

121 FERC ¶ 61,074
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

California Independent System Operator Corporation Docket Nos. ER07-805-001
ER07-805-002
ER07-1304-000

ORDER ON CLARIFICATION AND REHEARING,
ACCEPTING COMPLIANCE FILING WITH MODIFICATIONS,
AND ACCEPTING BILLING SERVICES AGREEMENT

(Issued October 22, 2007)

1. We herein address requests for clarification or rehearing of our June 25, 2007 Order in this proceeding.¹ We also accept with modifications a subsequent proposal that purported to comply with the June 25 Order. Finally, we accept an associated billing services agreement.

I. Background

2. The North American Electric Reliability Corporation (NERC), the Western Electric Coordinating Council (WECC) and the Western Interconnection Regional Advisory Body (WIRAB) each perform reliability functions under section 215 of the Federal Power Act (FPA).² In doing so, they incur a variety of administrative and related costs. WECC, acting on behalf of itself, NERC and WIRAB, bills a portion of those

¹ *California Independent System Operator Corp.*, 119 FERC ¶ 61,316 (2007).

² Energy Policy Act of 2005, Pub. L. No. 109-58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005), to be codified at 16 U.S.C. § 824o.

costs to the California Independent System Operator Corporation (CAISO).³ The associated charges are referred to here as NERC/WECC Charges.

3. In the initial stage of this proceeding, the CAISO proposed to allocate NERC/WECC Charges to Scheduling Coordinators in the CAISO's control area. The Scheduling Coordinators would separately collect the charges from load-serving entities (LSEs). The CAISO's proposal included measures for allocating NERC/WECC Charges among Scheduling Coordinators as well as the details of the billing process. On June 25, 2007, we accepted the CAISO's proposal subject to conditions. The present order addresses requests for clarification or rehearing of the June 25 Order and a compliance filing by the CAISO.

A. The CAISO's Original Proposal

4. As relevant to the present order, the CAISO originally proposed the following. First, the CAISO proposed to allocate NERC/WECC Charges among Scheduling Coordinators based on each Scheduling Coordinator's NERC/WECC Metered Demand (in general terms, net load). Second, the CAISO proposed that, in allocating NERC/WECC Charges for a given year, the CAISO would use measures of NERC/WECC Metered Demand from two years earlier.

5. Third, the CAISO proposed the following billing processes. For 2008, the CAISO would submit preliminary invoices to Scheduling Coordinators in August 2007, based on load data from 2006 and estimates of total NERC/WECC Charges for 2008. The CAISO would then submit final, "true up" invoices to Scheduling Coordinators in February 2008 based on total, approved NERC/WECC Charges for 2008.

6. For 2009 and beyond, the CAISO would use a system of quarterly invoices that would reflect estimates of NERC/WECC Metered Demand in the data year and a final, "true up" invoice. To use NERC/WECC Charges for 2009 as an example, the CAISO's proposed system of invoices would operate as follows:

- (1) Beginning in July 2007, the CAISO would submit quarterly invoices to Scheduling Coordinators based on estimates of NERC/WECC Metered Demand for 2007.

³ The WECC acts on NERC's behalf with respect to collection of NERC/WECC Charges under a delegation agreement between WECC and NERC. *See North American Electric Reliability Corp.*, 119 FERC ¶ 61,060 at P 529 (2007).

- (2) In May of 2008, the CAISO would announce proposed, final determinations of NERC/WECC Metered Demand for 2007.
- (3) Scheduling Coordinators would have 30 days to dispute the CAISO's determinations of NERC/WECC Metered Demand for 2007.
- (4) Once the WECC submitted a final bill to the CAISO for 2009, the CAISO would have 30 days to announce final assessments of NERC/WECC charges for 2009.
- (5) The CAISO would have 30 days to submit final invoices to Scheduling Coordinators.
- (6) Scheduling Coordinators would have 30 days to pay any amounts due under the final invoices.
- (7) The CAISO would have 30 days from the deadline for payment of the final invoices to remit the CAISO's receipts to WECC (by January 2 of the assessment year).⁴

B. The June 25 Order

7. In our June 25 Order, we accepted the CAISO's proposal to allocate NERC/WECC Charges to Scheduling Coordinators based on NERC/WECC Metered Demand. At the same time, we required the CAISO to expand the definition of NERC/WECC Metered Demand to include energy that is delivered but not reflected in load data. Expanding the definition of NERC/WECC Metered Demand to include such "Unaccounted for Energy" would allocate NERC/WECC Charges among Scheduling Coordinators based on total energy consumed within each Scheduling Coordinator's territory.

8. We also accepted the CAISO's proposal to allocate NERC/WECC Charges based on load data from two years before the associated costs were incurred.⁵ We indicated that LSEs would have an opportunity to inform WECC of changes to their individual NERC/WECC Metered Demands between the data year and the year in which

⁴ See CAISO Filing, Attachment A, §§ 11.2.19.4, 11.2.19.5, 11.2.19.8.

⁵ *Id.* at P 11, 23-26.

NERC/WECC Charges were incurred, so that use of two-year-old data would not result in undue assessments.⁶

9. Finally, we required changes to the billing process so that the CAISO would not receive funds well before remitting the funds to the WECC. We directed the CAISO to submit the first of its quarterly invoices to Scheduling Coordinators no earlier than January of the year before NERC/WECC Charges are incurred (*e.g.*, January 2008 for 2009 charges). We also contemplated an agreement between the CAISO and the WECC that would provide for timely payment by the CAISO to the WECC.⁷

C. Requests for Clarification or Rehearing

10. On July 25, 2007, Alliance for Retail Energy Markets (AReM) requested clarification or, in the alternative, rehearing of the Commission's June 25 Order. AReM is a non-profit corporation that is composed of entities that serve direct-access load. AReM seeks clarification that an adjustment to NERC/WECC Metered Demand for a given data year would be reflected in an adjustment to NERC/WECC Charges for the relevant assessment year (two years after the data year). AReM illustrates its interpretation as follows:

[T]he 2007 NERC/WECC assessment will be based on 2005 meter data. If an LSE had 500 MW of load in 2005 but 400 MW of load in 2007, the LSE could provide its current load data to the WECC and receive an adjustment to its 2007 assessment based on its reduced load.⁸

AReM also seeks clarification of how an LSE could obtain an adjustment to its NERC/WECC Metered Demand from WECC.

11. The CAISO also requested clarification or, in the alternative, rehearing of the June 25 Order, specifically concerning the invoicing process. The CAISO notes that it had originally proposed (for 2009 and beyond) to issue quarterly invoices beginning during the load data year. The CAISO asserts that quarterly invoices were necessary under that overall approach because, when the CAISO would start invoicing, final determinations of relevant load would not yet be made. The CAISO further asserts that,

⁶ *Id.* at P 12.

⁷ *Id.* at P 37-38.

⁸ AReM Request for Clarification or Rehearing at 3.

under the Commission's directive to begin invoicing during the following January (when load data would be known), it would be unnecessary and inefficient to use quarterly invoices. Finally, the CAISO asserts that it, in light of the CAISO's obligation to pay the WECC by the following January, it would be unworkable to use quarterly invoices beginning in January plus a final "true up" invoice. The CAISO thus proposes to dispense with quarterly invoices in favor of single, annual invoices.

D. Compliance Filing

12. On August 24, 2007, the CAISO submitted a proposal that purports to comply with the June 25 Order but implements the invoicing process in the CAISO's request for clarification or rehearing. Under the proposal, for 2008 and beyond, the CAISO would submit single, annual invoices to Scheduling Coordinators shortly after the CAISO receives the associated invoice from WECC. The CAISO would pay the WECC by three business days before January 2 of the year in which the costs would be incurred. Under the truncated schedule, Scheduling Coordinators would have 15 business days to pay an invoice.

13. Concerning the definition of NERC/WECC Metered Demand, the CAISO provided for inclusion of Unaccounted for Energy but added the following language:

Unaccounted for Energy . . . allocable to net metered CAISO Demand will be allocated pro rata to each Scheduling Coordinator based on the Scheduling Coordinator's net metered CAISO Demand.⁹

14. Finally, with its compliance filing, the CAISO submitted for approval under section 205 of the Federal Power Act¹⁰ a Billing Services Agreement between the CAISO and the WECC (Billing Services Agreement). The agreement delegates to the CAISO the authority to collect NERC/WECC Charges and provides for the CAISO to collect the charges under the tariff provisions that are on review in this proceeding. For both the Billing Services Agreement and the compliance filing, the CAISO requests effective dates as of June 27, 2007 (the effective date of the bulk of the CAISO's original proposal in this proceeding) so that all related matters would have the same effective date. The Billing Services Agreement was assigned Docket No. ER07-1304-000.

⁹ AReM Request for Clarification or Rehearing at 3.

¹⁰ 16 U.S.C. § 824d (2000).

E. Responsive Pleadings

15. Notice of CAISO's compliance filing and Billing Services Agreement was published in the *Federal Register* on September 7, 2007 with interventions and protests due by September 14, 2007.¹¹ Motions to intervene were filed by California Electric Oversight Board, California Department of Water Resources and State Water Project (SWP), Modesto Irrigation District, and M-S-R Public Power Agency/City of Santa Clara (M-S-R). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹² these timely and unopposed motions to intervene serve to make these entities parties to Docket No. ER07-1304-000.

16. M-S-R protests the CAISO's compliance filing, particularly the CAISO's proposed revisions to the billing process. M-S-R asserts that the truncated schedule – which leaves 15 business days for a Scheduling Coordinator to pay the CAISO's invoice – is unworkable because Scheduling Coordinators would need, within that time, to collect the funds from LSEs. M-S-R, which represents an LSE, asserts that it would be unreasonable to put LSEs under such time pressure.

17. SWP commented on the CAISO's compliance filing, particularly the revised definition of NERC/WECC Metered Demand and the reference therein to allocations of Unaccounted for Energy on a *pro rata* basis. According to SWP, the Commission intended to impose on each Scheduling Coordinator the Unaccounted for Energy within that Scheduling Coordinator's territory, not a *pro rata* share of all Unaccounted for Energy. Also according to SWP, *pro rata* sharing would unfairly result in increased cost responsibility by LSEs that, through accurate meters, have reduced Unaccounted for Energy. SWP requests deletion of the provision in question on the grounds that it could be interpreted in a manner inconsistent with the Commission's intent.

F. CAISO's Answer

18. On October 1, 2007 in Docket No. ER07-805-002 CAISO filed an answer in response to the various protests of its compliance filing. While our rules prohibit answers to protests unless otherwise ordered by the decisional authority,¹³ we will accept CAISO's answer because it provided information that assisted us in our decision. In response to SWP's protest about the nature of Unaccounted for Energy allocations

¹¹ 72 Fed. Reg. 51,428 (2007).

¹² 18 C.F.R. § 385.214 (2007).

¹³ 18 C.F.R. § 385.213(a)(2) (2006).

implied in the definition of NERC/WECC Metered Demand, CAISO claims that it does not intend to socialize Unaccounted for Energy *pro rata* outside the applicable utility Service Area. It further emphasizes that its allocation of Unaccounted for Energy will be consistent with its tariff, specifically Section 11.2.4.3, as it has expressed in discussion with SWP and others. CAISO also states that the provision SWP is requesting to delete is necessary because it specifies that Unaccounted for Energy must be calculated in a way that complies with Commission directives. CAISO argues that absent this provision the CAISO would be using an Unaccounted for Energy number that would reflect an allocation to exports, Station Power, and pumped storage load. CAISO claims that this would be contrary to Commission directives, since the Commission has ordered that NERC/WECC Metered Demand exclude exports, Station Power, and pumped storage load.

19. In response to M-S-R, CAISO states that the truncated schedule is necessary to meet the deadline of transferring payments to WECC by January 2 of each year. Moreover, CAISO argues that sufficient time is already built into the process for Scheduling Coordinators to raise and resolve disputes regarding billing.

20. In addition, CAISO proposes to correct an error in its proposed definition of NERC/WECC Metered Demand. CAISO states that the word “net” should appear immediately prior to the phrase “metered CAISO Demand” in the first sentence of the definition of NERC/WECC Metered Demand.

II. Discussion

A. AReM’s Request for Clarification or Rehearing

21. We grant AReM’s request for clarification subject to certain limitations. With respect to the right to receive an adjustment, we do not envision an absolute right. In general, the use of load from the data or proxy year (two years before the year in which NERC/WECC Charges are incurred) results in a sufficiently reasonable allocation of NERC/WECC Charges. It would not be in the public interest to impose on CAISO a time-consuming and burdensome process that attempted to exactly match each LSE’s responsibility for NERC/WECC Charges with the LSE’s actual load in the year in which the charges arose. This is due to the lag time that is required to finalize load data, the fact that electrical load changes constantly due to a variety of factors, the number of LSEs that are involved, and the additional administrative costs CAISO would incur to collect the NERC/WECC Charges.

22. On the other hand, we will allow LSEs to obtain an update to their load data when (1) the change in load is attributable to the transfer of load to another LSE after the data year, (2) the transfer is significant and easily identifiable, and (3) the update would not

impair efficient administration of or finality in the billing process. For example, if a change in load or the associated request for an adjustment arises too late in the billing process, the LSE will not be entitled to an adjustment. Here, to the extent that AReM seeks a retroactive adjustment to NERC/WECC Charges that have already been allocated through a final bill, AReM's request for clarification or rehearing is denied.

23. With respect to the process for seeking future adjustments to NERC/WECC Metered Demand, the *Business Plan and Budget Order* placed the responsibility for making those adjustments on the WECC.¹⁴ The WECC has not delegated the responsibility to the CASIO. Thus, the process for seeking adjustments is outside the scope of the present proceeding. Pending WECC's development of rules governing the adjustment process, we expect WECC to give appropriate consideration to requests to adjust an LSE's NERC/WECC Metered Demand, consistent with the forgoing guidelines, and to inform the CAISO of adjustments on a timely basis.

B. CAISO's Request for Clarification or Rehearing

24. We grant the CAISO's request for clarification or rehearing, *i.e.*, the CAISO's proposal to dispense with quarterly invoices in favor of a single invoice. This approach will simplify the invoicing process, allow time for resolution of disputes and other adjustments before invoicing, and relieve our concern in the June 25 Order that the CAISO would hold funds for a significant period before paying the WECC.

C. Compliance Filing

25. We accept the CAISO's compliance filing to become effective June 27, 2007, subject to certain modifications. First, we accept CAISO's proposed definition of NERC/WECC Metered Demand with the addition of the word "net" and otherwise without revision. The CAISO's clarification makes it clear that the allocation of Unaccounted for Energy would be consistent with existing tariff provisions, the Commission's directives, and assurances given to SWP and other interested parties. Moreover, CAISO has shown that the provision which SWP requested be deleted is necessary to comply with prior Commission directives.

26. Second, the truncated schedule in the compliance filing leaves insufficient time for Scheduling Coordinators to collect funds from LSEs without preliminary invoices. While we recognize that a truncated schedule for a final invoice may be necessary to submit

¹⁴ *North American Electric Reliability Corp.*, 117 FERC ¶ 61,091 at 151 (2006) (*Business Plan and Budget Order*), *order on reh'g*, 119 FERC ¶ 61,059 (2007).

payments to WECC by January 2 of each year, we feel that the truncated schedule makes preliminary invoices necessary to mitigate the administrative burden of a truncated schedule. The CAISO's original proposal for 2008 called for a preliminary invoice in August 2007. We believe that this approach – which we accepted without modification in the June 25 Order – continues to be appropriate for 2008 and will work for 2009 and beyond.¹⁵ A preliminary invoice in August would balance the need for a workable payment schedule with our earlier concern that the CAISO would hold funds for almost one year. The preliminary invoice should be based on the portions of the proposed, total budgets of NERC, WECC, and WIRAB that are allocable to the CAISO based on net energy for load.

D. Billing Services Agreement

27. We accept the unopposed Billing Services Agreement for filing, to become effective as of June 27, 2007.

The Commission orders:

(A) AReM's request for clarification is hereby granted as discussed in the body of this order. AReM's request for clarification or, in the alternative, rehearing is otherwise denied.

(B) The CAISO's request for clarification or, in the alternative, rehearing is hereby granted as discussed in the body of this order. The CAISO's request for clarification or, in the alternative, rehearing is otherwise denied.

(C) The CAISO's compliance filing is hereby accepted for filing effective as of June 27, 2007, except for the modifications discussed herein.

(D) CAISO is hereby directed to submit a compliance filing within 60 days of the date of this order, incorporating modifications to its tariff as discussed in the body of this order.

¹⁵ If CAISO has not already issued preliminary invoices in August based on the process approved in the June 25 Order, it is too late to proceed with preliminary invoices. CAISO should issue final invoices using the process approved in this order.

(E) The Billing Services Agreement is hereby accepted for filing effective as of June 27, 2007.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.