

166 FERC ¶ 61,098
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

February 8, 2019

In Reply Refer To:
California Independent System
Operator Corporation
Docket No. ER19-539-000

California Independent System
Operator Corporation
250 Outcropping Way
Folsom, CA 95630

Attention: Roger E. Collanton

Dear Mr. Collanton:

1. On December 12, 2018, the California Independent System Operator Corporation (CAISO) filed a non-conforming EIM Entity Agreement (Agreement) between CAISO and the Salt River Project Agricultural Improvement and Power District (Salt River) setting forth the legal obligations and operational rules that will govern Salt River's participation in CAISO's Energy Imbalance Market (EIM).¹ The EIM is the vehicle by which entities outside of CAISO's balancing authority area participate in CAISO's real-time market. Under the Agreement, Salt River will comply with the CAISO tariff provisions applicable to EIM entities, with certain modifications to account for Salt River's status as a publicly owned entity. As discussed below, we accept the Agreement for filing, effective February 11, 2019, as requested.

¹ An EIM Implementation Agreement setting forth the terms under which CAISO will extend its real-time energy market systems to provide imbalance energy services to Salt River pursuant to CAISO's EIM tariff provisions was accepted by delegated letter order on November 16, 2017. *Cal. Indep. Sys. Operator Corp.*, Docket No. ER17-2559-000 (November 16, 2017) (delegated order). Salt River intends to commence EIM participation in April 2020.

2. According to CAISO, the Agreement differs from the *pro forma* EIM Entity Agreement in that it reflects the legal and regulatory issues unique to Salt River as a publicly owned utility under section 201(f) of the Federal Power Act (FPA).² CAISO notes that an EIM Entity Agreement between CAISO and the Balancing Authority Area of Northern California (BANC), which contained similar non-conforming provisions, was accepted via delegated letter order in October 2018.³ CAISO requests that the Commission accept the Agreement, effective February 11, 2019.

3. CAISO states that Article I of the Agreement adopts definitions in the CAISO tariff for the Agreement and sets forth rules of interpretation. Article I also provides that matters specifically addressed by the Agreement govern, notwithstanding any inconsistent provisions of the CAISO tariff. CAISO explains that Article II acknowledges that Salt River is an exempt entity pursuant to section 201(f) of the FPA,⁴ and Article III, section 3.2.2 clarifies that because Salt River is an exempt entity, Salt River may terminate the Agreement regardless of any action or inaction by the Commission with respect to any application by CAISO to terminate the Agreement.⁵ Article VIII sets forth the provisions for indemnity and liability, which CAISO notes are identical to the indemnity and liability provisions reflected in the EIM Entity Agreement between CAISO and the BANC.⁶

4. CAISO further elaborates that Articles IV through VII and Articles IX and X are standard CAISO contract terms, unchanged from the *pro forma* EIM Entity Agreement with the exception of section 10.5, which includes language to address state law considerations unique to publicly owned utilities. CAISO states that the language in this section was modeled after the Southwest Power Pool, Inc. Open Access Transmission Tariff.⁷

5. Notice of CAISO's filing was published in the *Federal Register*, 83 Fed. Reg. 64,820 (2018), with interventions and protests due on or before January 2, 2019.

² 16 U.S.C. § 824(f) (2012).

³ CAISO Filing at 2 nn.3, 6-7. *See Cal. Indep. Sys. Operator Corp.*, Docket No. ER18-2360-000 (October 18, 2018) (delegated order).

⁴ 16 U.S.C. § 824(f).

⁵ CAISO Filing at 4.

⁶ *Id.* at 3.

⁷ *Id.*

Timely motions to intervene were filed by PacifiCorp, the Modesto Irrigation District, the Cities of Santa Clara and Redding, California and the M-S-R Public Power Agency, Southern California Edison Company, NV Energy, Inc., and Pacific Gas and Electric Company. Southwest Public Power Agency, Inc. (SPPA) and Salt River filed timely motions to intervene and comments. On January 11, 2019, CAISO and Salt River filed answers to SPPA's comments.

6. Salt River states that the proposed non-conforming provisions in the Agreement account for Salt River's status as a publicly owned utility, and reflect negotiated terms that align with the language reflected in the EIM Entity Agreement between CAISO and BANC.⁸ Salt River asserts that these negotiated terms were important to its decision to move forward with participating in the EIM because they recognize Salt River's exempt status under the FPA and provide Salt River with protection important to its ratepayers. Salt River also states that the modifications made to section 10.5 of the Agreement provide a process for addressing conflicts between Arizona law and the CAISO tariff, and further notes that the process is modeled after similar processes found in the Southwest Power Pool, Inc. and Midcontinent Independent System Operator, Inc. tariffs.⁹

7. SPPA states that it does not oppose Salt River's entry into the EIM, and it does not raise any specific concerns regarding the proposed non-conforming provisions in the Agreement. Instead, SPPA asks the Commission to further analyze the implications of Salt River's entry into the EIM to ensure that customers are not negatively affected.¹⁰ SPPA notes that, because Salt River is a public entity, its entry into the EIM will not be analyzed for market power implications, and that this may be the only opportunity the Commission has to address issues associated with Salt River's EIM participation. SPPA states that it is unclear from CAISO's filing how wholesale customers who are served under long-term contracts that use banking provisions to settle imbalances will be affected by Salt River's entry into the EIM. Moreover, SPPA asserts that it is not clear from the filing whether there will be sufficient transmission capability between Salt River and CAISO to ensure that EIM charges will remain just and reasonable¹¹ and whether transmission for EIM transfers will impact wholesale customers' ability to use Salt

⁸ Salt River Comments at 2.

⁹ *Id.* at 3.

¹⁰ SPPA Comments at 2.

¹¹ SPPA asserts that precedent requires that EIM rates as a whole remain just and reasonable, even when public entities are participating in those rates. *Id.* at 3 (citing *Pac. Gas & Elec. Co. v. FERC*, 306 F.3d 1112 (D.C. Cir. 2002)).

River's transmission system to deliver their own resources.¹² SPPA asserts that the EIM should not be structured in such a way as to prevent customers of EIM members from meeting their own obligations.¹³

8. In response, CAISO and Salt River both state that SPPA does not oppose or even comment on any specific elements of the Agreement and, therefore, SPPA's comments are beyond the scope of the proceeding.¹⁴ CAISO states that SPPA has requested the Commission further analyze the market power implications of Salt River's entrance into the EIM. CAISO further explains that it has not proposed any changes to the market power mitigation procedures that CAISO administers, which the Commission has already approved, and that CAISO will raise any concerns regarding Salt River's EIM participation through established mechanisms.¹⁵ CAISO and Salt River both assert that, while Salt River is exempt from the requirement that it obtain Commission authorization to make sales at market-based rates, Salt River will still be subject to the CAISO tariff provisions related to the EIM, including CAISO's market power mitigation procedures.¹⁶ CAISO also states that the Agreement does not modify the imbalance energy settlement rules that will apply to Salt River, and that rates, terms and conditions of services provided by Salt River to its wholesale customers pursuant to long-term contracts are a matter between Salt River and its customers and should be addressed in accordance with the terms of those contracts. CAISO states that Salt River will communicate with customers how much transmission it will make available for EIM transfers through the implementation process.¹⁷ Finally, Salt River states that during the course of implementation, it will work directly with its customers to assess whether they will be impacted by Salt River's participation in the EIM and to address issues that may be presented as Salt River moves toward participation.¹⁸

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ CAISO Answer at 2; Salt River Answer at 3.

¹⁵ CAISO Answer at 2 (referencing EIM rules of conduct, market monitoring and market power mitigation applicable to EIM market participants under the CAISO tariff).

¹⁶ *Id.* at 2-3; Salt River Answer at 3-4.

¹⁷ CAISO Answer at 3.

¹⁸ Salt River Answer at 4.

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept CAISO's and Salt River's answers because they have provided information that assisted us in our decision-making process.

11. We accept the Agreement for filing, effective February 11, 2019, as requested. The Agreement is a bilateral agreement between the parties that sets forth the legal obligations and operational rules that will govern Salt River's participation in the EIM. The changes CAISO has proposed in this filing to the *pro forma* EIM Entity Agreement are narrowly tailored to account for Salt River's status as a publicly owned utility under section 201(f) of the FPA. We also note that the non-conforming provisions of the Agreement are consistent with a similar agreement between CAISO and BANC that was accepted by delegated letter order.¹⁹

12. We reject as beyond the scope of this proceeding SPPA's comments regarding the implications of Salt River's entry into the EIM on Salt River's wholesale customers. The filing before us seeks Commission acceptance of non-conforming provisions in the Agreement between CAISO and Salt River. SPPA does not oppose Salt River's entry into the EIM, and does not raise any concerns regarding any element of the Agreement filed by CAISO. Because none of the issues raised by SPPA implicate the Agreement that is before us, we need not address them here. However, with regard to SPPA's concerns regarding potential market power implications, we note that although Salt River, as a publicly owned utility, is not required to obtain market-based rate authorization from the Commission to participate in the EIM, it is still subject to the EIM Market Power Mitigation Procedures set forth in CAISO's Tariff.²⁰ Pursuant to these procedures, CAISO and its Department of Market Monitoring are required to monitor the market for indications of market power and mitigate such market power if identified. We also note Salt River's commitment to work with its wholesale energy and transmission service customers to examine current contractual relationships and assess whether they will be affected by Salt River's anticipated participation in the EIM. We encourage Salt

¹⁹ See *supra* n.3.

²⁰ See, e.g., California Independent System Operator Corporation, CAISO eTariff, 29.38 Market Monitoring (0.0.0); 29.39 EIM Market Power Mitigation (2.0.0).

River to follow through on this commitment and to work with its customers to address any issues that may arise.

By direction of the Commission.

Kimberly D. Bose,
Secretary.