



**Final Proposal and Draft Tariff Language:
Central Counterparty Exception for Self-Supply
From Generation Financed by Tax-Exempt Debt**

August 23, 2012

1. BACKGROUND

On May 25, 2012, the ISO filed a tariff amendment with FERC to become a central counterparty to market transactions effective September 1, 2012, in compliance with FERC Order No. 741. See filings in FERC Docket No. ER12-1856. Several publicly-owned utilities protested the ISO's filing on the basis that it could jeopardize the tax-exempt status of the bonds they issued to finance generation projects, among other things. The Commission has yet to rule on the ISO's filing.

To resolve the concerns raised by the publicly-owned utilities, this paper proposes a further amendment to the tariff that would provide a limited exception to the ISO's status as a central counterparty. Specifically, it would exempt self-supplied energy from generation financed by tax-exempt debt. The ISO plans to submit this amendment to its Board of Governors at its meeting on September 13 and 14. This will require an abbreviated stakeholder process, as detailed below.

2. STAKEHOLDER PROCESS

Written comments are due on both the proposal and the tariff language by August 29.

The ISO will hold a stakeholder call to discuss the comments on August 30.

If necessary, the ISO will publish revised tariff language and hold a second call on dates to be determined.

3. EXCEPTION FOR CERTAIN SELF-SUPPLY TRANSACTIONS

Both during the stakeholder process leading to the ISO's compliance filing to become a counterparty and in their protests at FERC, the publicly-owned utilities expressed concerns about the implications for their tax-exempt bonds. They explained that, because that their bids and schedules to supply energy to their own load would become sales of energy to the ISO, these self-supply bids and schedules might be found to violate private use restrictions on the tax-exempt bonds that funded the generation projects. Those bonds limit the use of the generators for purposes other than to supply the customers of the municipal utilities.

ISO staff has been working with the publicly-owned utilities regarding their concerns. The ISO understands that they can be addressed with a tariff amendment creating a limited exception from the central counterparty mechanism for the self-supply from generation funded by tax-exempt debt. Accordingly, the ISO is proposing to amend proposed Section 11.29 of the tariff by adding subsection a(ii), as follows:

11.29 CAISO as Counterparty; Billing and Payment;

(a) The CAISO shall be the contracting counterparty, in its own name and right, to each Scheduling Coordinator, CRR Holder, Black Start Generator, or Participating TO for any purchase or sale of any product or service, or for any other transaction, that is financially settled by the CAISO under the CAISO Tariff, except under the following circumstances:

(i) The CAISO shall not be the contracting counterparty for transactions that procure Station Power for a Generating Unit located in Mexico or for transactions that procure Energy or Ancillary Services within Mexico; for such transactions, the CAISO will not act as principal but instead as agent for and on behalf of the relevant Scheduling Coordinators.

(ii) Bids for Supply submitted by a Scheduling Coordinator for any resource funded by Municipal Tax Exempt Debt shall not constitute sales to the CAISO, and the CAISO shall not be a contracting counterparty, to the extent that the total MW volume of such Bids for Supply in any settlement interval is less than or equal to the metered CAISO Demand for that settlement interval for the Load Serving Entity that holds entitlements to the resources for which such Bids for Supply are submitted.

(iii) The provisions of this Section 11.29 will not apply to the billing and payment of transactions associated with Trading Days that occurred prior to September 1, 2012. Billing and payment of such transactions shall be governed by the terms of the tariff effective on the Trading Days.

FERC accepted a similar provision proposed by MISO to protect the tax-exempt status of its participants in an order issued August 8, 2012. See *Midwest Independent Transmission System Operator, Inc.*, 140 FERC ¶ 61,116 (2012), P 20. The ISO's proposed amendment would differ from the exception approved for MISO because it would be narrower. Whereas MISO's tariff provision applies to all self-supply and financial schedules, the ISO's would be limited to schedules involving tax-exempt generation, because that is the only area in which substantial concerns have been raised. In that respect, it would be similar to provisions in the Transmission Control Agreement that recognize the special status of tax-exempt transmission facilities. See TCA §§ 2.3.1 & 2.3.3.

Like the central counterparty amendment, the significance of the proposed amendment is legal. It would not require any changes to the ISO market rules or software. In particular, ISO staff has not identified any reason why the ISO would need to quantify the amount of sales that fall within the proposed exception. This can be calculated by the publicly-owned utilities for their own purposes.

4. QUESTIONS ABOUT THE PROPOSED TARIFF AMENDMENT

The ISO wants to maximize the effectiveness of this stakeholder process and the likelihood that any questions or concerns can be resolved before the September Board meeting. To that end, the ISO encourages stakeholders to ask questions before initial written comments are due on August 29, and at any time during the process. Please submit questions to Dan Shonkwiler, dshonkwiler@caiso.com.