UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	**)** **)**	**Docket No. ER13-1372-000**

ANSWER TO COMMENTS

The California Independent System Operator Corporation ("ISO") submits its answer to the comments filed in the above-identified docket.[1] This proceeding concerns the ISO's filing of the Implementation Agreement between the ISO and PacifiCorp, which provides the framework for the development of an energy imbalance market administered by the ISO.

I. Background and Introduction

On April 30, 2013, the ISO filed the Implementation Agreement to establish the contractual terms under which the ISO will take the steps necessary to configure and expand the ISO's real-time energy market for use as energy imbalance service by PacifiCorp and its transmission customers. The Implementation Agreement includes a scope of work and associated milestone payment provisions. It specifies that PacifiCorp will pay a fixed implementation fee of $2.1 million ("Implementation Fee"), reflecting PacifiCorp's share of the ISO's estimated costs of configuring its real-time energy market to function as an energy imbalance market available to all balancing authority areas in the Western Electricity Coordinating Council that may choose to participate. The

[1] The ISO submits this answer pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213.

Implementation Fee is also consistent with the ISO's estimate of the specific costs attributable to the incremental work to include PacifiCorp's transmission customers in the ISO's real-time energy market. These cost estimates were supported by the Declaration of Mr. Michael K. Epstein, included in the April 30 filing.

Seventeen parties submitted timely motions to intervene without comments, and two parties intervened out of time without comment. The ISO does not object to these interventions.

Calpine Corporation, Morgan Stanley Capital Group Inc., Pacific Gas and Electric Company ("PG&E"), PacifiCorp, Powerex Corp.; Southern California Edison Company ("SoCal Edison"), Utah Associated Municipal Power Systems ("UAMPS"), Valley Electric Association, Inc., and Western Power Trading Forum submitted comments. PG&E and SoCal Edison are critical of certain aspects of the Implementation Fee, particularly its fixed nature. UAMPS argues that the filing is premature and does not address the rate-making impact of the Implementation Fee on PacifiCorp's customers. Certain other comments raise issues regarding the eventual structure of the energy imbalance market. The ISO responds to these comments below.

The cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California filed a protest. Because the protest does not raise any issues not presented in the comments, the ISO does not request leave to respond to the protest.[2]

[2] Rule 212(a)(2) of the Commission's Rule of Procedure, 385.212(a)(2) prohibits answers to protests absent Commission approval. If the Commission deems any part of

II. Answer

The comments generally do not address the matters germane to the issues before the Commission in this proceeding: the justness and reasonableness of the terms of the Implementation Agreement, including the agreed-upon Implementation Fee. Rather, the comments largely attempt to raise matters that that are beyond the scope of this proceeding or, indeed, any pending proceeding. The Commission should accept the Implementation Agreement without condition or modification, and defer consideration of issues that do not bear on the justness and reasonableness of the Implementation Agreement to future proceedings in which those issues may be relevant.

A. No Party Contests the Reasonableness of the ISO's Cost Estimate Supporting the Implementation Fee.

A number of comments focus on the fact that that the Implementation Fee is based on the ISO's estimated costs to configure and expand its real-time energy market for use as energy imbalance service by PacifiCorp and others. As an initial matter, it is significant that no party challenges the detailed explanation in Mr. Epstein's declaration supporting the estimates, contends that the estimates are not reasonable, or identifies any portion of the estimates as lacking support. Whether the Implementation Fee is based on a reasonable estimate of costs is

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this answer to constitute a response to the protest filed by Asuza, et al., or any other party to this proceeding, the ISO requests that the Commission accept it because it provides information that will assist the Commission in its deliberations. The Commission has accepted answers to protests if such answers clarify the issues in dispute or provide information that assists the Commission in making a decision. *See, e.g., Southwest Power Pool, Inc.,* 89 FERC ¶ 61,284 at 61,888 (1999); *El Paso Electric Co., et al. v. Southwestern Pub. Serv. Co*., 72 FERC ¶ 61,292 at 62,256 (1995); *Equitrans, L.P.*, 134 FERC ¶ 61,250, at P 6 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,023, at P 16 (2010); *Xcel Energy Services, Inc.*, 124 FERC ¶ 61,011, at P 20 (2008).

the primary issue before the Commission in this proceeding, and that issue is uncontested.

B. A True-Up Requirement Would Be Inconsistent with the Agreed-Upon Fixed Implementation Fee.

Some parties nonetheless contend that the Implementation Agreement should provide for a true-up of the Implementation Fee if the ISO's actual costs of adapting the real-time energy market for use by PacifiCorp's transmission customers' imbalance energy needs exceed the estimate.[3] These parties in effect seek to convert the agreed-upon fixed fee into a formula rate based on arguments that ignore the fundamental nature of rates under the Federal Power Act and the Commission's regulations.

First, as the public utility providing the service, the ISO has the discretion to design its charges. Unless the design the ISO proposes is unjust, unreasonable, or unduly discriminatory or preferential, the Commission may not modify or reject that choice.[4] The fixed fee that the ISO has proposed is not unjust, unreasonable, or unduly discriminatory or preferential. The Commission has long accepted stated rates, such as the fixed fee the ISO has proposed. Stated rates are consistent with the Federal Power Act's filing and notice requirements whereas, when the Commission accepts a formula rate, "it grants

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[3] *See* SoCal Edison at 3-4, PG&E at 6-7, and Six Cities at 2-4.

[4] *See New England Power Co.*, 52 FERC ¶ 61,090 at 61,336 (1990), *reh'g denied*, 54 FERC ¶ 61,055, *aff'd Town of Norwood v. FERC*, 962 F.2d 20 (D.C.Cir. 1992); citing *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C.Cir. 1984), *cert. denied*, 469 U.S. 917 (1984) (utility need establish that its proposed rate design is reasonable, not that it is superior to alternatives).

waiver of the filing and notice requirements of [section 205]" of the Federal Power Act.[5]

Second, the possibility that a stated rate might diverge from the costs of providing the service does not render it unjust and unreasonable, as long as sufficient justification has been provided for the level of the rate, as the ISO has done here. Just and reasonable rates are not, as these parties contend, limited to actual costs, determined on a retrospective basis. As explained in the April 30 filing, the Implementation Agreement is appropriately characterized as an initial rate because extension of the ISO's real-time energy market to provide energy imbalance service under an open access tariff based on the Order No. 888 *pro forma* model is a new service to a new customer. Under the Commission's regulations, initial rates are appropriately based on projected costs.[6]

Even if the Implementation Agreement is characterized as a change in rates under the Commission's regulations, rate changes must be justified on the basis of projected (Period II) costs unless an exception permits the use of historic (Period I) costs.[7] What is required, when a stated rate is based on projected costs, is that the projections be substantiated and "reasonable when made."[8] As

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5 *Public Utils. Comm'n of Cal. v. FERC*, 254 F.3d 250, 254 (D.C. Cir. 2001), quoting *Ala. Power Co. v. FERC*, 993 F.2d 1557, 1567-68 (D.C. Cir. 1993), in turn quoting *San Diego Gas & Elec. Co.,* 46 FERC ¶ 61,363 at 62,129-30 (1989).

6 *See* 18 C.F.R. § 35.12 (2012).

7 *See* 18 C.F.R. § 35.13 (2012).

8 *See, e.g.,Williston Basin Inter. Pipeline Co. v. FERC,* 165 F.3d 54, 59 (D.C Cir. 1999); *Ind. & Mich. Mun. Distribs. Ass'n v. FERC,*659 F.2d 1193, 1198-99 (D.C.Cir.1981). If actual costs diverge so drastically from projections on which a rate is based, the Commission may require an adjustment. *See Sw. Pub. Serv. Co. v. FERC,* 952 F.2d 555, 558 (1992).

explained above, no party has taken issue with the reasonableness of the estimates underlying the Implementation Fee.

There is accordingly no requirement that a stated rate, such as the Implementation Fee, be accompanied by a true-up provision. Parties' arguments in favor of such a provision are further diminished in this case because the Implementation Agreement provides protections against any disparity between charges and costs.[9]

C. The ISO Has Not Proposed to Allocate Any PacifiCorp Costs to ISO Customers.

The Implementation Agreement establishes the terms upon which the ISO will proceed to configure and extend its real-time energy market to provide energy imbalance service to PacifiCorp and its customers, including the fixed fee that PacifiCorp will pay. No provision of the Implementation Agreement establishes a rate authorizing the ISO to charge any costs of that effort to its existing customers. Several comments nonetheless express concern over potential allocation to ISO customers of costs incurred in connection with the Implementation Agreement.[10] They contend that the ISO's customers did not cause and will not benefit from expenditures relating to the expansion of the energy imbalance market.[11]

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[9] The Implementation Agreement expressly provides for the revision of the Implementation Fee by mutual agreement if the ISO notifies PacifiCorp that the sum of its actual costs to date and expected costs through completion exceed the $2.1 million Implementation Fee. (Implementation Agreement, Section 4(b).)

[10] *See* SoCal Edison Comments at 3-4, PG&E Comments at 6-7.

[11] SoCal Edison Comments at 4; PG&E Comments at 6.

These concerns are premature and beyond the scope of this proceeding. The ISO has supported the Implementation Fee that would be charged to PacifiCorp in the Implementation Agreement. That is the only fee at issue in this proceeding and none of the comments challenges its reasonableness. The Commission need not and should not decide here whether it might be just and reasonable for the ISO to charge other costs to other customers. That issue is appropriately addressed if and when the ISO seeks to recover costs from other customers that are related in some way to the proposed expansion of its energy imbalance market.

The ISO has committed to address other administrative and start-up costs associated with enabling the energy imbalance market to the benefit of all, not specific to PacifiCorp, in the proceeding where the ISO will seek Commission authority to implement the energy imbalance market and the broader Grid Management Charge proceeding for both the ISO and the energy imbalance market. Stakeholders will have an opportunity to share concerns in the stakeholder process leading up to these filings and in the proceedings themselves.[12]

Not only is the question of the recovery of energy imbalance market costs from ISO customers not germane to this proceeding, but additionally the fundamental premise of these comments is unfounded. ISO customers *will* benefit from the implementation of the expanded energy imbalance market. As the ISO noted in the transmittal letter and the studies referenced therein, the

[12] *See* Energy Imbalance Market, ISO Revised Straw Proposal, May 30, 2013, at p. 44-46.

economies of scale that result from balancing resources and loads of other balancing authority areas together with the resources and loads participating in the ISO will benefit all participants through improved reliability, better forecasting and integration of renewables, and improved scheduling practices. Moreover, the use of the ISO's security-constrained economic dispatch to manage congestion in other balancing authority areas reduces the risk that constraints in those balancing authority areas will have negative consequences in the ISO's balancing authority area. The existence of these benefits would justify the ISO's recovery from its customers of costs associated with enhancements to its market platform to facilitate the expansion of the energy imbalance market.[13] The ISO reiterates, though, that it has presented no proposal to do so in this filing. The recovery of any costs other than the costs to be recovered from PacifiCorp is a matter to be addressed in the future ISO rate filings, as discussed above.[14]

D. UAMPS's Concerns Are Beyond the Scope of this Docket.

UAMPS argues that the filing is premature and presents a possible imprudent expenditure in light of other regional proposals under development.[15] Speculation about what other parties may do, however, is not relevant to the reasonableness of an agreement between the ISO and PacifiCorp for a mutual

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[13] As the Commission has explained, "While [the] fundamental idea of matching costs to customers is often referred to in terms of cost causation, it has also often been described in terms of the costs which "should be borne by those who benefit from them." *Cal Indep. Sys. Operator Corp.*, 103 FERC ¶ 61.114 P 6 (2003), citing *Gulf Power Co. v. FERC*, 983 F.2d 1095, 1100 (D.C. Cir. 1993).

[14] Parties' concerns that the ISO may be unable to recover significant expenditures if PacifiCorp terminates the agreement prior to completion of the implementation process and should, for example, be charged an exit fee are similarly premature. (*See, e.g.,* PG&E Comments at 7, ft. 8).

[15] UAMPS Comments at 4.

undertaking. Other entities' consideration of alternative structures does not prohibit the ISO and PacifiCorp from deciding to pursue an expanded energy imbalance market for their own customers and to file an agreement associated with its development under section 205. If UAMPS believes that the expenditures are imprudent, it can pursue that issue when PacifiCorp seeks to recover its costs. Absent a request for a declaratory order, the Commission does not prejudge the prudence of expenditures.[16]

UAMPS also complains that the filing does not specify how the ISO plans to recover the remaining costs of the development of a wider energy imbalance market.[17] The ISO, however, is not proposing such a market at this point, so UAMPS's concern is outside the scope of this proceeding. UAMPS's concern—rather than the ISO's filing—is premature. The same is true of UAMPS's concerns about the ISO's recovery of costs of the ISO's new market system and the other similar concerns expressed in the comments.[18]

UAMPS also complains that this is an ISO filing, not a PacifiCorp filing, and, as such, does not address the ratemaking impact of the Implementation Fee on PacifiCorp customers. This observation is correct, but it does not constitute a shortcoming of the ISO's filing. This filing addresses the rates and other terms upon which the ISO will provide the services described in the Implementation Agreement. The ratemaking impact of PacifiCorp's recovery of the costs it will incur through payment of the Implementation Agreement's specified fee is a

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16 *See, e.g.*, *Violet v. FERC,* 800 F.2d 280 (1st Cir. 1986).

17 *Id.* at 7.

18 *Id.* at 7-10

matter to be addressed when PacifiCorp seeks to include those costs in its rates. UAMPS can raise any concerns it may have at that time; those concerns have no place in this proceeding.

E. The Implementation Agreement Does Not Predetermine the EIM Design, Which Is the Subject of an ISO Stakeholder Process Already Underway

Some parties express a concern that the Implementation Agreement will foreclose certain energy imbalance market design issues. The Implementation Agreement certainly does contemplate that certain principles important for PacifiCorp's participation will be accounted for in developing the energy imbalance market. This is an appropriate element of an agreement that sets forth the parties' commitment to move forward with implementation of the energy imbalance market before the market rules are known.[19] However, the Implementation Agreement unambiguously recognizes that the ultimate design of the energy imbalance market will be determined through a process in which the ISO will receive and consider the input of all stakeholders, and ultimately pursuant to the authorizations and regulatory approvals required to implement the energy imbalance market.[20] The Implementation Agreement specifically acknowledges that the market rules resulting from these processes may deviate from the principles set forth in the Implementation Agreement if necessary to address concerns raised during the stakeholder and regulatory approval

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19 Implementation Agreement, §14.

20 *Id.* and Exhibit A.

processes.[21] Nothing in the Implementation Agreement prejudges or predetermines any energy imbalance market design issue.

III. Conclusion

For the reasons explained above and in the ISO's April 30 filing in this proceeding, the Commission should accept the Implementation Agreement with PacifiCorp without condition.

Respectfully submitted,

By: *<u>/s/ John C. Anders</u>*
Nancy Saracino
General Counsel
Roger E. Collanton
Deputy General Counsel
Sidney M. Davies
Assistant General Counsel
John C. Anders
Senior Counsel
California Independent System Operator Corporation
250 Outcropping Way
Folsom, CA 95630
Tel: (916) 608-7287
Fax: (916) 608-7222
janders@caiso.com

Attorneys for the California Independent System Operator Corporation

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[21] *Id.*

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the above-referenced proceeding, 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, CA this 5th day of June, 2013.

/s/ Sarah Garcia
Sarah Garcia