

The Commission should accept the September 2 Compliance Filing without modification. As explained below, good cause does not exist to accept Powerex's and WPTF's late filings. On substantive grounds, Powerex and WPTF both argue that the Commission should reject the CAISO's proposal to require execution of the Western Electricity Coordinating Council (WECC) Universal Non-Disclosure Agreement⁴ as a prerequisite to receive protected data regarding intertie information. They fail to recognize that the CAISO tariff already requires market participants to execute a WECC confidentiality agreement in order to receive protected data. The Commission accepted the extension of these existing WECC confidentiality agreement requirements to market participants seeking intertie transaction data when it accepted the CAISO's May 22, 2014, tariff amendment in this proceeding. Moreover, it is just and reasonable for the CAISO to extend this existing practice to protected data regarding intertie information in order to ensure that no such information is impermissibly disclosed in violation of the WECC Universal Non-Disclosure Agreement. Lastly, the CAISO concurs with IID that the Commission should reject WPTF's filing on procedural grounds or should find that Powerex's and WPTF's substantive arguments are without merit.

I. Background

On May 22, 2014, the CAISO filed revisions to its tariff to implement modeling enhancements that included the authority to model unscheduled flow in the CAISO's day-ahead market, the enforcement of power flow constraints in the day-ahead market,

⁴ The formal name of the WECC Universal Non-Disclosure Agreement is the WECC Synchrophasor and Operating Reliability Data Sharing Agreement, but in its proposed tariff revisions the CAISO followed WECC's common practice of referring to that agreement simply as the WECC Universal Non-Disclosure Agreement. See, e.g., WECC Board Policy on Information Sharing at 2-3 (Dec. 6, 2013), available on WECC's website at <https://www.wecc.biz/Pages/home.aspx>.

and the expansion of the full network model topology to include information on resources, load, and interchange schedules in other balancing authority areas (May 22 Tariff Filing).

On June 27, 2014, the CAISO filed an answer to comments and a limited protest submitted in response to the May 22 Tariff Filing (June 27 Answer). The June 27 Answer included the CAISO's response to a concern raised by the Imperial Irrigation District (IID) that a CAISO proposal to disclose unscheduled flow estimates reflecting data provided to the CAISO under the WECC Universal Non-Disclosure Agreement would result in a breach of that agreement. The CAISO explained that IID's concerns were unwarranted and explained that, "under the [CA]ISO's proposal, the [CA]ISO only intends to provide unscheduled flow data under new tariff section 6.5.10.1.5 to those parties that have also signed the WECC Universal Non-Disclosure Agreement."⁵ The CAISO stated that it had intended to implement that requirement through existing provisions in tariff section 6.5.10 that require parties to sign a non-disclosure agreement as a prerequisite for being provided protected data by the CAISO,⁶ but that upon further consideration of the matter the CAISO had determined that the existing provisions may not be sufficiently specific about the requirement to sign the WECC Universal Non-Disclosure Agreement. Therefore, the CAISO stated that, if directed by the Commission, the CAISO was prepared to clarify in a compliance filing that unscheduled

⁵ June 27 Answer at 15-16.

⁶ Tariff section 6.5.10.1 describes different types of protected data that the CAISO will provide to parties that have signed a non-disclosure agreement in accordance with tariff section 6.5.10. Tariff section 6.5.10.2 states that the CAISO will only provide the protected data to market participants and non-market participants that satisfy the requirements described in that section.

flow data is only available to parties that have also signed the WECC Universal Non-Disclosure Agreement.⁷

In the July 31 Order, the Commission accepted the May 22 Tariff Filing subject to a compliance filing.⁸ The Commission summarized the concerns that IID had regarding data confidentiality and the CAISO's response in the June 27 Answer, including the CAISO's explanation that "unscheduled flow data will only be disclosed to parties that have signed the WECC universal non-disclosure agreement."⁹ The Commission accepted the CAISO's proposal to "provide parties that have signed a non-disclosure agreement the hourly unscheduled flow at each intertie in the day-ahead and real-time market after the results of the respective markets are posted."¹⁰ However, the Commission did not state whether or not it concurred with the CAISO's proposal in the June 27 Answer to make it more clear that unscheduled flow data is only available to parties that have also signed the WECC Universal Non-Disclosure Agreement.

In the September 2 Compliance Filing, the CAISO proposed to add new tariff section 6.5.10.2(e) to clarify that, in order to obtain the protected data regarding intertie (including unscheduled flow) information described in tariff section 6.5.10.1.5, all market participants or non-market participants that otherwise qualify to obtain the protected data pursuant to the requirements in tariff section 6.5.10.2 are also required to sign the WECC Universal Non-Disclosure Agreement. The CAISO made it clear that it was submitting these tariff revisions out of an abundance of caution, "assuming the

⁷ June 27 Answer at 15-16.

⁸ See July 31 order at Ordering Paragraphs (A)-(B).

⁹ *Id.* at PP 39, 43.

¹⁰ *Id.* at P 63.

Commission intended to permit the CAISO to make that clarification”, and, to the extent necessary, the CAISO requested that the Commission clarify the matter pursuant to 18 C.F.R. § 385.212.¹¹

More than seven weeks after the CAISO submitted the September 2 Compliance Filing, Powerex submitted the supplemental protest and WPTF submitted a motion to intervene out of time and the protest addressed below. IID subsequently submitted an answer to Powerex’s and WPTF’s out-of-time filings.

II. Answer

A. Good Cause Does Not Exist to Accept the Protest and Supplemental Protest

The Commission may grant motions to file out-of-time pleadings or motions to intervene for good cause shown.¹² Good cause does not exist for the Commission to accept Powerex’s supplemental protest or WPTF’s motion to intervene out of time and protest.

The Commission issued a notice of filing on September 3, 2014, that required motions to intervene and protests regarding the September 2 Compliance Filing to be submitted by September 23, 2014. Powerex and WPTF submitted their filings nearly a month after that due date. Both entities state that their filings were prompted not by the submittal of the September 2 Compliance Filing but by the CAISO’s implementation of its requirements regarding protected data in connection with the modeling enhancements going into effect on October 15, 2014.¹³ The proposal tariff revisions in

¹¹ Transmittal letter for September 2 Compliance Filing at 7-8 & n.31.

¹² See 18 C.F.R. § 385.214(d); *Public Service Company of Colorado*, 140 FERC ¶ 61,196, at P 29 (2012)

¹³ Powerex at 1-2, 11; WPTF at 2-3.

the September 2 Compliance Filing regarding the protected data were clear on their face, so Powerex and WPTF have no reasonable excuse for filing so late to protest those tariff revisions. Moreover, the CAISO has been absolutely clear since no later than the June 27 Answer that the CAISO only intends to provide unscheduled flow data to those parties that have also signed the WECC Universal Non-Disclosure Agreement. On July 14, 2014, Powerex filed an answer to the CAISO's June 27 Answer, but raised no issues concerning the use of the WECC Universal Non-Disclosure Agreement. Nor did Powerex or WPTF seek rehearing of the July 31 Order on this issue even after that order noted that "unscheduled flow data will only be disclosed to parties that have signed the WECC universal non-disclosure agreement."¹⁴

The time for Powerex or WPTF to raise these concerns has long since passed. Therefore, the Commission should reject Powerex's and WPTF's filings.

B. The CAISO's Proposal Is Consistent with Commission-Approved Tariff Provisions that Require Participants to Execute a WECC Confidentiality Agreement in Order to Receive Protected Data

Powerex and WPTF argue that the proposal in the September 2 Tariff Filing to require execution of the WECC Universal Non-Disclosure Agreement in order to receive protected data is onerous and reduces transparency.¹⁵ They fail to recognize that the CAISO tariff already includes similar requirements that the Commission has approved as just and reasonable. The proposal in the September 2 Tariff Filing merely extends the same requirement to sign the now-applicable WECC confidentiality agreement to a new category of protected data.

¹⁴ July 31 Order at PP 39, 43.

¹⁵ Powerex at 4-7; WPTF at 4-5.

In the September 2 Tariff Filing, the CAISO proposed to add tariff section 6.5.10.2(e) to require execution of the WECC Universal Non-Disclosure Agreement as a prerequisite to receive the protected data regarding intertie information described in tariff section 6.5.10.1.5. Similarly, existing tariff section 6.5.10.2(b)(ii) requires market participants that are not members of WECC to provide to the CAISO an executed WECC Non-Member Confidentiality Agreement for WECC Data in order to receive any of the types of protected data described in tariff section 6.5.10.1. Existing tariff section 6.5.10.2(d)(iii) imposes the same requirement on non-market participants that are not members of WECC. The Commission approved the addition of those two sections to the tariff as just and reasonable without further comment in 2010.¹⁶

Here, however, CAISO believes the unscheduled flow data received by WECC is information that is appropriately classified as “Covered Data” under the WECC Universal Non-Disclosure Agreement and is thus subject to the information-sharing restrictions contained therein. WECC defines “Covered Data” to include, in part, “information or data related to voltages, line flows, interchange schedules, e-tags, load projections, planned generation and transmission outages, and breaker status.”¹⁷ For this reason, and similar to previously Commission-approved practice, the CAISO proposes to require execution of the WECC Universal Non-Disclosure Agreement, as this is the applicable WECC non-disclosure agreement rather than the WECC Non-Member Confidentiality Agreement for WECC Data (now called the “WECC

¹⁶ See *California Independent System Operator Corp.*, 132 FERC ¶ 61,023, at PP 5, 17-20 (2010). Section 6.5.10.2 was originally numbered as section 6.5.3.3.1 but was given its current numbering in 2012. See *California Independent System Operator Corp.*, 141 FERC ¶ 61,201, at P 23 (2012).

¹⁷ WECC Universal Non-Disclosure Agreement at 5 (definition of “Operating Reliability Data”). Under that agreement, Covered Data is defined to include Operating Reliability Data. *Id.* at 4-5 (definition of “Covered Data”).

Confidentiality Agreement”), as a prerequisite for obtaining unscheduled flow data pursuant to section 6.5.10.2(e). The CAISO also plans to submit a future filing to update sections 6.5.10.2(b)(ii) and 6.5.10.2(d)(iii) to reference the WECC Universal Non-Disclosure Agreement instead of the superseded WECC Confidentiality Agreement.¹⁸ These long-standing practices have proven to be workable and the CAISO is committed to working with parties to ensure they remain so.

Powerex’s and WPTF’s complaints about the provisions of the WECC Universal Non-Disclosure Agreement are unavailing. It is the only WECC confidentiality agreement currently in effect and thus it is the only such agreement that can require execution under section 6.5.10.2(e) (and under sections 6.5.10.2(b)(ii) and 6.5.10.2(d)(iii) pursuant to the CAISO’s future filing). The only other option would be to not require execution of the WECC confidentiality agreement at all, but as explained below, it is just and reasonable to include in section 6.5.10.2(e) the requirement that the WECC confidentiality agreement be executed.

C. It Is Just and Reasonable to Require Execution of the WECC Universal Non-Disclosure Agreement

Powerex and WPTF argue that there is no reason to require execution of the WECC Universal Non-Disclosure Agreement under tariff section 6.5.10.2(e).¹⁹ They are incorrect.

Requiring execution of the WECC Universal Non-Disclosure Agreement is just and reasonable. It will ensure that no information is impermissibly disclosed in violation

¹⁸ See transmittal letter for September 2 Compliance Filing at 8 (explaining that the CAISO will update the tariff references in a future filing).

¹⁹ Powerex at 7-9; WPTF at 5.

of the WECC Universal Non-Disclosure Agreement. Also, as explained above, the CAISO tariff already requires execution of WECC confidentiality agreements in order to receive protected data other than the intertie information described in tariff section 6.5.10.1.5. The CAISO is simply clarifying that the currently applicable agreement to cover the provision of intertie information is the WECC Universal Non-Disclosure Agreement.

The CAISO has long made clear its intention to make execution of the WECC confidentiality agreement a prerequisite to receive the protected data regarding intertie information. In the stakeholder process that resulted in the May 22 Tariff Filing, the CAISO explained that it would “endeavor to share as much pricing and scheduling information as practical and lawful pursuant to the restrictions of any non-disclosure agreements.”²⁰ In the May 22 Tariff Filing itself, the CAISO stated that it would provide parties that have signed a non-disclosure agreement with the protected data described in section 6.5.10.1.5.²¹ The May 22 Tariff Filing did not include any proposed tariff revisions to implement the requirement to execute the WECC confidentiality agreement because the CAISO had planned to implement that requirement through existing provisions in tariff section 6.5.10.²² However, upon further consideration of the matter, the CAISO determined that the existing provisions in section 6.5.10 may not have been sufficiently specific about the requirement to sign the WECC confidentiality agreement.

²⁰ Comments Matrix – Full Network Model Expansion – Third Revised Straw Proposal at 29 (posted on December 30, 2013 and available on the CAISO website at <http://www.caiso.com/informed/Pages/StakeholderProcesses/FullNetworkModelExpansion.aspx>).

²¹ Transmittal letter for May 22 Tariff Filing at 32.

²² As explained above, those tariff provisions require parties to sign a non-disclosure agreement as a prerequisite to being provided protected data by the CAISO.

That is why the CAISO proposed to clarify the tariff in a compliance filing to state that intertie information is only available to parties that have also signed the WECC confidentiality agreement.

D. The September 2 Compliance Filing Is Procedurally Correct

Powerex argues that the Commission should reject the CAISO's proposed revisions to tariff section 6.5.10.2 on the grounds that they go beyond the directives in the July 31 Order.²³ There is no merit in Powerex's procedural argument.

In the July 31 Order, the Commission teed up the issue when it summarized the concerns that IID had regarding data confidentiality and the CAISO's response in the June 27 Answer, including the CAISO's explanation that "unscheduled flow data will only be disclosed to parties that have signed the WECC universal non-disclosure agreement."²⁴ However, the Commission did not state whether or not it concurred with the CAISO's proposal in the June 27 Answer to clarify in a compliance filing that unscheduled flow data is only available to parties that have also signed the WECC Universal Non-Disclosure Agreement. Therefore, the CAISO submitted proposed tariff revisions to implement the clarification in the September 2 Compliance Filing out of an abundance of caution, "assuming the Commission intended to permit the CAISO to make that clarification," and, to the extent necessary, the CAISO requested that the Commission clarify the matter pursuant to 18 C.F.R. § 385.212.²⁵

These CAISO actions were entirely proper from a procedural standpoint. The CAISO recognizes that compliance filings are normally limited to the directives

²³ Powerex at 9-11.

²⁴ July 31 Order at PP 39, 43.

²⁵ Transmittal letter for September 2 Compliance Filing at 8 & n.31.

contained in the relevant Commission order, but in this case, although the July 31 Order did not contain any specific directives on the relevant issue, the prior references to the issue in the order suggest that the Commission may well have agreed with the CAISO's proposed clarification.

It would have been inappropriate for the CAISO to interpret the Commission's silence as an implicit rejection. Because the CAISO proposed the revisions to tariff section 6.5.10.2 in the September 2 Compliance Filing with the appropriate caveats described above, the Commission can now clarify what it meant to say in the July 31 Order and either accept or reject the tariff revisions. But if the CAISO had not taken these actions, the Commission would have had no reason to clarify what it intended and would have been deprived of the ability to act on the tariff revisions.

E. The CAISO Concurs with IID's Answer

IID argues that the Commission should reject WPTF's out-of-time motion to intervene for failure to meet the procedural requirements to intervene out-of-time.²⁶ On substantive grounds, IID argues that the Commission should reject Powerex's and WPTF's protests because: (1) the CAISO will use reliability data provided under the WECC Universal Non-Disclosure Agreement to estimate flows in the full network model; (2) reliability data provided under the WECC Universal Non-Disclosure Agreement should be protected in accordance with the terms and conditions of that agreement; (3) the CAISO's proposal does not eliminate "full visibility" pursuant to the full network

²⁶ IID at 3-4.

model; and (4) tariff section 6.5.10.2(e) is necessary to ensure compliance with the WECC Universal Non-Disclosure Agreement.²⁷

The CAISO concurs with IID's answer. For the reasons explained therein and above in this CAISO answer, the Commission should reject Powerex's and WPTF's filings on procedural grounds or should find that Powerex's and WPTF's substantive arguments are without merit.

III. Conclusion

For the foregoing reasons, the Commission should accept the September 2 Compliance Filing as submitted in the captioned proceeding without condition or modification.

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²⁷ *Id.* at 5-7.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the above-referenced 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 at Folsom, California this 12th day of November, 2014.

Anna Pascuzzo

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