

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

California Independent System Operator Corporation))))	Docket No. ER13-40-000
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**ANSWER TO COMMENTS OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (ISO) hereby submits this answer to the comments filed by the Modesto Irrigation District (MID) in response to the ISO's proposal in this proceeding to release additional market related data. No party, including MID, opposes the ISO's proposed tariff amendment, which was widely supported in the stakeholder processes preceding the October 5 filing. Rather, MID asks only that the ISO and the Commission ensure there are sufficient security measures in place to protect certain market modeling data the ISO proposes to release. As discussed further below, the ISO has taken necessary measures to address the security issues raised by MID. Accordingly, the Commission should accept the ISO's proposed tariff amendment as filed so that the ISO can release in a timely manner the identified data, which is intended to enhance participation in the ISO market.

I. Background

On October 5, 2012, the ISO submitted a proposed tariff amendment in the above-captioned proceeding that would enable the release of additional market modeling related information, which consists of information on transmission limits, load distribution factors, shift factors or power transfer distribution factors, as well as

congestion revenue rights (CRR) auction bids, aggregated outages data, and variable energy resources forecast information. These proposed tariff changes were developed out of a stakeholder process conducted in 2010 and 2011, the purpose of which was to determine what additional market-related data and information would facilitate efficient participation in the ISO market. Stakeholders have requested and strongly support the release of this information. The ISO believes that the release of this information will enhance the participation of market participants in the ISO market.

The ISO's proposal also contains proper measures to protect any confidentiality or security concerns, including those of MID, related to the release of this information. With respect to information that is deemed critical energy infrastructure information (CEII), the ISO seeks to protect this sensitive information in the same way that it protects the release of transmission constraints information under the ISO existing tariff provisions in Section 6.5.1.5 and 6.5.3.3.1.4.

II. Answer

MID raises three general concerns related to the release of information the ISO indicated it will treat as CEII, but does not protest or in any way oppose the release of the information. While MID did not raise their concerns through the stakeholder processes that preceded this filing, the ISO has already adopted measures that address their concerns. The ISO understands the importance of protecting information that can be used to threaten the security of the ISO grid. As discussed below, the procedures in the ISO tariff and the Commission's own regulations provide the protections MID seeks.

A. The ISO's proposal includes protective measures consistent with the Commission's requirements on the dissemination of CEII.

MID asks that the ISO, and the Commission to the extent it oversees such matters, be particularly vigilant in processing of requests for Protected Data¹ that contain CEII to ensure that the requests are for a bona fide purpose and do not raise security concerns for utilities. MID also asks the ISO and the Commission to consider adding a requirement that the ISO develop and follow a CEII document tracking and control process, and to require those receiving CEII as part of Protected Data to follow such document tracking and control process.

As discussed in its filing, the ISO proposes to provide the Protected Data pursuant to the conditions already in its tariff and approved by the Commission previously that limit the distribution of the data to specific individuals.² As the ISO explained in its transmittal letter submitted in support of this tariff amendment, the tariff already contains specific protective measures to ensure that this data is obtained by parties that have a legitimate need for the data.³ These provisions are in Section 6.5.3.3.1 and currently apply to the ISO's release of information regarding the transmission constraints the ISO plans to enforce in the Integrated Forward Market (IFM), and the actual constraints the ISO enforces in each IFM. These sections provide that only certain entities can access this information. As the ISO explained in its

¹ "Protected Data" is the term the ISO proposes to refer to the market modeling related data that will be provided subject to certain conditions as described in proposed Section 6.5.10. The Protected Data will include the information on transmission constraints enforcement currently made available as well as the new data that the ISO proposes to release as part of this tariff amendment which includes the transmission limits, the load distribution factors, and the power transfer distribution factors.

² See Transmittal Letter at p. 3. See also *California Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,023 (2010).

³ See Transmittal Letter at p. 3.

transmittal letter, these provisions would continue to apply to the release of the transmission constraints information and to the release of the new data.⁴ Accordingly, the ISO explained in its transmittal letter that it proposes to move these provisions into Section 6.5.10 and that they apply to all the new data releases as well as the release of the transmission constraints related data.

These provisions specifically address the concern MID raises regarding the need to verify that the data goes to parties for a bona fide purpose and do not raise security concerns for utilities. Proposed Section 6.5.10 contains the same requirements in Section 6.5.3.3.1. Specifically:

6.5.10.2 Requirements to Obtain the Protected Data

The CAISO shall provide the Protected Data only to those Market Participants and non-Market Participants that satisfy the following requirements.

(a) To obtain access to the Protected Data, a Market Participant that is a member of the WECC that requests the Protected Data must: (i) execute and submit to the CAISO the Non-Disclosure Agreement for Protected Data that is posted on the CAISO Website; and (ii) provide to the CAISO a non-disclosure statement, the form of which is attached as an exhibit to the Non-Disclosure Agreement executed by the Market Participant, executed by each employee and consultant of the Market Participant who will have access to the Protected Data.

(b) To obtain access to the Protected Data, a Market Participant that is not a member of the WECC that requests the Protected Data must: (i) execute and submit to the CAISO the Non-Disclosure Agreement for Protected Data that is posted on the CAISO Website, (ii) provide to the CAISO a fully executed WECC Non-Member Confidentiality Agreement for WECC Data, and (iii) provide to the CAISO a non-disclosure statement, the form of which is attached as an exhibit to the Non-Disclosure Agreement executed by the non-WECC Market Participant, executed by each employee and consultant of the non-WECC Market Participant who will have access to the Protected Data.

⁴ *Id. e.g.*, at p.4.

(c) To obtain access to the Protected Data a non-Market Participant that is a member of the WECC that requests the Protected Data must: (i) reasonably demonstrate a legitimate business or governmental interest in the CAISO Markets, (ii) execute the Non-Disclosure Agreement for Protected Data posted on the CAISO Website, and (iii) provide to the CAISO a non-disclosure statement, the form of which is attached as an exhibit to the Non-Disclosure Agreement executed by the non-Market Participant, executed by each employee and consultant of the non-Market Participant who will have access to the Protected Data.

(d) To obtain access to the Protected Data , a non-Market Participant that is not a member of the WECC that requests the Protected Data must: (i) reasonably demonstrate a legitimate business or governmental interest in the CAISO Markets, (ii) execute the Non-Disclosure Agreement for Protected Data that is posted on the CAISO Website, (iii) provide to the CAISO a fully executed WECC Non-Member Confidentiality Agreement for WECC Data, and (iv) provide to the CAISO a non-disclosure statement, the form of which is attached as an exhibit to the Non-Disclosure Agreement executed by the non-Market Participant, executed by each employee and consultant of the non-Market Participant who will have access to the Protected Data.

6.5.10.3 Obligation to Report Violations of Section 6.5.10

Each Market Participant, non-Market Participant, employee of a Market Participant, employee of a non-Market Participant, consultant, and employee of a consultant to whom the CAISO distributes the Protected Data shall be obligated to immediately report to the CAISO any violation of the requirements of Section 6.5.10.

The ISO has adopted and implemented these measures to ensure the CEII data is not used for a harmful purpose. These provisions are the same provisions that currently apply to the CRR full network model as reflected in Section 6.5.1.5 and the release of the transmission constraints enforcement information as reflected in Section 6.5.3.3.1.4.⁵ In the first instance, the tariff requires that only market participants have access to the information, unless the non-market participant requesting the information

⁵ These provisions were established through prior FERC proceedings and reflect a careful consideration of the security concerns now raised by MID and the need to release pertinent market related information that enables better participation in the ISO market. See e.g., *California Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,313 PP 34-43(2007).

can demonstrate a legitimate business or governmental interest in the ISO market. It also imposes additional requirements to market participants or non-market participants that are not already members of the Western Electricity Coordinating Council (WECC). Finally, the tariff requires that not only a representative of the entity receiving the data execute the Non-Disclosure Agreement (NDA), but that the actual employees or consultants of the entity that will have access to the data execute the exhibit to the NDA personally. These measures allow the ISO to track the actual individuals that have access to the data.⁶

B. The NDA used for these purposes and the Commission's regulations on the treatment of CEII provide the specific protections MID seeks.

MID cautions that, to the extent the release of the data under the Tariff amendment is made to governmental agencies or public entities, the Commission should note that such CEII could be subject to public disclosure laws such as the Freedom of Information Act (FOIA), 5 U.S.C. § 552. MID notes that to the extent that the data is subject to a request under those laws, there would be a need for a further layer of vetting and protections under those laws. The NDA the ISO would require parties to execute to obtain the Protected Data addresses this issue directly. It provides:

(b) In the event that the Receiving Party is a federal, state, or local governmental entity and/or is subject to public records law or regulation, including but not limited to the federal Freedom of Information Act, U.S. Code Title 5, Section 552, or the California Public Records Act, California Governmental Code Sections 6250, et seq., the Receiving Party shall (i) notify the ISO immediately upon receipt of a request for public records that include all or part of the Protected Data; and (ii) treat the requested Protected Data as exempt from disclosure.

⁶ The actual NDA used for this purpose can be found at: http://www.caiso.com/Documents/CaliforniaISOProtectedDataNon-DisclosureAgreementOct23_2012.pdf.

Accordingly, if the receiving party is a federal, state, or local entity, the receiving party must treat the data as exempt from disclosures under FOIA requests. The Commission's own regulations in 18 C.F.R. § 388.113 provide appropriate guidance on how such data would be treated. These measures sufficiently address MID's concerns.

MID does not specify what additional measures the ISO should take and why the measures the ISO has undertaken do not address their concerns. Over the years and with the Commission's guidance, the ISO has carefully considered the issues MID now raises. In doing so it has developed a mechanism for the dissemination of sensitive information to parties that require the data for a legitimate business purpose. While the ISO on its own cannot guarantee that the grid is immune to security risks, it has taken all reasonable steps to ensure that the data it proposes to release is not used for such purposes. The Commission should accept the proposed amendment as filed.

III. Conclusion

For the reasons explained above the Commission should approve the amendment as filed.

Respectfully submitted,

By: /s/ Anna A. McKenna

Nancy Saracino

General Counsel

Anthony Ivancovich

Deputy General Counsel

Anna A. McKenna

Assistant General Counsel

California Independent System

Operator Corporation

250 Outcropping Way

Folsom, CA 95630

Tel: (916) 351-4400

Fax: (916) 351-4436

E-mail: amckenna@caiso.com

Counsel for the California Independent System
Operator Corporation

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party listed on the official service list for these proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Executed at Folsom, CA, on this fifth day of November 2012.

/s/ Anna Pascuzzo

Anna Pascuzzo