UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	**)** **)**	**Docket No. ER14-1729-000**

ANSWER TO COMMENTS

The California Independent System Operator Corporation ("ISO") hereby respectfully 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 NV Energy, which provides the framework for NV Energy's participation in the energy imbalance market that the ISO plans to operate, subject to Commission approval, commencing on October 1, 2014. NV Energy would begin participation on October 1, 2015.

I. Background and Introduction

On April 16, 2014, 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 to provide energy imbalance service to NV Energy and its transmission customers. The Implementation Agreement includes a scope of work and associated milestone payment provisions. It specifies that NV Energy will pay a fixed implementation fee of $1.1 million ("Implementation Fee"), which reflects NV Energy's share of the ISO's estimated costs of configuring its real-time energy market to function as

[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.

an energy imbalance market available to all balancing authority areas in the Western Electricity Coordinating Council that may choose to participate. The Implementation Fee is also consistent with the ISO's estimate of the specific costs attributable to the incremental work to include NV Energy's transmission customers in the ISO's real-time energy market. The ISO supported its cost estimates by the Declaration of Mr. Michael K. Epstein included in the April 16 filing. The Implementation Agreement is largely identical to the ISO's implementation agreement with PacifiCorp, which the Commission approved on June 28, 2013.[2]

Fifteen parties submitted timely motions to intervene without comments. One party submitted a motion to intervene out of time without comment. The ISO does not object to these interventions. NV Energy submitted comments wholly in support of the Implementation Agreement.

Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SoCal Edison"), Sacramento Municipal Utility District ("SMUD"), Truckee Donner Public Utilities District ("Truckee"), and Utah Associated Municipal Power Systems ("UAMPS"), submitted comments.[3] PG&E, SoCal Edison, Truckee and UAMPS are critical of certain aspects of the Implementation Fee. SoCal Edison, SMUD and UAMPS raise questions about the transmission charge for transfers between balancing authority areas participating in the energy imbalance market, and UAMPS also argues that the Commission should address the overall benefits of the energy imbalance market. Finally, Truckee seeks

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2 *Cal. Indep. Sys. Operator Corp.,* 143 FERC ¶ 61,298 (2013).

3 There was no protest of the Implementation Agreement.

assurance that a Commission decision to accept the Implementation Agreement does not inappropriately decide the outcome of energy imbalance market issues that should be considered in other proceedings. The ISO responds to these comments below.

II. Answer

The vast majority of the matters raised in the comments are not germane to the issue before the Commission in this proceeding: the justness and reasonableness of the terms of the Implementation Agreement, including the agreed-upon Implementation Fee. Most address matters that are pending in other proceedings or that pertain to the reasonableness of the terms of NV Energy's participation in the energy imbalance market, which will be the subject of future filings. Similar to its actions with respect to PacifiCorp, 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 other pending or future proceedings to which those issues may be relevant.

A. Allocation of the ISO's Total Cost Estimate Supporting the Implementation Fee Is Just, Reasonable, and Not Unduly Discriminatory.

No party challenges the detailed explanation in Mr. Epstein's declaration supporting the ISO's estimates of the costs of modifying the ISO's systems to enable NV Energy to participate in the energy imbalance market, 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 the primary issue before the Commission in this proceeding, and that issue is uncontested.

Truckee questions the justness and reasonableness of usage as the billing determinant, *i.e.,* as the methodology for allocating a portion of the total estimated energy imbalance market implementation costs to NV Energy. Truckee contends that the ISO has not adequately demonstrated that NV Energy's usage of the market is a good measure of the benefits it will receive. Truckee's argument is inconsistent with judicial and Commission precedent finding that a party's usage of a wholesale market is a reasonable basis for allocating the costs of establishing and administering that market.[4] Indeed, this conclusion is practically self-evident. All load benefits equally from the maintenance of system balance; it is thus appropriate that the costs of *establishing* the market be allocated according to load. A different measure of usage may be appropriate for the ongoing administration of the market; for example, the tariff-based administrative fee charged by the ISO for operating the energy imbalance market uses separate usage measures for market services and system operations. Truckee does not identify any contrary authority or any basis to depart from the well-established precedent for measuring benefits through usage. In the absence of any reason to depart from precedent, the Commission should reject Truckee's argument.

[4] *See, e.g., Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1370-71 (D.C Cir. (2004) (Midwest Transmission Independent System Operator Corp. administrative fee); *Cal. Indep. Sys. Operator Corp.*, 103 FERC ¶ 61,114 at P25-26 (2003) (control area services charge).

UAMPS points out that the economic assessment accompanying the ISO's filing shows that ISO receives almost all the benefits of reduced curtailments of renewable resources, and therefore questions why NV Energy should bear all of the implementation costs associated with its participation.[5] (UAMPS neglects to note the assessment also shows that NV Energy receives $12 million of the total of $17 million of projected benefits from NV Energy's participation in the energy imbalance market.) This argument fails to take into account the fact that the ISO's customers have borne 100% of the costs of the development, testing, and implementation of the ISO real-time market optimization systems and software upon which the energy imbalance market is premised, and that the ISO is not seeking to recoup any of those previously incurred costs from the new participants. Rather, the ISO is asking only that NV Energy bear a portion of the incremental costs of modifying those systems to enable new entities to participate. In the context of transmission expansion to serve new customers, the Commission allows utilities to charge the *greater* of embedded or incremental costs.[6] Here, the ISO proposes to charge the lesser of the two. There is no reason for the Commission to revisit its decision with regarding to the PacifiCorp Implementation Agreement that the fee is just and reasonable.

With regard to both Truckee's and UAMPS arguments, it is important to point out that the Implementation Fee represents an arms' length agreement

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[5] UAMPS at 5.

[6] Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, FERC Stats. & Regs. ¶ 31,005 (1994), clarified, 71 FERC ¶ 61,195 (1995)

between the ISO and NV Energy. As in the case of any such agreement, the Commission must presume that the rate is just and reasonable absent a finding that it is contrary to the public interest.[7] Neither party has identified even a plausible basis for such a finding.

B. Requiring Additional Conditions Would Be Inconsistent with the Agreed-Upon Fixed Implementation Fee and Unnecessary.

SoCal Edison contends 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 NV Energy's transmission customers' imbalance energy needs exceed the estimate.[8] In support of its position, SoCal Edison argues that the ISO's continued reference to its underlying cost estimates is unreasonable in light of the fact that actual costs from the PacifiCorp implementation should now be known. SoCal Edison then cites the increase in the PacifiCorp implementation fee accepted by the Commission to account for additional work by the ISO to develop base schedule aggregation functionality to illustrate that costs can exceed the Implementation Fee.[9] These arguments 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,

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7 *NRG Power Marketing LLC v. Me. Pub, Util. Comm'n*, 558 U.S. 165 (2010).

8 *See* SoCal Edison at 3-4.

9 *Id.* At 3. *See* Letter Order, Docket No. ER14-1350 (April 8, 2014).

unreasonable, or unduly discriminatory or preferential, SoCal Edison may not demand that the Commission modify or reject that choice.[10] The Implementation 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. Indeed, stated rates are consistent with the Federal Power Act's filing and notice requirements while, when the Commission accepts a formula rate, "it grants waiver of the filing and notice requirements of [section 205]" of the Federal Power Act.[11]

Second, the possibility that a stated rate might diverge from the eventual 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. The ISO has provided that justification here. Just and reasonable rates are not, as SoCal Edison contends, limited to actual costs, determined on a retrospective basis. Rate changes must be justified on the basis of projected (Period II) costs unless an exception permits the use of historic (Period I) costs.[12] What is required, when a stated rate is based on projected costs, is that the projections be substantiated and "reasonable when made".[13] As explained above, no party has

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[10] *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).

[11] *Public Util. 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).

[12] *See* 18 C.F.R. § 35.13 (2012).

[13] *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

taken issue with the reasonableness of the estimate underlying the Implementation Fee.

Accordingly, there is no requirement that a stated rate, such as the Implementation Fee, be accompanied by a true-up provision. SoCal Edison's 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, which the ISO has demonstrated it will follow. The amendment of the PacifiCorp implementation agreement as cited by SoCal Edison illustrates this principle. The Implementation Agreement expressly provides for the revision of the Implementation Fee by mutual agreement if the ISO notifies NV Energy that the sum of its actual costs to date and expected costs through completion exceed the $1.1 million Implementation Fee.[14]

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

The Implementation Agreement, as discussed in the ISO's transmittal letter, establishes the terms upon which the ISO will proceed to configure and extend its real-time energy market to provide energy imbalance service to NV Energy and its customers, including the fixed fee that NV Energy 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. Some comments

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(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).

[14] Implementation Agreement, Section 4(b); *see also,* Letter Order dated February 21, 2014 in Docket No. ER14-1350-000 (accepting an amendment to increase the implementation fee to be paid for by PacifiCorp).

nonetheless express concern over potential allocation to ISO customers of costs incurred in connection with the Implementation Agreement.[15]

The Implementation Fee that would be charged to NV Energy in the Implementation Agreement is the only fee at issue in this proceeding. In approving the PacifiCorp Implementation Agreement, the Commission made it clear that the question of whether it might be just and reasonable for the ISO to charge other costs to other customers should be 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.[16] The same principle applies here with regard to customers other than NV Energy. Issues regarding other customers are premature and beyond the scope of this proceeding and should be address in pending or future proceeding and deferred until such time as these questions are relevant to an ISO filing.

In particular, the ISO has addressed other administrative costs associated with the energy imbalance market that are not specific to accommodating the participation of NV Energy and PacifiCorp in the filing of its tariff amendment for implementation of the energy imbalance market,[17] and will address any adjustments to those costs in its broader Grid Management Charge proceeding.[18]

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15 *See* SoCal Edison Comments at 2-3, PG&E Comments at 3-4.

16 143 FERC ¶ 61,298 at PP. 33-34 (2013).

17 *See* Docket No. ER14-1386-000 (proposing an administrative energy imbalance energy market charge).

18 *See* Budget and Grid Management Charge Materials for the April 17, 2014 Stakeholder Meeting (including an Energy Imbalance Market cost of service study).

Stakeholders will have an opportunity to share concerns in the stakeholder process leading up to these filings and in the proceedings themselves.

Not only is the question of the recovery of energy imbalance market costs from ISO customers not germane to this proceeding, but the underlying premise of intervenors' comments – *i.e.,* that ISO customers will not benefit from the implementation of the expanded energy imbalance market – is unfounded. In fact, the ISO's existing customers will benefit if NV Energy ultimately participates in the energy imbalance market. As the ISO noted in the transmittal letter and the economic assessment referenced therein, the 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.[19] The ISO reiterates, though, that it has presented no proposal to do so in this filing.

[19] 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).

D. Concerns Regarding Transmission Charges Are Beyond the Scope of this Proceeding.

As the Commission is aware, in its tariff filing to implement the energy imbalance market, the ISO has proposed a reciprocal arrangement regarding transmission charges for EIM Transfers (inter-balancing authority area dispatches in the real-time market), *i.e.,* EIM Transfers would occasion no incremental charge. Some parties attempt through their comments to inject issues regarding the transmission charges into this proceeding. SMUD notes the ISO's position that the first year of operation of the energy imbalance market with minimal transfer capacity is an ideal time to test whether reciprocity is the optimal solution for transmission charges. It notes that the participation of NV Energy will add a significantly greater amount of transfer capacity. It asks that the Commission require that other entities be "held harmless" from any impact of the reciprocity provisions. SMUD also asks that the Commission direct the ISO to implement a "compensatory" transmission charge by October 15, 2015.[20] SoCal Edison also cites the greater capacity that NV Energy will provide, asserting a greater impact of wheeling charges, and asks the Commission to condition participation of NV Energy on the final resolution of issues concerning the transmission charge.[21]

The ISO has never asserted that the reciprocal waiver of transmission charge is only just and reasonable when the available transfer capacity is limited,

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[20] SMUD at 4-5. The ISO is unclear as to the intended meaning of a "compensatory charge," as transmission owners will be fully compensated for their transmission facilities under the proposed reciprocity.

[21] SoCal Edison at 4-5.

but merely that the period during which capacity would be limited provides the opportunity to consider whether some different transmission charge would be preferable. The ISO has committed to commencing a stakeholder process within the first year of operations to consider that issue. The Commission will determine whether the reciprocity proposal is just and reasonable in the proceedings on the ISO's and PacifiCorp's tariff amendments to implement the energy imbalance market. If the Commission so determines, then there is no reason that the reciprocity provisions should not continue in effect during the stakeholder process. Moreover, if SMUD or SoCal Edison conclude that there is evidence that the reciprocity provisions have become unjust or unreasonable due to the participation of NV Energy, they are free to file a complaint, and will be "held harmless" by virtue of the refund effective date. There is no reason to condition NV Energy's participation on the development of a different transmission charge based on speculative outcomes.

UAMPS raises a different issue regarding the transmission charge. It notes that NV Energy and PacifiCorp, although now affiliates, do not have transmission reciprocity between them. It asserts that the Commission must evaluate the impact of pancaked rates on NV Energy's participation in the imbalance energy market. This, too, is an issue outside the scope of this proceeding. The ISO and PacifiCorp did not have transmission charge reciprocity at the time of the filing of the PacifiCorp implementation agreement and will not have such reciprocity outside the energy imbalance market under

their proposed tariff amendments to implement that market.[22] The appropriate time to consider this issue, if it becomes an issue, is when NV Energy files an amendment to accommodate its participation in the energy imbalance market.

E. All Other Concerns Are Beyond the Scope of this Docket and Should be Dismissed.

UAMPS further argues that this proceeding concerns more than the acceptance of a rate filing by the ISO to recover its costs to implement NV Energy in the energy imbalance market,[23] and others attempt to sweep in the issues noted above. As the ISO stated in its transmittal letter in this proceeding, the only issue to be resolved here concerns whether the Implementation Agreement is just and reasonable. In almost identical circumstances, the Commission when it accepted the PacifiCorp implementation agreement dismissed all other issues as beyond the scope of the proceeding. The same holds true here. The fact that the ISO has subsequently filed to amend its tariff and implement the underlying energy imbalance market should not affect this determination; indeed, it highlights the irrelevance of such issues in this proceeding. PG&E and Truckee correctly seek assurance regarding the limited scope of this proceeding and the precedent set in the prior proceeding, with which the ISO concurs.[24]

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[22] *See*, Proposed CAISO Tariff section 29.26(b), Pending in Docket No. ER14-1386-000 (providing that an EIM Entity is not permitted to impose an incremental charge for EIM Transfers, but may charge for transmission service in excess of such limits).

[23] UAMPS at 4.

[24] PG&E at 3-4; Truckee at 3-5.

III. Conclusion

For the reasons explained above and in the ISO's April 16 filing in this proceeding, the Commission should accept the Implementation Agreement with NV Energy as filed and without condition.

Respectfully submitted,

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Dated: May 15, 2014

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 15th day of May, 2014.

/s/ Sarah Garcia
Sarah Garcia