope of these proceedings by debating the adequacy of the CAISO’s process and challenging the merits of the CAISO’s underlying policies regarding which operating procedures must be maintained on a confidential basis. Both debates go beyond the scope of the compliance filing directed by the Commission and are procedurally improper in these proceedings on the CAISO’s compliance filing.

What WPTF clearly desires is broad access to confidential operating procedures. This would be inconsistent with prior Commission orders as well as

⁹ December 4 Order at P 92.

¹⁰ *Id.*

¹¹ Operating Procedure A-02, Development and Distribution of Operating Procedures is located at the following Internet address:

<http://www.caiso.com/docs/2002/04/09/200204090852088429.pdf>. See also Operating Procedure A-03, Determining Distribution Restrictions for CAISO Operating Procedures located at the following Internet address:

<http://www.caiso.com/docs/2005/07/21/2005072111572515578.pdf>.

¹² Epic’s comments are substantially identical to those of WPTF.

¹³ SWP supports WPTF’s and Epic’s comments.

the December 4 Order. As the Commission noted in its December 4 Order, the CAISO referred to its October 11, 2007 filing on compliance with Order 890 in its December 21, 2007 tariff amendment filing in the instant dockets.¹⁴ In its Order 890 compliance filing, the CAISO explained that it complied with the Order 890 requirement that all transmission providers post all rules, standards and business practices on their websites even though some operating procedures are confidential. Specifically, the CAISO explained in relevant part:

Most Operating Procedures are also posted on the CAISO website. In a limited number of cases, however, an Operating Procedure is not posted either in whole or in part. These Operating Procedures have restricted distribution due to system security, market sensitivity, or proprietary reasons. The currently effective ISO Tariff is silent as to whether Operating Procedures are posted or not. Due to an oversight, the MRTU Tariff indicates that all CAISO Operating Procedures are posted on the CAISO website. The CAISO will amend Section 22.11 of the MRTU Tariff to indicate that Operating Procedures are posted to the CAISO website, except for any procedure or part thereof that cannot be made publicly available due to system security, market sensitivity or proprietary reasons, as discussed below. The CAISO will make this change to its MRTU Tariff in a tariff amendment filing to be made on or about December 21, 2007.

The categories and procedures for determining restricted distribution are included in Operating Procedure A-03. The CAISO restricts distribution of Operating Procedures for system security, market sensitivity or proprietary reasons. Each CAISO Operating Procedure is evaluated for these concerns to determine if any restrictions on distribution are necessary. If certain information must be protected, the CAISO will attempt to segregate the confidential material in a separate attachment in order to allow public distribution of the basic requirements and processes reflected in the Operating Procedure. If the confidential material cannot be segregated, then the CAISO will assess whether the sensitive material can be deleted from the distribution copy to create an abbreviated version of the Operating Procedure. If there are no remaining sensitive areas, then the Operating Procedure is posted on the CAISO website.

The need to restrict distribution of particular procedures is evident from the criteria that the CAISO applies in identifying such procedures. The CAISO restricts distribution of Operating Procedures for system security only if the information contained in them could be used to threaten or jeopardize either (1) the reliability or security of the CAISO Controlled Grid, or (2) the security of personnel operating the CAISO Balancing Authority or internal power systems, (so by definition release of the information would endanger human life or the electric grid). Distribution is also restricted for market sensitivity reasons only if the procedures contain information that could financially harm competitive markets or other parties if that information was obtained by external entities. Restricted access is therefore necessary to maintain the competition that is a fundamental prerequisite to a market-based electricity industry. Finally, access is restricted for procedures that include proprietary information such as (1) information that

¹⁴ December 4 Order at P 92, citing the CAISO's October 11, 2007 Order 890 Compliance Filing, Docket No. OA08-12 (October 11, 2007 filing).

is specific to a single entity or party (e.g., names and personal contact information), (2) contract information, or (3) information provided to the CAISO on a confidential basis. A failure to protect confidentiality in such circumstances would inhibit the CAISO's access to information necessary to reliably and effectively operate the CAISO Controlled Grid and the CAISO markets. The Commission historically has recognized the importance of maintaining the confidentiality of these types of Operating Procedures, as reflected, for example, in the Commission's Model Protective Order, which preserves the confidentiality of critical energy infrastructure information and "materials which customarily are treated by a Participant as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury."

The Commission accepted the CAISO's compliance filing in its May 16, 2008 Order.¹⁵ Accordingly the Commission has already accepted the CAISO's existing policies concerning the treatment of confidential operating procedures and the December 4 Order is fully consistent with the May 16, 2008 Order.

As discussed in its January 19, 2009 answer to comments and protests in the instant dockets, the CAISO does make operating procedures available to market participants based on necessity. Pursuant to Operating Procedure Nos. A-02 and A-03, which have been in existence for many years, the CAISO only makes such procedures available to entities that are operationally affected by the particular procedure. Thus, "necessity" is limited to entities that are operationally affected. This limitation is necessary and fully consistent with tariff requirements set forth in Section 20 of the CAISO tariff, which requires the CAISO to maintain the confidentiality of information and precludes a market participant from obtaining access to confidential information of another market participant. For example, many of the operating procedures relate to operation of transmission facilities. The CAISO considers the transmission owner to be an affected party

¹⁵ *California Independent System Operator Corporation*, 123 FERC ¶ 61,180 (2008) (May 16, 2008 Order) at P 18 (Commission accepts compliance filing except as specifically addressed in the order).

but will not provide access to any other business unit within the same corporation, such as a marketing or trading operation consistent with the Commission's Standards of Conduct orders, and will not make these procedures available to market participants generally even if they are willing to sign a nondisclosure agreement. WPTF (and Epic and SWP) appear to believe that all market participants are entitled to have access to all procedures if they are willing to sign a nondisclosure agreement. This is not and never has been the CAISO's process. As directed by the Commission, the CAISO filed an outline of its existing process.

Although the CAISO filed an outline of its existing process, on further review the CAISO believes that the limitation proposed in Section 22.11.3 to limit access to "a single representative" of an entity is too narrow. That requirement came from Operating Procedure A-02 at pages 11-12, which indicates that in case of a confidential operating procedure "[d]istribution should be limited to a single contact for each entity." The CAISO is willing to modify Section 22.11.3 and the operating procedure to indicate that a finite number of identified employees of an affected entity with a need to know can have access to relevant confidential operating procedures subject to agreed upon controls. The CAISO has already made this revision to Operating Procedure A-02 and has also already revised its webpage to include contact information for interested entities to request access to confidential operating procedures.¹⁶

¹⁶ The CAISO's operating procedure web page is at the following Internet address: <http://www.caiso.com/thegrid/operations/opsdoc/index.html>.

Concerning the phrase “agreed upon controls,” the CAISO deliberately chose not to refer to a nondisclosure agreement, as other options may be available. For example, notwithstanding SWP’s protestations in its late filed comments, the CAISO has twice over the last two months offered to meet with SWP to review operating procedures that may affect the operation of SWP’s pumps. (SWP indicated that it would get back to us promptly with a proposed group of individuals but has not done so to date.) Unless the CAISO were providing a hard or electronic copy of a procedure to be retained by the requesting entity, it may not be necessary to enter into a nondisclosure agreement in all circumstances. For example, the meeting proposed by the CAISO with SWP would involve individuals reviewing certain procedures, or portions thereof, on CAISO premises without retaining them. Consequently, the CAISO considers it appropriate to retain some discretion concerning determination of the necessary controls.¹⁷

Finally, in paragraph 92 of the December 4 Order the Commission anticipated the very possibility that particular entities might have objections to the denial of access by the CAISO to particular confidential operating procedures. The Commission very clearly stated that in such cases “the market participants are free to bring the issue and specific facts to the Commission in the form of a complaint.”¹⁸ The Commission should reject the protests and comments of

¹⁷ In addition to complaints about access to confidential procedures that could affect their pumps, SWP alleges that it became aware of such a procedure when reviewing confidential procedures produced in discovery. The CAISO believes that it is not appropriate to address the merits of SWP’s assertion in this proceeding except to state that the CAISO does not believe that it has treated SWP Participating Load in any way that is inconsistent with the tariff in effect at the relevant time.

¹⁸ December 4 Order at P 92.

WPTF, Epic, and SWP in these proceedings and point them to the complaint process as the appropriate forum for any concrete concerns about denial of access to any specific confidential operating procedures.

In summary, the CAISO complied with the Commission directive to file an outline of its existing process. The Commission should accept the CAISO's compliance filing subject to the proposed modification to broaden access to identified employees of an affected entity with a need to know.

II. MOTION FOR LEAVE TO FILE ANSWER

Answers to protests are generally not permitted.¹⁹ The CAISO respectfully requests waiver of the Commission's Rules of Practice and Procedure prohibiting answers to protests.²⁰ Good cause exists for the waiver. Parties have raised specific concerns with the CAISO's proposed tariff compliance language. This answer will assist the Commission in considering these concerns. Accordingly, the Commission should permit the CAISO to file this answer and accept the proposed tariff amendments subject only to the revision proposed above.

¹⁹ See 18 C.F.R. § 385.213(a)(2).

²⁰ The CAISO requests a waiver pursuant to 18 C.F.R. § 385.101(e).

III. CONCLUSION

The CAISO urges the Commission to accept the CAISO's January 5 compliance filing subject only to the proposed modification expanding the scope of access to confidential procedures proposed above.

Respectfully submitted,

/s/ Michael D. Dozier

Nancy Saracino
General Counsel
Sidney M. Davies
Assistant General Counsel
Michael D. Dozier
Senior Counsel
California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
(916) 608-7048
mdozier@caiso.com

Attorneys for the California Independent
System Operator Corporation

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all parties on the official service list compiled by the Secretary in the above-captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 5th day of February 2009.

Anna Pascuzzo
Anna Pascuzzo