

**COMMENTS OF EPIC MERCHANT ENERGY, L.P. ON CAISO
DRAFT FINAL PROPOSAL FOR CONVERGENCE BIDDING DATA RELEASE**

January 27, 2010

EPIC Merchant Energy, L.P. ("EPIC") appreciates the opportunity to submit these comments on the California ISO's ("CAISO") Draft Final Proposal on Data Release & Accessibility, Phase 2 Convergence Bidding Data Release dated January 15, 2010 ("Draft Final Proposal"). EPIC agrees with the CAISO's stated goal of attempting to "strike the right balance between the provision of information that would facilitate competition without compromising confidentiality or promoting unfair advantage." However, EPIC submits that the Draft Final Proposal is ill-suited to achieve this goal and would, in fact, severely damage competition, compromise confidentiality, and promote unfair advantage. The conclusions reached by CAISO in the Draft Final Proposal are unwarranted and would give certain market participants a competitive advantage. The Draft Final Proposal is, therefore, contrary to law under the Federal Power Act ("FPA").

I. Implementation of the Draft Final Proposal Requires a FERC Tariff Filing.

EPIC disputes the Draft Final Proposal's contention that no tariff revision must be filed with the Federal Energy Regulatory Commission ("FERC") before CAISO can begin the daily release of net cleared virtual quantities by node at the close of the real-time market. Under Section 35.28(g)(4) of the FERC's regulations, each ISO/RTO must release offer and bid data on a three-month lag basis. In Order No. 719, the Commission made clear that RTOs and ISOs may "propose a shorter time, with accompanying justification, or a longer time of four months if they can demonstrate a collusion concern."¹ On rehearing of Order No. 719, the Commission went on to specifically state that "if an RTO or ISO believes it is desirable to release offer and bid data on the day following the operating day, nothing in the Final Rule prevents it from making such a proposal to the Commission, with appropriate justification."² Thus, the Commission clearly requires that any ISO/RTO wishing to release bid data sooner than three months after an operating day provide justification for such proposal as part of a tariff filing with the Commission.

Notably, Section 205(c) of the FPA provides that "every public utility shall file with the Commission . . . schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services." The next-day release of convergence bidding data contemplated by the Draft Final Proposal is expressly intended to affect the wholesale price of

¹ Order No. 719 at par. 421.

² Order No. 719-A at par. 158.

energy.³ Therefore, CAISO clearly cannot implement such release without filing tariff revisions with the FERC.

The issue of whether the data in question here qualifies as "Confidential Information" under Section 20.2 of CAISO's tariff is beside the point. Section 6 of the CAISO tariff contains detailed provisions regarding the timing and scope of CAISO data releases. For the Draft Final Proposal to be implemented, CAISO would need to file revisions to Section 6 of its tariff. In fact, CAISO has recognized the need to address the disclosure of virtual bid data through tariff filings as recently as December 21, 2009, when CAISO published Convergence Bidding Draft Tariff Modifications that would revise (i) Section 6.5.3.2.2 to provide for the publication of the aggregate volume of cleared Virtual Supply Bids and virtual Demand Bids on OASIS by 1:00 p.m., along with the results of the Day-Ahead Market; and (ii) Section 6.5.6.1 to provide for the publication of Virtual Bids on OASIS 180 days following the applicable Trading Day.⁴ It simply cannot be the case that tariff revisions are required for those two revisions but not also required for the far more controversial next-day release of nodal data contemplated in the Draft Final Proposal.

One of the primary stated purposes of such data release is to affect wholesale energy prices. A consequence of such quick release of bid data is market participants' bidding behavior could result in perverse bids. As a whole, market participants bid strategy could mainly center on other participants bids; whereas, Real-time prices should be the focus of convergence bidders. Real-time prices should affect bidding behavior; instead this proposal could cause Real-time prices to be effected by bidding behavior.

II. The Draft Final Proposal Would Violate Section 205 of the FPA.

EPIC submits that the next-day disclosure of net virtual demand on a nodal basis is unjust, unreasonable, and unduly discriminatory because it would confer a competitive advantage on certain market participants and has no legitimate basis. Under Section 205(a) of the FPA, all rules and regulations affecting or pertaining to the rates or charges for wholesale energy sales must be just and reasonable. Section 205(b) of the FPA makes it unlawful for any public utility to "make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage." CAISO is therefore prohibited from adopting any data disclosure practice that would favor one set of market participants over another.

³ See, e.g., Southern California Edison Comments on Issue Paper at 2 (Dec. 17, 2009) (stating that it expects the contemplated release of information to "bring about one of the stated goals of convergence bidding—that is convergence of day-ahead and real-time prices—more rapidly and more efficiently"); Convergence Bidding Information Release and Market Performance, Presentation by Mr. Frank A. Wolak, Chair, Market Surveillance Committee (Jan. 22, 2010) (stating that the contemplated information release will "reduce total cost of meeting load.").

⁴ The Convergence Bidding Draft Tariff Modifications are available at <http://www.caiso.com/248b/248ba28162ea0.pdf>

The Commission has rejected proposals to shorten the period for bid data disclosure where, as here, such proposals lacked an adequate, nondiscriminatory justification.⁵ In requiring that there be a three-month lag before the release of bid and offer data by any ISO/RTO, the Commission specifically noted that earlier release could give certain entities a competitive advantage:

[T]rading strategies, which is exactly the information sought by petitioners, are trade secrets that have considerable value to market participants. While the Illinois Commerce Commission may wish to use the data for enforcement purposes, other entities may use it to give themselves a competitive advantage, or to eliminate the competitive advantage of another entity.⁶

Here, it appears that a primary purpose of implementing next-day release of nodal virtual bid data is to provide an advantage to certain market participants. As CAISO has stated,

[G]iven the credit requirements and convergence bidding transaction fee, it may be expensive for an LSE to protect nodal load positions, particularly if the LSE has many load nodes. Providing information about convergence bidding activity will help the LSEs to compete more effectively in the virtual market without imposing undue cost for participation. In addition to these benefits, the release of nodal virtual data may augment the liquidity of the virtual market by allowing more participants, including the IOUs, to play a more active role.⁷

Thus, the contemplated next-day release of data seems intended to give LSEs, including IOUs, a competitive advantage so that they "can compete more effectively in the virtual market."

Further, as the CAISO has noted, the approach adopted in the Draft Final Proposal would not treat virtual and physical bids equally.⁸ Net cleared virtual quantities at each node or intertie would be released on a next-day basis, but CAISO has not proposed to simultaneously release net cleared physical quantities at each node or intertie. As a result, generators would have an enormous competitive advantage over pure convergence bidders in reconstructing what happened in the market. This will facilitate the exercise of market power by incumbent utilities and undermine the ability of convergence bidding to prevent such abuses.

Not only would the contemplated next-day release of data be anticompetitive, but it also would serve no legitimate purpose. As CAISO has acknowledged, no other ISO or RTO posts such nodal information on a next-day basis. Moreover, as the CAISO has recognized, "the need for some sort of nodal data release, in addition to the 90-day lag, data is not apparent given that

⁵ *ISO New England Inc. and New England Power Pool*, 118 FERC ¶ 61,224 at pars. 11-12 (2007) (rejecting proposal to reduce the lag time at which ISO New England posts Demand Bid and Supply offer data from 180 days until the first day of the fourth calendar month following the month during which the bids were in effect).

⁶ Order No. 719-A, at par. 157.

⁷ Draft Final Proposal at 6.

⁸ Draft Final Proposal at 7.

other ISOs have not implemented additional safeguards, like position limits that the [California] ISO has proposed for its design."⁹ Specifically, MISO and the NYISO post only aggregate virtual bid data, not virtual bid data on a nodal basis. ISO New England posts nodal data but not until the first day of the fourth month following the operating month, and even then, it masks the Location ID. And PJM posts nodal data but only on a 6-month delay or lag.¹⁰ There is no justification for CAISO to implement next-day release of nodal net cleared virtual quantities when no other ISO/RTO has needed to do so in order to garner the benefits of convergence trading.

Under Section 205 FPA, CAISO cannot adopt practices designed to favor one set of market participants over another set. Practices intended to allow IOUs to "compete more effectively" are unlawful *per se*. By tilting the playing field in favor of certain market participants, the Draft Final Proposal would distort competition and undermine the efficiency of the market. Pure convergence bidders would be placed at a significant competitive disadvantage, greatly discouraging their participation in the market. As a result, the Draft Final Proposal would greatly impede the development of convergence bidding, limit the benefits that convergence bidding can bring to the market, and leave the door open for the exercise of market power and other abuses by incumbent utilities. EPIC therefore urges CAISO to reconsider its Draft Final Proposal and to instead release convergence bid information on a 90-day lag, consistent with how it treats physical bids and consistent with FERC policy.

EPIC Merchant Energy

Mark Carlock

mjcarlock@emelp.com

281 760-4555

⁹ Draft Final Proposal at 5.

¹⁰ CAISO Data Release & Accessibility Initiative Phase 2: Convergence Bidding Data Release, Mr. Wade McCartney at 6-10 (Dec. 10, 2009).