

111 FERC ¶ 61, 500  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

California Independent System Operator  
Corporation

Docket No. ER05-1081-000

ORDER ACCEPTING TARIFF AMENDMENT NO. 71

(Issued June 29, 2005)

1. In this order, we accept the proposed tariff revisions the California Independent System Operator Corporation (CAISO) filed as Amendment No. 71 to its open access transmission tariff (tariff), and order the CAISO to make a compliance filing. Amendment No. 71 allows the CAISO to (1) disclose to the Commission confidential or commercially sensitive information when requested by the Commission during the course of an investigation or otherwise, and (2) share critical operating information, system models and planning data with other Western Electricity Coordinating Council (WECC) Reliability Coordinators, subject to appropriate confidentiality and use restrictions, without providing notice of the request to affected market participants in advance of either disclosure. This order will benefit consumers by facilitating market monitoring, and by promoting timely coordination of California's electric transmission system operations among Western Reliability Coordinators and thus enhancing reliability in the WECC.

**Background**

2. Section 20.3.4 of the CAISO tariff currently provides that the CAISO may disclose information that is confidential or commercially sensitive, when required by applicable laws or regulations, or when required to do so in the course of administrative or judicial proceedings. However, the CAISO must first provide notice to affected Market Participants.

3. On June 6, 2005, the CAISO filed a proposed amendment to its tariff to change its obligations regarding confidential data, that would add the following two new sections, section 20.3.4.(c)(i) and (c)(ii):

(c) The ISO may disclose confidential or commercially sensitive information, without notice to an affected Market Participant, in the following circumstances:

(i) If the FERC, or its staff, during the course of an investigation or otherwise, requests information that is confidential or commercially sensitive. In providing the information to FERC or its staff, the ISO shall take action consistent with 18 C.F.R §§ 1b.20 and 388.112, and request that the information be treated as confidential and non-public by the FERC and its staff and that the information be withheld from public disclosure. The ISO shall notify an affected Market Participant within a reasonable time after the ISO is notified by FERC or its staff that a request for disclosure of, or decision to disclose, the confidential or commercially sensitive information has been received, at which time the ISO and the affected Market Participant may respond before such information would be made public; or

(ii) In order to maintain reliability operation of the ISO Control Area, the ISO may share critical operating information, system models, and planning data with other WECC Reliability Coordinators, who have executed the Western Electricity Coordinating Council Confidentiality Agreement for Electric System Data, or are subject to similar confidentiality requirements.<sup>1</sup>

### **Notice and Comment**

4. Notice of the CAISO's filing was published in the *Federal Register*, 70 Fed. Reg. 35245 (2005), with interventions and protests due on or before June 20, 2005. Timely motions to intervene were filed by Powerex Corporation, Pinnacle West Capital Corporation and Arizona Public Service Company (Pinnacle West Companies), Williams Power Company, California Department of Water Resources State Water Project, Transmission Agency of Northern California, Modesto Irrigation District, and Northern California Power Agency. Timely motions to intervene, comments and protests were filed by the Cities of Redding and Santa Clara and the M-S-R Public Power Agency (Cities/MSR), the California Electricity Oversight Board (CEOB), Southern California Edison Company (SCE) and Duke Energy of North America, LLC, *et al.* (Duke Energy).

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<sup>1</sup> CAISO June 6, 2005 filing, Attachment A.

## **Discussion**

### **A. Procedural Matters**

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

### **B. Disclosure of Confidential or Commercially Sensitive Information to the Commission.**

6. To effectively support the Commission's investigative and market monitoring functions, the CAISO requests the ability to disclose confidential or commercially sensitive information to the Commission, without first having to notify affected market participants.

7. The CAISO states that there is no legitimate basis to foreclose the CAISO from disclosing confidential or commercially sensitive information to the Commission, as long as the CAISO and affected market participants are given the opportunity to respond when a request has been received by the Commission to release the information to a third party. The CAISO states that this enhancement will allow the Commission to act more promptly to: (1) review system events and market activities; (2) investigate potential instances of gaming violations of the Market Behavior Rules; and (3) remedy any gaming or market manipulation activity.

8. Further, the CAISO claims that proposed section 20.3.4 (c)(i) is consistent with tariff provisions that the Commission has approved for other independent system operators. In that regard, the other independent system operators' tariffs include a mechanism that allows them to respond to the Commission's requests for disclosure of confidential or commercially sensitive information without first having to provide notice of the request to the affected market participant.<sup>2</sup>

9. Cities/MSR asks the Commission not to permit the CAISO to share confidential information with the Commission prior to notification to affected market participants. Cities/MSR and Duke Energy claim that the CAISO's reasons for seeking this authority are not compelling. Duke Energy notes that the CAISO has provided no evidence to support its assertion (and Duke Energy is unaware of any such evidence) that the existing

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<sup>2</sup> See NYISO FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 373A; ISO New England, FERC Electric Tariff No. 3, Attachment D, Original Sheet No. 9417; PJM Interconnection, LLC, Third Revised Rate Schedule FERC No. 24, Substitute First Revised Sheet No. 61.

tariff provisions have limited the usefulness and relevance of the information provided to the Commission by the CAISO. Cities/MSR state that requiring the CAISO to engage in electronic notification procedures would not be overly burdensome, and Duke Energy states that the CAISO may currently disclose such information after complying with the notification requirement. Cities/MSR also asks that the requirement of advance notification be extended beyond disclosures initiated by the CAISO to disclosures requested by the Commission. SCE stresses the dangers inherent in possible inadvertent disclosure of confidential information to third parties, and also notes that the CAISO has given no examples of investigations that were hindered by the delay of the CAISO having to give notice to market participants before disclosing information to the Commission. SCE further asks that, if the Commission approves proposed section 20.3.4(c)(i), it require the CAISO to notify affected market participants of the disclosure of sensitive information to the Commission concurrently with the disclosure itself.

10. Duke Energy asserts that the CAISO's primary concern is with the possibility that a market participant might obtain an injunction to block it from disclosing information to the Commission, but it states that the CAISO has not demonstrated that this would happen, or that a federal court would issue such an injunction without good cause. In the event, however, that such good cause should exist, Duke Energy asserts that market participants should have the ability to avail themselves of their injunctive rights. Finally, Duke Energy asserts that market participants should be notified prior to the disclosure of their sensitive information to allow them to ensure that the CAISO is providing complete and accurate information to the Commission and to other governmental entities.

11. The CEOB supports proposed section 20.3.4(c)(i), stating that federal and state regulatory agencies cannot provide meaningful oversight over a complex market without access to timely, accurate data, some of which may be commercial sensitive to market participants. The CEOB states that relying on a transmission organization's market monitor to report potential problems, and then requiring the Commission to subpoena the data necessary to evaluate those problems, subjects the market to potential manipulation and fails to protect ratepayers. While the CEOB is concerned that removal of announcements of requests for data may decrease the transparency of the Commission's oversight process, it asserts that the energy crisis of 2000-01 demonstrates the need for strong electricity market oversight, and the CEOB is optimistic that the continued cooperating among the CAISO, the CEOB and the Commission's Office of Market Oversight and Investigations (OMOI) will help to alleviate such transparency concerns. The CEOB further states that it itself has had difficulty obtaining timely information from the CAISO, and supports this rule on that basis, particularly since the CAISO's new market behavior rules require the CEOB to bring potential problems to the Commission's attention within a short period of time.

## **1. Commission Determination**

12. The Commission agrees with the CAISO that the additional tariff language filed here will allow the Commission to act more promptly to review system events or supply issues, investigate potential instances of market gaming and/or violations of Market Behavior Rules, and expeditiously resolve any of these concerns. The Commission finds it necessary that in order to take timely action to address market power or other market problems, the Commission must be able to obtain data from the CAISO in as immediate a fashion as possible.

13. Duke Energy and SCE have raised concerns as to the accuracy and handling of the confidential information supplied by the CAISO to the Commission. Duke Energy specifically expresses concern that the CAISO may provide incomplete or inaccurate information that may lead to false allegations of improper market behavior, as Duke Energy alleges has happened before. The Commission is equally concerned about the accuracy of the information it relies upon for any investigation or enforcement action. In that regard, the Commission always attempts to verify any confidentially received information.

14. Also, SCE and Duke Energy both raise concerns about the safe handling of information. The commission is aware of the need for safe handling of any confidential information it receives and has significant and proper procedures in place to safeguard the handling of confidential information by its staff. Additionally, the proposed new section 20.3.4(c)(i) provides that “the ISO shall notify an affected Market Participant within a reasonable time after the ISO is notified by FERC or its staff that a request for disclosure of, or decision to disclose, the confidential or commercially sensitive information has been received, at which time the ISO and the affected Market Participant may respond before such information would be made public.” Thus, a market participant would have an opportunity to challenge any information provided by the CAISO to the Commission, before that information was made public. As such, we find that the proposed tariff language adequately addresses both Duke’s concern about inaccurate information and SCE’s concern about market participant notification and disclosure of information.

15. We further note that, as the CAISO states, the tariff language here is comparable in most respects to that found in other existing Independent Systems Operator or Regional Transmission Organization (RTO) tariffs. However, in order to make the CAISO tariff fully consistent with the provisions of the New York Independent System Operator, ISO New England, and PJM Interconnection tariffs, we will require the CAISO to make a compliance filing within 30 days of the date of this order adding the following tariff language to section (c) (i): “The CAISO shall provide the requested information to the FERC or its staff within the time provided for in the request for information.” We find

that with this additional specificity the Commission can most effectively meet its desired timeframe for monitoring markets.

**C. Sharing Critical Information, System Models, and Planning Data with the WECC Reliability Coordinators**

16. In the western interconnection, the CAISO is one of three reliability coordinators.<sup>3</sup> The CAISO states that the other two regional coordinators in the western interconnection routinely exchange information, and that section 20.3.4 of CAISO's tariff limits its ability to participate and reciprocate in the sharing of information (*e.g.*, individual unit operating performance and facility outage information) unless there is a legal obligation to do so. This, in turn, can hinder reliability efforts since it is not possible to create a real-time grid analysis of regional operations for the entire western interconnection. The CAISO states that, in order to promote reliable grid operations for both California and the western interconnection in summer 2005 and beyond, it must be able to share critical operating information, system models, and planning data with the other WECC reliability coordinators. The CAISO anticipates that management of emergency operations, security analysis and planning of next day operations, and coordination of transmission loading relief procedures will improve as a result of the proposed amendment. The CAISO states the amendment will ensure that the three reliability coordinators in the western interconnection are "looking at everything" that could impact the transmission system in California and the West. Moreover, the proposed amendment will allow the ISO to contribute to the development of a west-wide model, which will benefit California and the entire western interconnection.

17. To ensure that the information is exchanged subject to appropriate confidentiality and use restrictions, the CAISO's proposal requires that each recipient of information execute the WECC Confidentiality Agreement for Electric System Data, or else be subject to similar confidentiality requirements. The CAISO asserts that in no circumstance will the information be submitted by the ISO absent proper confidentiality protections.

18. Cities/MSR also asks the Commission to reject the CAISO's proposal to share confidential information with other WECC Reliability Coordinators without advance notice to affected market participants. CAISO states that, because the information is confidential to market participants, it should not be within the CAISO's discretion to release it. Cities/MSR asks the Commission to require that the CAISO notify market

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<sup>3</sup> The other two reliability centers in WECC are the Rocky Mountain Desert Southwest Reliability Center (RDRC) in Loveland, CO and the Pacific Northwest Security Coordinator (PNSC) in Vancouver, WA.

participants in advance of sharing confidential information with other WECC reliability coordinators. Duke Energy's arguments, above, apply to the proposal to share information with the WECC reliability coordinators as well as to the proposal to share information with the Commission. SCE states that it supports proposed section 20.3.4(c)(ii), with the assurance that any information shared among WECC reliability coordinators will be subject to an appropriate confidentiality agreement.

19. The CEOB supports the timely provision of information by the CAISO to other WECC reliability coordinators, so as to ensure the reliability of the CAISO grid and the entire Western region.

### **1. Commission determination**

20. The Commission will accept proposed section 20.3.4(c)(ii). We believe this action will allow a more efficient and reliable grid operation in the WECC, further such actions will allow the Commission to act more promptly to review system events and expeditiously resolve market concerns. We find it appropriate to take precautions with critical operating information to minimize the risk of harm that could result from making unauthorized disclosures of data. Consequently, it is appropriate that the CAISO proposes to ensure that the information exchanged among the WECC Reliability Coordinators is kept confidential by requiring parties to either execute the WECC Confidentiality Agreement for Electric System Data, or provide for similar confidentiality requirements. This aspect of the CAISO proposal squarely addresses the concerns raised by SCE with regard to this issue.

### **D. Effective Date**

21. In its filing, the CAISO asks for an effective date of June 7, 2005 for this order. Generally, under *Central Hudson Gas & Electric Corporation*,<sup>4</sup> the Commission will not grant waiver of the 60-day prior notice requirement of section 205 of the Federal Power Act, absent good cause. Here, the CAISO has pointed to the need to ensure timely access to market data during summer 2005. The Commission will make these tariff provisions effective as of the date of the issuance of this order.

### **The Commission orders:**

- (A) The CAISO's Amendment No. 71 is hereby accepted, as discussed in the body of this order, to become effective as of the date of the issuance of this order.

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<sup>4</sup> 60 FERC ¶ 61,106 (1992).

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(B) The CAISO is so ordered to make a compliance filing within 30 days from the date of this order, as discussed herein.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.