FINANCIAL MARKETERS' COMMENTS ON CAISO'S JANUARY 15, 2010 DRAFT FINAL PROPOSAL FOR CONVERGENCE BIDDING DATA RELEASE

January 27, 2010

SESCO Enterprises LLC, Sliverado Energy LP, Jump Power, LLC, and JPTC, LLC (collectively "Financial Marketers") urge CAISO to reconsider its January 15, 2010 Draft Final Proposal on Data Release & Accessibility, Phase 2 Convergence Bidding Data Release dated January 15, 2010 ("Draft Final Proposal") and to instead release virtual bid data along with physical bid data on a three-month lag, consistent with FERC policy. Next-day release of nodal virtual bid data would give generators and other incumbent utilities a significant competitive advantage and, as a result, impede the development of convergence bidding, distort competition, and adversely affect energy prices. There is no legitimate, nondiscriminatory basis for releasing nodal virtual bid data next-day.

I. Next-Day Releases Cannot Be Implemented Without a FERC Tariff Filing.

The Draft Final Proposal wrongly concludes that no tariff revision must be filed with FERC before CAISO can begin the daily release of net cleared virtual quantities by node at the close of the real-time market. Section 35.28(g)(4) of the FERC's regulations clearly requires that each ISO/RTO release offer and bid data on a three-month lag basis. The Commission has held 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] In fact, the Commission has specifically held 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, if CAISO intends to implement next-day releases of nodal virtual demand data, it must make an associated tariff filing with FERC, fully justifying the proposal.

Under Section 205(c) of the FPA, "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, <u>and the classifications, practices, and regulations affecting such rates and charges</u>, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services." CAISO cannot implement next-day release of convergence bidding data without making a tariff filing with FERC because, according to the Draft Final Proposal, such data releases are intended to affect the wholesale price of energy.[3]

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[1] Order No. 719 at par. 421.

[2] Order No. 719-A at par. 158.

[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.").

The issue of whether the data at issue here qualifies as "Confidential Information" under Section 20.2 of CAISO's tariff is a red herring. Section 6 of the CAISO tariff governs the timing and scope of CAISO data releases. For next-day releases of nodal virtual bid data to be implemented, CAISO would need to file revisions to Section 6 of its tariff. Thus, CAISO has recently 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] Financial Marketers do not understand how CAISO can acknowledge on the one hand that tariff revisions are required for those two revisions, while at the same time insisting that no tariff filing is necessary to implement next-day releases of virtual bid data when FERC has specifically stated that any deviation from the three-month lag default rule must be supported in a tariff filing.

II. The Proposed Next-Day Release of Virtual Bid Data Would Be Unlawful.

Next-day disclosure of net virtual demand on a nodal basis would be unjust, unreasonable, and unduly discriminatory or preferential. In establishing a default rule that there be a three-month lag before the release of bid and offer data by any ISO/RTO, the Commission noted that earlier release could give certain entities a competitive advantage or eliminate a legitimate competitive advantage that other entities might have:

> [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.[5]

The Draft Final Proposal appears intended to provide such an advantage to load-serving entities, including investor-owned utilities. 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.[6]

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

[5] Order No. 719-A, at par. 157.

[6] Draft Final Proposal at 6.

Financial Marketers submit that such a rationale cannot form a basis for departing from the default three-month lag rule under FERC Order Nos. 719 and 719-A. Financial Marketers note that the Commission has rejected proposals to shorten the period for bid data disclosure where no legitimate, nondiscriminatory justification for such shorter period has been demonstrated.[7]

The unfairness of the proposed next-day release of virtual bid data is exacerbated by the Draft Final Proposal's failure to treat virtual and physical bids equally.[8] While net cleared virtual quantities at each node or intertie would be released on a next-day basis, CAISO has not proposed to simultaneously release net cleared physical quantities at each node or intertie. Thus, generators would be placed at a significant competitive advantage over convergence bidders in reconstructing what happened in the market. This competitive advantage will facilitate the exercise of market power by incumbent utilities and undermine the ability of convergence bidding to prevent such abuses.

Furthermore, the proposed next-day release of virtual bid data would serve no legitimate, nondiscriminatory purpose has. CAISO has acknowledged that no other ISO or RTO posts nodal virtual demand information on a next-day basis. CAISO has further recognized that "the need for some sort of nodal data release, in addition to the 90-day lag, data is not apparent given that 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 convergence bid data when no other ISO/RTO has needed to do so in order to reap the benefits of virtual trading.

Section 205 of the Federal Power Act prohibits ISOs and RTOs from adopting practices designed to unduly discriminate against, or give an undue preference to, a market participant or set of market participants. By tilting the playing field in favor of certain market participants to allow them to "compete more effectively," the Draft Final proposal would distort competition and make the market less efficient. Placing convergence bidders at a competitive disadvantage will discourage them from participating in the market, impeding the development of a vibrant convergence bidding sector. Thus, the numerous well-recognized benefits that convergence bidding can bring to the market will be unjustifiably restricted. This will be harmful to consumers and make the exercise of market power and other abuses by incumbent utilities more likely. For these reasons, Financial Marketers urge CAISO to reconsider its Draft Final Proposal

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[7] *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).

[8] Draft Final Proposal at 7.

[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).

and to instead release convergence bid information on a 90-day lag, consistent with FERC policy.

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