

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

California Independent System Operator Corporation)	Docket No. ER08-1059-___
)	
California Independent System Operator Corporation)	Docket Nos. ER06-615-___
)	and ER07-1257-___
California Independent System Operator Corporation)	Docket No. ER08-519-___
)	

ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO MOTIONS TO INTERVENE AND COMMENTS, AND MOTION TO FILE ANSWER AND ANSWER TO PROTESTS

On May 30, 2008, the California Independent System Operator Corporation (“CAISO”) submitted in the above-referenced proceedings a filing (“May 30 CRR Filing”) to amend the current ISO Tariff (“ISO Tariff”) and the CAISO’s Market Redesign & Technology Upgrade (“MRTU”) Tariff to enhance provisions in those tariffs relating to Congestion Revenue Rights (“CRRs”), and to comply with certain Commission directives.¹ The Commission established a June 20, 2008 comment date regarding the May 30 CRR Filing. In response, a number of parties submitted motions to intervene, comments, and protests.²

¹ Capitalized terms not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, Appendix A to the MRTU Tariff; in the Master Definitions Supplement, Appendix A to the MRTU Tariff as set forth in Part G (Definitions) of Appendix BB to the current ISO Tariff; and in the May 30 CRR Filing.

² Motions to intervene were submitted by the following parties: the Alliance for Retail Energy Markets (“AReM”); Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California; City of Santa Clara, California d/b/a Silicon Valley Power, and M-S-R Public Power Agency (together, “SVP/M-S-R”); Financial Institutions Energy Group (“FIEG”); Modesto Irrigation District (“MID”); Northern California Power Agency; NRG Power Marketing LLC, Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Power LLC, and Long Beach Generation LLC; Pacific

The CAISO does not object to any party's motion to intervene, and notes that several parties state their support of or lack of opposition to the May 30 CRR Filing in full or in part.³ However, pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213, the CAISO files its answer to the comments, and pursuant to Rules 212 and 213 of the Commission's Rules, 18 C.F.R. §§ 385.212, 385.213, the CAISO respectfully requests leave to file an answer, and files its answer, to the protests.⁴ For the reasons explained below, the Commission should accept the May 30 CRR Filing without modification, except as described herein.

I. ANSWER

A. The Request for a New Stakeholder Process if the MRTU Start Date Slips Beyond Fall of 2008

SCE notes that its comments are premised on a fall 2008 MRTU start-up and that in the event MRTU start-up slips beyond the fall 2008, SCE requests that the CAISO re-initiate the stakeholder process, file an amendment with FERC if necessary, and revise its CRR Enhancements and CRR allocation process to

Gas and Electric Company ("PG&E"); Powerex Corp. ("Powerex"); Sacramento Municipal Utility District; Southern California Edison Company ("SCE"); and Transmission Agency of Northern California ("TANC"). The California Public Utilities Commission filed a notice of intervention. In addition, AReM, FIEG, PG&E, Powerex, and SCE filed comments, and MID, SVP/M-S-R, and TANC filed protests.

³ See AReM at 3; Powerex at 5-6; SCE at 2-5; SVP/M-S-R at 8.

⁴ The CAISO requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to make an answer to the protests. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case. See, e.g., *Entergy Services, Inc.*, 116 FERC ¶ 61,286, at P 6 (2006); *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,124, at P 11 (2006); *High Island Offshore System, L.L.C.*, 113 FERC ¶ 61,202, at P 8 (2005).

accommodate the new MRTU start-up date.⁵ Should the start of the MRTU markets be delayed beyond January 1, 2009, the CAISO will initiate a stakeholder process to address all items that caused, and were affected by, the delayed startup date, and will consider any necessary tariff changes within such a stakeholder process. The CRR allocation process would be one of the items addressed in any such stakeholder process if it were to become necessary.

B. Tariff Changes in Compliance with the Commission’s March 24, 2008 Order Regarding the 30-Day Rule for Scheduling Outages that May Have a Significant Effect on CRR Revenue Adequacy

In the MRTU Tariff there is a requirement to schedule Outages that may have a significant effect on CRR revenue adequacy thirty (30) days in advance of the Outage.⁶ In its March 24, 2008 Order, the Commission required the CAISO to “include in the MRTU [T]ariff the 30-day rule exemption policies found in section 10.3.1 of the Business Practice Manual for CRRs within 60 days of issuance of this order.”⁷ In the May 30 CRR Filing, the CAISO complied with the Commission’s March 24 Order and included the 30-day advance submittal and approval requirement for scheduling Outages that may have a significant effect on CRR revenue adequacy in the MRTU Tariff.⁸ PG&E and SCE had several comments on the CAISO’s implementation of this requirement and the CAISO’s responses to the comments are set forth below.

⁵ SCE at 2.

⁶ See MRTU Tariff, § 9.3.6.3.2.

⁷ *California Independent System Operator Corp.*, 122 FERC ¶ 61,271, at P 69 (2008) (“March 24 Order”).

⁸ See Transmittal Letter for May 30 CRR Filing at 14-16.

1. The Existence of a Flow Limit on Transmission Lines Rated Below 200 kV as a Criterion for the 30-Day Approval Requirement

In the May 30 CRR Filing, Section 36.4 of the MRTU Tariff was revised to read as follows, in relevant part:

Outages of the types of transmission facilities described below that extend beyond a twenty-four (24) hour period must be submitted for CAISO approval consistent with this 30-day advance submittal requirement. The types of transmission facilities on the CAISO Controlled Grid to which this 30-day advance submittal and approval requirement applies consist of transmission facilities that:

- (a) are rated above 200 kV; or
- (b) are part of any defined flow limit as described in a CAISO Operating Procedure; or
- (c) were out of service in the last three (3) years and for which the CAISO determined a special flow limit was needed for real-time operation.

A list of the transmission facilities that satisfy criteria (b) and (c) above is provided in the Operating Procedures. The list will be reviewed by the CAISO on an annual basis and revised as appropriate.⁹

In reviewing the criterion in subsection (b) set forth above, PG&E states that it and the CAISO frequently employ flow limits during either normal operations or maintenance Outages as a means of ensuring the reliable operation of the grid and that the CAISO has unreasonably assumed that any facility below 200 kV that is part of a pre-defined flow limit (or any facility below 200 kV that has experienced an Outage for which flow limits were applied) will significantly affect CRR revenue adequacy.¹⁰ The CAISO has previously stated

⁹ See, e.g., May 30 CRR Filing, Attachment C, at § 36.4.3.

¹⁰ PG&E at 6.

that a list of the specific facilities meeting the criteria in (b) and (c) will be developed and placed in an operating procedure.¹¹ Currently, the facilities that are part of a defined flow limit that will be subject to the 30-day advance submittal requirement are only those facilities rated above 200 kV. The CAISO will work with the Participating Transmission Owners (“PTOs”) to populate the list for facilities that are 200kV and below. In the course of this process, PG&E will be able to indicate to the CAISO which facilities rated 200kV and below in its opinion should not be placed on the list (*i.e.*, which the facilities should not subject to the 30-day advance submittal requirement). Consistent with this clarification, the CAISO proposes to further clarify Section 36.4 to specify that the CAISO will create the list to be included in the Operating Procedures in collaboration with the PTOs. The proposed revision is as follows:

A list of the transmission facilities that satisfy criteria (b) and (c) above is provided in the Operating Procedures. The list will be initially created in collaboration with the respective PTOs and will be reviewed by the CAISO in collaboration with the PTOs on an annual basis and revised as appropriate; provided however, that the CAISO will ultimately determine the lines that are included in the list.

¹¹ See May 30 CRR Filing, Attachment C, at § 36.4.3 (indicating that a list of the transmission facilities that satisfy criteria (b) and (c) will be in the Operating Procedures and that the list will be reviewed by the CAISO on an annual basis and revised as appropriate); see *also* the November 15, 2007 version of the Business Practice Manual (“BPM”) for Outage Management at § 4.2.1.1, which is available on the CAISO Website at <http://www.caiso.com/1840/1840b2cc23580.html>.

2. Requests that the CAISO, Within Six Months of MRTU Start Up, Develop a More Sophisticated Method of Determining Whether There Should Be Additional Exemptions to the 30-Day Rule and Publish a List of Additional Exemptions to the 30-Day Rule

In the May 30 CRR Filing, the CAISO recognized that certain PTOs have expressed concern regarding the lack of a more sophisticated method for determining whether there should be additional exemptions from the 30-day rule (on the basis that Outages at certain facilities do not significantly impact CRR revenue adequacy).¹² In response, the CAISO committed to assess the effectiveness of the initial rules exemptions from the 30-day rule and the CAISO's approach to modeling Outages in the Monthly CRR process during the first year of MRTU operation, and to consider changes after observing twelve months of market outcomes.¹³ The CAISO stated that it was committed to assessing the effectiveness of the provisions based on actual experience with the LMP markets.¹⁴

PG&E does not object to the CAISO's 30-day advance submission rule for those transmission lines that might have a significant effect on CAISO revenue adequacy; however, PG&E is concerned about the limited set of exemptions set forth in the tariff and the fact that modifying or expanding the exemptions will take longer because the exemptions are now set forth in the tariff (as opposed to the relevant BPM).¹⁵ PG&E suggests that the CAISO "no longer appears to be

¹² Transmittal Letter for May 30 CRR Filing at 16.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ PG&E at 5-6.

committed to addressing the development of a more robust list of exemptions as quickly as possible” and asks the Commission to “direct the CAISO to act more quickly to develop ‘a more sophisticated method for determining whether there should be additional exemptions.’”¹⁶ PG&E also states the following:

Specifically, PG&E requests that FERC require the CAISO to implement a more robust list of exemptions to the 30-day outage approval requirement, a list intended to minimize the lines to which the requirement applies while still reasonably protecting CRR revenue adequacy, *within six months after MRTU goes live*.¹⁷

In responding to PG&E’s comments, it is important to distinguish: (i) when the CAISO will begin evaluating the revenue adequacy of the issued CRRs; from (ii) when the CAISO will begin to develop an economic methodology to evaluate potential additions to the exemptions to the 30-day advance submission rule for Outages; from (iii) when the CAISO can publish a “more robust list of exemptions” to the 30-day Outage approval requirement.

With regard to the CAISO’s evaluation of the revenue adequacy of the issued CRRs, this will begin monthly with the start of MRTU. This evaluation will be part of the normal monitoring of the MRTU markets. With regard to developing a methodology to evaluate additions to the exemptions to the 30-day advance submission rule, the CAISO can begin to develop such a methodology in conjunction with stakeholders within six months of the start of MRTU. However, the CAISO cannot publish a more robust list of exemptions to the 30-

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 9 (emphasis added).

day Outage approval requirement within six months of the start of MRTU. As noted in the May 30 CRR Filing, the CAISO:

commits to assess the effectiveness of the initial rules exemptions from the 30-day rule and the CAISO's approach to modeling Outages in the Monthly CRR process during the first year of MRTU operation, *and to consider changes after observing twelve months of market outcomes*. The CAISO is committed to assessing the effectiveness of these provisions based on actual experience with the LMP markets.¹⁸

In other words, the CAISO believes it can comply with two-thirds of the PG&E's request. The CAISO will begin evaluating the revenue adequacy of the issued CRRs on a monthly basis after the start of MRTU¹⁹ and it will develop, in consultation with stakeholders, an economic methodology to evaluate the potential for additions to the exemptions to the 30-day advance submission rule. The CAISO does not agree that it should (or can) publish a "more robust list of exemptions" to the 30-day Outage approval requirement within six months of the start of MRTU. As noted in the May 30 CRR Filing, the CAISO is committed to assessing the effectiveness of the relevant provisions based on actual experience with the LMP markets and that it should consider implementing any changes only after observing twelve months of market outcomes.²⁰

¹⁸ Transmittal Letter for May 30 CRR Filing at 16 (emphasis added).

¹⁹ The CAISO indicated that it would begin to evaluate the revenue adequacy of the issued CRRs at the end of each month after MRTU go-live. The CAISO explained that the CRR Balancing Account will be cleared at the end of each month, and will provide a simple indicator of CRR revenue adequacy on a monthly basis. If the end-of-month balance (net of CRR Auction revenues) is negative, it indicates that the CAISO's allowance for Outages in the monthly CRR release was insufficient to prevent CRR revenue inadequacy on average over the hours of the month. If the balance is positive, it indicates that more CRRs could have been released without adversely impacting CRR revenue adequacy. *Id.*

²⁰ *Id.*

3. Request for an Implementation Workshop Regarding the 30-Day Advance Submission Rule for Outages

SCE asks the Commission to direct the CAISO to address a number of items. The items include the following:

- (i) The CAISO must update and post the CRR BPM and the Outage BPM, and before they are posted, the CAISO should provide drafts and review the drafts with the CAISO Transmission Maintenance Coordination Committee (“TMCC”) and allow for stakeholder comments;
- (ii) The CAISO must develop new Operating Procedures, if any are needed, to implement the 30-day rule, and the CAISO should work with the TMCC and grid operators in developing these procedures as soon as possible before MRTU go-live;
- (iii) The CAISO needs to hold an implementation workshop with the TMCC and for PTO grid operations and maintenance personnel to ensure that the new rules are discussed and all questions are answered;
- (iv) After holding an implementation workshop, the CAISO needs to conduct a dry run with the grid operators that submit outages to ensure the process works as intended and that outage requests will not be adversely impacted; and
- (v) The CAISO must commit to developing a realistic schedule to cut over to the new MRTU 30-day rule, this schedule must be consistent with the actual MRTU go-live date, and the CAISO should be required to communicate with the TMCC and PTO grid operators so that this schedule is clear.²¹

The CAISO has committed to comply with SCE’s requests by scheduling an implementation workshop on the 30-day advance submission rule for Outages and on developing exemptions to that rule. The implementation workshop is scheduled for mid-September 2008. The CAISO believes it is appropriate that the workshop is attended by Outage Schedulers and Transmission/Substation

²¹ SCE at 9-10.

Maintenance/Construction Planners. The workshop will be held at the CAISO's offices in Folsom, California. The workshop discussion will include but is not limited to the following topics: the change in the timing for submittal of qualifying Outages; what qualifies an Outage as being subject to the 30-day rule; how required Outages that can not meet the 30-day rule are handled; which facilities are included for application of the 30-day rule and which are not; where information can be found about the 30-day rule; where information can be found about which facilities are included in the 30-day rule; and when the 30-day rule becomes effective.

4. Conforming Change to Section 9.3.6.3.2 of the MRTU Tariff

SCE states that it strongly supports the CAISO's proposed tariff modification to exempt from the 30-day rule Outages that are planned to be initiated and completed within a 24-hour period (rather than in a single calendar day as previously proposed). SCE supports the proposed language in MRTU Tariff Section 36.4.3 on the condition that MRTU Tariff Section 9.3.6.3.2 is also revised to ensure consistency and clarity with the language in Section 36.4.3. The CAISO agrees with SCE's comments in principle. That is, the CAISO agrees that Section 9.3.6.3.2 should also reference the 24-hour rule as provided in Section 36.4.3. However, the CAISO believes this is better accomplished as provided below and proposes to make this change to Section 9.3.6.3.2 on compliance:

9.3.6.3.2 For Transmission Facilities.

Except for Outages that may have a significant effect upon CRR revenue adequacy as defined in Section 36.4.3~~and for these Outages that will be completed within a twenty four (24) hour period~~, an Operator may, upon seventy-two (72) hours advance notice (or within the notice period in the Operating Procedures posted on the CAISO Website), schedule with the CAISO Outage Coordination Office a Maintenance Outage for transmission facilities on its system, subject to the conditions of Sections 9.3.6.4.1, 9.3.6.8 and 9.3.6.9. For Outages that may have a significant effect upon CRR revenue adequacy as defined in Section 36.4.3~~and will not be completed within a twenty four (24) hour period~~, an Operator may, upon thirty (30) days notice in advance of the first day of the month the Outage is proposed to be scheduled (or within the notice period in the Operating Procedures posted on the CAISO Website), schedule with the CAISO Outage Coordination Office a Maintenance Outage for transmission facilities on its system, subject to the conditions of Sections 9.3.6.4.1, 9.3.6.8, ~~and 9.3.6.9,~~ and 36.4.3.

The CAISO believes SCE's recommendation is an appropriate one. The CAISO notes that Section 36.4.3 includes all of the provisions regarding Outages that have a significant effect upon CRR revenue adequacy, including the 24-hour rule. Rather than repeat the relevant provisions of Section 36.4.3 in Section 9.3.6.3.2, the CAISO proposes that a cross-reference to Section 36.4.3 be placed in Section 9.3.6.3.2. The proposed revision satisfies SCE's request and ensures that the 24-hour rule will be applied as intended.

5. Objections to Including the 30-Day Rule in the Existing ISO Tariff

Both PG&E and SCE object to including the 30-day advance submission rule for Outages in the existing ISO Tariff. PG&E notes that with respect to the 30-day Outage approval requirement, the CAISO requests that the ISO Tariff

language be effective on July 30, 2008.²² PG&E states that because of the potentially fluid nature of the MRTU start date, a specific effective date should not be specified at this time; instead the provisions with respect to implementation of the 30-day Outage scheduling requirement need to be applied no sooner than 30 days in advance of the beginning of the month MRTU goes live.²³

SCE also opposes modifying the current ISO Tariff to include the 30-day rule and requests that FERC clarify that the rule applies only to the MRTU Tariff and goes into effect on the actual MRTU go-live date.²⁴ SCE states that all of the CAISO discussions and stakeholder process for implementing the 30-day rule have been in the context of the MRTU Tariff and the BPMs, not the current ISO Tariff.²⁵ SCE claims that it is not appropriate or necessary for the PTOs to implement the 30-day rule before MRTU goes into effect.²⁶ SCE indicates that it is uncertain that the CAISO will implement MRTU in the Fall of 2008 and that implementing the 30-day rule in the current ISO Tariff would place an additional burden on PTOs regarding the scheduling of Outages, all of which will constrain operational flexibility and could ultimately affect construction and maintenance activities, negatively impact reliability, and increase costs.²⁷ SCE asks that the Commission direct the CAISO to clarify that the tariff language on the 30-day rule

²² PG&E at 9.

²³ *Id.*

²⁴ SCE at 8.

²⁵ *Id.* at 7.

²⁶ *Id.*

²⁷ *Id.*

will not be effective on July 30, 2008, but instead will be effective concurrent with MRTU go-live, or consistent with a schedule that reflects the actual CAISO MRTU implementation date.²⁸ SCE provides three reasons in support of its requests to not include the 30-day rule in the existing ISO Tariff and to make the effective date of the 30-day rule concurrent with the MRTU go-live date. SCE's reasons are that: (i) implementing the 30-day rule in the existing ISO Tariff will require the PTOs to transition to a dramatically different process, (ii) there are several outstanding implementation policy items that must be addressed, and (iii) the CAISO must include some dry runs with the PTOs to test out the new process before it can be implemented.²⁹

The CAISO agrees to resubmit on compliance the proper tariff sheets that reflect that the 30-day rule is made effective concurrent with the MRTU go-live date. This means that if, for example, the first Trading Day under MRTU is November 1, 2008, the Outages to which the 30-day rule applies as described in Section 36.4.3 are the Outages expected to occur December 1, 2008 or beyond and, therefore, must be reported by November 1, 2008. The CAISO notes, however, that prior to MRTU go-live, parties may submit such Outages before the 30 days are invoked and, in fact, encourages parties to do so if such Outages are known. There is no restriction under the current tariff that requires that such Outages not be submitted thirty days in advance. The CAISO proposes that if

²⁸ *Id.* at 8

²⁹ *Id.*

such Outages are known at a prior time, submission of the information early enables the CAISO and all Market Participants to better anticipate such Outages.

C. The Commission Should Accept the Proposed Affiliate Disclosure Requirement With the Revisions Discussed in this Answer.

FIEG states that it supports the proposal in the May 30 CRR Filing to revise the current ISO Tariff and the MRTU Tariff to require CRR Holders and Candidate CRR Holders to disclose Affiliates that are also CRR Holders, Candidate CRR Holders, or Market Participants and their guarantors. However, FIEG argues that the CAISO's proposal to extend the disclosure requirement to all entities that are Affiliates or become Affiliates of a CRR Holder or Candidate CRR Holder would impose unduly burdensome reporting requirements that would not solve the issues the CAISO is attempting to address through its proposed tariff changes.³⁰

The CAISO acknowledges that it has proposed a very broad disclosure requirement and is willing to modify the scope of this requirement, as discussed below. FIEG, however, misapprehends the purpose of the disclosure requirement. The purpose of the disclosure requirement is to provide the CAISO with information concerning the nature of the entities that are holders of CRRs, or propose to hold CRRs, to mitigate financial risks such entities impose on CAISO Market Participants and to enhance the CAISO's monitoring of CRR holdings.

³⁰ FIEG at 2-6. The CAISO proposes to make these changes by adding Section 39.9, as amended, to Part H of Attachment BB of the current ISO Tariff, and by amending Section 39.9 of the MRTU Tariff. Further, the CAISO proposes to amend Section 12.1.1.1 of the current ISO Tariff and Section 12.1.1.2 of the MRTU Tariff to indicate that the information disclosed pursuant to Section 39.9 will be one of the qualitative factors used by the CAISO to calculate Unsecured Credit Limits. Transmittal Letter for May 30 CRR Filing at 20.

Due to the risks associated with CRRs and the fact that new and different types of entities desire to hold these instruments, the CAISO should have as much information as it can about the entity holding or proposing to hold CRRs, including information about the entity's Affiliates outside of the CAISO Markets.³¹

FIEG believes this information is not necessary – unless the entity is requesting an Unsecured Credit Limit³² – because the credit requirements should be calculated to cover the risk. If these credit risks could be calculated with a high level of certainty, the CAISO might agree. Unfortunately, due to the prospective obligations of CRRs and due to the fact that CRR values can change because of unanticipated circumstances, it is not possible to calculate the credit risk with a sufficiently high level of certainty. One of the tools the CAISO will utilize is additional Affiliate information, and such information should not be limited to Affiliates in the CAISO Markets. The CAISO believes that it should be able to require a Candidate CRR Holder to disclose, for example, that it is affiliated with the entities that defaulted in the PJM Interconnection, L.L.C. (“PJM”).³³ Based on that information, the CAISO would be able to put in place heightened monitoring of both the entity's credit standing as well as heightened market monitoring of its CRR portfolio and the CRR portfolios of any Affiliates.

The CAISO believes that its tariffs can be revised in a way that both responds to the concerns that the disclosure requirement is overly broad, yet

³¹ *Id.* at 20-21.

³² See FIEG at 6-7.

³³ See *PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,279 (2008).

provides the CAISO with a reasonable level of Affiliate information. Specifically, the CAISO proposes two modifications to the tariff changes contained in the May 30 CRR Filing. First, the CAISO proposes to modify Section 39.9 in its tariffs to state that each CRR Holder or Candidate CRR Holder must notify the CAISO of all entities with which it is affiliated that are CRR Holders, Candidate CRR Holders, or Market Participants and their guarantors, and any Affiliate participating in an organized electricity market in North America. Second, the CAISO proposes to modify Section 12.1.1 of the current ISO Tariff and Section 12.1.1 of the MRTU Tariff to state that the CAISO has the authority to obtain, from a Market Participant that requests an Unsecured Credit Limit, financial and/or other information concerning all of the Market Participant's Affiliates, and proposes to modify Section 12.1.1.1 of the current ISO Tariff and Section 12.1.1.2 of the MRTU Tariff to state that the CAISO will use such information as one of the qualitative factors it considers in determining the Market Participant's or a guarantor's Unsecured Credit Limit. Information concerning Affiliates is relevant to the CAISO's evaluation of a Market Participant's "overall financial health and its ability to meet its financial obligations,"³⁴ and therefore should be one of the qualitative factors the CAISO uses to determine the Unsecured Credit Limits. Before it extends an Unsecured Credit Limit to a Market Participant, the CAISO should have sufficient information to evaluate whether the activities of that Market Participant or its Affiliates have the potential to affect the overall financial health of that Market Participant. Further, having knowledge that

³⁴ Current ISO Tariff, § 12.1.1.1; MRTU Tariff, § 12.1.1.2.

Affiliates – particularly in other organized electricity markets – are involved in risky business practices or situations (e.g., late payments, litigation, and defaults) will allow the CAISO to perform additional due diligence and to set (or deny) Unsecured Credit Limits in a way that potentially limits downside credit risk for all participants in the CAISO Markets, which in turn will increase Market Participant confidence in those markets.

The proposed tariff modifications described above limit the general disclosure requirements under Section 39.9 while allowing the CAISO access to all Affiliate information when assessing how much, if any, unsecured credit to extend to an entity. This proposal is also consistent with one of the approaches suggested by FIEG for the CAISO to achieve its credit management goals through more tailored reporting requirements, except the disclosure requirement under Section 39.9 is not limited to CAISO Market Participants but extends to Affiliates participating in other organized electricity markets in North America.³⁵ The CAISO believes that its revised disclosure requirement is reasonable and not unduly burdensome.

³⁵ See FIEG at 6-7 (“In the alternative, should CAISO demonstrate that affiliate activities in other ISOs [Independent System Operators] or RTOs [Regional Transmission Organizations] could have a bearing on its credit management activities, it might be appropriate for it to request disclosure of all affiliates that participate in any ISO or RTO, e.g., affiliates that are not members of CAISO, but are members of PJM and participate in the FTR [Financial Transmission Rights] auctions.”). FIEG also asserts that the CAISO could rely on publicly available sources of information to identify Affiliates. *Id.* at 7 n.8. FIEG fails to recognize that information concerning all Affiliates, or even the set of Affiliates that participate in organized electricity markets such as those operated by ISOs and RTOs, is not always publicly available. Moreover, FIEG itself correctly states that the CAISO has limited resources for evaluating and monitoring Affiliates. *Id.* at 6. Therefore, it is appropriate for the CAISO to maximize the efficient use of these resources by requiring Market Participants that request Unsecured Credit Limits to provide information to the CAISO concerning their Affiliates, as opposed to requiring the CAISO to search for information concerning their Affiliates using publicly available sources.

D. The May 30 CRR Filing Does Not Significantly Expand the CAISO’s Existing Authority to Impose Additional Credit Requirements, and the Commission’s “Rule of Reason” Permits the CAISO to Include Implementation Detail in its Credit Manuals, Which the CAISO Plans to Do.

During the stakeholder process that preceded the submission of the May 30 CRR Filing, the CAISO explained that it has authority under the current ISO Tariff and the MRTU Tariff to impose additional credit requirements and that both tariffs allow the CAISO to reevaluate the credit requirements for holding CRRs on an ongoing basis.³⁶ In the May 30 CRR Filing, the CAISO responded to two concerns expressed by stakeholders: (1) in response to stakeholder concerns that the CAISO’s tariffs are not sufficiently clear, the CAISO proposed to clarify Section 12.6.3.1(c) of both tariffs to state that the CAISO may adjust the credit requirements for holding CRRs with terms of one year or less to account for changes in the monthly auction prices for CRRs and changes in the Historical Expected Values for CRRs, or more frequently than monthly if necessary if the CAISO finds that actual or anticipated market conditions indicate that CRR credit requirements may be inadequate to cover the financial risk of the CRRs; and (2) in response to stakeholder concerns that the CAISO has not provided the triggers for imposing additional credit requirements and the methodology for calculating such requirements, the CAISO stated that it will develop a business process for determining the triggers and methodology.³⁷ MID, SVP/M-S-R, and TANC argue that: (1) the CAISO’s proposed changes to Section 12.6.3.1(c)

³⁶ See Transmittal Letter for May 30 CRR Filing at 25 (citing current ISO Tariff, §§ 12.1.5, 12.6.3.1(c); MRTU Tariff, §§ 12.1.3, 12.6.3.1(c)).

³⁷ Transmittal Letter for May 30 CRR Filing at 25.

significantly expand its authority under the existing tariff provisions to impose additional credit requirements and (2) the Commission’s “rule of reason” requires the CAISO to include the triggers and methodology for imposing additional credit requirements in its tariffs.³⁸ As explained below, MID, SVP/M-S-R, and TANC are incorrect as to both of these contentions.

1. The May 30 CRR Filing Simply Clarifies Existing Tariff Authority to Impose Additional Credit Requirements.

Contrary to the arguments of MID, SVP/M-S-R, and TANC, the proposed changes to Section 12.6.3.1(c) clarify the CAISO’s authority under its tariffs to impose additional credit requirements rather than significantly expand that authority. The CAISO’s existing authority is reflected in a number of tariff sections. Section 12.1.5 of the current ISO Tariff and Section 12.1.3 of the MRTU Tariff both state that a Market Participant’s Estimated Aggregate Liability includes amounts that the Market Participant is reasonably anticipated to be liable for pursuant to those tariffs. The amounts for which a Market Participant is reasonably anticipated to be liable may change based on the CAISO’s calculations,³⁹ and if a Market Participant’s Estimated Aggregate Liability, as calculated by the CAISO, becomes greater than the Market Participant’s

³⁸ MID at 7-9; SVP/M-S-R at 8-11; TANC at 8-20.

³⁹ See current ISO Tariff, § 12.1.5A.1 (stating that the CAISO calculates estimated obligations based on either one month, two months, or twelve months of historical charges for a Market Participant, whichever results in the most accurate estimate); MRTU Tariff, § 12.1.3.1.1 (stating that estimated amounts are “based on estimated Settlement amounts calculated by the Settlement system using estimated meter data, and other available operation data”). See *also* current ISO Tariff, § 12.4 (stating that the CAISO’s calculation of Estimated Aggregate Liability includes “an estimate of charges for Trading Days for which Settlement data is not yet available,” and that “[t]o estimate charges for Trading Days for which Settlement data is not yet available, the ISO will consider available historical Settlement data, and other variable operational and market data as described in the ISO Credit Policy & Procedures Guide posted on the ISO Home Page”); MRTU Tariff, § 12.4 (containing similar provisions).

Aggregate Credit Limit, the Market Participant is required to provide additional collateral.⁴⁰ Further, specifically with regard to CRRs, the current version of Section 12.6.3.1(c) in both tariffs states that “[t]he CAISO shall reevaluate the credit requirements for holding CRRs, and shall adjust the credit requirements accordingly, not less than monthly.”

The changes in the May 30 CRR Filing to Section 12.6.3.1(c) clarify that the CAISO may employ its already existing discretion to adjust the credit requirements for holding CRRs with terms of one year or less not only to account for changes in monthly CRR auction prices, but also to account for changes in the Historical Expected Values of CRRs and to address actual or anticipated market conditions that indicate that CRR credit requirements may be inadequate to cover the financial risk of the CRRs. These clarifications merely add detail consistent with the CAISO’s existing credit policy, which is to ensure that the credit requirements address the credit risks associated with the particular CRR or CRR portfolio. The CAISO recognizes that the CRR Auction prices may not always fully reflect the credit risk. Accordingly, the CAISO proposes to use Historical Expected Values in certain circumstances.⁴¹ Similarly, there will be circumstances where neither the CRR Auction prices nor Historical Expected

⁴⁰ Current ISO Tariff, § 12.4; MRTU Tariff, § 12.4.

⁴¹ In the May 30 CRR Filing, the CAISO proposes that “[e]ach CRR Holder that holds a CRR with a term of one year or less shall be subject to a credit requirement (\$/MW) equal to the negative of the most recent CRR Auction Price of such CRR or the Historical Expected Value of such CRR, whichever is lower, plus the Credit Margin for such CRR.” Historical Expected Value in both tariffs is as “[t]he expected value of a CRR, as calculated by the CAISO, based on monthly historical market operation data for the applicable month. Such values will be established based on at least one (1) year and up to three (3) years of historical market operations data.” May 30 CRR Filing at Attachments B and D (proposed definition of Historical Expected Value).

Values adequately address the credit risk due to actual or anticipated market conditions that are not reflected in the calculations of those prices and values, e.g., a major derate of a transmission line such as occurred in PJM.⁴² As explained in the May 30 CRR Filing, the CAISO believes that such market conditions will be “event[s] of extraordinary circumstances, such as unplanned outages, that could dramatically affect CRR values.”⁴³ Ensuring that credit requirements correspond to credit risks in both normal and extraordinary circumstances is consistent with the CAISO’s credit policy and is entirely appropriate.

The CAISO recognizes the concerns of MID and SVP/M-S-R that the CAISO has not yet developed specific methodologies for calculating increased credit requirements in circumstances where actual or anticipated market conditions indicate that CRR credit requirements may be inadequate to cover CRR financial risk.⁴⁴ Although the CAISO agrees that it should develop such methodologies as part of a further stakeholder process and has committed to do so,⁴⁵ the CAISO believes that Section 12.6.3.1(c), as revised in the May 30 CRR Filing, can and should be implemented even before such methodologies have been developed, subject to the following enhancement: the CAISO proposes to

⁴² See *supra* note 33.

⁴³ May 30 CRR Filing, Attachment F, Memorandum to CAISO Governing Board (May 13, 2008), at 6.

⁴⁴ MID at 8-9; SVP/M-S-R at 10-11.

⁴⁵ See the discussion below in Section I.D.2 below concerning the development of a business process for determining the triggers and methodology for imposing additional credit requirements.

modify its tariffs to state that, whenever the CAISO requests additional Financial Security from a Market Participant as a result of a change in CRR value that is not related to an adjustment due to monthly CRR Auction price or an adjustment related to Historical Expected Value, the CAISO will provide a written explanation of the reason for that request.⁴⁶ Moreover, if the CAISO's written explanation does not satisfy the Market Participant, it will still be free to exercise its existing right to dispute any request for additional Financial Security.⁴⁷

2. The Triggers and Methodology for Imposing Additional Credit Requirements Should Be Included in the CAISO's Credit Manuals Rather than in the CAISO's Tariffs.

MID, SVP/M-S-R, and TANC argue that the Commission's rule of reason requires the CAISO to include in its tariffs the triggers and methodology for imposing additional credit requirements that the CAISO has noted it will develop. These parties are mistaken. As explained below, the triggers and methodology, which will be developed with stakeholder input, should instead be included in the CAISO credit manuals: the CAISO Credit Policy & Procedures Guide ("Credit Guide"), which it currently uses, and the BPM for Credit Management, which it will use once MRTU is implemented.⁴⁸

⁴⁶ Under Section 12.4.2 of both the current ISO Tariff and the MRTU Tariff, a Market Participant may dispute a Financial Security request resulting from the CAISO's calculation of Estimated Aggregate Liability by undertaking several listed steps, the first of which is that the Market Participant must request a review of the CAISO's calculation.

⁴⁷ See *supra* note 46.

⁴⁸ If development of the business process is not completed until after MRTU is implemented, the CAISO will include the business process only in the BPM for Credit Management.

Pursuant to the rule of reason, a public utility is required to file “only those practices that affect rates and service significantly, that are realistically susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous.”⁴⁹ In Order No. 890, which revised the *pro forma* Open Access Transmission Tariff (“OATT”), the Commission applied the rule of reason to determine the creditworthiness provisions that must be included in transmission providers’ OATTs.⁵⁰ In this regard, the Commission stated that “requiring transmission providers to file all of their rules, standards and practices in their OATTs would be impractical and potentially administratively burdensome.”⁵¹ Instead, the Commission directed that each transmission provider must include the following in its OATTs: (1) the qualitative and quantitative criteria that the transmission provider uses to determine the level of secured and unsecured credit required of its customers; (2) a summary of the procedure for determining the level of secured and unsecured credit; (3) a list of the acceptable types of collateral/security; (4) a procedure for providing customers with reasonable notice of changes in credit levels and collateral requirements; (5) a procedure for providing customers, upon request, with a written explanation for any change in credit levels or collateral requirements; (6) a reasonable opportunity to contest determinations of credit

⁴⁹ *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (emphasis omitted).

⁵⁰ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, at P 1649 (“Order No. 890”), *order on reh’g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007) (“Order No. 890-A”), *reh’g pending*.

⁵¹ Order No. 890 at P 1651.

levels or collateral requirements; and (7) a reasonable opportunity to post additional collateral, including curing any non-creditworthy determination.⁵²

The Commission has concluded that the creditworthiness provisions in the current ISO Tariff (which are essentially identical to the creditworthiness provisions in the MRTU Tariff) already satisfy all seven of these Commission requirements.⁵³ In particular, the CAISO's tariffs already contain Order No. 890-compliant summaries of the procedures for determining the levels of secured and unsecured credit, as well as Order No. 890-compliant procedures for providing customers with reasonable notice of changes in credit levels and collateral requirements and procedures for providing customers, upon request, with written explanations for any changes in credit levels or collateral requirements. Moreover, these existing provisions in the CAISO's tariffs will be supplemented by the tariff provisions contained in the May 30 CRR Filing plus the modifications proposed in Section I.D.1 above, which only provide further information about the CAISO's existing authority to impose additional credit requirements. Therefore, the CAISO should not be required to include in its tariffs the triggers and methodology for imposing additional credit requirements.

⁵² *Id.* at P 1657.

⁵³ See CAISO Filing to Comply with Order No. 890, Docket No. OA08-12-000 (Oct. 11, 2007), at 41-44 ("October 11 Compliance Filing"). The Commission found that the October 11 Compliance Filing demonstrated that the creditworthiness provisions in the current ISO Tariff satisfy the requirements of Order No. 890, but directed the CAISO to make a similar showing concerning the MRTU Tariff. *California Independent System Operator Corp.*, 123 FERC ¶ 61,180, at P 43 (2008). In the CAISO's June 16, 2008, filing submitted to comply with that order ("June 16 Compliance Filing"), the CAISO explained (at pages 7-12) that the essentially identical creditworthiness provisions in the MRTU Tariff likewise satisfy the requirements of Order No. 890. Commission action on the June 16 Compliance Filing is pending.

The triggers and methodology will consist of details that implement the CAISO's existing tariff authority to impose additional credit requirements. Pursuant to the rule of reason, such implementation details are appropriately included in the CAISO's Credit Guide and BPM for Credit Management, not in its tariffs. This approach is consistent with the Commission's general recognition that the CAISO may include certain details in the BPMs rather than in the MRTU Tariff.⁵⁴ Moreover, the CAISO anticipates that these implementation details may need to be updated from time to time as new credit risks and circumstances arise that cannot be anticipated ahead of time and that the CAISO needs to react to promptly. The CAISO will develop the triggers and methodology with stakeholder input, and will consult with stakeholders in updating them, but it would be impossible to modify them on a timely basis if they were included in the tariffs rather than in the BPM for Credit Management. This means that it will always be appropriate to have the authority to require additional collateral when the circumstances justify the call for additional collateral – subject to the requirement

⁵⁴ See *California Independent System Operator Corp.*, 116 FERC ¶ 61,274, at P 1358 (2006) (“Business Practice Manuals document through procedures, examples and timelines the manner in which the CAISO conducts its operations under the MRTU Tariff. The manuals will serve as guides for internal operations and inform market participants of the CAISO's practices. The information contained in the Business Practice Manuals is meant to provide further explanation of the CAISO's practices but not significantly affect any rates, terms or conditions, consistent with the Commission's ‘rule of reason.’”); *California Independent System Operator Corp.*, 119 FERC ¶ 61,076, at P 656 (2007) (“[The] assertion that the Commission should have conditioned implementation of the MRTU Tariff on the acceptance of Business Practice Manuals is simply another request to have the entire text of the Business Practice Manuals on file with the Commission. We have consistently rejected arguments that every manual or operating procedure should be on file with the Commission. Requiring such documents to be on file would thwart our ‘rule of reason,’ and undermine the practical purpose of having a tariff on file with the Commission, supported by detail included in Business Practice Manuals not on file.”). The Credit Guide and the BPM for Credit Management are both available on the CAISO Website and will be posted on the CAISO's Open Access Same-Time Information System (“OASIS”), as required by Order Nos. 890 and 890-A. See Order No. 890-A at P 1657; Order No. 890-A at P 992.

that the CAISO provide a written explanation and that this authority should be in addition to mechanisms the CAISO proposes to develop for the BPM.

Accordingly, the right to implement this authority should not be contingent on the development of triggers and practices. Moreover, although the CAISO plans to develop such practices, the CAISO anticipates that some of the practices will be developed only as a result of actual experience.

II. CONCLUSION

For the reasons explained above, the Commission should accept the May 30 CRR Filing without modification, except as described herein.

Respectfully submitted,

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Dated: July 7, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service lists in the 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 Washington, D.C. this 7th day of July, 2008.

/s/ Bradley R. Miliauskas
Bradley R. Miliauskas