

Western Power Trading Forum Comments on Draft IST CFTC Exclusion Language

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WPTF appreciates the opportunity to submit these comments on the CAISO-proposed Inter-SC Trade (IST) tariff changes (<http://www.caiso.com/Documents/DraftTariffLanguage-Inter-SCTradesOversightExemption.doc>) to provide for a CFTC exclusion.

WPTF members support the CAISO's efforts toward a CFTC exclusion. However, having reviewed the draft tariff language, we are concerned that the proposed language implies mechanisms that are not workable given the current structure and application of ISTs.

ISTs – particularly with the implementation of MRTU – are financial transactions used to transfer the value of energy at a particular point from one party's account to another. They often are used in conjunction with other physical transactions, and they may or may not be used separate from such transactions. For example, a marketer selling to a load-serving entity may schedule an import of physical energy with the ISO and then use the IST to transfer the value of the energy to the LSE. The LSE may then schedule physical load with the ISO at their load area having received the value of the energy at a hub price. However, the trading points are financial only; they represented a weighted average price and are not locations to or from which physical energy can be scheduled.

As a result, some of the language the ISO has included in its proposed IST language does not fit well with the commercial reality. Leaving the language unchanged would at a minimum create significant ambiguity. More significant, however, are WPTF members' concerns that it may be impossible to satisfy these provisions as they are currently drafted precluding them from entering CAISO Energy Transaction under the EEI.

WPTF understands that the CAISO is relying in part on similar language filed by the ISO NE. WPTF has reviewed the ISO NE's language and finds subtle differences, and in some cases the CAISO has changed the ISO NE's filed language in its proposed tariff provision in a manner that creates the challenges for WPTF members. We ask that the CAISO reconsider some of the particular terminology.

These points as well as our other questions and recommended changes are below.

28.4 a) "In order to submit an Inter-SC Trade, a Scheduling Coordinator must have prior authorization from the CAISO, which may be provided on a blanket basis for all Inter-SC Trades entered by that Scheduling Coordinator."

What is required to obtain the prior authorization described in 28.4(a)?

28.4 b) (i) "the Inter-SC Trade constitutes an exchange...". It is not clear what an "exchange" is. If the intention is that the SC have an accompanying bilateral related transaction could that be specified?

28.4 b) (i) "...the Inter-SC Trade constitutes an exchange for a separate transaction that ...is a spot, forward or derivatives contract that contemplates the transfer of energy or a MW obligation to or from a Market Participant..." WPTF is concerned that the language may be interpreted to suggest that a participant must have an IST transaction "separate" from a physical transaction in order to comply. We note that the ISO NE filed language uses the phrase "for an off-market ('Related Transaction')". In this way the ISO NE is clear that what is required is a related bilateral transaction that calls out the IST. Use of "related" would avoid the concern that the CAISO is in some way expecting that the bilateral IST transaction would be distinct from any bilateral physical transaction. It is also unclear to what "exchange" refers. We propose the CAISO consider the following language instead: (i) the Inter-SC Trade constitutes part of a transaction outside of the CAISO (a "Related Transaction"). This would also resolve the fact that the CAISO uses "Related Transaction" later in 28.4 even though it is not previously defined.

28.4 b) (i) "...is a spot, forward or derivatives contract that contemplates the transfer of energy or a MW obligation to or from a Market Participant..." What is the rationale for describing the nature (spot, forward or derivative) of the Related Transaction in the second requirement of 28.4(b)(i)? Such a description seems unnecessary.

28.4 b) (i) "...commercially appropriate obligations..." It is not clear what is meant by "commercially appropriate obligations." Is the ISO concerned about legitimate, bona fide transactions? If so, we suggest the following revision: "...involves a legitimate business purpose that imposes a duty to transfer energy or a MW obligation from one Market Participant to another..."

28.4 b) (i) "...that impose a duty to transfer electricity or a MW obligation from the seller to the buyer, or from the buyer to the seller..." The duty to transfer electricity is between ISO and Buyer or Seller, not between Buyer and Seller. WPTF proposes striking the phrase "from the seller to the buyer, or from the buyer to the seller".

28.4 b) (i) "...with performance taking place..." It is unclear to what "performance" refers. With the IST, performance in the bilateral contracts would be fulfilled by submitting the IST, where the IST may be a "scheduling" term of the contract. As a result, if the contract calls for an IST and a party fails to do it, the counterparty could exercise its available remedies under the contract and potentially suspend performance. As drafted the CAISO's language can be interpreted to impose some performance requirements other than simply scheduling the IST. Also, with respect to "...reasonable time...", it is unclear what requirement "reasonable time" is intended to impose. ISTs can be done for any period of time, a month, a year, etc. It is not clear why the ISO has added a "reasonable time" requirement for performance of the Related Transaction or tied it to market practices. Each Market Participant will have its own market view, and some may engage in shorter term transactions or longer dated ones as a result. With respect to "in accordance with prevailing cash market practices", it is unclear what this means, especially within the context of an IST. Lastly, with respect to "...and is not contingent on either party to carry out the Inter-SC Trade..." given that the Related Transactions often do require the submission of an IST, it is unclear what this means and how it would be workable under established standard contract language. WPTF recommends that the CAISO consider removing the last requirement from 28.4 b) (i). If the CAISO wishes to retain this type of provision then it must be clarified.

28.4 c) WPTF suggests that 28.4 c) be revised to require that each SC will produce the required records with five (5) business days. This is consistent with the records retrieval requirement for End Users in the CFTC reporting and recordkeeping rules and is more reasonable than "upon request of the CAISO." Finally, we suggest deleting the word "their" in the last line.