

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

California Independent System Operator)
Corporation) Docket No. ER08-1113-007

**MOTION OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION FOR LEAVE TO FILE ANSWER TO PROTESTS AND ANSWER TO
PROTESTS AND COMMENTS**

The California Independent System Operator Corporation (the ISO)¹ respectfully requests that the Federal Energy Regulatory Commission (Commission) approve the proposed tariff language submitted by the ISO on January 19, 2010 in compliance with the Commission’s December 17, 2009 Order on Rehearing, Motions for Clarification and Compliance with the additional modifications the ISO agrees to make in a further compliance filing if so ordered as discussed in its answer to protests and comments below.² The Commission’s *December 2009 Order* directs the ISO to allow signatories of Market Efficiency Enhancement Agreements (MEEAs) to self-certify that a resource identified in a MEEA “was dispatched to support interchange transactions” between the ISO and the Sacramento Municipal Utility District-Turlock Irrigation District Integrated Balancing Authority Area (IBAA).³ On January 19, 2010, the ISO filed tariff language to fulfill this requirement. Western Area Power Administration filed comments in response

¹ The ISO is also sometimes referred to as the CAISO. Capitalized terms not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, Appendix A to the CAISO Tariff.

² *California Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,241 (2009) (*December 2009 Order*).

³ *Id.* at P 50.

to the ISO's compliance filing. A collection of IBAA entities also filed comments and a protest in response to the ISO's compliance filing.⁴ Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure,⁵ the ISO files a motion for leave to file an answer to the protests filed by Western and the IBAA entities, and an answer to such protests and comments filed by such parties.

I. MOTION

The IBAA entities filed their comments and protest on February 12, 2009. The ISO is requesting leave to file this answer within fifteen days of the date of the IBAA entities' comments and protest. Answers to protests are generally not permitted. See 18 C.F.R. § 385.213(a)(2). The ISO respectfully requests waiver of the Commission's Rules of Practice and Procedure prohibiting answers to protests pursuant to 18 C.F.R. § 385.101(e). Good cause exists for the waiver. As discussed in the ISO's answer, the ISO is willing to modify its proposed tariff language in order to address some concerns raised by parties. The ISO's answer will also assist the Commission evaluate the arguments raised in response to the ISO's January 19, 2010 compliance filing. Accordingly, the Commission should permit the ISO to file this answer.

II. ANSWER

A. The ISO's proposed tariff language concerning self-certification precisely reflects the Commission's compliance directives.

⁴ The entities include the Sacramento Municipal Utility District, Transmission Agency of Northern California, Turlock Irrigation District, Modesto Irrigation District and the Cities of Santa Clara, Redding and Palo Alto (collectively, IBAA entities).

⁵ 18 C.F.R. §§ 385.212, 385.213 (2009).

In their comments and protest, the IBAA entities argue that the ISO's proposed self-certification process requires IBAA entities to certify facts they cannot verify, including that a MEEA resource was dispatched to support an interchange transaction and that the energy supporting the transaction does not originate from the Pacific Northwest.⁶ Similarly, Western asserts it does not understand why the ISO's proposes to require a MEEA signatory to demonstrate that a MEEA transaction is supported by a resource from within the IBAA.⁷

The ISO's proposed tariff language reflects the language of the *December 2009 Order*. Specifically, the language proposed by the ISO in section 27.5.3.2.2 requires a MEEA signatory to represent that MEEA resources were dispatched to support an interchange transaction with the ISO and that power supporting the interchange transaction is not originating from the Pacific Northwest or another balancing authority outside of the IBAA. This language reflects the language of the *December 2009 Order*, which states "a MEEA signatory should be able to self-certify that a MEEA resource was *dispatched to support interchange transactions*."⁸ This language also reflects the Commission's directive that "*a MEEA signatory must be able to demonstrate that the power [to support interchange transactions] is not originating from the Northwest*."⁹

The IBAA entities' concern with the ISO's proposed tariff language is unwarranted. First, the tariff language reflects the Commission's directives. Second, at least some of the IBAA entities requested the adoption of an affidavit mechanism to

⁶ Comments and protest of IBAA entities at pp. 5-9.

⁷ Comments of Western at pp. 5-6.

⁸ *December 2009 Order* at P 50.

⁹ *December 2009 Order* at P 55 and fn 37.

demonstrate resources identified in a MEEA operated to support an interchange transaction.¹⁰ If the IBAA entities believe the Commission's self-certification mechanism makes entering a MEEA impossible, they should have requested rehearing of the Commission's December 2009 Order. They did not do so. The IBAA entities argument that they need only demonstrate that power is not originating from the Northwest in the context of establishing a MEEA as opposed to in connection with specific interchange transactions with the ISO ignores a central ruling of the Commission's IBAA orders that an entity controlling resources within the IBAA may enter into a MEEA and receive MEEA pricing when it operates those resources to support an interchange transaction with the ISO.¹¹ The Commission affirmed this central ruling in the *December 2009 Order* when it stated: "*determining that MEEA resources were dispatched to support the transaction is a key element for receiving MEEA pricing.*"¹²

Based on the *December 2009 Order*, the ISO understands a MEEA signatory can demonstrate that it dispatched MEEA resources to support an interchange transaction with data reflecting not only that the MEEA signatory operated resources identified in a MEEA but also NERC tags, OASIS transmission reservation data, day ahead load and resource plans and power purchase agreements or contracts demonstrating committed use of transmission on the California Oregon Transmission Project and marginal cost information.¹³ This information may serve to support a MEEA

¹⁰ See e.g., Comments of SMUD Regarding Technical Conference dated September 15, 2009 at pp. 10-11.

¹¹ *California Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,271 at P 6 (2008).

¹² *December 2009 Order* at P 55.

¹³ *December 2009 Order* at P 51.

signatory's assertion that it dispatched MEEA resources to support an interchange transaction and did not source power from the Pacific Northwest to sell into the ISO markets at a MEEA specific price. The ISO intends to adhere to the Commission's directives in the negotiation and administration of any MEEA.

B. The ISO's proposed tariff language does not require a MEEA signatory to provide marginal cost information.

In their comments and protest, Western and the IBAA entities argue that the ISO's proposed MEEA self-certification process inappropriately requires a MEEA signatory to provide the ISO with marginal cost information. This argument is incorrect. The ISO's tariff language set forth in proposed section 27.5.3.2.2 states that in response to an ISO challenge, a MEEA signatory shall support its self-certification with information demonstrating that MEEA resources were dispatched to support an interchange transaction with the ISO. Proposed tariff section 27.5.3.2.2 provides in part:

The CAISO may challenge the use of these Resource IDs and conduct an audit under Section 27.5.3.7. In connection with any such audit, the MEEA signatory shall support its certification with information demonstrating that an MEEA signatory resource was dispatched to support the interchange transaction. This information may include, but is not limited to, NERC tags, OASIS transmission service data, day-ahead load and resource plans, power purchase agreements or contracts demonstrating use of the California Oregon Transmission Path as well as marginal cost information.¹⁴

¹⁴ The ISO recognizes that the reference in this tariff language to the California Oregon Transmission Path should read California Oregon Transmission Project. The ISO is willing to correct this reference in a future compliance filing.

Consistent with the Commission's directives, information submitted by a MEEA signatory to demonstrate the dispatch of MEEA resources to support an interchange transaction "*may include*" marginal cost information.¹⁵ If a MEEA signatory provides the ISO with marginal cost information, the ISO will consider this information in connection with any challenge to a self-certification under a MEEA. The ISO's proposed tariff language, however, does not require a MEEA signatory to submit marginal cost information to the ISO. The Commission should, accordingly, reject the comments and protest of Western and the IBAA entities.

C. The ISO's proposal to withhold MEEA specific pricing during any audit of a self-certification is consistent with the December 2009 Order and the public interest.

In their comments and protest, Western and the IBAA entities argue that the ISO's proposal to apply default pricing to an interchange transaction pending resolution of an ISO challenge to a MEEA signatory's self-certification that the transaction was supported by a MEEA resource exceeds the scope of Commission's compliance directives.¹⁶ The ISO's proposed tariff language in section 27.5.3.2.2 allows the ISO to withhold MEEA pricing pending a challenge regarding whether a MEEA signatory dispatched MEEA resources to support an interchange transaction. Contrary to the arguments of Western and the IBAA entities, this proposal is consistent with the *December 2009 Order*.

¹⁵ *December 2009 Order* at P 51.

¹⁶ Comments of Western at pp. 7-8; comments of IBAA entities at pp. 2-5.

The Commission directed the ISO to establish a self-certification mechanism under a MEAA that allows a MEEA signatory to demonstrate that it dispatched MEEA resources to support an interchange transaction. Under the Commission's *December 2009 Order*, MEEA signatories should support their certifications with information demonstrating that a MEEA resource was used to support an interchange transaction.¹⁷ But what if a MEEA signatory does not provide any such information? The ISO must have a mechanism to protect its markets from a situation in which a MEEA signatory decides not to provide information to demonstrate that it dispatched MEEA resources to support an interchange transaction. While an argument could be made that the ISO could seek to recover the difference between the MEEA price and a default price through dispute resolution procedures or a complaint before the Commission, this approach would expose the ISO's markets in the event a MEEA signatory ceases operation or prolongs the dispute through challenges in the courts. The Commission should not accept a situation in which a MEEA signatory can self-certify that it dispatched MEEA resources to support an interchange transaction with the ISO and receive the benefit of that self-certification without a mechanism to ensure that the ISO's markets receive adequate protection. The ISO's proposed tariff language provides an appropriate balance between the flexibility afforded to MEEA signatories and the need to protect ISO markets.

Alternatively, the Commission could consider adopting a mechanism similar to its approved treatment of marginal losses adjustments under the IBAA structure in which the ISO calculates a readjustment of payments to the extent the ISO has determined

¹⁷ *December 2009 Order* at P 50.

that the Scheduling Coordinator's payments did not reflect transactions that qualified for the marginal losses adjustment.¹⁸ Under this approach, the ISO would calculate a readjustment of the MEEA price to reflect the otherwise applicable default price applicable to schedules for which the ISO has determined were not supported by MEEA resources. Any amounts owed to the ISO for such re-adjustments would be recovered by the ISO from the affected Scheduling Coordinator by netting the amounts owed from payments due in subsequent settlements statements until the outstanding amounts are fully recovered. A MEEA signatory would have the right to dispute any such determination by the ISO and seek to reestablish MEEA pricing for any such Schedules. The ISO will submit tariff language to replace the current language with this alternative in a future compliance filing, if so ordered by the Commission.

D. The ISO's proposed tariff language allows for alternative MEEA structures consistent with the Commission's *December 2009 Order*.

In their comments and protests, Western and the IBAA entities argue that the ISO's proposed language regarding negotiating alternative structures is overly restrictive or provides the ISO with too much discretion by requiring a potential MEEA signatory to demonstrate that a different structure more accurately identifies the actual location of resources within the IBAA that support interchange transactions with the ISO.¹⁹ The ISO disagrees. The ISO's proposed tariff language in Section 27.5.3.2 reflects the directives of the *December 2009 Order*.²⁰ The ISO has proposed tariff

¹⁸ ISO tariff, Appendix C, Section G.1.2 Applicable Marginal Losses Adjustment.

¹⁹ Comments of Western at pp. 8-9; Comments and protest of IBAA entities at pp. 11-12.

²⁰ *December 2009 Order* at P 78, directing the ISO to file tariff language that permits entities controlling resources within the IBAA to ability to negotiate another pricing structure.

authority to allow a potential MEEA signatory to negotiate a MEEA structure that reflects an alternative structure if the MEEA signatory establishes that a different structure more accurately reflects resources dispatched to support transactions with the ISO. This language is consistent with the ISO's statement of limited MEEA clarifications following the August 2009 technical conference in this matter. These clarifications include the following language:

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 usage. *It is possible that the ISO and a MEEA signatory could negotiate other structures, if a MEEA signatory establishes that a different structure more accurately identifies the actual location of resources within the IBAA that support transactions with the ISO. [Emphasis added.]*²¹

As part of the *December 2009 Order*, the Commission directed the ISO to file tariff language consistent with the ISO's statement of limited MEEA clarifications.²² If Western and the IBAA entities opposed the Commission direction that the ISO file tariff language consistent with these clarifications, they should have requested rehearing of the Commission's December 2009 Order. They did not do so. The ISO is willing to discuss alternative structures that more accurately identify the actual location of resources within the IBAA used to support interchange transactions in the context of MEEA negotiations.

²¹ Comments of the ISO on the August 20, 2009 Technical Conference dated September 15, 2009, Attachment A, pp. 1-2.

²² *December 2009 Order* at P 78, fn 63 and 64.

- E. The ISO is willing to modify its proposed tariff language to clarify that a MEEA signatory is not required to associate a specific MEEA resource with a specific MEEA customer and to clarify that default pricing applies if a MEEA entity does not self-certify that MEEA resources were dispatched to support an interchange transaction.**

In their comments and protest, the IBAA entities request modifications to the ISO's proposed language modifications in section 27.5.3.2.1 to clarify that a MEEA signatory is not required to associate a specific generator within a portfolio of MEEA resources with a specific MEEA signatory.²³ The IBAA entities argue that this proposed modification is consistent with the ISO statement of limited MEEA clarifications filed after the August 2009 technical conference in this matter. The ISO agrees and is willing to modify the proposed language in the fifth sentence of section 27.5.3.2.1 to read as follows:

By applying a set of weighted distribution factors to a set of generator locations, an MEEA signatory is not required to associate a specific generator within a MEEA portfolio of resources with a specific MEEA customer.

This language clarifies that if the ISO negotiates a MEEA with more than one entity, the MEEA signatories may rely on the dispatch of multiple MEEA resources to support an interchange transaction and will not need to match a specific resource with a specific MEEA signatory.

Western and the IBAA entities also request modifications to the ISO's proposed tariff language in section 27.5.3.2.2 to clarify that if a MEEA signatory does not self-certify that MEEA resources were used to support a portion of the interchange transaction then default pricing will apply.²⁴ Under the ISO's proposed self-certification

²³ Comments of IBAA entities at pp. 10-11.

²⁴ Comments of Western at pp. 7-8; Comments of IBAA entities at pp. 9-10.

mechanism, a MEEA signatory must use a MEEA Resource ID to self-certify that it dispatched MEEA resources to support an interchange transaction in order to receive a MEEA-specific price. Default pricing will apply when a MEEA signatory schedules an interchange transaction with a non-MEEA Resource ID. The ISO is willing to modify in a subsequent compliance filing the proposed language in the last sentence of section 27.5.3.2.2 to read as follows:

For an interchange transaction for which a MEEA signatory has not self-certified that the resources dispatched and operated to implement the interchange transaction are the resources identified in the MEEA, the default IBAA price specified in Appendix C, Section G.1.1 will apply for the corresponding volume and time period.

F. The Commission did not require the ISO to hold a stakeholder process to comply with the December 2009 Order.

In its comments, Western argues that the ISO did not conduct a stakeholder process in connection with its compliance filing.²⁵ The Commission's *December 2009 Order* included explicit directives and required a compliance filing within 30 days. The Commission did not order the ISO to conduct a stakeholder process to comply with these directives. The ISO generally does not hold a stakeholder process to prepare compliance filings and did not do so in this case. Moreover, as the Commission stated in its *December 2009 Order*, parties have been aware of the IBAA for some time and have had the opportunity to engage the ISO in bilateral discussions.²⁶ The ISO remains

²⁵ Comments of Western at pp. 3-4.

²⁶ *December 2009 Order* at P 129.

prepared to initiate negotiations with any entity controlling resources within the IBAA to develop a MEEA.

III. CONCLUSION

The ISO's proposed tariff amendments comply with the *December 2009* Order. The ISO is also willing to make changes as described above on further compliance to address a limited number of concerns raised by parties in their comments and protests. The Commission should approve the proposed tariff amendments with the modifications the ISO agrees to make in this answer.

Respectfully submitted,

/s/ Andrew Ulmer

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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 captioned 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, California this 1st day of March 2010.

/s/ Jane Ostapovich
Jane Ostapovich