

the ISO compliance filing, which raise concerns with the ISO's proposed tariff language.⁴

II. ANSWER

A. **The ISO is willing to provide a more detailed explanation of whether an entity is operationally affected by an ISO non-public Operating Procedure.**

In its protest, Modesto argues that the ISO's proposed explanation of whether an entity is operationally affected is too narrow.⁵ Modesto states that there are more ways that an entity can be operationally affected other than as provided in the ISO's explanation. Modesto recommends that the Commission direct the ISO to expand the definition of whether an entity is operationally affected to address "all operational concerns." Modesto's request to authorize access to non-public Operating Procedures that create "operational concerns" for Market Participants would permit access to non-public Operating Procedures that create only an economic or financial impact on a requesting entity. The Commission has already determined that the ISO may deny access to non-public Operating Procedures if a Market Participant is only economically or financially affected.⁶ Accordingly, the Commission should reject Modesto's request here.

⁴ Southern California Edison Company (SCE) and the California Department of Water Resources – State Water Project (CDWR) filed comments. Modesto Irrigation District (Modesto) filed a protest. Answers to protests are generally not permitted. See 18 C.F.R. § 385.213(a)(2). The ISO respectfully requests waiver of the Commission's Rules of Practice and Procedure prohibiting answers to protests pursuant to 18 C.F.R. § 385.101(e). Good cause exists for the waiver. As discussed in the ISO's answer, the ISO is willing to modify its proposed tariff language in order to address concerns raised by parties, including the concerns set forth in the protest filed by Modesto. Accordingly, the Commission should permit the ISO to file this answer and approve the proposed tariff amendments with the modifications the ISO agrees to make on further compliance.

⁵ Protest of Modesto at p. 3.

⁶ *Order on Compliance* at P 34.

Consistent with the Commission's direction, the ISO intends to allow access to non-public Operating Procedures subject to agreed-upon controls if an entity has a legitimate need to review those Operating Procedures.⁷ In light of Modesto's protest, the ISO is willing to modify its explanation of whether an entity is operationally affected in proposed Tariff Section 22.11.3 to read as follows:

For purposes of this section, an entity is "operationally affected" if (1) the entity is a party to the Transmission Control Agreement, a neighboring Balancing Authority or a Market Participant and (2) the Operating Procedure, if implemented, would require a change outside of the CAISO Markets in the operation of that entity's facilities that are part of or interconnected to the CAISO Controlled Grid.

This draft language would continue to allow parties to the Transmission Control Agreement and neighboring Balancing Authorities access to non-public ISO Operating Procedures, if the Operating Procedures require a change in the operation to those entities' facilities. This draft language would also expand the right of access to Market Participants to review non-public Operating Procedures, if the Operating Procedures require a change in the operation of those entities' facilities outside of the CAISO's Markets. The ISO believes this language strikes an appropriate balance between disclosure of market sensitive, system security sensitive or proprietary data and the legitimate need of entities to review this information. Moreover, this proposed language would address at least one of Modesto's concerns that it should have a right to review non-public ISO Operating Procedures that, if implemented, require a change in the operation of interconnection facilities linked to the CAISO Controlled Grid.

In its comments, CDWR suggests that the ISO should expand its definition of whether an entity is operationally affected to include (1) instances in which an Operating Procedure reflects that the ISO is authorized to use an entity's facilities; and (2)

⁷ *Id.*

instances in which an Operating Procedure requires adjustments of generator or load operating levels. The ISO's proposed revisions tariff section 22.11.3 set forth above should address CDWR's concerns. First, the proposed language would permit a requesting entity to review a non-public Operating Procedure to the extent the entity has authorized the ISO to use its facilities outside of the CAISO Markets and the Operating Procedure, if implemented, would require a change in the operation of those facilities. Second, the proposed language would permit a requesting entity to review a non-public Operating Procedure to the extent the Operating Procedure, if implemented, would require a change in the operation of the entity's facilities outside of the CAISO Markets. To the extent an entity has already submitted a bid into the CAISO Markets that would involve the operation of those facilities, the requesting entity's need to review the non-public Operating Procedure would only be for an economic or financial purpose, which the Commission has already acknowledged is an insufficient reason to obtain access to non-public ISO Operating Procedures.

B. No additional tariff provisions are justified or required beyond the provisions for agreed upon controls to obtain access to non-public Operating Procedures.

In its comments, SCE states that the Commission should be required to provide more details concerning the phrase "agreed upon controls."⁸ In its proposed tariff language, the ISO specified that it will provide access to non-public Operating Procedures subject to agreed upon controls if the ISO determines the entity is operationally affected by the Operating Procedure. The proposed tariff language specifies these controls may include execution of a nondisclosure agreement or other measures to limit access, disclosure and use of non-public information. SCE asks

⁸ SCE Comments at p. 2.

whether these controls once established would apply to all requests for access, whether the ISO would standardize these controls for all entities, and what occurs if the parties cannot agree upon controls. SCE's questions exceed the scope of the Commission's directives in the *Order on Compliance*. Accordingly, the ISO does not believe SCE's comments require further changes to its proposed tariff language. Nevertheless, the ISO offers the following response to SCE's questions: The ISO intends to treat all similarly situated entities alike and, where possible, will seek to employ a standard agreement to implement any controls related to access, disclosure and use of non-public Operating Procedures. To the extent a requesting entity and the ISO cannot agree upon controls for access to non-public information contained within an Operating Procedure, the requesting entity may invoke dispute resolution procedures under Section 13 of the CAISO Tariff.

C. No additional procedures for requesting access to non-public Operating Procedures are justified or necessary, but the ISO is willing to clarify the timeframe for providing access to those operationally affected.

In its comments, CDWR requests that the Commission revise the ISO's proposed tariff language to allow a requesting entity to ask for all Operating Procedures that authorize adjustments to the requesting entity's facilitates or direct the ISO to specify on its website each Operating Procedure that authorizes adjustment of the operating levels of any facilities.⁹ CDWR's proposal exceeds the scope of the Commission's directives in the *Order on Compliance* and is unnecessary.

The Commission directed that the ISO provide a description of the timeframe for providing access to non-public operating procedures or an explanation of its denial of

⁹ CDWR Comments at pp. 3-5.

access to such operating procedures. The ISO has specified such a process in proposed tariff Section 22.11.3. It is reasonable to require a requesting entity to specify the Operating Procedure to which it is requesting access. The ISO's proposed process for requesting access to a non-public Operating Procedure balances the needs of the requesting entity to review non-public information with the needs of the ISO to address any such requests through a manageable process.

CDWR insists it needs to monitor the ISO's Operating Procedures to ensure that those Operating Procedures only authorize use of CDWR's resources with CDWR's consent. The ISO's proposed process permits CDWR to accomplish this effort. The ISO has held multiple discussions with CDWR staff to discuss the contents of its Operating Procedures and whether and how they relate to CDWR's generation resources or pump loads. The ISO remains willing to hold additional discussions with CDWR as necessary.

The ISO acknowledges CDWR's comment that the proposed tariff language should identify the triggering event for the 30 day timeframe for the ISO to provide access to non-public Operating Procedures. The ISO is willing to modify proposed tariff section 22.11.3 to include the following language on further compliance:

If the CAISO determines that the entity is operationally affected by the Operating Procedure or portion thereof, the CAISO will, subject to agreed upon controls, provide access to the non-public Operating Procedure within thirty (30) days of the entity's written request.

- D. While no additional clarification is necessary, the ISO is willing to reiterate the means for resolving disputes over access to ISO non-public Operating Procedures.**

In its comments, SCE proposes that the ISO add tariff language to specify how an entity may dispute an ISO determination that an entity is not operationally affected by a non-public ISO Operating Procedure. In its proposed tariff language, the ISO stated that it will respond in writing to any request and, if the ISO determines that the requesting entity is not operationally affected by the Operating Procedure, explain the reason for its determination in its written response. If an entity believes the ISO's determination is in error, it may initiate dispute resolution procedures with the ISO under Section 13 of the CAISO Tariff. It is not necessary to include additional tariff language in proposed Section 22.11.3 to specify dispute resolution procedures if an entity wishes to dispute the ISO's determination. To the extent the Commission believes it is appropriate to clarify the dispute resolution procedures available to a requesting entity as part of tariff section 22.11.3, the ISO is willing to include the following language on further compliance:

If the CAISO denies a request for access to a non-public Operating Procedure or portion thereof, the requesting entity shall have the right to invoke the CAISO ADR Procedures in Section 13.

III. CONCLUSION

The ISO's proposed tariff amendments comply with the Commission's directives. Moreover, the ISO is willing to make changes on further compliance to address parties' concerns. The Commission should approve the proposed tariff amendments with the modifications the ISO agrees to make in this answer.

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Respectfully submitted,

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Certificate of Service

I hereby certify that I have this day served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 29th day of May, 2009 at Folsom, California.

/s/ Jane Ostapovich
Jane Ostapovich