

128 FERC ¶ 61,103
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

California Independent System
Operator Corporation

Docket No. ER08-1113-001

ORDER ON REHEARING AND CLARIFICATION

(Issued July 30, 2009)

1. In this order, we address the requests for rehearing and clarification of the Commission's September 19, 2008 order, which conditionally accepted proposed tariff revisions submitted by the California Independent System Operator Corporation (CAISO) to establish an Integrated Balancing Authority Area (IBAA), which modeled and priced export and import transactions with the Sacramento Municipal Utility District (SMUD) and Turlock Irrigation District (Turlock) balancing authority areas, effective on the start date of the CAISO's Market Redesign and Technology Upgrade (MRTU) Tariff (hereinafter, IBAA Proposal).¹ In this order, we deny the requests for rehearing and grant in part and deny in part requests for clarification of the September 19 IBAA Order, as discussed below.

2. The IBAA Proposal establishes modeling and pricing proxy points for import and export transactions and is consistent with the CAISO's MRTU market design. In the past, CAISO energy markets have been hampered by significant differences between day-ahead scheduled flows that do not reflect actual, real-time transmission flows and constraints and operating limitations of generators.² These infeasible day-ahead

¹ *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,271 (2008) (September 19 IBAA Order). In addition, in the September 19 IBAA Order, the Commission accepted the CAISO's proposed tariff revisions addressing the impact of the IBAA Proposal on Congestion Revenue Rights.

² *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 5 (2006) (September 2006 Order).

schedules required the CAISO to scramble in real time to redispatch its system to accommodate the actual flows and to allocate the costs of the re-dispatch as uplift. In addition, the zonal pricing approach lacked clear price signals that accurately reflect costs at specific locations. Similarly, limitations in system and market modeling restricted the CAISO from dispatching its system in a more efficient manner.³

3. To remedy these and other market problems, the CAISO comprehensively restructured its markets through its MRTU Tariff. While the current MRTU Tariff eliminates flaws and implements numerous market enhancements, some flaws persist, in part due to preexisting seams between the CAISO and external balancing authority areas. One such flaw stems from the fact that the CAISO does not have the information necessary to calculate correct Location Marginal Pricing (LMP) for interchange transactions. This results in a mismatch between the day-ahead schedules and the real-time, actual grid operations and imprecise modeling. To support the goals of MRTU, the CAISO needs to be able to predict the effect these interchange transactions will actually have on its markets. The IBAA Proposal addresses these market flaws consistent with the goals of MRTU. For example, by using a more accurate representation of the locations of external resources used to implement interchange transactions in the CAISO's full network model, the IBAA Proposal helps to ensure that interchange transactions from the SMUD and Turlock balancing authority areas are appropriately valued for purposes of managing congestion on the CAISO-controlled grid, and reduce the likelihood of significant differences between scheduled flows and actual flows.

4. Further, the alternative pricing arrangement, Market Efficiency and Enhancement Agreement or "MEEA," offered by the CAISO in exchange for the sharing of information will allow an entity that controls a resource within the IBAA to receive a more favorable pricing structure if it is willing to provide the CAISO with information allowing the CAISO to verify the location and operation of the resources used to implement interchange transactions between the CAISO-controlled grid and the IBAA.

5. However, some parties request rehearing or clarification on certain elements of the IBAA Proposal. The Commission denies rehearing and provides clarification of certain items, including what "actual price" MEEA signatories may be entitled to, how parties may avoid certain duplicative charges and how to determine what information the CAISO may provide a MEEA signatory.

³ *Id.* P 10.

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I. Background

6. On June 17, 2008, the CAISO filed its IBAA Proposal. The proposal established a single hub for modeling and pricing all imports and exports between the CAISO and SMUD and Turlock balancing authority areas regardless of the interconnection points that separate the CAISO from the SMUD and Turlock balancing authority areas.

7. As an alternative to the single hub pricing mechanism, the CAISO proposed to provide market participants the option to execute a MEEA. The CAISO stated that a market participant wishing to execute a MEEA would provide the CAISO with additional information sufficient to allow verification of the specific location and operation of the external resource that is used to implement interchange transactions in exchange for an alternative pricing and modeling arrangement. The Commission’s September 19 IBAA Order accepted the IBAA Proposal subject to modification and directed the CAISO to make a further compliance filing in response to several concerns. On November 25, 2008, the CAISO filed revised tariff sheets as the Commission directed. On March 6,

2009, the Commission conditionally accepted, subject to modification, the CAISO's revised tariff sheets.⁴

II. The IBAA Proposal

8. Under the MRTU Tariff, the CAISO is unable to accurately price transactions stemming from neighboring authorities, because it does not have the information necessary to calculate correct LMPs for interchange transactions. This results in a mismatch between the day-ahead schedules and the real-time, actual grid operations and imprecise modeling. The CAISO must be able to predict the effect these interchange transactions will actually have on its markets. The IBAA Proposal addresses this issue.

9. The IBAA Proposal establishes a single IBAA comprised of the SMUD and Turlock balancing authority areas, configured as a single hub with default modeling and pricing points for all interchange transactions. The CAISO contends that by using a single hub approach with one default pricing point for all imports and one default pricing point for all exports, the IBAA Proposal avoids creating unjust and unreasonable scheduling and pricing results caused by: (1) multiple price locations for transactions between the IBAA and the CAISO-controlled grid; and (2) the incentive for sellers into the CAISO markets to schedule at the most favorably priced interchange locations irrespective of the location of the resources actually dispatched to implement the transaction.

10. The CAISO also argues that by having a more accurate representation of the location and operation of external resources used to implement interchange transactions in the CAISO's full network model, the IBAA Proposal will help to ensure that there will not be significant differences between day-ahead scheduled flows and actual flows in real-time. The CAISO indicates that reducing the possibility of large differences between scheduled and actual flows will eliminate the infeasible schedule problem that is prevalent in the pre-MRTU zonal market design.

11. The CAISO proposes to offer alternative pricing arrangements, or MEEAs, with any market participant owning or controlling resources that believes that the default rules will not appropriately price or reflect the value of its interchange transactions. Under the MEEA, a market participant will provide the CAISO with additional information sufficient to allow the CAISO to verify the location and operation of the external resource that is actually used to implement interchange transactions. In addition, in response to stakeholder comments, the CAISO agreed to provide a stakeholder process before finalizing any MEEA and filing it with the Commission.

⁴ *Cal. Indep. Sys. Operator Corp*, 126 FERC ¶ 61,207 (2009) (March 6 Compliance Order).

12. The IBAA Proposal relates to the operation of the three 500 kV alternating current (AC) lines that together form the California-Oregon Intertie, which is highly integrated and serves to transfer electricity from the Pacific Northwest into central California.⁵ The first line, the California Oregon Transmission Project (COTP), is located within the SMUD balancing authority area. On its northern end is the Captain Jack substation, which is located in Oregon in the Bonneville Power Administration balancing authority area. The COTP runs south for 345 miles from Captain Jack to the Tracy/Tesla substations. The other two lines, which are part of the California-Oregon Intertie, are commonly known as the Pacific AC Intertie (PACI) and extend generally from the Malin substation in the north to the Tesla substation in central California. The PACI in California is generally located within the CAISO balancing authority area, and has major substations at Malin and Tesla that are electrically connected to Captain Jack and Tracy, respectively.

III. The September 19 IBAA Order

13. In its September 19 IBAA Order, the Commission conditionally accepted the IBAA Proposal. The Commission directed the CAISO to modify its proposal in several ways. The first was to address potential over-collection for losses due to modeling of parallel flows. The second was to clarify that the CAISO must file with the Commission any changes to the IBAA, including changes to the default pricing points, and any new IBAA Proposal. In addition, the Commission directed the CAISO to include the default pricing points in its filed tariff and to change its tariff to remove the stakeholder process requirement for developing individual MEEAs.

IV. Discussion

A. Procedural Matters

14. The City of Santa Clara, California (Santa Clara), SMUD, Turlock,⁶ the City of Los Angeles Department of Water and Power (LADWP), Transmission Agency of Northern California (TANC), the United States Department of Energy: Berkeley Site

⁵ See *Cal. Energy Comm'n v. Bonneville Power Admin.*, 902 F.2d 1298, 1302 (9th Cir. 1990); *Pacific Gas and Elec. Co. v. FERC*, 746 F.2d 1383, 1384 n.1 (9th Cir. 1984). See also *PacifiCorp*, 121 FERC ¶ 61,278, at P 2 (2007).

⁶ Turlock joins in the arguments and requests for relief submitted by SMUD, Santa Clara, Modesto, TANC, and Western, and urges the Commission to grant rehearing and to adopt them.

Office (DOE-Berkeley), the City of Redding, California (Redding),⁷ Imperial Irrigation District (Imperial), Western Area Power Administration (Western), the City and County of San Francisco (San Francisco), Modesto Irrigation District (Modesto), Southern California Edison Company (SoCal Edison), and Northern California Power Agency (NCPA) filed requests for rehearing and/or clarification of the September 19 IBAA Order. The CAISO filed an answer to the requests for rehearing and a motion for clarification. Santa Clara, SMUD, Turlock, TANC, Western and Modesto filed answers to the CAISO's Answer.

15. We reject the CAISO's answer to the requests for rehearing and its late-filed motion for clarification.⁸ Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2008), prohibits answers to a request for rehearing.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Santa Clara's, SMUD's, Turlock's, TANC's, Western's or Modesto's answer and will, therefore, reject them.

B. Jurisdictional Matters

17. Imperial and Turlock request rehearing of the Commission's approval of the IBAA Proposal, claiming that the Commission lacks statutory authority to set the rates, terms and conditions of governmental entities' sales of electric energy outside the CAISO's organized auction market. According to Imperial, the Commission's jurisdiction under section 205 of the Federal Power Act (FPA) is limited to sales by public utilities.⁹ Imperial contends that governmental and municipal utilities are not "public utilities" under the FPA and therefore not within the Commission's jurisdiction.¹⁰ Turlock asserts that the FPA provides that the Commission has only limited jurisdiction over certain governmental entities' sales into the CAISO's organized auction markets and does not

⁷ Redding concurs with TANC's request for rehearing and clarification and joins and adopts TANC's arguments and requests for relief.

⁸ *PJM Interconnection, LLC*, 95 FERC ¶ 61,333, at 62,184 n.11 (2001) (rejecting a late-filed motion for clarification as an untimely request for rehearing and citing *New England Power Pool*, 89 FERC ¶ 61,022, at 61,076 (1999)).

⁹ Imperial Irrigation District October 20, 2008 Rehearing Request at 18 (Imperial Rehearing Request) (citing 16 U.S.C. § 824d (2006)).

¹⁰ *Id.* at 18-19 (citing *Bonneville Power Admin. v. FERC*, 422 F.3d 908 (9th Cir. 2005) (*Bonneville*)).

have blanket authority over all interchange transactions. Turlock claims that the September 19 IBAA Order ignores these express limitations on the Commission's authority by setting prices for all interchange transactions even though not all interchange transactions involve sales into the CAISO's organized auction markets.

18. Turlock also claims that the Commission is forcing governmental entities to provide modeling data to the CAISO as a prerequisite for receiving just and reasonable rates for their sales. Turlock further claims that the Commission is exceeding its jurisdiction because the FPA does not authorize the Commission to directly or indirectly order governmental entities like Turlock to provide the disputed market data that the CAISO contemplates in the September 19 IBAA Order and its proposed MEEA.¹¹

19. Turlock asserts that the Commission must clarify that, to the extent the IBAA Proposal sets the rates, terms and conditions of sales by governmental entities it does so only for those sales that are not excluded by sections 201(f) and 206(e)(2) of the FPA. Turlock states that, for example, the Commission should clarify that the IBAA Proposal establishes only the rates, terms and conditions for sales into the CAISO's organized, auction markets and does not affect the rates, terms and conditions of governmental entities' bilateral sales that occur outside of the CAISO's auction markets, even if these sales are scheduled into or out of the CAISO-controlled grid. Turlock states that without this clarification, the Commission is inappropriately attempting to do indirectly what it cannot do directly under the FPA.¹²

Commission Determination

20. The Commission denies rehearing on the issue of jurisdiction. The Commission has jurisdiction over the CAISO and its tariff under the FPA, and the regulation of proposals concerning the CAISO's tariff is within that core authority.¹³ The IBAA Proposal is a request by the CAISO to alter its tariff. Such a request is within the Commission's jurisdiction and is not affected by the *Bonneville* case because *Bonneville* concerned the Commission's refund authority, which is not implicated here.

21. The Commission's authority in this situation is well-established. At the outset of MRTU, the Commission explained to parties, including Imperial, that the Commission's

¹¹ Turlock October 20, 2008 Rehearing Request at 21-23 (Turlock Rehearing Request) (citing 16 U.S.C. §§ 824(f), 824(e)(2) (2006)).

¹² *Id.* at 23.

¹³ 16 U.S.C. § 824d (2006).

approval of the CAISO's charges for services was within its authority.¹⁴ By approving MRTU, the Commission explained that it was allowing the CAISO to charge for services the CAISO provided under its tariff and for use of CAISO-controlled facilities.¹⁵ The IBAA Proposal is similarly limited, only applying to scheduled transactions that impact the CAISO-controlled grid.

22. Courts have recognized that the Commission's authority includes all aspects of wholesale sales.¹⁶ In *NARUC*, the D.C. Circuit Court of Appeals found that the Commission may exercise jurisdiction over the terms of wholesale transactions.¹⁷ The court explained that the Commission could regulate the "relationships between parties with respect to electricity flowing over facilities."¹⁸ The court continued that, although this regulation may affect the conduct of non-jurisdictional entities, it was not an exercise of jurisdiction over the non-jurisdictional entities.¹⁹ Similarly, here, the IBAA Proposal concerns wholesale transactions that flow over facilities, not the regulation of the non-jurisdictional entities themselves.

23. Also, since the IBAA Proposal only applies to scheduled transactions that impact the CAISO-controlled grid, only a party that chooses to use the CAISO-controlled grid is affected. Therefore, the Commission has not improperly compelled the governmental entities to act and has not exceeded its jurisdiction by accepting the IBAA Proposal. Here, the CAISO Tariff applies to transactions that impact the CAISO-controlled grid, and if a party chooses to participate in the CAISO market that party is choosing to operate under the CAISO Tariff. Just as a non-jurisdictional entity may choose to participate in a settlement agreement that is submitted to the Commission, a non-jurisdictional entity may choose to participate in the CAISO market, which is governed by the CAISO Tariff.²⁰

¹⁴ *Cal. Indep. Sys. Operator*, 119 FERC ¶ 61,076, at P 485 (2007).

¹⁵ *Id.*

¹⁶ *National Assoc. of Regulatory Utility Commissioners v. FERC*, 475 F.3d 1277, 1280 (D.C. Cir. 2007) ("*NARUC*") (citing *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 696 (D.C. Cir. 2000)).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 1281.

²⁰ *San Diego Gas & Electric Co.*, 119 FERC ¶ 61,296, at P 27 (2007).

24. Further, Turlock's claim that the Commission ordered governmental entities to provide modeling data to the CAISO is incorrect. The September 19 IBAA Order provides certain non-jurisdictional entities the option to enter MEEAs, which would create an agreement through which the CAISO would receive information and the non-jurisdictional entity would receive alternate pricing. Thus, because MEEAs are voluntary, the Commission is not requiring the non-jurisdictional entity to provide modeling data and is not exercising jurisdiction over the entity.

25. Also, the Commission clarifies that the IBAA Proposal establishes only the rates, terms and conditions for sales in the CAISO's market. However, a scheduling coordinator that submits a schedule to the CAISO markets may be subject to the applicable tariff provisions.

C. Operational and Pricing Issues

1. The Single Hub Approach

26. DOE-Berkeley claims that despite its limited scheduling needs and inability to influence markets, the September 19 IBAA Order sweeps it into a complex market model for which DOE-Berkeley has little need and can only participate in at extreme expense. According to DOE-Berkeley, it is not associated with differences in the estimated and actual power flows the IBAA Proposal is designed to address. DOE-Berkeley claims that under the proposed MRTU Tariff, it will self-schedule transactions in the CAISO day-ahead market, receiving the day-ahead LMP where its schedules enter the CAISO and paying the day-ahead LMP at its load point. DOE-Berkeley states that it does not normally participate in shorter term markets nor otherwise sell power into the CAISO markets. Therefore, DOE-Berkeley claims that the CAISO will have full knowledge of its schedules and use of the COTP well ahead of the time that the CAISO is required to commit generation or make other operational decisions impacting reliability. Thus, DOE-Berkeley maintains that by the nature of its operations and the scheduling of energy for its own end use, it will not be in a position to influence markets operated by the CAISO.

27. DOE-Berkeley states that, as an agency of the United States, it does not participate in manipulation of the electric market, so the IBAA Proposal's efforts to deter gaming of the system associated with different prices on each intertie does not apply. Further, DOE-Berkeley argues that it would be difficult for anyone in its situation to engage in any unethical scheme, claiming it would take collaboration by another branch of DOE-Berkeley and would be easily detected.

28. DOE-Berkeley claims that the existing price modeling properly reflects the reality that the power it purchases from the Pacific Northwest and transmits to the CAISO grid via the COTP enters the system at Tracy. DOE-Berkeley estimates that moving the place of settlement from Tracy to Captain Jack may cost it \$2 million annually. Thus, DOE-

Berkeley requests the Commission order the CAISO to maintain its settlement point at the Tracy substation.

29. Imperial claims the IBAA Proposal penalizes the CAISO's adjacent neighbors for events that are beyond their control. Imperial contends that the loop flows at issue may be caused by the CAISO itself, entities within the CAISO, or simply just the physics of the flow of energy. According to Imperial, the CAISO already has operating procedures to handle unscheduled flows, as do each of the balancing authority areas in the Western Interconnection, as well as accounting and settlements procedures to account for unscheduled loop flows. Therefore, Imperial argues that the CAISO should not be allowed to penalize its neighbors for events that are beyond their control.

30. Further, Imperial states that the Commission has recognized that imbalances cannot always be controlled and that it is unfair to penalize for them. For example, Imperial states that the Commission has been sympathetic toward, and has demonstrated more flexibility with respect to, variable energy sources such as wind power.²¹

31. Western claims that under the IBAA Proposal, the CAISO does not obtain any new data from any of the IBAA participants unless they execute a MEEA. According to Western, this means that the CAISO is in the exact same position as it is today, i.e., there is no new data, therefore the IBAA Proposal does little to provide the CAISO with any new information to more accurately schedule or model the interchange flows between balancing authorities. Western states that it provided an affidavit stating that the CAISO's proposed single hub approach will not achieve the CAISO's goal of improving forward scheduling and that it is highly probable the single hub proposal will not result in an improvement from the existing MRTU proposal.²² Further, Western maintains that it provided testimony on the flaws of the CAISO's graphs of schedules versus actual flows. Western believes the Commission erred in failing to analyze the evidence Western provided demonstrating that without information from Western and other IBAA entities, the IBAA Proposal does little to improve the accuracy of predicting and recognizing the physical flows. As a result, Western believes the Commission decision is not based on the substantial evidence provided in this proceeding.

32. Western and TANC claim that the IBAA Proposal may undercut rather than advance the CAISO's stated reliability objectives. Western argues that the selection of

²¹ Imperial Rehearing Request at 14 (citing *Imbalance Provisions for Intermittent Resources Assessing the State of Wind Energy in Wholesale Electricity Markets*, 111 FERC ¶ 61,026, at P 8 (2005)).

²² Western October 20, 2008 Request for Rehearing and Clarification at 7 (Western Rehearing Request) (citing Ex. WPA-1 at 7-11).

Captain Jack is not a true reflection of the price at the interchange. Western claims to provide evidence that by choosing an arbitrary and artificially low pricing point, it may have an impact on a generator's willingness to schedule into the CAISO from Western's sub-balancing authority. Western and TANC argue that, by artificially pricing transactions from Western's sub-balancing authority to the CAISO at the lowest cost node on Western's system, generators in Western's sub-balancing authority or using Western's transmission system have little market incentive to schedule into the CAISO in the day ahead market.

33. TANC and Turlock contend that pricing imports at Captain Jack and exports at the SMUD Hub will not improve the accuracy of the CAISO's modeling. TANC asserts that the CAISO chose Captain Jack as the default point for imports for strictly punitive reasons - to coerce SMUD and Turlock into providing the CAISO sensitive market information. Moreover, TANC contends that the Commission's acknowledgement that the "default price may, in limited circumstances, create an artificially low price for energy,"²³ undermines the Commission's finding that the proposal is just and reasonable and suggests that the Commission is willingly relying on the proposal's punitive nature to pressure entities into executing MEEAs.

Commission Determination

34. In the September 19 IBAA Order, the Commission found the CAISO's single hub IBAA methodology to be just and reasonable, finding that it is "an appropriate method to model and price interchange transactions that will help minimize the difference between scheduled and actual flows so that the CAISO can operate its system on a reliable, least cost basis."²⁴ We found that the radial approach to modeling interchange transactions that would apply in the absence of the IBAA Proposal would lead to inappropriate scheduling incentives. Because of the SMUD-Turlock IBAA's high degree of parallel transmission and large number of interconnections with the CAISO, the Commission found that radial modeling will tend to be inaccurate in an LMP market where participants have an incentive to schedule transactions following the contract path with the highest LMPs. The single hub methodology is designed to achieve the goals of MRTU of ensuring feasible schedules and establishing accurate LMPs for effective congestion management, thus avoiding the inaccuracies and perverse scheduling incentives inherent in radial modeling.

²³ TANC October 20, 2008 Request for Rehearing and Clarification at 58 (TANC Rehearing Request) (quoting September 19 IBAA Order at P 120).

²⁴ September 19 IBAA Order at P 41.

35. We disagree with DOE-Berkeley's claim that it is inappropriate for the IBAA default price to apply to its imports because the CAISO will have sufficient information about the location of the generation used to serve its load. The CAISO's access to information about its external resources alone should not exempt imports from the IBAA default mechanism. The single hub methodology makes the reasonable assumption that imports to the CAISO are sourced from the Pacific Northwest, and DOE-Berkeley acknowledges that this is the case for many of its imports.²⁵ Whether or not DOE-Berkeley has an incentive to game its schedules, it is asking the Commission to allow it to continue to schedule and receive a price for interchange transactions at Tracy when its imports actually originate at Captain Jack. This is precisely the outcome that the IBAA Proposal seeks to address. As addressed below, Imperial's claim that the IBAA Proposal improperly penalizes the CAISO's neighbors for loop flows that are beyond their control is incorrect. The IBAA Proposal is designed to better model and price energy based on actual flows versus contract paths, and by better modeling these paths, the CAISO can price transactions based on their impact on the grid. Thus, the IBAA Proposal only concerns energy scheduled to impact the CAISO-controlled grid. Although loop flows may have other sources, we find the assumptions contained in the IBAA Proposal to be reasonable given the information available.

36. Parties' assertions that the IBAA single hub methodology will not provide the CAISO with additional information in the absence of executed MEEAs and will solely have a punitive effect on SMUD and Turlock ignore the purpose of the IBAA Proposal. The single hub mechanism was developed to provide, in the absence of additional information about the location of resources supporting interchange transactions between the IBAA and the CAISO, a reasonable assumption about where these transactions originate so that they may appropriately be modeled and allows the CAISO to charge for costs it incurs to support such transactions. The congestion component of the LMPs at each pricing node reflects these costs. The market implications of this assumption are two fold. First, the single hub methodology addresses the economic incentives associated with contract path schedules versus actual flows. Second, the single hub approach ensures that the congestion costs that are the result of interchange transactions between the SMUD-Turlock IBAA and the CAISO balancing authority will not be inappropriately socialized to all CAISO ratepayers. Furthermore, even though it is possible that not all imports from the SMUD-Turlock IBAA originate from the Pacific Northwest, a number of parties have acknowledged that some of their imports are sourced north of the IBAA default pricing point.²⁶ It is logical to conclude that a modeling approach that recognizes

²⁵ DOE-Berkeley October 20, 2008 Rehearing Request at 6 (DOE-Berkeley Rehearing Request).

²⁶ DOE-Berkeley Rehearing Request at 6; Western July 8, 2008 Protest, Docket No. ER08-1113-000 at 25-27.

this fact, in the absence of additional information, would likely be more accurate than a mechanism that allows external entities to specify and schedule contract paths and reap the benefit of being able to avoid congestion charges.

37. The Commission disagrees with Western's assertion that it has failed to analyze the evidence and testimony questioning the accuracy of the CAISO's flow data. SMUD presented similar evidence and testimony which was addressed in the September 19 IBAA Order where the Commission found that, while the exact magnitude of loop flows attributable exclusively to imports from the SMUD-Turlock balancing authority area may not be knowable given the flow data currently available to the CAISO, the data the CAISO has provided demonstrates that these loop flows do occur.²⁷ Furthermore, that such loop flows do occur is a basic principle of electrical engineering. Additionally, our acceptance of the IBAA Proposal was not premised on this data alone. As we have previously discussed, the goal of the IBAA default proposal is to ensure proper modeling and pricing that reflects the impact of the transactions on the CAISO's system, as well as to eliminate unjustified scheduling incentives.

38. We also disagree with Western that we failed to address its testimony and evidence asserting that the IBAA Proposal would not result in more effective congestion management. In the September 19 IBAA Order, we determined that the IBAA Proposal was a reasonable means of addressing these issues and that, because of the unique nature of the SMUD-Turlock IBAA, it was appropriate to apply it to entities importing and exporting from these neighboring balancing authority areas in conjunction with the implementation of MRTU and its LMP dispatch. We found that the IBAA default proposal would provide a reasonable assumption about the location of resources utilized to serve interchange transactions and that the addition of the MEEA option was a necessary component of the proposal that would further improve the accuracy of modeling and pricing through improved data exchange between the CAISO and the IBAA entities.²⁸

2. Default Pricing of Imports and Exports

39. Turlock states that the CAISO's single hub default pricing proposal is unjust and unreasonable and unduly preferential to the CAISO customers and unduly burdensome to Turlock and others that, when importing from or exporting to the CAISO, would always have to buy high from the CAISO and sell low to the CAISO. Turlock claims that such a result is textbook discrimination under section 205(b) of the FPA.²⁹ LADWP asserts that

²⁷ September 19 IBAA Order at P 38-39.

²⁸ *Id.* P 91, 140.

²⁹ Turlock Rehearing Request at 27.

the September 19 IBAA Order errs by failing to explain why it is just and reasonable for the CAISO to purposely select IBAA proxy hubs that allow the CAISO to intentionally under-pay its market participants for the value of external resources and over-collect for the value of its own resources.³⁰ LADWP also argues that there is no record evidence that the IBAA proxy methodology will produce artificially low prices for imports and artificially high prices for exports only in “limited circumstances,” as the Commission suggests in its September 19 IBAA Order. Even in this circumstance, LADWP claims the Commission’s approval of the proposed IBAA pricing for imports and exports as just and reasonable was error.³¹

40. Turlock takes issue with the Commission’s rationale that all sales out of the CAISO also should be priced at the lowest LMP available until the CAISO customer/participant selling the power demonstrates to SMUD or Turlock that the sale is “relieving congestion” on their systems.³² Turlock states that no such proposal has been presented or even suggested here.

41. Turlock asserts that the Commission erred in finding that the CAISO’s default pricing proposal was not anti-competitive. Turlock states that the CAISO’s pricing proposal is anti-competitive on its face because it would fix prices to the advantage of the CAISO’s ratepayers and to the disadvantage of Turlock’s and others’ ratepayers.³³

42. Turlock claims that such one-sided, discriminatory pricing would undermine the competitive pricing in the energy markets in both the CAISO and in the Pacific Northwest. Turlock and others raised concerns about the IBAA Proposal with the Commission in their protests, and they argue that the Commission found the CAISO’s proposal was just and reasonable because it allegedly forces the sellers from the Turlock-SMUD IBAA to demonstrate that they are delivering power from a particular resource to a particular location.³⁴

43. Turlock contends that the September 19 IBAA Order admits that it is difficult to identify a specific resource supporting an interchange transaction. Turlock states that the

³⁰ LADWP October 20, 2008 Rehearing Request and Motion for Clarification at 12. (LADWP Rehearing Request).

³¹ *Id.* at 9.

³² September 19 IBAA Order at P 82.

³³ Turlock Rehearing Request at 29 (citing MSC Report at 6).

³⁴ *Id.* (citing September 19 IBAA Order at P 86).

September 19 IBAA Order makes no mention of the CAISO customers being required to demonstrate that they are delivering power from a particular resource to a particular location as the CAISO proposal requires of entities selling from the Turlock-SMUD IBAA. Further, Turlock states that the order inappropriately downplays the undue burden that this proposal places on balancing authority areas.

44. Turlock points out that in response to parties' concerns about this issue, the Commission admits that the default pricing proposal may not reflect the actual sourcing location but will ensure that the CAISO market (but not other market participants) will pay less for their purchases. Turlock states that the Commission admits that the multi-hub approach that the CAISO proposed and then rejected would provide substantially more accurate prices than the default pricing proposal.³⁵

45. Turlock states that protecting the CAISO's customers to the detriment of SMUD's and Turlock's customers is not a viable justification for violating the principle of cost causation. Turlock claims that, to the contrary, this justification demonstrates the discriminatory nature of the CAISO's proposal. Turlock therefore states that the Commission's acceptance of the SMUD Hub as the default pricing point for exports is arbitrary, capricious, and abuse of discretion because it is discriminatory and violates the longstanding principle of cost causation.³⁶

46. LADWP claims that the CAISO has not met its burden of proof to demonstrate that the IBAA proxy hubs it proposes will establish LMPs that are reasonably equivalent to the actual marginal cost of resources used to support the interchange transaction between the CAISO balancing authority area and the SMUD-Turlock IBAA, as it states is required by Commission precedent.³⁷ According to LADWP, the IBAA Proposal does not provide details of how the CAISO will model congestion and losses at the Captain Jack and SMUD Hub proxy buses. LADWP claims the September 19 IBAA Order fails to explain why the IBAA Proposal's use of two proxy buses, which benefits the CAISO's customers, is just and reasonable.

47. Further, LADWP asserts that the Commission erred in justifying acceptance of the IBAA Proposal based on the fact that since external entities do not bear all the costs and

³⁵ *Id.* at 31 (citing September 19 IBAA Order at P 60, 83).

³⁶ Turlock Rehearing Request at 32.

³⁷ LADWP Rehearing Request at 6 (citing *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289, at P 72 (2006)). LADWP Rehearing Request at 10 (citing *JSG Trading Corp. v. USDA*, 176 F.3d 536, 544-46 (D.C. Cir. 1999); *Greater Boston Television Corp. v. FCC*, 444 F.2 841, at 852 (D.C. Cir. 1970, *cert. denied*, 403 U.S. 923 (1971))).

responsibilities of Regional Transmission Organization (RTO) or Independent System Operator (ISO) membership, they are not entitled to receive all of the benefits.

48. DOE-Berkeley and Modesto oppose the application of the Captain Jack LMP to price all import into the CAISO. DOE-Berkeley urges the Commission to reconsider its September 19 IBAA Order and establish a proxy point at the boundary points where power enters the CAISO balancing authority area, the Tracy substation. While DOE-Berkeley states that all agree that the correct pricing would reflect the location of the resource that is being imported into the CAISO balancing authority area, it argues that using Captain Jack as the proxy pricing point does not accomplish that. DOE-Berkeley argues that there are no resources at Captain Jack. Most of the Northwest resources that are imported through Captain Jack take the form of liquidated damages contracts or other form of contract from a portfolio of resources. There is no way of knowing where those resources are actually located. DOE-Berkeley contends that all that occurs at Captain Jack is the transfer of ownership of resources between counterparties. While the Commission points to the fact that many of the resources are located north of Captain Jack, DOE-Berkeley argues that there is no distinction supporting the choice of Captain Jack—the resources are located north of Tracy as well. According to Modesto, the CAISO's assumption not only ignored the ability of entities within the SMUD-Turlock IBAA to sell from their own internal resources, but ignored the CAISO's admission that its contrary assumption – that none of the sales from the SMUD-Turlock IBAA would be sourced from internal generation – was false.

49. Further, Modesto states that the Commission does not respond to its argument that the pricing points at and around Tracy are similar. Modesto noted that the transmission interface points between Modesto and CAISO are geographically close. The same is true with respect to Turlock's and SMUD's interface points with the CAISO. According to Modesto, this should mean that the LMPs should not be grossly different between the CAISO and either Modesto, Turlock or SMUD. Accordingly, Modesto states that there is little reason to believe that entities will be selecting intertie points that fail to represent the source of the generation.

50. Imperial disagrees with the Commission's conclusion that that legal challenges to the establishment of external proxy pricing points constitute a collateral attack on the Commission's prior orders authorizing the use of LMP in the CAISO market.

51. Turlock argues that the Commission erred in empowering the CAISO to apply LMPs to facilities that are external to and independent of the CAISO-controlled grid. Turlock argues that by setting the price of sales at intertie points, the Commission is by definition affecting the LMPs (i.e., the prices) of both the CAISO and the interconnecting utility. Turlock states that, the price changes directly affect the prices charged in the neighboring balancing authority areas, including the Turlock and SMUD balancing authority areas. Turlock claims that neither the Commission, nor the CAISO have the

authority to unilaterally set the prices for Turlock's and SMUD's facilities, which are external to and independent of the CAISO-controlled grid.

52. SMUD contends that the Commission disregarded evidence presented by SMUD that demonstrated that flow reversals the CAISO cited were grossly exaggerated at best and likely non-existent, resulting from arithmetic errors in the CAISO's analysis.³⁸ SMUD argues that the Commission's finding that the CAISO's peak period data sufficiently addressed the magnitude of flow reversals while the full year data addressed the persistence of flow reversals was illogical. SMUD claims that the magnitude of peak period flow reversals says nothing of their magnitude in other periods and that, besides, its own evidence shows that the flow reversals cited never occurred to begin with.

53. According to SMUD, not only is pricing power differently between entities inside and outside of the CAISO balancing authority area an unexplained departure from Commission precedent, but even such a treatment would not justify different pricing treatment for sellers using transmission within the SMUD and Turlock balancing authority areas that *are* members of the CAISO.³⁹

54. Turlock contends that the use of prices at Captain Jack is also unjustified because it ignores the fact that additional transmission costs, losses and congestion costs will be incurred by a seller importing power from Captain Jack into the CAISO-controlled grid. Turlock also states that, contrary to the CAISO's contentions, the Northeast ISO/RTOs do not have separate pricing for exports and imports associated with the same interconnection that authorizes the ISO/RTO to always buy power at the lowest price possible and to sell power at the highest price possible.

55. Turlock argues that the September 19 IBAA Order turned a blind eye to the fact that the CAISO's pricing proposal will violate the doctrine of cost causation and to the fact that the proposal ignores the 345 miles of transmission needed to get power from Captain Jack to the CAISO. Turlock also notes that the September 19 IBAA Order ignores the fact that there is no evidence in the record to support the CAISO's bald assertion that using Captain Jack as the default pricing point for imports will somehow alleviate congestion. Turlock claims that the reason this evidence is not in the record is that it does not exist. Turlock argues that using the price at Captain Jack will lower the price of imports, it will not lower or alleviate congestion as the September 19 IBAA Order suggests.

³⁸ SMUD October 20, 2008 Rehearing Request at 3 (SMUD Rehearing Request).

³⁹ *Id.* at 4 (citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1971); *Mid-Continent Area Power Pool*, 87 FERC ¶ 61,075, at 61,309-10 (1999)).

56. TANC asserts that the IBAA Proposal also erroneously assumes that imports on the COTP are the least valuable imports to the CAISO while the location of internal resources supporting exports to SMUD and Turlock are the most valuable to the CAISO. TANC contends that these assumptions fail to reflect actual flows and actually contradict the information the CAISO already has. TANC argues that the Commission acted arbitrarily and capriciously and without reasoned decision-making in choosing to rely on the CAISO's power flow studies and assumptions and failing to order an evidentiary hearing despite parties' demonstrations that the CAISO's studies and assumptions were flawed. TANC further claims that, in light of potentially dire consequences for neighboring balancing authority areas and because the CAISO has failed to demonstrate that these assumptions would meet its objectives, the Commission erred in accepting the CAISO's default pricing points for its imports and exports with the SMUD- Turlock IBAA.

57. Imperial states that it strongly opposes the extension of the CAISO LMP pricing model beyond its interconnection points with neighboring balancing authority areas. According to Imperial, when the Commission originally approved the CAISO's MRTU Tariff, it did so with the understanding that MRTU would not adversely impact the commercial practices and relationships currently in place in the West and that those existing practices would be accommodated within the MRTU framework.⁴⁰ Imperial argues that the establishment of LMP proxy points beyond interties with the CAISO is a violation of the Commission's prior commitment and the CAISO's prior representations of MRTU, and it is unjust and unreasonable to ratepayers in neighboring bilateral markets.

Commission Determination

58. The September 19 IBAA Order accepted the CAISO's default pricing points for imports and exports on the basis that, absent more information, they represented a reasonable assumption as to the location of the external resources utilized to serve interchange transactions between the SMUD-Turlock IBAA and the CAISO.⁴¹ We agreed with the CAISO that based on the available information on interchange transactions, imports into the CAISO are likely to flow through Captain Jack and exports are likely to flow through the SMUD Hub. In particular, we found that imports were likely to be supported by less expensive resources in the Pacific Northwest and that these transactions which flow through Captain Jack have a different impact on CAISO system

⁴⁰ Imperial Rehearing Request at 15 (citing *Cal. Indep. Sys. Operator*, 116 FERC ¶ 61,274, at P 489 (2006)).

⁴¹ September 19 IBAA Order at P 82.

congestion than imports sourced at Tracy.⁴² Therefore, we found it reasonable to establish Captain Jack as the default pricing point for imports into the CAISO to ensure that the CAISO market would not be forced to bear the costs of congestion or additional uplift charges caused by these interchange transactions.

59. While some parties argue that the CAISO's default pricing mechanism favors the CAISO's customers at the expense of other balancing authority areas and external resources, we disagree with assertions that the proposal is unduly discriminatory and anti-competitive. As discussed in the September 19 IBAA Order, the default proposal makes a reasonable assumption about the location of resources dispatched to serve interchange transactions. In the absence of more specific information allowing the CAISO to verify the location of these resources, the CAISO has demonstrated that its default proposal will more accurately model and price interchange transactions than the current radial approach. Any improvement in modeling and pricing under MRTU's LMP markets would provide benefits that would be realized by not just CAISO ratepayers but all entities using the CAISO balancing authority. Furthermore, the fact that the IBAA Proposal provides entities willing to provide the information necessary to verify the location of the external resources that support their interchange transactions with CAISO LMP modeling and pricing the same as the CAISO's own ratepayers negates any claims of preferential treatment.

60. LADWP expresses doubt that artificially low prices will result for imports only in "limited circumstances." The September 19 IBAA Order explained that any devaluation that may occur would simply be the result of the loss of higher payments anticipated by entities for sales into the CAISO. Further, the September 19 IBAA Order explained that any reduction in revenues would be at least partially mitigated by our determination allowing COTP users that import to CAISO that demonstrate that they pay for losses to Western/TANC to have the marginal loss component of Tracy applied to their import.⁴³ It is also important to note that LMPs at Captain Jack and Tracy will likely be similar when there is little or no congestion, and during times when congestion does occur, the default pricing mechanism will ensure that resulting prices reflect the impact the transactions have on the CAISO's system. Furthermore, any party within the IBAA that controls resources therein and believes that the IBAA default price does not accurately represent the value of its resources has the option to execute a MEEA with the CAISO to provide data on generation sources and, in exchange, receive the appropriate LMP for its imports/exports.

⁴² *Id.* P 82-83.

⁴³ *Id.* P 120.

61. In the September 19 IBAA Order, we unequivocally rejected the CAISO's proposal to require any entity wishing to enter into a MEEA to prove that the agreement would result in a demonstrable benefit to the CAISO.⁴⁴ The only precondition that must be met to qualify for a MEEA is that an entity control resources, either physically or contractually, within the IBAA.⁴⁵ Once that entity has provided the CAISO with the information necessary to verify the location of its external resources that support its imports and exports with the CAISO, it will receive the appropriate LMP to reflect the location of the resources supporting a particular import/export. Once a MEEA has been executed there is no precondition that an interchange transaction must relieve congestion to receive the actual price, but it logically follows that imports which are demonstrated to provide congestion relief will be compensated accordingly.

62. We disagree with LADWP's claim that the Commission erred in finding that because external entities do not bear all of the costs or responsibilities of RTO/ISO membership they are also not entitled to all of the benefits. As we said in the September 19 IBAA Order, an entity that does not submit information sufficient to enable accurate modeling is not comparable to other market participants that do provide such information.⁴⁶ Any entity wishing to receive the benefit of a location-specific price for its interchange transactions can provide the information necessary to accurately model these transactions and thus calculate the correct LMP. Absent this information, these interchange transactions cannot be precisely modeled, and are thus subject to default pricing.

63. While we reiterate our position previously articulated in both Order No. 2000⁴⁷ and our September 19 IBAA Order that external entities are not guaranteed to receive all of the benefits of RTO membership since they do not bear all of the costs and responsibilities of membership,⁴⁸ we disagree with LADWP's assertion that the argument was our sole justification for accepting the IBAA Proposal. Our acceptance of the IBAA Proposal was premised on numerous supporting factors, including the need for a

⁴⁴ *Id.* P 185.

⁴⁵ *Id.* P 160; March 6 Compliance Order at P 28.

⁴⁶ September 19 IBAA Order at P 42.

⁴⁷ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

⁴⁸ September 19 IBAA Order at P 42.

reasonable approach to price interchange transactions between neighboring balancing authority areas and the CAISO to reflect the impact on the CAISO system. While we agree that the IBAA Proposal provides entities subject to it a default price reflecting Captain Jack, as we have stated, the proposal also contains alternative appropriate pricing for IBAA entities if they are willing to participate more transparently in the market by executing a MEEA to provide the CAISO the information needed to provide more appropriate LMPs for their imports and exports.

64. The Commission addressed the issues raised concerning using Captain Jack as the default proxy point for modeling and pricing imports from the SMUD-Turlock IBAA into the CAISO in our September 19 IBAA Order where we explained that: “[a]n import pricing point does not need to be a generation bus; it needs to be a point through which power from imports is likely to flow. Captain Jack meets this criterion.”⁴⁹ The Commission also found that the critical point was not whether or not all imports are sourced north of Captain Jack, but rather whether it represented the most reasonable assumption absent sufficient information to verify resource locations.⁵⁰ Further, the IBAA Proposal does improve the CAISO’s ability to model congestion on its system by both allowing the CAISO to make a reasonable assumption about where imports and exports from the SMUD-Turlock IBAA originate, and by providing an opportunity for external entities to provide it additional data for modeling interchange transactions. The improved modeling inherent in the IBAA Proposal is neither anti-competitive nor unduly burdensome, as it results in more accurate modeling and pricing.

65. Turlock claims that the Commission acknowledged that the alternate multi-hub approach to the IBAA would result in substantially more accurate pricing than the proposed single-hub approach. However, it appears that Turlock’s description of the September 19 IBAA Order is incomplete. Though the Commission did state that, “[w]ith sufficient information from neighboring entities, a multiple hub approach would provide more accurate prices than a single hub approach,” the paragraph referenced by Turlock goes on to explain that:

However, without detailed information from neighboring entities to verify that schedules are a reasonable representation of actual flows, a multiple hub approach will result in less accurate pricing than a single hub

⁴⁹ *Id.* P 90.

⁵⁰ *Id.* P 44, 120.

approach. Since the CAISO does not currently have the detailed information it needs to verify transactions, a default single hub approach is appropriate.⁵¹

Without the additional information that could be provided voluntarily through executed MEEAs, the single-hub approach is the most accurate approach available for modeling and pricing these transactions.

66. We also disagree with Modesto's claim that the Commission ignored its argument that, because the pricing points around Tracy are similar, the Commission need not accept the IBAA Proposal to prevent differences between contract paths and actual flows. While prices may be similar at the pricing points at and around Tracy at some times, prices will also differ during periods of congestion. Therefore, because prices at and around Tracy are unlikely to always be similar, especially during periods of congestion, we will deny Modesto's request for rehearing on this issue.

67. Regarding Imperial's request for rehearing concerning its argument that the Commission improperly concluded that the establishment of external proxy pricing points represents a collateral attack on prior Commission orders, we disagree with Imperial that the Commission made such a finding. Indeed, the CAISO urged the Commission to dismiss Imperial's arguments as collateral attacks on prior Commission orders, but in our discussion, we did not speak to the CAISO's assertions. Instead, we focused on the technical merits of the arguments of the CAISO and commenters, including Imperial. We did not rely on the CAISO's comments, and thus, we likewise dismiss Imperial's request for rehearing on this issue. Also, if an entity provides certain verification regarding the location and operation of an import or export, under the terms of a MEEA, the entity could receive actual pricing for the transaction rather than default pricing.

68. We also deny Turlock's request for rehearing regarding its position that the IBAA Proposal allows the CAISO to apply LMPs to external facilities. The IBAA mechanism does not set prices in neighboring control areas; rather, it merely sets prices at balancing authority intertie points. As the Commission recognized in the September 19 Order that "[a]ny pricing system in an interconnected network has impacts on neighboring

⁵¹ *Id.* P 60.

systems,”⁵² we also noted that the CAISO will not use external data to “impose LMPs on outside areas,”⁵³ but rather to accurately price LMPs on its own system.

69. SMUD’s assertion that we ignored evidence it provided suggesting that flow reversals were “grossly exaggerated” is incorrect. The Commission considered all submitted evidence in the record in making determinations regarding the IBAA proposal. The September 19 Order noted that “[w]hile the exact magnitude of loop flows attributable exclusively to imports from the SMUD-Turlock balancing authority area may not be knowable given the flow data currently available to the CAISO, the data the CAISO has provided demonstrates that these loop flows do occur.”⁵⁴ Even if the Commission was convinced by SMUD’s submitted evidence that the magnitude of the flows was exaggerated, the existence of these flows alone justifies the IBAA’s acceptance. The September 19 Order also stated that “[w]e have reviewed the data presented by SMUD and find that there were still hundreds of megawatts in differences between scheduled and actual flows”⁵⁵ at the substations for which data was provided by SMUD. Thus, we deny SMUD’s request for rehearing on this issue.

70. We disagree that the proposal is at odds with any prior order that MRTU would not adversely impact existing commercial practices and relationships in the West and find that the IBAA Proposal strikes the reasonable balance between accommodating the market practices of neighboring control areas while improving the accuracy of modeling and pricing for the CAISO-controlled grid. The IBAA entities are afforded the option of either accepting the default price, which is based on a reasonable assumption about the location of the resources that support their imports and exports with the CAISO, or entering into a MEEA to provide additional data to the CAISO in exchange for a location-specific price. The two pronged proposal honors the existing practices of neighboring balancing authority areas by allowing them to select the default if they choose not to exchange the type of data required for more accurate modeling in an LMP market. Both participation in the CAISO market and the choice about whether to provide the information necessary to improve the CAISO’s Full Network Model continue to be on a voluntary basis.⁵⁶

⁵² *Id.* P 46.

⁵³ *Id.*

⁵⁴ *Id.* P 38-39.

⁵⁵ *Id.* P 39.

⁵⁶ The Commission addresses jurisdictional issues above.

3. Method for Pricing Losses and Congestion on the COTP

a. Demonstration of the Duplicative Charge

71. Parties contend that any requirement placed on COTP users to demonstrate their obligation to cover COTP losses would create an unnecessary burden in light of the fact that the Commission has already determined that: “COTP customers already pay TANC or Western a rate under the TANC or Western tariff for losses.”⁵⁷ Santa Clara claims that the CAISO has acknowledged that COTP customers pay losses to another entity: “[t]he congestion and loss charges for service over the COTP, whatever they amount to, are charges under TANC’s transmission tariff, not the CAISO (or MRTU) Tariff.”⁵⁸ Therefore, Santa Clara claims the Commission should clarify that all COTP imports to CAISO, and exports from the CAISO will have the marginal loss component at the Tracy 500 kV bus applied to all such imports and exports, without any additional demonstration of COTP loss payments to Western or TANC.

72. To the extent the Commission does not so clarify the issue, Santa Clara seeks rehearing, claiming it is unreasonable and inefficient to require customers to prove a fact that the Commission already has determined. Further, Santa Clara contends that if the Commission clarifies that further demonstration is necessary, Santa Clara requests clarification that the demonstration can be shown by submission of appropriate contracts that require the payment of losses as a condition of use of the COTP or Western resources. San Francisco similarly contends that, to the extent the Commission requires a showing regarding loss payment for imports at Tracy, it should accept the Western OATT as sufficient demonstration that losses have been paid to Western for those imports, with no further documentation required.

73. Santa Clara contends that it demonstrated that it also pays Western losses for use of Western’s transmission. Santa Clara claims that a review of the Contract for Electric Service Base Resource between Western and Santa Clara demonstrates that Western Base Resource customers are responsible for losses on the Western system for their Base Resource schedules. Therefore, Santa Clara claims that if the Commission determines that an additional demonstration must be made of the double charges, the Commission should require either the transmission owners, operators, or customers to submit a single copy of the relevant agreement that contains the payment for losses provision on a one

⁵⁷ Santa Clara October 20, 2008 Request for Clarification and Rehearing at 15 (Santa Clara Rehearing Request) (citing September 19 IBAA Order at P 106).

⁵⁸ *Id.* at 16 (quoting CAISO August 8, 2008 Answer, Docket No. ER08-1113-000).

time basis in order to demonstrate the existence of the obligation to pay Western or TANC for COTP losses.

74. Both DOE-Berkeley and San Francisco assert that the Commission has inappropriately placed the burden to demonstrate that an entity has already paid for losses on the users of the COTP in ordering that the CAISO propose “what showing will be needed for this treatment.”⁵⁹ According to DOE-Berkeley, no such showing is necessary. DOE-Berkeley claims that it has a 6.25 percent allocation of the transfer capacity of the COTP, and it uses this line to import power from the Northwest into the CAISO to meet the loads of three sites it maintains in the CAISO balancing authority area. DOE-Berkeley claims that it pays losses on all of these imports. DOE-Berkeley urges the Commission, on rehearing, to direct the CAISO that, if an entity, such as DOE-Berkeley, has an allocation of the COTP transfer capacity, then use of the COTP should be sufficient demonstration that it pays for the losses associated with that use. DOE-Berkeley claims that for such imports, the charges for losses at Captain Jack should be eliminated.

75. San Francisco states that requiring a demonstration that losses were paid to Western or TANC as a basis for adjustment in payment of losses is unnecessary and unduly burdensome because energy deliveries at Tracy are predicated on the delivering party obtaining transmission service from Western pursuant to the Western OATT. According to San Francisco, the Western OATT requires that the transmission customer is responsible for replacing losses associated with all transmission service as calculated by Western. It notes that the Commission already has determined that “...COTP customers already pay TANC or Western a rate under the TANC or Western tariff for losses. Thus, those COTP customers that serve load in the CAISO could be over-charged for losses, since they pay Western or TANC and then in effect pay the CAISO since its LMPs implicitly account for parallel flows.”⁶⁰ Therefore, San Francisco submits that calculating losses at Tracy, as provided for in its contract, avoids this outcome entirely and obviates the need for any further adjustment to prevent double-counting of losses. Modesto, meanwhile, argues that this obligation to demonstrate loss payments to TANC or Western gives too much discretion to the CAISO.

⁵⁹ DOE-Berkeley Rehearing Request at 10 (quoting September 19 IBAA Order at P 106).

⁶⁰ San Francisco October 20, 2008 Rehearing Request at 7 (San Francisco Rehearing Request) (quoting September 19 IBAA Order at P 106).

Commission Determination

76. In the September 19 IBAA Order, we recognized that, to the extent that COTP users can demonstrate that they already pay TANC or Western for losses on imports, they should receive the appropriate adjustment to the marginal cost of losses component for their imports into the CAISO.⁶¹ The Commission maintains its finding that it is appropriate for the parties seeking exemption from loss payments to demonstrate that they have paid for such a loss to avoid any potential misapplication of the exemption and to ensure that the adjustment is properly applied. Such a demonstration does not pose an unnecessary burden on the party seeking exemption. The Commission addressed the type of demonstration required in the March 6 Compliance Order.⁶² In the March 6 Compliance Order, we accepted the CAISO's proposed mechanism for verifying that COTP users pay losses to TANC or Western by assigning a unique Resource ID to submitted schedules that are eligible for the loss treatment.⁶³ As the Commission discussed in that order, the CAISO's proposed system for qualifying for Tracy losses was not too burdensome, as parties alleged here, especially in light of the fact that the system included an automatic process to assign an LMP either with or without losses to the transaction.⁶⁴ Further, we address claims regarding exports below.

b. Duplicative Loss Charges Imposed on COTP Exports

77. Santa Clara claims that COTP exports will encounter duplicative loss charges: one paid to TANC/Western for service from Tracy to Captain Jack, and a second paid to the CAISO as a part of the SMUD Hub LMP. Just as with imports under the conditionally-approved IBAA Proposal, Santa Clara claims COTP exports encounter duplicative loss charges between Tracy and the SMUD Hub.

78. Santa Clara asserts that in recognition of this duplicative losses charge, the Commission should impose the same limitation on the CAISO's ability to collect charges on COTP exports from the CAISO-controlled grid that it imposed on COTP imports. Like the Commission's determination with respect to imports into the CAISO-controlled grid, Santa Clara claims this solution will avoid unjust and unreasonable duplicative loss charges that would otherwise be paid for exports using the COTP. Therefore, Santa

⁶¹ September 19 IBAA Order at P 106.

⁶² March 6 Compliance Order at P 158-61.

⁶³ *Id.* P 158.

⁶⁴ *Id.* P 161.

Clara requests clarification or, in the alternative, rehearing that the Commission intended that COTP exports from CAISO to be treated similarly to COTP imports into CAISO.

79. Santa Clara also contends that the Commission's logic regarding losses should be extended to congestion and the adjustment to the marginal loss component if COTP users can demonstrate that they pay losses for imports to Western or TANC. Santa Clara claims that the Commission's logic regarding losses on imports (and congestion on imports as well) also should be applied to exports. Santa Clara states that while the September 19 IBAA Order exempts COTP users from paying the marginal loss component of the Captain Jack LMP if they pay losses to TANC or Western, it requires COTP users that export from the CAISO using the COTP to pay the marginal loss component of the LMP at the SMUD Hub in addition to the payment for losses to TANC or Western for delivery of the transaction to Captain Jack over the COTP. Therefore, Santa Clara contends, because the IBAA Proposal will price the COTP export transaction at the SMUD Hub, there needs to be an adjustment to this price to equate to the loss and congestion component at Tracy. Otherwise there will be duplicative loss and congestion charges for use of the COTP because the marginal loss component at the SMUD Hub will include the cost of losses from parallel flows on the CAISO-controlled grid resulting from the COTP export schedules.

80. Santa Clara asserts that the only reasonable result, consistent with the Commission's previous treatment of losses on imports, would be to adjust the marginal loss component for COTP exports priced at the SMUD Hub to the Tracy marginal loss component to recognize that losses are paid to TANC or Western for use of the COTP to deliver the transaction from Tracy to Captain Jack.

Commission Determination

81. The Commission agrees with Santa Clara that to the extent it faces charges for losses from TANC or Western for exports on the COTP, it should be entitled to demonstrate these payments to avoid duplicative charges from the CAISO. However, Santa Clara has failed to provide any support here of its assertion that it has actually incurred these costs. If Santa Clara can provide the CAISO with the support necessary to verify if and when it is faced by these duplicative charges for losses, we will require the CAISO to honor these exports with the same losses adjustment given to COTP imports. However, the burden will be on Santa Clara, or any other COTP user exporting from the CAISO, to provide the same level of support for this adjustment as is required for COTP imports. We direct the CAISO to allow COTP customers that export from the CAISO to make this demonstration, using the same methodology it allows for COTP imports, and the Commission directs the CAISO to make such a filing on compliance within 60 days of issuance of this order.

82. In response to Santa Clara's argument that the logic for the losses adjustment for imports should be likewise extended to congestion charges, we refer to our prior order

where we explained that any congestion reflected in the relevant LMPs under the IBAA would be attributable to binding constraints, not on the intertie, but on the other elements of the CAISO-controlled grid.⁶⁵ Therefore, there is no duplication of any congestion charges imposed by third parties.

c. Duplicative Loss Charges for non-COTP Imports

83. Santa Clara, NCPA, and Modesto seek clarification that the Commission's recognition of duplicative loss charges applies equally to imports at the applicable Western-CAISO intertie scheduling point using non-COTP transmission service acquired under the Western OATT. To the extent that the Commission does not clarify that non-COTP service under the Western OATT is entitled to mitigation of duplicative loss charges, Santa Clara seeks rehearing of that decision.

84. Santa Clara contends that just as it is responsible for Western losses for its use of the COTP to deliver energy into the CAISO, Santa Clara is likewise responsible for losses incurred for use of Western's transmission system to deliver Santa Clara's "Base Resource" entitlement from Western's generator busses to the point of interconnection for CAISO imports. Santa Clara claims this requirement is memorialized in the agreement entitled "Contract for Electric Service Base Resource between Western and Santa Clara."

85. Santa Clara states that sections 15.7 and 28.5 of the Western OATT place responsibility for losses on Western's transmission customers. Santa Clara claims that these provisions are explicit in directing Western transmission customers to make payment to Western for losses incurred on its system. Santa Clara claims these payments are contractual obligations for all users of the Western system, and the relevant provisions of the Western OATT clearly demonstrate that the transmission customer is responsible for the payback of losses to Western for use of the Western system.

86. NCPA states that its members have contracts with Western that provide for delivery at the interconnection point between Western and the CAISO at Tracy, and pay losses (in the form of reduced deliveries to account for losses) from the generation source to the Tracy interconnection, whether or not the power flows over the COTP. NCPA contends that since its members are already compensating Western for losses from the point(s) of generation to Tracy over the Western system, these payments should receive the same treatment as transactions over the COTP if they are settled at a point other than Tracy—specifically, an adjustment in the marginal loss component of their import to reflect losses already paid.

⁶⁵ September 19 IBAA Order at P 105.

87. NCPA maintains that the Commission erred in not affording to imports from Western delivered at Tracy the same marginal loss treatment—specifically a credit against losses already paid to another transmission provider—that it ordered for imports over the COTP. NCPA states that, to the extent that customers are paying losses for COTP transmission to Tracy, it should be deducted from the CAISO loss component if calculated from any other point (Captain Jack or Malin, for example) along the COTP.

88. Modesto and San Francisco request rehearing of the Commission's treatment of losses. According to Modesto, the Commission's decision is arbitrary in that it conflicts with the Commission's ruling in Amendment No. 2,⁶⁶ which prohibited the CAISO from assessing charges for non-CAISO-controlled grid facilities.

Commission Determination

89. We clarify that imports from Western, delivered at the Western-CAISO intertie scheduling point, should receive the same losses treatment as imports over the COTP receive under the IBAA system. Therefore, to the extent a party can demonstrate that it already pays Western for transmission losses pursuant to Western's transmission service tariff or applicable agreements for imports to the CAISO at the Western-CAISO intertie scheduling point, even if the import uses non-COTP Western transmission service, it is subject to an adjustment to the marginal loss component of the default LMP under the IBAA system. Just as it is appropriate for COTP customers that already pay for losses via the rates under the TANC or Western tariffs to be eligible for an adjustment for the losses charge for parallel flows that is implicit in the LMP pricing, non-COTP Western transmission customers should receive the same treatment, and the Commission directs the CAISO to make such a filing on compliance within 60 days of issuance of this order.

4. Impact on Imports to the CAISO

90. Multiple parties argue that the Commission failed to address their arguments that the IBAA Proposal would discourage imports from the Pacific Northwest. They contend that the Commission's conclusion that because the default pricing is reasonable, there should not be an issue with imports to the CAISO lacks evidence in the record and is not sufficiently explained.

⁶⁶ Modesto Rehearing Request at 27 (citing *Cal. Indep. Sys. Operator Corp.*, 82 FERC ¶ 61,312, at 62,241 (1998); *Cal. Indep. Sys. Operator Corp.*, 107 FERC ¶ 61,152 (2004) (ruling confirming arbitration determination that the CAISO may not assess ancillary services charges for use of the COTP), *reh'g denied*, 111 FERC ¶ 61,078, at 61,359-60 (2005), *order denying motions for clarification*, 113 FERC ¶ 61,133 (2005); *order dissolving stay*, 114 FERC ¶ 61,307 (2006), *appeal docketed*, Case No. 06-1002 (D.C. Cir.)).

91. Some parties claim that, while the IBAA Proposal may not change the terms and conditions of California's resource adequacy program, the pricing proposal creates an obstacle to meeting it and will undermine supply adequacy and affect reliability. Parties contend that if lower prices are paid for imports at an artificial proxy point, it will deter suppliers in neighboring balancing authority areas from selling their energy to the CAISO. Parties assert that if supply is removed from the CAISO market, it will cause resource adequacy problems that will affect reliability in the region. Turlock claims that the CAISO's suggestion that the resource adequacy program will somehow save the CAISO from the resource adequacy problems that will result from the CAISO's preferential treatment of its customers is naïve and short-sighted. Turlock points out that the CAISO resource adequacy program was in effect in 2000 and 2001 but it did not stop the market meltdown and black outs from occurring because of the lack of supply in the market. Turlock states that the CAISO single hub pricing proposal ignores the fact that entities will stop selling into the CAISO when prices at Captain Jack are insufficient to cover their costs of generation, transmission, congestion and losses. Turlock states that when entities stop selling into the CAISO the supply of power will decrease dramatically and could jeopardize reliability.⁶⁷

92. Turlock notes that the Market Surveillance Committee Report (MSC Report) suggests that these trading opportunities may not be lost by the CAISO customers if the supplier can justify its higher price by providing more detailed information to the CAISO that substantiates the generation actually supporting the transaction. Turlock claims that this suggestion fails to acknowledge the significant burden of making this showing under proposed MRTU Tariff section 27.5.3.2, which entails the entity entering into a MEEA whereby there has to be a burdensome exchange of data and a showing that there are market efficiencies and enhancements obtained through such an arrangement. Turlock claims that such an unjust, unreasonable and unduly burdensome process will undoubtedly deter entities from trying to justify the costs underlying their sales prices and will instead result in them selling their power elsewhere, thereby reducing supply in the region.

93. In addition, Modesto states that the September 19 IBAA Order did not sufficiently address arguments made by several parties that the IBAA Proposal creates a disincentive to sell excess energy into the CAISO's markets.⁶⁸ While the Commission stated that neighboring entities that want to schedule import transactions from their local resources into the CAISO can enter into MEEAs, Modesto claims there are two defects in this rationale. First, it argues that, even assuming a MEEA would provide price relief, the

⁶⁷ Turlock Rehearing Request at 32 (citing MSC Report at 6).

⁶⁸ Modesto Rehearing Request at 10 (citing Ex. SMUD-2 at 5:2-6:2).

default price itself must be reasonable. It states that the Commission never showed the default price to be reasonable. Second, Modesto states that the Commission cannot dismiss the concern that the IBAA default pricing mechanism puts imports into the CAISO at risk by assuming that IBAA entities will elect to sign MEEAs. According to Modesto, the terms of a MEEA may be so egregious, even with the specifications that the Commission has required to be added, that an entity may still not decide to enter into a MEEA.

94. Further, Modesto argues that the September 19 IBAA Order fails to address Modesto's concerns that, as a net buyer, it is already in a less than optimal position of being able to sell excess energy into the CAISO's market. Modesto states that if it cannot recover its costs due to the CAISO's depressed pricing point, it has less incentive to sell. Modesto further contends that without the IBAA default pricing mechanism, there may be incentives to purchase lower priced electricity from the Pacific Northwest to serve load and sell higher cost, excess, internal generation to the CAISO markets. However, Modesto argues that if it cannot recover its costs due to the default pricing at Captain Jack, it has little incentive to sell into the CAISO markets. Modesto also contends that the Commission should address its argument that the IBAA Proposal harms Modesto by making it artificially more expensive to purchase from the CAISO.

Commission Determination

95. In the September 19 IBAA Order, we responded to similar concerns that the default proxy pricing mechanism could result in decreased imports to the CAISO and may jeopardize the CAISO's resource adequacy program, stating that:

LMP is a pricing system that provides a transparent price signal reflecting the marginal cost to supply energy at specific locations. The IBAA Proposal may result in [energy] imports being priced lower than local transactions because of the difference in location. If a local transaction would relieve congestion better than an import transaction, the LMP associated with the local transaction will reflect the higher value of this transaction relative to an import transaction. Conversely, if an external transaction would better relieve congestion, the LMP for that transaction would be higher, which would increase imports. Accordingly, while there may be different prices, this is unlikely to substantially decrease imports to the CAISO.⁶⁹

96. Our position has not changed. We disagree with parties' assertions that this rationale is inappropriate because the default proposal is not an LMP mechanism. The

⁶⁹ September 19 IBAA Order at P 111 (footnote omitted).

default proxy points of Captain Jack and the SMUD Hub will be modeled and priced as LMPs using the best available information. Parties that are concerned about inaccuracies in modeling and pricing their interchange transactions that may result from the default mechanism have the option of executing a MEEA and improving the robustness of the Full Network Model.

97. Regarding Modesto's assertion that the default proposal may not allow recovery of costs of importing energy from the Pacific Northwest, we reiterate that, should Modesto be able and willing to demonstrate that its own generation is being used to support imports into the CAISO, it would be eligible to receive an LMP that properly values the imports. If Modesto does not execute a MEEA because it does not want to provide the CAISO the requisite information, that does not mean that the IBAA default proposal is unjust or unreasonable.⁷⁰

98. We disagree with claims that parties will be discouraged from availing themselves of the MEEA option because it would require a burdensome exchange of information and a showing that the agreement will create market efficiencies and enhancements for the CAISO. First, the tariff provisions stipulating what the data exchange under a MEEA would entail have not been finalized, and thus assertions as to the burdensome nature of the requirements are premature. For instance, in the March 6 Compliance Order the Commission required the CAISO to further amend its MEEA proposal to clarify that the Western Electricity Coordinating Council format is an acceptable form for data submissions.⁷¹ In addition, as stated above, the Commission has rejected the CAISO's proposed requirement of demonstrable benefits as a prerequisite for MEEA qualification. Parties wishing to enter into a MEEA need not prove that their interchange transactions create market efficiencies and enhancements for the CAISO, though the data a MEEA entity provides undoubtedly will result in such benefits because it will improve the Full Network Model. The option to negotiate a MEEA is and will continue to be available to

⁷⁰ The opportunity to choose is available and either choice would result in just and reasonable prices, i.e., parties can enter into a MEEA to obtain LMP pricing or choose not to enter into a MEEA and obtain default pricing. Thus, even if parties choose not to enter into a MEEA to obtain LMP pricing, the Affected IBAA Entities would be subject to just and reasonable rates under the default pricing. September 19 IBAA Order, at P 84 (“[t]he IBAA proposal’s default pricing is a reasonable way for the CAISO to manage congestion absent more specific information about resources supporting interchange transactions.”); March 6 IBAA Order at P 130 (“[t]he Commission approves this portion of the CAISO compliance filing as just and reasonable.”).

⁷¹ March 6 Compliance Order at 82.

any entity controlling resources within the IBAA that wishes to receive the most accurate price for its interchange transactions with the CAISO.

99. No evidence has been provided to support the legitimacy of the claim that the IBAA Proposal could undermine resource adequacy programs or harm reliability in the region. The IBAA Proposal was established to improve the CAISO's Full Network Model by modeling and pricing imports and exports between the SMUD-Turlock IBAA and the CAISO at the location where these interchange transactions are likely to be supported. Absent this proposal, there would be an incentive and opportunity for entities importing or exporting from the SMUD-Turlock IBAA to take advantage of price differentials and schedule at the intertie point bearing the highest LPM, rather than the intertie where the interchange transaction is actually sourced. The default proposal is an improvement over the current modeling approach because it is premised upon a reasonable assumption as to where the resources supporting these transactions are actually located and eliminates the incentive for submitting inaccurate schedules.

100. One advantage of an LMP mechanism is that it identifies, through price signals, areas of constraint where additional transmission investment is needed. Because the IBAA will improve the Full Network Model and thus the accuracy of LMPs throughout the CAISO market, it will also improve the accuracy of these price signals. Given the limited availability of information to the CAISO, the IBAA Proposal represents the best available alternative in the absence of additional information.

5. Effects of the Proposal on Value and Use of COTP Transmission

101. Parties argue that the Commission erred in accepting the IBAA Proposal because it takes property rights and devalues their investments in COTP transmission. They assert that the CAISO ignores 340 miles of COTP transmission from the California-Oregon Border to central California by pricing exports into the CAISO at Captain Jack and that this diminishes the substantial investment undertaken in constructing and in maintaining the transmission project.

102. TANC argues that the IBAA Proposal places COTP imports at a disadvantage to the CAISO's own PACI facilities by devaluing the COTP's transmission. TANC asserts that this will force transmission users to shun the COTP and oversubscribe the PACI. According to TANC, the Commission acknowledges the potential negative impacts,⁷² but attempts to justify them because "of both the limited circumstances of any unintended harm and the offer of the CAISO to avoid these consequences."⁷³ TANC claims that

⁷² TANC Rehearing Request at 59 (citing September 19 IBAA Order at P 120).

⁷³ *Id.*

neither the unintended and limited nature of any harm, nor the ability to enter into a MEEA, mitigates the anticompetitive nature of the proposal.

103. TANC further asserts that the Commission ignored record evidence in concluding that the harm would be limited in nature, would not result in losses or under recovery of costs over the COTP, and that “[t]he devaluation referred to by TANC, Santa Clara and Modesto is simply the loss of the higher payments they projected by making sales into the CAISO markets.”⁷⁴ TANC argues that several parties demonstrated that the CAISO would in fact clearly and intentionally devalue the COTP by eliminating or severely curtailing the primary market for COTP imports. TANC points to Santa Clara’s evidence that the IBAA Proposal would devalue its share of the COTP entitlement by \$9.8 million per year.⁷⁵ TANC concludes that the Commission’s finding that the external entities will be able to continue to schedule transactions at interties, and that only the price available at the relevant intertie scheduling point will change for CAISO markets reveals the anticompetitive nature of the IBAA Proposal.

104. Modesto argues that the Commission’s assertion that the CAISO is a voluntary market, and entities have the choice to buy and sell from the CAISO, is at odds with its own precedent encouraging open and nondiscriminatory access, with a policy of not encouraging islanding of resources or utilities. Modesto states that it is a net purchaser, with resources located in the Desert Southwest, which it must bring through the CAISO, and from which it cannot untangle itself readily. According to Modesto, even if it could feasibly island itself from the CAISO, the obstacles of building new transmission and the permitting issues building new generation place substantial barriers to doing so.

105. Modesto also argues that the Commission’s position is at odds with its other pricing choices which roll-in costs to the integrated grid, for example the Commission’s decision to roll-in costs of gen-ties to renewable facilities, stating that all users of the CAISO-controlled grid benefit from these transmission facilities, even though the remote generation may only really be built for the benefit of a few entities. Further, Modesto states that it and others are attempting to meet renewable and greenhouse gas goals, which necessitate accessing transmission, and yet, in order to avoid punitive treatment, the Commission’s Order states that Modesto must avoid the CAISO-controlled grid. Modesto contends that conclusion is unreasonable and arbitrary.

106. Modesto also disagrees with the Commission that there are no “out of pocket” losses to the IBAA participants. Modesto states that it must purchase electricity at a higher price at the SMUD Hub (thereby paying out of pocket) than it otherwise would

⁷⁴ *Id.* at 60 (quoting September 19 IBAA Order at P 120).

⁷⁵ *Id.* (citing Santa Clara July 8, 2008 Protest at P 59).

have to, and these are costs that Modesto's ratepayers would likely shoulder. As to sales, Modesto claims, it is forced to forego revenue from the disincentives third parties will have to sell electricity using Modesto's facilities or the disincentives it may have to sell its own generation to the CAISO. Therefore, Modesto argues that the Commission's Order raises the same fundamental concerns as an Amendment V Takings Clause violation, removing the value of an investment without compensation. Modesto also claims the September 19 IBAA Order conflicts with Commission precedent which accords value to property investment.⁷⁶

107. Modesto argues that, while the Commission noted Modesto's argument that the CAISO's default pricing approach will create phantom congestion, the September 19 IBAA Order did not address it. According to Modesto, the CAISO will rely more heavily on the CAISO-controlled grid portion of the California-Oregon Intertie as market participants use those facilities more, given that the pricing incentives artificially are tipped to the favor of CAISO-controlled grid transmission. Modesto argues that this will leave capacity unused on the COTP and lead to congestion on the CAISO-controlled grid starting at Malin, when that congestion is not necessary.

108. Also, Western claims that if a generator sells power into the Pacific Northwest, and power is scheduled back on the PACI it could create phantom congestion on the PACI on a day-ahead basis. Because impacts on the market, under LMP, impact the flows, Western contends the Commission should study the impacts of the CAISO's selection of an arbitrarily low price. Without further analyzing the impacts that this artificial price could have on the market and reliability, Western does not believe the Commission decision can be based on substantial evidence.

109. DOE-Berkeley maintains that the September 19 IBAA Order fails to take into account the unique position of the DOE-Berkeley labs. DOE-Berkeley claims that the Energy and Water Development Appropriations Act of 1984 authorized the Secretary of Energy to construct or participate in the construction of facilities necessary to facilitate beneficial power sales between the Pacific Northwest and California and to obtain "fair compensation from the non-federal participants,"⁷⁷ which could be in the form of transmission capacity. According to DOE-Berkeley, the mandate to reserve sufficient capacity to serve the needs of Department of Energy Laboratories and wildlife refuges in California was confirmed in a 1985 supplemental appropriations bill. DOE-Berkeley

⁷⁶ Modesto Rehearing Request at 23 (citing *Cal. Indep. Sys. Operator Corp.*, 104 FERC ¶ 61,129, at 61,461-62 (2003) (CAISO must honor existing contracts)).

⁷⁷ DOE-Berkeley Rehearing Request at 4 (citing H.R. Conf. Rep. No. 98-866 at 56-57 (1984)).

asserts that together, these Congressional directions constitute a bargain between the federal taxpayer and other entities and a carefully-structured arrangement for the transmission and usage of energy by the labs. In exchange for taxpayer funds and/or facilities, the federal government obtained the benefit which this bargain provides to the labs, and by extension, to the federal taxpayer. According to DOE-Berkeley, the CAISO proposal would significantly interfere with and undermine this congressionally-mandated arrangement.

110. DOE-Berkeley maintains that, in stating that the default price may create an artificially low price for energy and decrease the attractiveness of buying transmission service from TANC for the COTP, the Commission acknowledges that the new tariff diminishes the benefit Congress intended would flow to the labs and the taxpayer.⁷⁸ DOE-Berkeley states that the Commission should take into account the labs' national interest in research and the role played by the COTP in allowing the labs access to reasonably priced power from the Pacific Northwest. By reducing the value of the transmission rights ordered by Congress, the September 19 IBAA Order diminishes the "fair-compensation" obtained by the Department for the benefit of taxpayers. On reconsideration, the Commission should order the CAISO to price power imports for the DOE-Berkeley labs at the Tracy substation.

111. According to DOE-Berkeley, the IBAA Proposal fails to recognize that the COTP is part of SMUD/Western's balancing authority area and not the CAISO's. DOE-Berkeley notes that there already exists joint use and coordinated operations agreements that govern the use, pricing and operation of the COTP. DOE-Berkeley is a beneficiary of these contracts – which the Commission has approved. DOE-Berkeley claims that the September 19 IBAA Order incorrectly minimizes the impact of the tariff by suggesting devaluation of the COTP attributed to the CAISO's proposal is, "simply the loss of higher payments...."⁷⁹

112. According to DOE-Berkeley, the IBAA Proposal improperly extends the CAISO's jurisdiction by imposing congestion costs and loss charges for power that flows from Captain Jack over the COTP. DOE-Berkeley argues that the Commission has stated that CAISO has not sought *de facto* control of the COTP.⁸⁰ According to DOE-Berkeley, at issue, however, is not operational control but price control. DOE-Berkeley claims that the CAISO and the September 19 IBAA Order fail to identify the CAISO's authority to interfere with the agreements governing the operation and pricing of the COTP and to

⁷⁸ *Id.* at 5 (citing September 19 IBAA Order at P 120).

⁷⁹ *Id.* at 9 (citing September 19 IBAA Order at P 120).

⁸⁰ *Id.*

impose congestion costs and loss charges for power that flows over the COTP – outside the CAISO’s boundaries. DOE-Berkeley contends that if the CAISO is allowed to charge for congestion, the mitigation of such costs is not accomplished by the proposed allocation of Congestion Revenue Rights (CRRs).

113. Santa Clara claims that the Commission failed to address its assertion that the IBAA Proposal imposes duplicative congestion charges, and the CAISO will over collect congestion costs. Santa Clara also claims that it demonstrated that the CAISO charge for congestion is duplicative of costs incurred to manage congestion in the neighboring balancing authority areas and that the IBAA charge for congestion will result in the CAISO over collecting congestion costs. Santa Clara contends that, just as the CAISO incurs costs for congestion on the PACI, whether caused by scheduled usage of the PACI or from unscheduled flows, SMUD/Western incurs all the costs for managing congestion on the COTP, whether caused by scheduled usage or from unscheduled flows, including unscheduled flows from the CAISO’s scheduled usage of the PACI. Santa Clara states that Western bears the responsibility and cost of managing congestion on Western’s transmission system, whether caused by scheduled use or unscheduled flow from the CAISO-controlled facilities. Likewise, Santa Clara argues that the CAISO is responsible for the costs of congestion on its system, whether caused by scheduled usage or unscheduled flows. Santa Clara requests that the Commission require the CAISO to provide Tracy congestion pricing to COTP imports and exports and to apply the applicable Western-CAISO intertie scheduling point congestion pricing for imports and exports from Western’s transmission system.

Commission Determination

114. In the absence of evidence to the contrary, Modesto’s concerns about the impact of the IBAA Proposal on phantom congestion are speculative. The CAISO has shown that, without the default proposal, however, there would be an economic incentive for external entities to schedule imports and exports with the CAISO at an intertie point with the highest LMP. This potential legitimately raises concerns and uncertainty by the CAISO about schedules into its market. The IBAA Proposal represents a reasonable approach to address these interchange transactions between the SMUD-Turlock IBAA and the CAISO, absent additional information.

115. We disagree with assertions that the IBAA Proposal represents an attempt by the CAISO to charge for use of external facilities. The proposal merely represents a modeling and pricing mechanism that reflects the impact that interchange transactions have on the CAISO-controlled grid. The proposal is about properly modeling and pricing

for parties that choose to participate in the CAISO's markets and not about overreaching the CAISO's authority to price external transmission.⁸¹

116. We also disagree with Modesto's claims that our acceptance of the IBAA Proposal contradicts our past determinations that encourage open and nondiscriminatory access to the CAISO-controlled grid. The CAISO-controlled grid remains as accessible as ever. MRTU was designed to remedy several short-comings of the prior market, and the IBAA Proposal extends MRTU pricing principles to interchange transactions, allowing for more accurate pricing based on the information available to the CAISO.

117. Santa Clara's arguments that the congestion charges faced by COTP users are duplicative in the same way the Commission found charges for losses of those imports to be are off point. In the September 19 IBAA Order, the Commission explained that "any congestion that is reflected in LMPs applicable to interchange transactions that use the California-Oregon Intertie will be attributable to binding constraints, not on the intertie, but on the other elements of the CAISO-controlled grid."⁸² Thus, these congestion costs are a reflection of the impact the imports have on the CAISO-controlled grid and therefore are not duplicative of any imbedded costs paid to TANC or Western for congestion on the COTP itself. Because the LMP differential between Captain Jack and Tracy is expected to be the sum of the congestion and loss components, Santa Clara's protest appears to be a transparent attempt to undermine the IBAA Proposal in its entirety. Therefore, we reject Santa Clara's request to extend the exemption of charges for users of the COTP to congestion costs.

118. Regarding TANC and DOE-Berkeley's assertions that the IBAA Proposal may result in a devaluation of the COTP, we find that the IBAA Proposal will help appropriately value the COTP. The COTP may be somewhat overvalued because sellers could pick a delivery point (and best price) and not account for CAISO system impacts. The IBAA Proposal is a just and reasonable way to more accurately value imports' impact on the CAISO-controlled grid and hence more accurately value the underlying asset. Contrary to DOE-Berkeley's assertions, it would be inappropriate and discriminatory to exempt it from paying prices that appropriately reflect the impact of transactions on the CAISO-controlled grid. Furthermore, parties that control resources within the IBAA and believe that the IBAA default pricing mechanism does not properly value their interchange transactions with the CAISO are able to execute a MEEA and obtain pricing that more accurately reflects the value of their import.

⁸¹ September 19 IBAA Order at P 283 ("The IBAA Proposal does not impose on or devalue external facilities.").

⁸² *Id.* P 105.

119. TANC references testimony provided by Santa Clara that the IBAA Proposal will devalue its share of the COTP by \$9.8 million per year. Santa Clara's witness supports this figure by asserting that it used the CAISO's own numbers when referring to the LMP differential between Captain Jack and Tracy. However, Santa Clara's witness does not give weight to the fact that the CAISO's own hypothetical average LMP differential was provided for illustrative purposes alone. The CAISO never attempted to assert that there was any factual basis behind the number or to suggest that it was anything more than a hypothetical figure. Therefore, to take this illustrative figure and make the unsupported assertion that it would translate into an actual financial loss 24 hours a day 365 days a year for 100 percent of the Santa Clara's COTP entitlement is overreaching.

Furthermore, as described throughout this order, the effect of the IBAA Proposal on the prices of imports into the CAISO is a reflection of the impact of these transactions and not the value of external resources such as the COTP. Also, the goal of the IBAA Proposal is to more accurately model and price transactions, and, as discussed above, to the extent that the COTP is affected, its valuations may not have included its impacts on other systems. Under the IBAA Proposal, such effects will more accurately be reflected in the IBAA pricing.

120. Modesto is mistaken that the September 19 IBAA Order is inconsistent with previous Commission policy encouraging open access. The Commission encourages parties to enter MEEAs and operate as openly and transparently as possible. Further, Modesto's efforts to compare the IBAA Proposal to a Fifth Amendment takings clause matter is not convincing since the Commission is accepting a reasonable proposal concerning modeling and pricing on the CAISO-controlled grid and not effecting any sort of taking.

121. Further, since the IBAA Proposal is just and reasonable, the Commission finds that the "bargain" between DOE-Berkeley and the taxpayers, as DOE-Berkeley characterizes it, remains sound.

6. Influence of the Proposal on Transmission and Generation Investment

122. Western disagrees with the Commission that it did not submit any evidence that the IBAA Proposal would have a significant impact on new transmission investment on Western's transmission system. According to Western, its witness, Brian Rahman, states, "The CAISO's new pricing proposal provides no incentives for generation and transmission development [from Western's Sub-balancing authority]."⁸³ Western claims that SMUD's testimony makes a similar point. Western notes that the Commission itself,

⁸³ Western Rehearing Request at 12 (citing Ex. WPA-1 at P 9).

finds “the default price may, in limited circumstances, create an artificially low price for energy and decrease the attractiveness of buying transmission service....”⁸⁴ Western claims that if both Western’s and SMUD’s witnesses and the Commission find the IBAA Proposal artificially decreases the value of transmission service on Western’s system, that logic would dictate there is evidence of an adverse impact on infrastructure development and that further studies or analyses need to be done.

123. Modesto disagrees with the Commission that the IBAA Proposal will not undermine California’s renewable portfolio objectives. Modesto reiterates that the IBAA Proposal would constrain a vital link to the Pacific Northwest and hinder California’s ability to meet its renewable goals by obstructing access to renewable sources of energy in the Pacific Northwest. Modesto argues that the IBAA Proposal is a gross distortion of LMP, as the CAISO selected a pricing point that is over 340 miles from Modesto generation. Modesto contends that the Commission misunderstood Modesto’s point that the CAISO’s program would obstruct California’s renewable portfolio standard, irrespective of whether the IBAA and renewable programs are independent from each other. According to Modesto, the Commission failed to recognize that one program has obstructive effects on the other. Modesto argues that whether they derived from different sources is irrelevant.

124. Moreover, Imperial maintains that the IBAA Proposal could undercut the Commission’s policy goal of promoting the development of renewable energy and compliance with the State of California’s rigorous renewable energy portfolio standard. Imperial claims the Commission approved unreasonably vague tariff language giving the CAISO premature authority to extend its IBAA Proposal to other balancing authority areas in the West, such as Imperial’s area. Imperial states that its balancing authority area contains an abundance of renewable resources, including geothermal, solar and wind resources. According to Imperial, price signals must be sufficiently high to stimulate the development of those resources. Imperial argues that if the CAISO starts down a path of paying lower prices for imports to the CAISO, renewable resources in neighboring balancing authority areas either may not be developed or the renewable energy that is developed may be sold to customers in locations outside the CAISO.

125. Modesto requests rehearing on whether the default pricing will discourage new transmission. According to Modesto, the Commission did not explain why it does not agree that new transmission will be discouraged. Modesto states that, while the Commission urged parties to bring problems to the Commission’s attention should they arise, parties cannot forecast how the Commission will react when brought such evidence. Therefore, Modesto contends that the Commission’s conclusion simply moves

⁸⁴ *Id.* (quoting September 19 IBAA Order at P 120).

the question to a later date. Further, Modesto maintains that the Commission will find it hard to deem a proposal that it has found to be just and reasonable to be unjust and unreasonable at a future date.

126. TANC claims that the Commission erred in ignoring record evidence that the IBAA Proposal would have a negative impact on transmission investment. TANC points to its own testimony that demonstrated that the proposal might undermine its ability to complete its \$1.2 billion transmission project.⁸⁵ TANC's General Manager testified that, because the IBAA Proposal would pay schedules using the COTP the lowest conceivable price for imports into the CAISO market and would be charged the highest price for exports out of the CAISO Market, potential lenders and investors for TANC's transmission projects may perceive this as increasing risk, resulting in greater costs for the projects.⁸⁶ TANC further states that other parties submitted evidence regarding the impacts of the IBAA Proposal on infrastructure development. For instance, Western submitted testimony explaining that the proposal would fail to provide incentives for generation and transmission development.⁸⁷

127. TANC finds fault with the Commission's rationale that "[p]arties' assertions that future developers will not know how transactions will be priced are essentially an attack on the market redesign...approved by the Commission in its September 2006 Order."⁸⁸ TANC argues that the Commission fails to consider that, because none of the independent and autonomously operating neighboring balancing authority areas have implemented an LMP market design, they will continue to use regional planning for determining future transmission projects. TANC contends that its concerns are not a collateral attack on the MRTU Orders and that, in fact, TANC has committed to embarking on a massive transmission project that will help its members meet the State of California's renewable portfolio standards and greenhouse gas initiatives with the need for LMP price signals.

⁸⁵ TANC Rehearing Request at 61 (citing TANC July 8, 2008 Protest, Docket No. ER08-1113-000, at P 115).

⁸⁶ *Id.*

⁸⁷ *Id.* (citing Western July 8, 2008 Protest, Docket No. ER08-1113-000, Ex. WPA-1 at P 9).

⁸⁸ TANC Rehearing Request at 62 (citing September 19 IBAA Order at P 131).

Commission Determination

128. In the September 19 IBAA Order, we explained the role that price signals play in providing information about where transmission investment is needed in an LMP market.⁸⁹ The IBAA Proposal was designed to make a reasonable assumption as to the source of imports and exports with the CAISO to ensure that LMPs are accurate and provide clear price signals.

129. TANC's assertion that the IBAA Proposal increases the risk of future transmission projects mischaracterizes the concept of risk. Prior to the filing and acceptance of the IBAA Proposal, potential investors in the \$1.2 billion transmission project were faced with regulatory risk, or the risk that the pricing of transactions over its project may change via a regulatory filing by the CAISO with the Commission. Once we accepted the IBAA Proposal, however, the risk, although not eliminated, of the project actually *decreased* because investors have more certainty regarding the rates that would be applicable to the project.

130. TANC provides no evidence that its users and its investors have not factored this risk into their risk analysis, only submitting warnings that the project's risk profile may increase. We reject TANC's request for rehearing on these grounds and note that TANC has provided no evidence that its project is unduly harmed by the IBAA Proposal, nor rendered uneconomic as a result of the IBAA Proposal.

131. We refer parties to the September 19 IBAA Order where we addressed claims that the IBAA Proposal could undermine the state of California's renewable portfolio standard.⁹⁰ The Commission explained that the CAISO's pricing policies are separate from California's policies to encourage the development of renewable energy and that nothing in the IBAA Proposal would prohibit a resource from entering into a power purchase agreement to import renewable energy.⁹¹ We maintain that the LMP-based market design that was implemented with MRTU will improve locational pricing accuracy and contribute to more efficient generation and transmission investment by providing the necessary price signals. The IBAA Proposal is being implemented to further these goals under MRTU.

⁸⁹ September 19 IBAA Order at P 131.

⁹⁰ *Id.* P 134.

⁹¹ *Id.*

7. Consequences for the Real-Time and Day-Ahead Markets

132. Santa Clara contends that the Commission erred by not requiring the CAISO to utilize information it currently possesses to improve the accuracy of its interchange modeling. Santa Clara contends that the Commission incorrectly reasoned that, although increased information would be helpful to produce a more accurate model of the effects on the CAISO-controlled grid, modeling all COTP schedules is not necessary for purposes of modeling and pricing interchange transactions. Santa Clara claims it demonstrated that LMPs under the IBAA Proposal will be inaccurate and that the IBAA Proposal can lead to infeasible schedules because the CAISO will intentionally ignore schedules on the COTP that sink outside the CAISO balancing authority area. Santa Clara continues that failing to include reasonable estimates for COTP schedules will result in modeled flows on the CAISO system being understated because the CAISO will fail to reflect the unscheduled flows on its system from most COTP schedules. Santa Clara further states that because the majority of COTP schedules do not sink in the CAISO balancing authority area, the CAISO will ignore significant unscheduled flows on its system in its day-ahead market, and the adverse impact of the CAISO's erroneous modeling proposal including artificially low day-ahead LMPs, the dispatch of resources that cannot be delivered, and the need for real-time redispatch and market uplift costs. Santa Clara asserts that the Commission erred by failing to require the CAISO to improve the accuracy of its modeling of imports on the California-Oregon Intertie lines.

133. Imperial notes that the Commission rejected Santa Clara's request that the CAISO model all COTP schedules, not just COTP schedules that sink in the CAISO. Imperial argues that it would be arbitrary and capricious for the Commission to conclude that the CAISO can demand data on external schedules in a MEEA. Imperial states that if the CAISO needs to investigate potential acts of market manipulation through circular scheduling, it or the Commission can request additional data at that time, including through a subpoena, if necessary.

134. Santa Clara contends that the Commission's failure to address the completeness of the CAISO's model is inconsistent with the Commission's determination that accurate modeling is necessary to ensure accurate LMPs and avoid infeasible scheduling. Santa Clara adds that the Commission's recognition of the importance of accurate day-ahead modeling cannot be reconciled with the Commission's decision not to require the CAISO to correct day-ahead modeling errors demonstrated by Santa Clara's protest, affidavit and studies. Therefore, Santa Clara requests that the Commission correct its error by ordering the CAISO to account for all COTP schedules in its day-ahead and real-time markets, making reasonable approximations where necessary based on all available and useable information.

135. Santa Clara claims that it demonstrated that the CAISO has sufficient information regarding COTP schedules that the CAISO can use to avoid the California-Oregon

Intertie modeling problems. Santa Clara claims that the CAISO already has historical COTP scheduling data, historical actual California-Oregon Intertie flow data, and actual COTP schedules sinking in CAISO, and actual PACI schedules as a proxy for COTP schedules (which can be used to estimate total COTP flows). Santa Clara also claims that using reasonable estimates is necessary to avoid inaccurate LMPs, inaccurate price signals, and infeasible schedules. Santa Clara also explained that the CAISO's proposal is to estimate zero flows for COTP schedules that do not sink in the CAISO, an estimate that will nearly always be inaccurate and is therefore the worst estimate possible.

136. Santa Clara contends that the CAISO did not address the information that it had demonstrated is available to the CAISO, other than to claim, without explanation, that the CAISO does not have the information. According to Santa Clara, the CAISO acknowledged that it receives aggregate net schedules for non-CAISO COTP use, but asserted that it does not receive them in time for the day-ahead and hour-ahead processes. Santa Clara contends that the CAISO's assertion does not address the historical California-Oregon Intertie flows, historical COTP schedules, actual day-ahead COTP schedules sinking in CAISO and actual day-ahead PACI schedules available to CAISO, which Santa Clara identified as information that could be used to produce estimates of intertie schedules that are more reasonable than the "zero" estimate proposed by the CAISO.

137. Santa Clara maintains that the Commission erred because the CAISO's response does not address the information that Santa Clara's affidavit demonstrates CAISO has available. Santa Clara contends that the CAISO does not establish any facts on this point through testimony; the CAISO merely summarily argues that it lacks information it has, without any discussion. Santa Clara asserts that it defies logic to find that the CAISO, as path operator, does not have the historical California-Oregon Intertie schedules and flows, or that as the operator of the PACI, CAISO does not have the actual Malin-PACI schedules, or that CAISO does not receive the actual COTP schedules that sink in its balancing authority area. Santa Clara claims that the Commission's implicit determination that the CAISO does not have the information available to improve its modeling is clearly erroneous and is unsupported by the record evidence.

Commission Determination

138. The CAISO stated in its August 8, 2008 Answer that it does not possess the data for COTP deliveries into the SMUD-Turlock IBAA that Santa Clara asserts it does.⁹² The CAISO explained that, for transactions that are not scheduled into the CAISO system, the CAISO will not be able to model such schedules in its market systems and

⁹² CAISO August 8, 2008 Answer, Docket No. ER08-1113-000, at 44-45.

applications because it does not receive market or other information regarding the use of the COTP in the timeframe of either the CAISO's Day-Ahead Market or Hour-Ahead Scheduling Process.⁹³ The CAISO also noted that it will receive non-CAISO-controlled grid COTP *aggregate net schedules* in its role as Path Operator for the California-Oregon Intertie, but that information will not be input to or used by the CAISO market systems/applications because it is not available when the Day-Ahead and Hour-Ahead processes run.⁹⁴

139. While access to additional and timely information on COTP imports that sink outside the CAISO could improve the CAISO's ability to model its system, it cannot compel other parties to engage in the voluntary exchange of this information in the timeframes most beneficial to the CAISO's modeling. Therefore, to the extent that COTP users whose imports sink outside the CAISO choose not to provide the CAISO the information it requires to incorporate these schedules into its market model on a timely basis, we cannot require the CAISO to model such external schedules.

140. In the September 19 IBAA Order, the Commission responded to suggestions that the CAISO model all the COTP schedules, not just the ones that sink into the CAISO-controlled grid. The Commission stated, "[w]hile we agree that more information would be helpful to produce a more accurate model of the effects on the CAISO-controlled grid, modeling all COTP schedules is not necessary for purposes of modeling and pricing interchange transactions."⁹⁵ The Commission maintains that, in light of the limitations on the information available, the suggested modeling of all COTP schedules is unnecessary and not a part of the IBAA Proposal.

D. Pre-Implementation Testing, Simulation and MRTU Go-Live⁹⁶

141. Western disagrees with the Commission that prior testing is unnecessary because the CAISO will have several months to test its market simulation with the IBAA model. First, Western argues that the testing only measures whether the IBAA is working as planned and is not a reexamination of the merits of the IBAA Proposal. For instance, if testing indicates that exports decline as a direct result of the proposal, there is nothing in the September 19 IBAA Order that would prevent implementation upon the start up of

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ September 19 IBAA Order at P 44.

⁹⁶ The Commission notes that MRTU Go-Live occurred on March 31, 2009 and thus the pre-implementation period has concluded.

MRTU. Second, Western believes such an approach, even assuming it would involve a reexamination of the IBAA Proposal, carries significant risks because of the start date of MRTU and the fact that the CAISO must file a “certification” with the Commission.⁹⁷

142. Western believes information developed during the CAISO’s market simulation supports Western’s proposal to “robustly test then accept approach” rather than the Commission’s “accept then test approach.”⁹⁸ According to Western, the CAISO’s market simulation testing had inconsistent results to LMP pricing and congestion without the IBAA Proposal. Given the array of past problems with testing, Western contends that it is highly optimistic to assume that the CAISO can reasonably re-test 34 scenarios with its IBAA Proposal in just over one month. Western adds that it should not be after the fact tests that establishes the justness and reasonableness of a proposal.

143. Western also states that it does not expect entities that are interested only in profits to run their gaming strategies during the testing period. There are no financial incentives to test gaming scenarios during the testing period since there are no profits to be made. Furthermore, by running gaming strategies during testing, it would allow the CAISO to modify its system to reduce the ability of such entities to profit at a later time. As a result, Western expects many entities will withhold these strategies until the markets are actually running.

144. Western expects certain scheduling coordinators to develop numerous strategies to take advantage of the artificially low price to their advantage once MRTU goes live. Western contends that if such scheduling coordinators take advantage of any holes in the market design to run gaming strategies when MRTU goes live, the impacts on the CAISO and neighboring balancing authorities could be detrimental to reliability and expensive.

145. Santa Clara requests that the CAISO be required to provide it an opportunity to fully test the potential results in an appropriate market simulation, with a public report on the results required to be submitted to the Commission for consideration prior to MRTU go live.

146. Santa Clara claims that the Commission erroneously takes comfort in the CAISO’s ability to work out the bugs in the IBAA Proposal through market testing prior to MRTU go live. Santa Clara contends that the Commission’s reliance on market simulations not

⁹⁷ The Commission notes that, at the time Western filed its request for rehearing, it based the dates in its pleading on a start date for MRTU of February 1, 2009.

⁹⁸ Western Rehearing Request at 14.

only fails to decide the case on the record, it is flawed because it fails to recognize the limits of the CAISO's market simulation.

147. Santa Clara contends that there are several problems with the Commission's reliance on market testing. Santa Clara maintains that there is not adequate time to test the IBAA Proposal and the testing would not be sufficient.

148. Santa Clara submits that, given the typical pattern of California-Oregon Intertie flows in January and low CAISO load levels, it is likely that the actual schedules and flows over the California-Oregon Intertie would either be at much lower levels than would occur in the spring and summer months, or could even be in the export direction, rather than the import direction. In either case, Santa Clara claims the CAISO's parallel simulation in January would not likely reveal certain pricing problems, which would most likely manifest when the California-Oregon Intertie lines are used to import significant amounts of energy into California from the Northwest.

149. Santa Clara requests that the Commission require the CAISO to work with market participants to develop simulation scenarios for testing the IBAA Proposal prior to the 60-day MRTU readiness certification. If the simulations reveal material price differences between the day-ahead and real-time markets, the CAISO should be required to incorporate compensating injections into its day-ahead, Hour-Ahead Scheduling Process (HASP) and real-time market models that are based on reasonable estimates of expected actual California-Oregon Intertie flows, including COTP schedules that do not sink in the CAISO. Santa Clara notes that the record does not include any detail regarding the type of testing CAISO intends to implement for the IBAA. Thus, Santa Clara requests that the Commission ensure the IBAA is fully tested, and that the testing address the possibility of irrational outcomes and unreasonable prices before MRTU goes live.

150. Modesto claims that the Commission erred in finding that the IBAA Proposal is necessary for the initiation of MRTU. Modesto claims that without the IBAA Proposal, the LMP function of MRTU would not be hindered. The full network model would still be able to be used within MRTU. Further, Modesto states that the CAISO has already admitted that it will need to make changes to this filing soon after the initiation of MRTU.

151. Modesto states that the CAISO is leaving issues concerning other balancing authority areas unresolved, belying any conclusion that the IBAA Proposal is necessary. Were it otherwise, the Commission would have directed that all of these other issues be resolved before MRTU. Modesto also states that the Commission's decision is also arbitrary in that the Commission chose not to defer MRTU based on seams issues.⁹⁹ Yet,

⁹⁹ Modesto Rehearing Request at 32 (citing September 2006 Order at P 486, 490).

for this quintessential seams issue, the Commission requires that it be resolved prior to MRTU. As such, Modesto claims the Commission's decision is not in accordance with past decisions.

152. TANC argues that the IBAA Proposal raises seams issues that the Commission has already determined in previous MRTU orders to be best resolved through a collaborative seams process among the Western Electricity Coordinating Council control areas. TANC contends that, by referencing the seams reports in its IBAA filing and including IBAA updates in its quarterly seams reports, the CAISO has acknowledged that the IBAA Proposal addresses seams issues.¹⁰⁰ TANC asserts that the CAISO has also acknowledged that working through the appropriate Western Electricity Coordinating Council forums to develop a region-wide consensus for the pricing impact of power flows between neighboring balancing authority areas is the optimal approach for modeling and pricing interchange transactions.¹⁰¹ Furthermore, TANC states that the Commission has failed to follow its own longstanding precedent of requiring interconnected utilities to work together at resolving conflicts before seeking a Commission determination.¹⁰²

153. TANC contends that the Commission erred in determining that the CAISO could implement the IBAA Proposal at the start of MRTU. TANC argues that the Commission failed to take into account whether pre-market testing would be adequate to address and correct any problems that might arise with the IBAA's modeling and pricing methodologies.

Commission Determination

154. We deny the requests for rehearing regarding testing of the IBAA Proposal. With respect to parties' concerns regarding prior testing, the Commission notes that this is not the proper venue for raising this issue. The CAISO has already filed its MRTU readiness certification, and the Commission issued an order acknowledging the CAISO's readiness.¹⁰³ Parties, including Western, raised issues regarding the CAISO's readiness

¹⁰⁰ TANC Rehearing Request at 78.

¹⁰¹ *Id.* at 56 (citing CAISO June 17 Filing, Ex. ISO-1 at 47:17-48:2).

¹⁰² *Id.* at 80 (citing *Penn. Elec. Co.*, 65 FERC ¶ 61,304, at 62,401 (1993); *Indiana Michigan Power Co.*, 64 FERC ¶ 61,184, at 62,554 (1993); *American Elec. Power Co.*, 49 FERC ¶ 61,377, at 62,381 (1989), *reh'g denied*, 50 FERC ¶ 61,192 (1990)).

¹⁰³ *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,221 (2009).

to launch MRTU – including the sufficiency of pre-implementation testing – in that proceeding.¹⁰⁴ However, the CAISO asserted that it was indeed ready to launch MRTU as scheduled.¹⁰⁵ Parties’ concerns were properly vetted and addressed in that proceeding, and we will not revisit them here. However, we do note that the CAISO has provided market participants significant opportunities for market simulation and testing.¹⁰⁶

155. Western’s assertions about the “gaming” strategies of market participants, while well-intentioned, are unfounded and speculative. Indeed, Western may be correct in stating that market participants that possess specific strategies that they may use to excessively profit from their participation in the MRTU and IBAA will be better served by withholding those strategies until actual MRTU operation and not revealing them during market simulation. However, that line of reasoning suggests that no additional amount of testing, no matter how extensive, will ever expose gaming strategies. Thus, the CAISO, its participants, and the Commission are tasked with implementing rules that are reasonable and are designed to prevent such gaming opportunities. Nevertheless, the CAISO should remain vigilant in monitoring its markets for potential gaming and report expediently to the Commission if such practices occur.

156. Modesto’s claim that the IBAA Proposal is not necessary for the implementation of MRTU, while noted, is not a sufficient reason to grant rehearing nor delay the IBAA Proposal. The Commission has explained in the September 19 IBAA Order and here why the IBAA Proposal is just and reasonable and how it fits with the operation of the MRTU markets. Furthermore, we see no reason to delay the implementation of the IBAA Proposal when MRTU has been implemented.

E. The Eastern RTOs

157. Imperial requests rehearing of the determination that the IBAA Proposal is consistent with what Eastern RTOs, such as PJM, have done in the past. Imperial argues that the CAISO should not be allowed to superimpose a proposal on its neighboring balancing authority areas that was specifically designed for PJM and based on actual operating experience of that particular market. Imperial states that there are several significant differences between the Eastern and Western markets which make the application of the PJM model to the West illogical and therefore arbitrary and capricious.

¹⁰⁴ *Id.* P 36-37.

¹⁰⁵ *Id.* P 68.

¹⁰⁶ *See* CAISO March 16, 2009 Monthly Status Report Re: MRTU, Docket No. ER06-615-000.

158. Imperial claims that the interconnection points in the East may be located very close together, making consolidation of those points feasible for pricing purposes, whereas the interconnection points in the West are separated by large distances, which makes consolidated pricing an unreasonable and untenable proposition and that will lead to inaccurate pricing. Imperial also claims that many large transmission lines and generating facilities in the West are co-owned and may be located in a different co-owner's balancing authority area, contrary to the PJM model, whereby PJM limits the circumstances in which proxy prices are applicable to its neighbors, and that generally proxy bid prices will only be applicable if these entities are not purchasing power outside their balancing authority area. Additionally, Imperial contends that a significant percentage (approximately 42 percent) of the transmission lines in the West are owned by governmental entities and the Commission lacks jurisdiction over sales by any governmental entities that trade in the West.

159. LADWP also notes that the IBAA Proposal contains a dual-hub approach that models lowest cost default proxy bus to price imports (Captain Jack Hub) and a separate high cost default proxy bus to price exports (SMUD Hub). Thus, the use of two proxy buses to implement its buy-low, sell-high pricing deviates from the single proxy bus for modeling and pricing *both* imports and exports that eastern ISOs/RTOs have adopted.

160. SMUD argues that the Commission's finding that that the experiences of the eastern RTOs rendered the CAISO's concerns about potential gaming of schedules within the proposed SMUD-Turlock actual and not merely theoretical was arbitrary and capricious. SMUD notes that its protest and accompanying testimony pointed out that the CAISO's claimed concern about artificial scheduling incentives within the proposed SMUD-Turlock IBAA was solely theoretical and that the actual likelihood of the gaming practices the CAISO sought to prevent with its IBAA filing was low. SMUD argues that the Commission did not address SMUD's testimony or SMUD's related arguments. SMUD states that what the CAISO should know is that the gaming problem is not only theoretical in nature, the actual likelihood of the gaming practices the CAISO aims to prevent are already low. SMUD states that if the CAISO's real concern was the prevention of gaming, there is no logical reason for focusing its mechanism on the SMUD-Turlock IBAA when other balancing area authorities are likely to have a larger impact on CAISO markets. SMUD claims that it uses network service to purchase power from sources in the Northwest, it uses those purchases to serve native load, meaning that power sold by SMUD into the CAISO markets will likely be from SMUD resources displaced by the energy it has imported from the Northwest. SMUD also states that the COTP was built to provide its owners with access to Northwest resources that would be used to serve their own loads, and that the facility still serves that basic function.

Commission Determination

161. We disagree with parties that claim the Commission “relied” on the experience of eastern RTOs in accepting the IBAA Proposal. The Commission accepted the IBAA Proposal as a standalone proposal, just and reasonable on its own merits. The Commission explained the relevance of the experience of the eastern RTOs in the September 19 IBAA Order, by noting that “the CAISO has adequately demonstrated – based on its own analysis and the experience of the eastern RTOs – that the potential for operational problems and unjust and unreasonable prices justifies the need for the IBAA Proposal.”¹⁰⁷ Any further similarities between the eastern RTOs and the CAISO were quite general. Specifically, we found that “many differences” exist between the eastern RTOs and the CAISO, but that relevant similarities do exist, namely “the degree to which the eastern RTOs are integrated with their neighbors and the extent to which differences between scheduled and actual flows may lead to infeasible schedules as market participants seek the most favorable prices.”¹⁰⁸ The Commission *did not* accept the IBAA Proposal based on similarities with eastern RTOs such as “the proximity of interconnection points with its neighbors,” “co-ownership” status of transmission lines, “jurisdiction” issues, all as charged by Imperial.

162. The Commission rejects SMUD’s claim that the Commission acted arbitrarily and capriciously in finding that the CAISO’s concerns about potential gaming of schedules to be actual and not theoretical. Regardless of SMUD’s use of the COTP, that is, as a corridor to access additional resources to serve load, this primary purpose does not preclude the opportunities to arbitrage price differences at intertie scheduling points. And, given the empirical evidence gleaned from eastern RTOs regarding this very matter, as well as the record evidence of the operational effects the current scheduling practices have on real-time operations because of the actual differences between contract path and actual flows, it is clear that these gaming concerns are real and not theoretical. Thus, because we prefer a proactive approach to preventing gaming possibilities stemming from loop flow to a “wait and see” approach where sensible, we continue to find that the CAISO acted appropriately in addressing loop flow concerns in designing the IBAA.¹⁰⁹

163. As the Commission addressed in the September 19 IBAA Order, the Commission relies on the record evidence of the operational effects that scheduling practices have on

¹⁰⁷ September 19 IBAA Order at P 164.

¹⁰⁸ *Id.* P 163.

¹⁰⁹ See, e.g., *PJM Interconnection, LLC*, 122 FERC ¶ 61,082 at P 68 (2008) (reiterating that a tariff contains protective provisions to prevent potential gaming).

real-time operations.¹¹⁰ Further, in response to SMUD's claim that it uses Northwest imports to serve its own load, this assertion alone is not conclusive. The September 19 IBAA Order addressed the CAISO's acknowledgement that not all interchange transactions would be sourced from the Pacific Northwest.¹¹¹ The Commission found that, in the absence of additional information, the Captain Jack default represents a conservative proxy that allows the CAISO to better manage congestion on its system and will reduce incentives for artificial scheduling.¹¹² Also, as the Commission has repeatedly stated, if a party disagrees with the IBAA presumptions, the party may consider the MEEA option.

164. Regarding SMUD's claim that the Commission should not have focused on gaming concerns regarding SMUD-Turlock only, and that instead should have addressed neighboring control areas that are likely to have greater impacts on the CAISO control area, the Commission disagrees. As we found in the September Order:

[W]e agree that a solution that accurately models the transmission system and power flows for the entire Western Interconnection would be preferable. However, such a solution does not appear feasible in the near term, and we therefore agree that it is not unreasonable for the CAISO to focus its efforts on the neighboring balancing authority areas which have the greatest impact on the CAISO. Further, while the particular characteristics of the SMUD and Turlock balancing authority areas warrant the establishment of an IBAA at this time, as discussed above, the tariff language we are conditionally approving in this order enables the CAISO to establish, subject to Commission approval, additional IBAs should transmission congestion patterns change or the CAISO identify problems caused by interchange transactions with other neighboring balancing authority areas.¹¹³

¹¹⁰ September 19 IBAA Order at P 59.

¹¹¹ *Id.* P 83.

¹¹² *Id.*

¹¹³ *Id.* P 61.

F. Market Efficiency Enhancement Agreements

165. LADWP seeks clarification of the Commission's modifications to the MEEA provisions of the tariff.¹¹⁴ It asks the Commission to clarify that, in requiring these provisions, the Commission intends for the CAISO to specify that, in the MEEA, it will provide IBAs with reciprocal information regarding the CAISO resources and operations, subject to similar safeguards and procedures. LADWP claims that this clarification will allow the parties to develop a transparent and balanced alternative pricing arrangement and will ensure that the exchange of information in the MEEA is *mutual*. LADWP contends that a mutual exchange of information is consistent with the Commission's objective of fostering a transparent and balanced agreement. Also, LADWP asserts that this exchange will advance the CAISO's long term goals and objectives. As the CAISO recently stated in this proceeding, it "has made no secret of its long run desire to exchange detailed scheduling, generation and load information with other [balancing authority areas]."¹¹⁵

166. Modesto and TANC seek clarification as to what the Commission meant by the "actual prices" that would be granted by executing a MEEA. Modesto states that if the Commission has already decided that it means pricing other than at the interties, Modesto requests rehearing. If "actual prices" means the prices granted to any other market participant were it not for the IBAA Proposal, i.e., priced at the CAISO interties, then Modesto believes that the Commission's logic would be sound. However, they contend that if the pricing is other than at the interties, the same deficiencies regarding discrimination and lack of reasoned support continue with the treatment upon signing a MEEA. Such an approach would be arbitrary, according to Modesto.

167. Imperial and Modesto state that the Commission recognizes that MEEAs are an integral component of the IBAA Proposal, without which the use of default, proxy pricing points cannot be legally justified. Modesto states that the Commission's

¹¹⁴ Specifically, the requirement that the CAISO include tariff provisions that: (1) state the limited purpose for which the CAISO will use the information; (2) specify measures the CAISO must take to preserve the confidentiality of information; (3) provide procedures with which the parties would have to comply in their negotiations; (4) provide dispute resolution procedures; (5) establish audit rights for both parties; and (6) provisions that specify the minimum information the CAISO requires to accurately model interchange transactions (specified by type of entity involved in a potential MEEA). September 19 IBAA Order at P 182, 184.

¹¹⁵ LADWP Rehearing Request at 14 (quoting CAISO July 23, 2008 Answer at P 38).

conclusion is an implicit acknowledgement that the default pricing proposal is unjust and unreasonable. Further, Imperial argues that the CAISO's filing and the September 19 IBAA Order fail to provide reasonable notice of the terms of a MEEA, rendering the Commission's decision unlawful.

168. Imperial and Modesto state that the CAISO's demand for data from neighboring balancing authorities is overly broad. Despite the CAISO claims that it needs data regarding the location and dispatch of external resources actually used to implement interchange transactions to more accurately model the effect of such transactions on the CAISO-controlled grid, Imperial and Modesto maintain that the impact of interchange transactions on the CAISO-controlled grid can be determined based simply on scheduled and actual physical flows over the interconnection points between the CAISO and neighboring transmission systems and such data can be after the fact.

169. Both Imperial and Modesto are concerned about the market-sensitivity of the data requested. According to Modesto, the MEEAs are a thinly veiled attempt for the CAISO to acquire sensitive market data by offering to lessen the effects of the default approach of its own creation. It argues that this is simply an attempt to gain a contract through coercion.

170. Modesto states that, while the Commission let the CAISO specify the data it seeks in its compliance filing, it noted that there are already concerns that the CAISO expects day-ahead transactions and generation schedules. According to Modesto, such information, provided in advance, would not be used for reliability, but for enhancing – and favoring – the CAISO's market, at the expense of its competitors.

171. According to Imperial, in the past, the Commission has specifically allowed lag periods for bids and offered data before allowing other entities access to such commercially sensitive data to ensure that the lag period “is sufficient to protect commercially sensitive data and to guard against misuse of the data.”¹¹⁶ According to Imperial, other commercially sensitive data demanded by the CAISO is not necessary for this purpose and will unfairly give the CAISO market advantages over its neighboring balancing authority areas. Imperial, therefore, requests that the Commission reasonably restrict the data demanded by the CAISO and not give the CAISO the authority to unilaterally determine what information should be required from its neighboring balancing authorities. Thus, Imperial contends that the CAISO's neighboring balancing authorities should have input in determining the terms of the MEEA.

¹¹⁶ Imperial Rehearing Request at 29 (quoting *Wholesale Competition in Regions with Organized Electric Markets* NOPR, 122 FERC ¶ 61,167, at P 220 (2008)).

172. In addition, Modesto argues that the Commission ignored the experience of the eastern RTOs which relied on agreements that did not require the provision of day-ahead schedules, but provided information for schedules on an aggregate level.

173. Imperial objects to any standard requirement in a MEEA for a neighboring utility to provide data to the CAISO on transactions entered into by that utility with other entities in bilateral markets outside the CAISO as well as on the neighboring utility's own loads in its own balancing authority area located outside the CAISO. Imperial similarly objects to any standard provision in a MEEA compelling a neighboring balancing authority to provide the CAISO with schedules and e-tags submitted by other market participants to the neighboring balancing authority. Imperial claims these demands for data by the CAISO are overly broad and unduly burdensome. Moreover, Imperial claims the demand for schedules and e-tags submitted to a neighboring balancing authority conflicts with the Commission's ruling that reliability data cannot be used for market purposes.

174. Further, Imperial states that after-the-fact schedules and data may have proprietary value. Not only will such an overly broad and unduly burdensome demand for data discourage sales (i.e., imports) to the CAISO, but Imperial contends it will render the option of entering into a MEEA to avoid default pricing illusory. Consequentially, to the extent the Commission's order leaves open the door for the CAISO to demand such data in a MEEA, Imperial requests rehearing.

175. Imperial complains that the Commission based its approval of the IBAA Proposal on the MEEA, while a draft or elements of the MEEA has never been filed or comments and protests submitted. Imperial states that, in Order No. 890, the Commission held that the CAISO must "demonstrate a clear need" for highly sensitive market and pricing data, even though the CAISO has committed not to disclose the information it sought.¹¹⁷ In contrast, Imperial states that, while the Commission directed the CAISO to clearly demonstrate how it intends to use bid information and to use only aggregated data and not individual transactions for each entity, the CAISO has not demonstrated any of these requirements have been met. Imperial states that, unless the Commission knows the terms of the MEEA (or at least, a *pro forma* MEEA), approval of the IBAA Proposal is not based on reasoned decision-making.

176. SoCal Edison states that, in its comments, it pointed out that the proposed tariff language failed to clarify the criteria the CAISO would use for determining if an entity qualifies for a MEEA designation. Specifically, SoCal Edison was concerned that the

¹¹⁷ *Id.* at 32 (citing *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283, at P 37 (2008)).

CAISO had not defined what constitutes a “demonstrable benefit to the CAISO Market.” SoCal Edison maintains that the Commission tried to address this concern by requiring the CAISO to include in its tariff bright-line criteria on the qualifications of a MEEA agreement. However, SoCal Edison maintains that each integrated balancing authority area is different, and similarly, each MEEA agreement will be different and could have different impacts on the CAISO markets. As such, SoCal Edison maintains that requiring the CAISO to define what it means by “demonstrable benefits,” along with conducting a formal stakeholder process, reduces the possibility of MEEA contracts being accepted or rejected based on criteria that do not take into account the uniqueness of each IBAA.

177. SoCal Edison’s preference would be for the Commission to grant its request for rehearing and require the CAISO to engage in a stakeholder process prior to requesting tariff approval for a MEEA at the Commission. SoCal Edison states that alternatively, if the Commission permits the CAISO’s proposed language to become the final tariff language, market participants will have no option but to file FPA section 206¹¹⁸ complaints with the Commission to resolve any unjust outcomes the MEEA agreement may create for impacted stakeholders. SoCal Edison claims that such a result is inappropriate for several reasons. First, it is a waste of the Commission’s time and resources to review, consider, and rule on FPA section 206 complaints, when the same issue could have been resolved through the stakeholder process and additional tariff details. Second, it is a violation of the Commission’s statutory mandate to permit tariff language to stand when it has not been found to be just and reasonable.

178. Imperial asks the Commission to confirm that any obligation to provide data does not fall on a balancing authority and data only has to be provided to the CAISO if and when a commercial sale is made to the CAISO at an LMP. Imperial claims that to hold otherwise, would be contrary to statements made by the Commission in the September 19 IBAA Order.¹¹⁹ In addition, Imperial claims it would be contrary to established Commission policy, where the Commission has made clear that it is not willing to give the CAISO *carte blanche* access to sensitive commercial data of other entities.¹²⁰ Moreover, Imperial contends that the provision of this commercially sensitive reliability data to third parties is contrary to the Western Electricity Coordinating Council’s confidentiality provisions and to confidentiality provisions of NERC’s Rules of Procedure.¹²¹ Imperial contends that it is not an appropriate function of a balancing

¹¹⁸ 16 U.S.C. § 824d (2006).

¹¹⁹ Imperial Rehearing Request at 11.

¹²⁰ *Id.*

¹²¹ *Id.* at 11-12.

authority to gather and provide detailed, competitively-sensitive information for purposes of pricing commercial transactions. According to Imperial, it would be a poor public policy that could threaten reliability if balancing authorities were required to engage in this type of commercial market function. It states that balancing authorities would be distracted from their core function of maintaining grid reliability, and such a requirement could cause market participants to hesitate to provide information to balancing authorities out of a fear that the information will be used against them economically and/or land in the hands of a competitor. Imperial claims this would harm reliability.

179. Imperial states that the September 19 IBAA Order makes it clear that the IBAA Proposal is a commercial pricing/market-based proposal, rather than a reliability-based proposal. Imperial claims that the order also recognized that the CAISO cannot use data supplied by a balancing authority, under reliability standards, for market purposes. Therefore, Imperial states that a neighboring utility, in its role as a balancing authority, cannot be obligated to supply data to the CAISO under the IBAA Proposal.

180. Modesto states that it is unclear whether the procedures for negotiating the MEEAs will be further defined in the business practice manuals. If this is the case, Modesto asserts that the CAISO more than likely will include conditions favorable to it within the manuals. Modesto contends that these issues are too important to be left in the Business Practice Manuals and should be included in the Tariff.

181. Modesto seeks clarification that that both injunctive and financial damages apply to the CAISO if it breaches the MEEA. Modesto states that there is no accountability specified for the CAISO, should the CAISO breach the MEEA. According to Modesto, the Commission's added requirements lack a deterrent to the CAISO to refrain from breaching the MEEA requirements specified by the Commission. Modesto states that the problem with only providing for injunctive relief is that the damage may have already occurred. Modesto requests that the Commission clarify that both injunctive and financial damages apply to the CAISO if it breaches the MEEA. Modesto adds that the CAISO is a not-for-profit entity, which makes it difficult to hold the CAISO accountable for actions that it takes in breach of an obligation. It states that other than injunctive relief, the other available remedies at this point appear to be financial ones. While Modesto notes that the CAISO will pass-through the penalties to its market participants, it risks dissatisfaction from those market participants for incurring those penalties.

182. SMUD disagrees with the Commission's conclusion that the IBAA pricing proposal is not being implemented as a way to coerce parties into providing commercially sensitive data to the CAISO by executing a MEEA. SMUD concludes that it is illogical and arbitrary for the Commission to accept, as an entity's only alternative to accepting an "artificially low" price for it exports to the CAISO, an agreement that would allow the CAISO to use the very same Western Electricity Coordinating Council reliability data for market purposes. SMUD asserts that to provide this information to the

CAISO would require SMUD to violate its contractual obligations to the Western Electricity Coordinating Council. In addition, SMUD contends that the Commission's rejection of the coercion argument on the basis the changes it has ordered the CAISO to make will make the MEEAs "even-handed" misses the point that being able to execute a MEEA on predictable terms does not mitigate the coercive circumstances of the agreement in the first place.

183. Turlock states that the Commission erred in finding that the CAISO's offer to substitute "actual prices for real-time data through execution of a MEEA" is sufficient to justify the CAISO's discriminatory treatment of Turlock and SMUD. Turlock notes that, in the September 19 IBAA Order, the Commission erroneously found that any harm caused by the CAISO's discriminatory treatment of the Turlock-SMUD IBAA was mitigated by the CAISO's offer to substitute actual prices for the proposed default proxy prices, if the balancing authority executes a MEEA. Turlock argues that conditioning non-discriminatory rates on Turlock and the other balancing authority areas signing MEEAs with the CAISO is coercive, unjust, unreasonable and unduly discriminatory. Turlock and TANC assert that the CAISO's default pricing proposal must be just and reasonable on its own and the CAISO cannot rely on the availability of MEEAs to "mitigate" or rectify the undue discrimination that results from the CAISO's default pricing proposal.¹²²

184. TANC argues that the MEEA is not just and reasonable itself and thus cannot cure the errors in the default price. TANC argues that the Commission erred in failing to order a hearing to determine the appropriate scope of data that MEEA participants should be required to provide. Furthermore, TANC asserts that the Commission has failed to address directly impacted entities for which a MEEA would not be a realistic or acceptable alternative to the default proposal. TANC requests that the Commission grant rehearing to reverse its ruling with respect to the IBAA Proposal, or failing that to order an evidentiary hearing as to these important issues and the disputed issues of material fact TANC has raised.

185. TANC argues that, by approving the MEEA proposal, the Commission has vested the CAISO with the authority to demand commercially sensitive market information as a prerequisite for receiving a just and reasonable rate. TANC asserts that, while the Commission correctly concludes that it would be inappropriate to allow the CAISO to enforce network constraints on other transmission systems, the Commission erred by failing to find it every bit as unlawful for the CAISO to compel non-jurisdictional facilities to provide it with sensitive market data. TANC points to well-established Supreme Court law that provides that the Commission cannot accomplish indirectly what

¹²² Turlock Rehearing Request at 20.

it is forbidden by statute to realize directly.¹²³ TANC also cites as support the Commission's previous MRTU orders, which it claims have likewise acknowledged that the CAISO cannot compel neighboring balancing authority areas to provide it data to improve its Full Network Model.¹²⁴

Commission Determination

186. In the September 19 IBAA Order, the Commission accepted the CAISO's proposal to offer alternative pricing arrangements under MEEAs to any entity that owns or controls external resources and believes that the default pricing mechanism will not appropriately price or reflect the value of its interchange transactions. These entities would be offered an alternative modeling and pricing arrangement in exchange for the information necessary to verify the location of the external resources that are used to support its interchange transactions with the CAISO. We accepted the CAISO's MEEA mechanism as an integral part of the IBAA Proposal on the basis that "resources capable of verifiably providing the CAISO with operational benefits should be valued and compensated appropriately."¹²⁵

187. Numerous parties have re-raised on rehearing concerns that the CAISO's MEEA mechanism represents an unlawful attempt by the CAISO and the Commission to coerce entities into providing market sensitive data as the only alternative to what they perceive as an unjust and unreasonable default pricing scheme. This characterization is false in numerous respects. The execution of MEEAs is optional and any party that does not wish to provide the data that will be required by the CAISO to execute one will have the default price applied to its imports and exports with the CAISO. In the September 19 IBAA Order, we found that the assumptions supporting the single hub modeling and pricing mechanism were reasonable based on the CAISO's experiences with managing congestion on its system.¹²⁶ Thus, we found that the prices that would result from the default pricing were also just and reasonable given the information available. As the Commission stated in the March 27 IBAA Order:

¹²³ TANC July 8, 2008 Protest, Docket No. ER08-1113-000, at 76 (citing *Sunray Mid-Continental Oil Co. v. FPC*, 364 U.S. 137, 152 (1960); *Nat'l Fuel Gas Supply Corp. v. FERC*, 909 F.2d 1519, 1522 (D.C. Cir. 1990); *Richmond Power & Light v. FERC*, 574 F.2d 610, 620 (D.C. Cir. 1978)).

¹²⁴ TANC Rehearing Request at 76.

¹²⁵ September 19 IBAA Order at P 181.

¹²⁶ *Id.* P 82.

The opportunity to enter into such an agreement is and has been available to the Affected IBAA Entities. The opportunity to choose is available and either choice would result in just and reasonable prices, i.e., parties can enter into a MEEA to obtain LMP pricing or choose not to enter into a MEEA and obtain default pricing. Thus, even if parties choose not to enter into a MEEA to obtain LMP pricing, the Affected IBAA Entities would be subject to just and reasonable rates under the default pricing.^{127]}

188. Modesto requests clarification that the relevant “actual price” that would apply to MEEA transactions would be the LMP at the scheduling intertie between the IBAA and the CAISO. We clarified in our March 6 Compliance Order that the relevant pricing point under a MEEA would be the node where the interchange transaction is demonstrated to be located.¹²⁸ This would not necessarily coincide with the scheduling intertie as Modesto asserts. To accept Modesto’s proposal to use scheduled locations rather than to base the price on the actual location of the external resource would be to undermine the goal of the MEEA to allow the CAISO to accurately model and price actual flows.

189. In response to SoCal Edison’s concerns about the definition of “demonstrable benefit,” we refer to the Commission’s prior rejection of the CAISO’s use of the term in our September 19 IBAA Order.¹²⁹ As stated above, the Commission found that the provision of additional information for modeling and pricing interchange transactions that would be provided through an executed MEEA provides sufficient benefits to both the CAISO and all market participants, and thus it was not necessary for an entity wishing to execute a MEEA to quantify or otherwise demonstrate these market benefits.

190. Numerous parties raise various concerns about the type of data that entities wishing to execute a MEEA would be required to provide to the CAISO. In the September 19 IBAA Order, the Commission directed the CAISO to include, on compliance, tariff language to specify the information it would require to accurately model interchange transactions, specified by the type of entity involved in a potential MEEA.¹³⁰ On compliance, the CAISO filed tariff provisions specifying the information it proposed to require of MEEA entities. In the March 6 Compliance Order, the Commission found that

¹²⁷ *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,278, at P 28 (2009) (March 27 IBAA Order) (footnotes omitted) (emphasis added).

¹²⁸ September 19 IBAA Order at P 105; March 6 Compliance Order at P 34.

¹²⁹ September 19 IBAA Order at P 185.

¹³⁰ *Id.* P 182.

the data requirements proposed by the CAISO appeared to be overly-broad and designed specifically for implementing the proposed limitations on eligibility for MEEA pricing that we rejected in that order.¹³¹ The Commission directed the CAISO to eliminate the data requirements that would have been utilized to implement the rejected eligibility limitations and to explain how any data it proposes to require would be used to actually verify the location and operation of the resources used to implement interchange transactions between the CAISO and the IBAA.¹³²

191. Because of the ongoing nature of the compliance proceeding, we will not respond at this time to the merits of alternative assertions about what types of information the appropriate data set would or would not include. Thus, we will address parties' data concerns when we address the CAISO's second compliance filing.

192. Parties also raise concerns that executing a MEEA would require providing the CAISO with commercially-sensitive data that the CAISO would use for market purposes. Though we have found that the MEEA represents a just and reasonable mechanism for ensuring that entities controlling resources within the IBAA are provided the opportunity to receive appropriate compensation, the Commission is also concerned that the confidentiality of the data exchanged through a MEEA is protected. For this reason, the Commission adopted LADWP's proposed MEEA terms and conditions in the September 19 IBAA Order to ensure that adequate confidentiality, as well as dispute resolution and audit, provisions would be in place.¹³³ The Commission addressed this issue again in the March 6 Compliance Order, ordering the CAISO to include in its second compliance filing specific confidentiality provisions to ensure the protection of any information provided by a market participant either during MEEA negotiations or under an executed MEEA.¹³⁴

193. LADWP requests clarification that data exchanges between the CAISO and any party executing a MEEA would be reciprocal to ensure that the agreements are indeed balanced. We strongly encourage the mutual exchange of resource and operational information between the parties entering into a MEEA. While we agree that neighboring balancing authority areas would also benefit from information from the CAISO allowing better modeling of the impacts of interchange transactions on their systems, we do not find it necessary to order a *quid pro quo* exchange. The issue here is what information is

¹³¹ March 6 Compliance Order at P 80.

¹³² *Id.* P 80-81.

¹³³ September 19 IBAA Order at P 184.

¹³⁴ March 6 Compliance Order at P 91.

necessary to accurately model and price the impacts of interchange transactions on the CAISO's system, which does not necessarily represent the information that a neighboring balancing authority area would require to improve its own system modeling and operations. Furthermore, the types of entities that might enter into MEEAs with the CAISO could vary substantially and thus so would their information exchange needs. We find that the issue of what specific information, if any, the CAISO will provide to the entity executing a MEEA will be best determined through negotiating the agreements and on a case-by-case basis.

194. Imperial's comparison of the IBAA Proposal to the provisions addressing the protection of commercially-sensitive information in Order No. 890¹³⁵ is misplaced. As previously stated, entering into a MEEA and providing information is entirely voluntary. If Imperial does not want to provide certain information to the CAISO, it is not required to enter a MEEA.

195. The Commission addresses parties' request for additional hearings and stakeholder process below, so we do not address the same requests here. Further, in response to SoCal Edison's contention that, without additional stakeholder process, parties may file complaints pursuant to section 206 of the FPA, we fail to see how additional stakeholder process will keep parties that oppose MEEAs from filing complaints. Regardless, while we deny the request for rehearing on this point, we encourage the parties to pursue any stakeholder process they believe would be mutually beneficial to resolve any issues they may continue to have with respect to the MEEA.

196. The Commission finds that it is unnecessary to address whether injunctive and/or financial damages apply to the CAISO if it breaches the MEEA. As Modesto is aware, the issue of damages is rarely easily determined without an understanding of the particular facts of the matter at issue.¹³⁶ Thus, the Commission finds it to be premature to address the issue here.

G. Discrimination

197. Several parties request rehearing on the Commission's finding that the IBAA Proposal is not unduly discriminatory, arguing that the Commission's finding is arbitrary and capricious and was not supported by substantial evidence. Several parties disagree with the Commission's finding that although the IBAA Proposal may charge the IBAA entities different rates, it still holds the IBAA Proposal is not unduly discriminatory based

¹³⁵ *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283 (2008).

¹³⁶ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services By Public Utilities*, 125 FERC ¶ 61, 326, at P 102 (2008).

on the “unique set” of facts applicable to them. Multiple parties contend that the IBAA Proposal is unduly discriminatory because the CAISO proposes to form a SMUD-Turlock IBAA and not an IBAA that includes other balancing authority areas. Turlock notes that similarly situated entities must be treated similarly,¹³⁷ and that the FPA ensures equality of treatment for substantially similar services.¹³⁸ Modesto adds that transmission service may not unduly discriminate between different classes of customers.¹³⁹

198. Modesto and Turlock argue that the Commission’s determinations are in error because the factors cited by the Commission as factual differences, sufficient to justify the CAISO’s disparate treatment of Turlock and SMUD are either not supported by the facts or are not sufficient to justify discrimination under section 205(b) of the FPA. Western states that the Commission’s ruling that the IBAA Proposal’s default rate is not unduly discriminatory is not supported by the substantial weight of the evidence. Turlock also argues that the Commission finding that the CAISO’s new market design requires “either sufficient data or proxy assumptions” does not justify the CAISO’s disparate treatment of Turlock and SMUD.

199. SMUD asserts that the Commission misapplies the term “similarly situated” by concluding that it is appropriate to single out SMUD and Turlock because they are unlikely to present scheduling and pricing concerns that are identical to other balancing authorities under MRTU. SMUD argues that “the whole reason for establishing customer classes is to group customers with *similar* characteristics since it is unlikely that any two customers will be identical.”¹⁴⁰

¹³⁷ Turlock Rehearing Request at 9-10 (citing *Pub. Serv. Co. of Indiana, Inc.*, 11 FERC ¶ 63,008, at 65,043 (1980) (“Section 205(b) requires the Commission to insure, to the extent possible, that similarly situated wholesale customers are afforded similar treatment.”)); *Cities of Newark v. FERC*, 763 F.2d 533, 547 (3rd Cir. 1985); *Cities of Bethany v. FERC*, 727 F.2d 1131, 1139 (D.C. Cir. 1984); *City of Frankfort v. FERC*, 678 F.2d 699, 706 (7th Cir. 1982)).

¹³⁸ Turlock Rehearing Request at 10 (citing *St. Michaels Utils. Comm’n v. FPC*, 377 F.2d 912 (4th Cir. 1967)).

¹³⁹ Modesto Rehearing Request at 15 (citing *Alabama Elec. Coop., Inc. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982); *Atlantic City Elec. Co., et al.*, 77 FERC ¶ 61,148, 61,584 (1996)).

¹⁴⁰ SMUD Rehearing Request at 27 (emphasis in original).

200. Western states that the Commission arbitrarily grants the CAISO authority to apply a different standard to every balancing authority. Western argues that such a ruling opens the door to discrimination, and it was arbitrary for the Commission not to require the CAISO to articulate the standards it would apply on a going forward basis. TANC argues that the Commission failed to consider that the factors the CAISO had outlined in its proposed tariff for establishing a new IBAA were formulated by the CAISO to target the SMUD and Turlock balancing authority areas. TANC further contends that the Commission's finding that it is reasonable for the CAISO to consider individual impacts and market conditions in establishing new potential IBAs gives the CAISO unilateral discretion to discriminate and apply different standards for each neighboring balancing authority area. SMUD contends that the Commission's order illogically provides the CAISO the discretion to establish new IBAs despite the Commission's finding that the IBAA was critical to address a modeling issue that required singling out SMUD and Turlock.

201. SMUD and Turlock take issue with the Commission's conclusion that because SMUD and Turlock were once a part of the CAISO's balancing authority area, the CAISO has the information it needs to conclude that they have a greater impact on the CAISO than other neighboring balancing authority areas. In fact, SMUD contends that the CAISO's admitted lack of detailed knowledge of other balancing authority areas makes it impossible for the CAISO to support its claim that the SMUD and Turlock balancing authority areas are significantly different from other neighboring balancing authority areas.

202. According to Modesto and Imperial, the pricing impacts of the default approach will be harmful to entities within the IBAA, whereas other balancing authority areas will not suffer harmful effects. Imperial argues that this pricing discriminates against the CAISO's neighbors and violates the FPA because it is unduly preferential to sellers and purchasers located within the CAISO and unduly discriminatory against sellers and purchasers located in other balancing authority areas.

203. TANC asserts that the Commission erred in finding that SMUD and Turlock were not being placed at a disadvantage relative to other potential future IBAs. TANC argues that future IBAs would benefit from additional time before implementation, which might allow them the opportunity to negotiate default pricing points without having to provide sensitive market data, such as through execution of a MEEA.

204. Modesto argues that the Commission's acceptance of the CAISO's promise to extend IBAA status to others in the future is not a response to the current discrimination argument. Modesto contends that the CAISO made thin excuses as to why extending the

default approach to other entities was not feasible.¹⁴¹ Further, Modesto argues that the CAISO never explained why the substantial sources of electricity from Bonneville Power Administration (Bonneville), PacifiCorp, Sierra Pacific/Nevada Power, and the other entities and balancing authority areas in the Desert Southwest fail to raise concerns. Modesto maintains that the Commission did not address the CAISO's own inconsistent statements regarding its selection of a narrow class to be subject to the default approach.¹⁴² Modesto adds that if the CAISO does not know whether the alleged problem is greater on the SMUD-Turlock balancing authority area than on other balancing authority areas, it is unduly discriminatory to single out the SMUD-Turlock balancing authority area for IBAA designation now.

205. TANC adds that the Commission erred in allowing the CAISO to unilaterally set the default pricing points for SMUD and Turlock without providing any support for what defaults it would set for future IBAA's. TANC cites the CAISO's July 17 filing where the CAISO states that it may prefer a more collaborative region-wide approach for future IBAA's.¹⁴³ TANC argues that the CAISO has provided no evidence that SMUD and Turlock deserve a less collaborative approach.

206. Multiple parties contend that there is no proof that SMUD and Turlock have a greater impact on the CAISO market and that the claimed distinctions themselves lack evidentiary support. Modesto and SMUD assert that the Commission ignored the arguments and evidence that the number of interconnections is irrelevant to determining whether SMUD and Turlock have a greater impact on the CAISO than other neighboring balancing authority areas. SMUD and Modesto argue that, while the Commission has admitted that the sheer number of interconnections between a balancing authority area and the CAISO is not indicative alone, the Commission inappropriately concludes that the existence of a couple of large interconnections make the number of interconnections a relevant measure of SMUD and Turlock's impact on the CAISO.

¹⁴¹ Modesto Rehearing Request at 16-17.

¹⁴² *Id.* at 17 (citing Ex. ISO-3 at 28:9-10 (“[t]here is no need to wait to see what happens in California”); Exh. ISO-3 at 30:15-22 (“[i]f it is found that congestion patterns are such that similar inefficient scheduling incentives exist at other locations, then the CAISO will need to implement changes to its interchange pricing policies at other scheduling points to address these problems, but there is no discrimination in not yet having addressed a problem that has not yet been identified.”)).

¹⁴³ TANC Rehearing Request at 56 (citing the CAISO July 17, 2008 Filing, Docket No. ER08-1113-000, Ex. CAISO-1 at 47:17-48:2).

207. TANC and Modesto argue that the Commission erred in accepting the CAISO's IBAA Proposal without taking into account the impacts of other neighboring balancing authority areas or the number and size of interconnections in other balancing authority areas as compared to those of the SMUD and Turlock balancing authority areas. TANC asserts that the Commission's finding that "the CAISO's proposal includes a mechanism to address how such balancing authority areas shall be identified and treated in the future,"¹⁴⁴ does not provide a justification for applying an unduly discriminatory proposal to SMUD and Turlock here.

208. SMUD and Turlock argue that the Commission's finding that the SMUD and Turlock balancing authority areas had the "greatest impact on the CAISO" was arbitrary in light of the fact that the CAISO has admitted that it has never studied the relative impact of the discrepancies between actual and scheduled flows at its interconnections with SMUD and Turlock against discrepancies at its interconnections with other neighboring balancing authority areas.¹⁴⁵

209. To address data provided by the CAISO that purports to demonstrate that large and frequent deviations between scheduled and actual flows occur between the SMUD and Turlock balancing authority areas and the CAISO, SMUD argues that even if the evidence provided supported such a finding, the CAISO cannot prove that these deviations are more significant than deviations at interconnections with other adjacent balancing authority areas. Turlock states that the Commission's finding that the "large discrepancies" between scheduled flows and actual flows between the SMUD-Turlock IBAA and the CAISO justifies the CAISO discriminating against both Turlock and SMUD is erroneous because the record suggests that these discrepancies are no larger than those arising from the CAISO's interconnections with other neighboring balancing authorities. Turlock notes that the CAISO's witness, Mr. Rothleder, testified that both LADWP and Imperial experience similarly significant discrepancies between their scheduled flows and actual flows.¹⁴⁶ Turlock states that in his discussion of LADWP, Mr. Rothleder testified that the Southern California Import Transmission (SCIT) interface between LADWP and the CAISO has significant discrepancies but admits that the CAISO has not actually determined the impact of the SCIT on these issues.¹⁴⁷

¹⁴⁴ *Id.* at 52 (citing the September 19 IBAA Order at P 215).

¹⁴⁵ SMUD Rehearing Request at 3 (citing *NorAm Gas Transmission Co. v. FERC*, 148 F.3d 1165 (D.C. Cir. 1990)).

¹⁴⁶ Turlock Rehearing Request at 17 (citing Ex. ISO-1 at 42:7-22).

¹⁴⁷ *Id.* at 18 (citing Ex. ISO-1 at 42:17-22).

210. Turlock claims that the Commission erred in finding that Turlock caused large discrepancies between scheduled and actual flows without addressing Turlock's individual impact on the CAISO-controlled grid. Turlock contends that the alleged "discrepancies" referenced by the Commission arise almost entirely from interconnection points between the CAISO and SMUD and not the CAISO's two interconnections with Turlock. Moreover, Turlock claims that the existence and magnitude of these claimed discrepancies are in dispute.

211. Several parties assert that the Commission erred in authorizing the CAISO to group Turlock and SMUD into one IBAA. Turlock argues that the Commission's reasoning is insufficient to justify the CAISO grouping Turlock and SMUD into one IBAA because the facts relied on to justify the combination of SMUD and Turlock are not unique to Turlock and SMUD. Turlock claims each of the other neighboring utilities are similarly or even more integrated with one or more of their neighboring utilities and they too could submit the type of schedule referenced by the Commission in the September 19 IBAA Order. For example, Turlock states that a similar schedule also could be submitted from Imperial, LADWP or Bonneville to the CAISO for power that is actually sourced from within one of their neighboring balancing authorities. Moreover, Turlock states that at least some of these neighboring balancing authority areas share interconnections with the CAISO so that fact too is insufficient to warrant disparate treatment.

212. Turlock argues that the Commission erred in finding a "high degree of integration" between Turlock and the CAISO compared to other neighboring balancing authority areas. Turlock states that if Turlock and SMUD are treated as individual balancing authority areas the CAISO's justifications for discriminating against Turlock would fall apart because Turlock's two points of interconnection – (1) the Westley Interconnection (230 kV), and (2) the Oakdale Interconnection (115 kV) – are insufficient to justify the CAISO's disparate treatment of Turlock under the CAISO's own reasoning. Turlock notes that the CAISO's own witness Mr. Rothleder, when referring to the relevance of the number of interconnections, concedes that:

The first criterion pertains to the number of Intertie Scheduling Points between the CAISO and the relevant BAA and the distance between these Points. This is a simple but important criterion because the number of interties and the distance between them is a clear indication of how closely two BAAs are integrated. Simply put, the greater the number of interconnections, the increased potential for having flows on the other party's system.¹⁴⁸

¹⁴⁸ *Id.* at 13 (citing Exh. ISO-1 at 28:4-9).

213. Turlock states that under the CAISO's own stated rationale, Turlock's two interconnections are not sufficient to make Turlock a "highly integrated" balancing authority area as the September 19 IBAA Order finds. Turlock claims that this conclusion is confirmed by Mr. Rothleder's testimony in which he states that the CAISO's two interconnections with Comision Federal de Electricidad and the CAISO's three interconnections with Imperial are not sufficient to make either Comision Federal de Electricidad or Imperial highly integrated with the CAISO.¹⁴⁹ Turlock states that if it is treated as its own balancing authority area, the CAISO cannot justify treating LADWP and the Bonneville as less integrated with the CAISO-controlled grid than Turlock because these entities have a greater number of CAISO interconnections than Turlock, and LADWP's and Bonneville's CAISO interconnections are significantly larger than Turlock's.

214. According to SMUD, the Commission's order is also arbitrary and capricious because the CAISO has provided no evidence that the price divergence at the SMUD and Turlock interconnection points with the CAISO are of greater consequence than it is at intertie points with other neighboring balancing authority areas.

215. Multiple parties claim that the CAISO's offer to substitute "actual prices for real-time data through execution of an MEEA" is not sufficient to justify alleged discrimination. TANC contends that this argument ignores the facts that: other balancing authority areas do not need to execute a MEEA to avoid the current default pricing mechanism; future IBAA's may benefit from a more favorable default price and thus not need to negotiate alternative pricing arrangements; and requiring entities to enter into a MEEA to avoid the punitive default pricing departs from the Commission's finding that the default prices must be independently just and reasonable.¹⁵⁰ Modesto and SMUD assert that discrimination is not obviated through the execution of a MEEA because other entities do not have to sign a MEEA and surrender market-sensitive information to the CAISO. Also, SMUD argues that the establishment of MEEAs does not exempt the Commission from finding that the default prices themselves are independently just and reasonable. TANC also takes issue with the Commission's reliance on Order No. 2000 and the logic that external entities that do not submit sufficient information about the location of specific resources supporting their transactions to enable accurate price modeling by the RTO are not entitled to receive the same benefit of a location-specific

¹⁴⁹ *Id.* at 14 (citing Exh. ISO-1 at 40:16-41:7).

¹⁵⁰ TANC Rehearing Request at 58 (citing the September 19 IBAA Order, at P 83).

price to support its acceptance of the SMUD-Turlock IBAA when such a treatment is not being imposed on other external resources.¹⁵¹

Commission Determination

216. The Commission denies rehearing on the issue of whether the IBAA Proposal is unduly discriminatory. The Commission's approval of the IBAA Proposal does not, as Western and TANC suggest, arbitrarily grant the CAISO authority to apply a different standard to every balancing authority area. The tariff language proposed by the CAISO specifies factors that can lead to the creation of an IBAA, thus providing guidance to market participants.¹⁵² As the Commission required, any new IBAA must be filed at the Commission and be subject to its approval, so the Commission can ensure IBAA's are not arbitrarily created.¹⁵³ While the factors listed are not exclusive and designation of an IBAA is subject to Commission approval, the tariff language is not solely designed to create a SMUD-Turlock IBAA as TANC alleges.¹⁵⁴ Further, the application of the IBAA Proposal to SMUD and Turlock is not unduly discriminatory even if parties claim that other balancing authority areas arguably possess some of the IBAA factors. If another

¹⁵¹ TANC Rehearing Request at 53 (citing *Regional Transmission Organization Order No. 2000*, FERC Stats. & Regs. ¶ 31,089, at 31,180 (1999)).

¹⁵² See CAISO November 25, 2008 Compliance Filing, Docket No. ER08-1113-002, Attachment A, Superseding Original Sheet No. 543B (stating, “[i]n establishing a new IBAA or modifying an existing IBAA, the factors that the CAISO will consider shall include, but are not limited to, the following: (1) The number of Interties between the potential or existing IBAA and the CAISO Balancing Authority Area and the distance between them; (2) Whether the transmission system(s) within the other Balancing Authority Area runs in parallel to major parts of the CAISO Controlled Grid; (3) The frequency and magnitude of unscheduled power flows at applicable Interties; (4) The number of hours where the actual direction of power flows was reversed from scheduled directions; (5) The availability of information to the CAISO for modeling accuracy; and (6) The estimated improvement to the CAISO's power flow modeling and Management processes to be achieved through more accurate modeling of the Balancing Authority Area.”).

¹⁵³ September 19 IBAA Order at P 215.

¹⁵⁴ See proposed MRTU Tariff § 27.5.3.3 (stating, “[i]n establishing a new IBAA or modifying an existing IBAA, the factors that the CAISO will consider shall include, but are not limited to the following...”).

balancing authority area possesses similar IBAA factors and the Commission is presented with a convincing proposal that balancing authority area could also become an IBAA.

217. Differences in rates are justified where they are predicated upon differences in facts.¹⁵⁵ As the CAISO demonstrated, SMUD and Turlock represent unique sets of factors,¹⁵⁶ and it is reasonable for the CAISO to consider the individual characteristics and market impacts of its neighboring balancing authority areas in determining whether and how to implement its IBAA Proposal. The Commission agrees with the CAISO's consideration of individual factors when forming an IBAA Proposal and will not require the CAISO to address such issues on a generic basis. Although SMUD and Turlock are the first to receive IBAA treatment, they uniquely qualify for IBAA treatment and any timing concerns are not sufficient to outweigh the strength of the IBAA Proposal and the benefits of actual pricing with an executed MEEA.¹⁵⁷

218. Parties' efforts to isolate individual factors for forming an IBAA such as the number of interconnections or the size of the interconnections are misplaced. As evident by the factors set out in the CAISO's tariff proposal, multiple, non-exclusive factors are considered when determining whether balancing authority areas should be considered an IBAA. The CAISO provided evidence that the SMUD and Turlock balancing authority areas together contained such factors and should be considered an IBAA.¹⁵⁸ For instance, as SMUD's expert acknowledges, there is high number of interconnections between SMUD-Turlock and the CAISO as compared to other balancing authority areas.¹⁵⁹ Also, the COTP and PACI are highly integrated, which creates a high level of integration between the SMUD-Turlock IBAA and the CAISO.¹⁶⁰ Further, the SMUD-Turlock IBAA has several large interconnection points, including Tracy.

¹⁵⁵ *St. Michaels Util. Comm'n v. FPC*, 377 F.2d 912, 915 (4th Cir. 1967); *Public Service Co. v. FERC*, 575 F.2d 1204, 1211 (4th Cir. 1978).

¹⁵⁶ CAISO June 17, 2008 Filing, Docket No. ER08-1113-000, at 28 (citing Ex. ISO-1 at 28-43).

¹⁵⁷ *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 721 (D.C. Cir. 2000).

¹⁵⁸ CAISO June 17, 2008 Filing, Docket No. ER08-1113-000, Ex. ISO-1 at 28-43 (CAISO June 17, 2008 Filing).

¹⁵⁹ SMUD July 8, 2008 Protest, Docket No. ER08-1113-000, Ex. SMUD-3 at 13.

¹⁶⁰ *Pacific Gas & Elec. Co.*, 63 FERC ¶ 63,018, at 65,069 (1993).

219. Significantly, the history of the SMUD and Turlock balancing authority areas is unique in that until a few years ago, both SMUD and Turlock were integrated parts of the CAISO's balancing authority area.¹⁶¹ As a result, the CAISO has more detailed knowledge of the SMUD and Turlock balancing authority areas and the potential challenges that may arise from import and export interchange transactions with the CAISO under MRTU. No party has demonstrated that another balancing authority area contains the tariff factors and the unique history of SMUD and Turlock.

220. Also, the CAISO has provided compelling data that illustrates the significance of unscheduled flows between the SMUD and Turlock balancing authority areas and the CAISO-controlled grid.¹⁶² The data, which compares SMUD and Turlock with other neighboring balancing authority areas, documents the amount and frequency of unscheduled flows over a 12-month period. The evidence demonstrates that SMUD and Turlock both experienced large and, in many cases, frequent deviations between scheduled and actual power flows. SMUD did not address this long-term data and focused on the data the CAISO provided regarding a more limited time period. Parties' efforts to focus on individual factors and any one particular data set miss the larger point of considering the totality of factors and unique characteristics of a potential IBAA.

221. Even if, as some parties contend, the CAISO does not prove definitively that the SMUD-Turlock flow deviations are more significant than deviations at interconnections with other adjacent balancing authority areas, or as Turlock suggests, that the flow discrepancies from the SMUD-Turlock IBAA are no larger than those arising from the CAISO's interconnections with other neighboring balancing authorities, the CAISO has shown that the SMUD-Turlock IBAA should be considered an IBAA when considering all the factors proposed in the tariff and their unique history. And in the future, if other balancing authority areas fit as well, they may also be considered IBAA's too.

222. The Commission did not misapply the test for undue discrimination and the term "similarly situated." SMUD and Turlock mischaracterize the Commission's analysis. By rearranging the Commission's statement, SMUD confuses the Commission's legal finding that SMUD and Turlock are not similarly situated, as compared to other balancing authority areas, with the Commission's independent decision to allow CAISO to establish new IBAA's on a case-by-case basis.

223. Also, Turlock's claim that, on its own, it is not highly integrated into the CAISO and does not have a large impact on the CAISO when compared to other balancing authority areas is misguided. The SMUD-Turlock situation has been shown to be unique,

¹⁶¹ CAISO June 17, 2008 Filing, Ex. ISO-1 at 28.

¹⁶² *Id.*, Ex. ISO-1 Appendix A at 8 and 11.

as addressed above. This uniqueness includes Turlock's history as a recent part of the CAISO balancing authority area. The CAISO also demonstrates the high frequency of Turlock power flow reversals.¹⁶³ Also, Mr. Rothleder provides ample reasons why the CAISO is not focusing on other balancing authority areas, such as LADWP at this time.¹⁶⁴ The reasons provided include: (1) the LADWP transmission system has one-third of the interconnections that the SMUD-Turlock IBAA has with the CAISO, (2) more of LADWP's interconnections are DC controllable lines, which the CAISO explains must be analyzed more closely such that additional studies are required before the IBAA modeling at this location can be finalized, and (3) the intertie scheduling points with the LADWP balancing authority area will not be modeled as radial connections under MRTU, due to the fact that the CAISO has entitlements that extend into the LADWP transmission system, thereby extending the CAISO-controlled grid into the LADWP balancing authority area, it is necessary to model the LADWP system using a partial looped network.¹⁶⁵ The CAISO claims that due to the transmission entitlements turned over to the CAISO, it has already improved upon the radial modeling approach by including certain facilities of LADWP's external transmission system in the full network model.

224. As the CAISO has demonstrated previously, Turlock is uniquely situated within the CAISO's balancing authority area with SMUD, making it possible for a schedule to be made from Turlock to the CAISO for power that is actually being sourced from within the SMUD balancing authority area or the Pacific Northwest, thus it is important that the CAISO be better able to map such flows or reflect their source in its LMPs.¹⁶⁶

225. Also, SMUD's claims of a greater "Price Divergence" at the intertie points with other adjacent balancing authority areas as compared to the price divergence at the intertie points with SMUD and Turlock are not germane to the IBAA Proposal. The proposal is designed to respond to the impact these schedules have on the CAISO's ability to model and price interchange transactions. It is the significance of these impacts and not the size of the price differentials themselves that the CAISO's IBAA Proposal seeks to address by creating a reasonable default assumption to improve its model and create more accurate energy pricing of imports. Furthermore, the IBAA Proposal is not intended to limit large price differentials if the price differentials are the result of true market forces.

¹⁶³ *Id.*, Ex. ISO-1 at 36.

¹⁶⁴ *Id.*, Ex. ISO-1 at 42.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*, Ex. ISO-1 at 32.

226. As discussed above, the SMUD and Turlock balancing authority areas possess unique factors making it appropriate to form an IBAA, and therefore the separate treatment is not discriminatory, and the MEEA option provides even further assurance that if SMUD and Turlock elect to enter into MEEAs, they will receive more favorable pricing for imports into the CAISO that are sourced from their control areas.

H. Future IBAAs

227. Imperial and Modesto seek rehearing of the Commission's finding with respect to potential future IBAA's. They are concerned that while the IBAA Proposal specified six criteria for identifying an IBAA, those criteria left many factors undefined. Imperial argues that neighboring balancing authority areas need to know on what criteria they will be judged before being identified as an IBAA. While the Commission required the CAISO to obtain Commission approval before it imposes the IBAA on other neighboring balancing authority areas, Imperial states that it did not require the CAISO to create a standard in its tariff that the CAISO will be using to determine an identifiable threshold for being classified as an IBAA before the CAISO files for the Commission's approval.

228. Imperial claims the CAISO's proposed tariff language is too vague to provide meaningful notice to neighboring balancing authorities (and market participants in those neighboring balancing authority areas) of how the CAISO will apply its IBAA Proposal to them, if at all, in the future. According to Imperial, nowhere in its filing did the CAISO provide notice of any concrete measurements or describe when the generic factors set forth in its proposed tariff, whether evaluated together or alone, will be deemed significant enough to warrant application of the IBAA Proposal to another new balancing authority area. Therefore, Imperial claims that it is critical to the legal validity of the CAISO's proposed tariff language, regarding the creation of new IBAA's, that the Commission require the CAISO to demonstrate that there are numerous interconnections between the CAISO and the neighboring balancing authority, that the size of those interconnections is large, and that the distance between them is small, consistent with the Commission's findings here. Without that type of guidance, Imperial claims that the CAISO's neighbors cannot make informed business or operational decisions and the CAISO's tariff language must be rejected, on rehearing, because it fails to comply with the reasonable notice requirements of the FPA and due process.

229. Also, based on its review of the Commission's order, Imperial states that it also understands that if and when the CAISO proposes any new IBAA, a full opportunity will be provided to legally challenge that proposal under section 205 of the FPA, and the CAISO cannot simply rely upon the Commission's order here. To the extent that Imperial's understanding is incorrect, it requests rehearing.

230. Parties claim that, to the extent the CAISO's tariff includes language that serves as a basis for proposing new IBAA's, that language must provide reasonable notice. They

contend an essential component of fair notice under due process of the FPA is the requirement that a statute or regulation be written with sufficient clarity and not be so ambiguous that “men of common intelligence must necessarily guess at its meaning and differ as to its application.”¹⁶⁷ Parties assert that the IBAA Proposal does not provide such clarity.

231. Imperial contends that the CAISO’s analysis of the proposal based on a large number of interconnection points is flawed and factually inaccurate. According to the CAISO, “the SMUD [balancing authority area] alone has ten (10) interconnections with the CAISO-controlled grid.” However, Imperial understands that SMUD has only two interconnections directly with the CAISO, namely, the Rancho Seco and the Lake interties.

232. According to Imperial, since nearly all balancing authority areas are integrated with other balancing authority areas, it is conceivable that all balancing authority areas across the Western Interconnection or Western Electricity Coordinating Council, or even across the entire United States, because of their interconnectivity, could be “combined” for purpose of the CAISO’s analysis. Therefore, Imperial requests that the Commission clarify that the interconnection points that the CAISO proposes to use in its tariff proposal will be based on the number of interconnection points to the CAISO, not the number of interconnections to other balancing authorities.

233. According to Modesto, the Commission’s framework for identifying new IBAAAs also does not answer the question of how the Commission is to ensure that all applicable IBAAAs are being addressed by the IBAA Proposal. Instead, it argues that protection is granted to any new target of an IBAA default approach by requiring IBAAAs to be filed, allowing it to protest its new designation. According to Modesto, this gives the CAISO a disincentive to remedy discrimination. Rather, the burden is placed on market participants to fight each other and file a complaint if a participant believes that the CAISO has overlooked an IBAA. Modesto contends that this is not something that a market participant likely will be willing to do, given the desire to maintain steady business relationships with other utilities.

Commission Determination

234. Parties’ claim that the IBAA Proposal lacks proper notice before an IBAA is proposed is misplaced. The Commission requires the CAISO to make a filing with the

¹⁶⁷ Imperial Rehearing Request at 23-24.

Commission in the event that it proposes a new IBAA.¹⁶⁸ Such a filing with the Commission provides sufficient notice to affected parties.

235. In the September 19 IBAA Order, the Commission addressed the CAISO's proposed mechanism for establishing future IBAs. The Commission found that creating rigid metrics that the CAISO would have to use to form new IBAs was inappropriate in light of the different characteristics of each of the CAISO's neighboring balancing authority areas.¹⁶⁹ We deny rehearing with respect to the establishment of future IBAs.

236. We disagree with Imperial's assessment that the Commission must find identical circumstances to those justifying the creation of the SMUD-Turlock IBAA to be present before accepting any new IBAA proposed by the CAISO. Our acceptance of the CAISO's proposal here was based in part on the unique factors present in the SMUD and Turlock balancing authority areas that contribute to the scheduling and pricing problems the IBAA Proposal seeks to address. However, we recognized in our September 19 IBAA Order that, because every balancing authority area that neighbors the CAISO is different, the factors that could precipitate the creation of a new IBAA and the appropriate methodology for modeling and pricing interchange transactions with that IBAA will be analyzed on a case-by-case basis.¹⁷⁰

237. In response to Imperial's concerns that it would have the opportunity to legally challenge the creation of any new IBAA that it disagrees with, we reiterate that any new IBAA that the CAISO wishes to propose must be filed with the Commission under section 205 of the FPA, at which time any interested party will be allowed to file comments on the proposal.¹⁷¹

238. Imperial's concerns regarding the potential spreading of CAISO IBAs across the United States seems unfounded. Since any new IBAs must be filed with the Commission and would be open to comment and protest, we expect that the CAISO will carefully consider any IBAA it plans to propose prior to seeking Commission approval and would not propose any IBAs that do not make sense, including any proposal for an IBAA that has no scheduling point at the boundary with the CAISO-controlled grid.

¹⁶⁸ September 19 IBAA Order at P 215; *see also* Proposed Tariff Sheet No. 543.07.

¹⁶⁹ September 19 IBAA Order at P 215.

¹⁷⁰ *Id.* P 209, 215.

¹⁷¹ *Id.* P 215.

239. Modesto's concern that the requirement that the CAISO file any new potential IBAs with the Commission somehow promotes discrimination is illogical since the CAISO had to file the present IBA request with the Commission. Therefore, future potential IBAs will be subject to the process described above.

I. Existing Contracts

240. Multiple parties claim that the IBA Proposal will affect existing contracts. Such existing contracts include: the Coordinated Operation Agreement, which concerns the operation of the COTP and PACI; the Path Operating Agreement, which concerns the operation of the California-Oregon Intertie; the Interconnected Control Area Operating Agreement, which concerns the operation of interconnections; and certain agreements with San Francisco.

241. TANC asserts that, by accepting the IBA Proposal, the Commission has violated the *Mobile-Sierra* Doctrine,¹⁷² which it argues dictates that the Commission cannot accept a proposed rate schedule that violates an underlying agreement.¹⁷³

1. Coordinated Operation Agreement

242. Multiple parties contend that the IBA Proposal violates section 8.4 of the Coordinated Operation Agreement¹⁷⁴ by selecting prices that are not at the interties thereby integrating parallel flows into the cost of power. According to Modesto and TANC, a fundamental principle of the Coordinated Operation Agreement was to allow parties to mitigate parallel flows while not charging each other for them.

243. Santa Clara claims that the CAISO's filing admits that if its IBA Proposal includes charges for unscheduled flows, then the CAISO is violating its contractual obligations under the Coordinated Operation Agreement. Santa Clara contends that because the IBA Proposal prices COTP imports using losses and congestion values modeled at Captain Jack, the CAISO has admitted that it is violating the existing contracts.

¹⁷² *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac Power Co.*, 350 U.S. 348 (1956).

¹⁷³ TANC Rehearing Request at 16.

¹⁷⁴ “[n]o Party shall be charged any rate...for any power, which flows over the System....” Coordinated Operation Agreement § 8.4.

244. Santa Clara contends that if the Commission does not clarify that the Tracy loss component applies to COTP exports, then the IBAA Proposal violates the Coordinated Operation Agreement by charging losses on parallel flows on COTP exports. Santa Clara contends that the Commission acknowledges that the LMPs at Captain Jack for COTP imports implicitly and inherently include losses on parallel flows. To resolve the loss charge on parallel flows the Commission requires the CAISO to reverse those losses, by pricing losses at Tracy. Based on that modification, and because it found that the Coordinated Operation Agreement provides for the shared usage, coordinated operation, maintenance, and planning of the California-Oregon Intertie, and “does not concern how energy is priced once it enters the CAISO-controlled grid,”¹⁷⁵ the Commission concluded that, as modified, the IBAA Proposal does not violate existing contracts. Santa Clara states that the Commission relies on its ruling that the CAISO must provide Tracy loss treatment, thereby avoiding a losses charge on the parallel flows. Santa Clara claims that the Commission’s rationale does not take into account loss charges imposed on COTP exports, through the modeling and LMP pricing at the SMUD Hub.

245. TANC states that, at a minimum, imports priced at Captain Jack will reflect congestion costs based on COTP schedules on the CAISO’s underlying 230 kV transmission system but that the Captain Jack price may also include congestion on the non-COTP portion of the three-line system (the System).¹⁷⁶ TANC questions why the Commission rejected the use of losses at Captain Jack under certain circumstances while permitting the CAISO to assess congestion costs based on Captain Jack prices. TANC argues that the Commission should ensure that neither congestion nor losses are charged for any power flows over the three-line system prior to the Tracy Substation, the contractually established point of interconnection between the COTP and CAISO facilities.

246. TANC argues that the Commission’s attempt to distinguish the impacts of COTP imports on the CAISO-controlled grid from the transmission of power from COTP imports into the CAISO market represents a distinction without a difference. TANC contends that the IBAA Proposal to price COTP imports based on their source and sink will assess the charge based on the path the energy follows. TANC asserts that, because

¹⁷⁵ Santa Clara October 20, 2008 Rehearing Request, Docket No. ER08-1113-001 at 27 (citing September 19 IBAA Order at P 247).

¹⁷⁶ The “System” under the Coordinated Operation Agreement is not the same thing as the California-Oregon Intertie. The “System” under the Coordinated Operation Agreement is defined as the combined facilities of the PACI-P, PACI-W and COTP. The California-Oregon Intertie under the Coordinated Operation Agreement is a specifically defined subset of the three line System in the northern part of California.

all COTP power imported into the CAISO flows over the System, selecting a point north of both the CAISO-controlled grid and the COTP as the source for COTP imports results in the CAISO measuring for impacts for flows over the System.

247. TANC cites the Commission's determination that "any congestion that is reflected in LMPs applicable to interchange transactions that use the California-Oregon Intertie **will be attributable to binding constraints, not on the intertie, but on the other elements of the CAISO-controlled grid.**"¹⁷⁷ TANC argues that this apparent attempt by the Commission to ascribe congestion to facilities other than the System violates the terms of the Coordinated Operation Agreement. TANC asserts that the prohibition on charges over the COTP under section 8.4 of the Coordinated Operation Agreement is broader than the Commission's interpretation and includes charges for congestion attributed to the underlying elements of the grid. TANC argues that, because the Commission's determination allows for charges for congestion on the COTP, in violation of the Coordinated Operation Agreement, its ruling must be reversed. According to TANC, the Commission's conclusion that the fact that COTP imports into the CAISO are voluntary transactions somehow nullifies the prohibition in section 8.4 of the Coordinated Operation Agreement is unfounded.

248. Santa Clara adds that the record demonstrates that congestion will occur, at times, on the System. Therefore, Santa Clara contends the CAISO's charges for congestion will in any event include congestion for parallel flows on the System, as the Commission has recognized that the LMP models parallel flows on the System. Santa Clara states that the Coordinated Operation Agreement contains no distinction and explicitly bars all charges for unscheduled flows resulting from schedules on the System. Santa Clara contends that whether the congestion occurs on the System or the CAISO-controlled grid, a charge for congestion resulting from parallel flows from COTP schedules violates the Coordinated Operation Agreement.

249. Modesto claims that while the Commission believes that concerns as to the charging for parallel flows are mooted by its ruling requiring the CAISO to remove losses, the September 19 IBAA Order ignores congestion. Also, there is no certainty that losses will be taken out of the equation, as there are factors left to the CAISO's discretion as to whether to accept those losses.

250. TANC argues that the Commission's conclusion that the Coordinated Operation Agreement "does not concern how energy is priced once it enters the CAISO Controlled Grid," ignores the reality of an interconnected electrical grid, that electrons will take the

¹⁷⁷ TANC Rehearing Request at 34 (citing the September 19 IBAA Order at P 105 (emphasis added by TANC)).

path of least resistance without regard to ownership of the facilities, which the Coordinated Operation Agreement addressed by prohibiting charges associated with schedules over the System. TANC further asserts that while the Coordinated Operation Agreement does not address charges after energy leaves the COTP, it does address charges for parallel flows for energy that is transmitted on the COTP. Thus, TANC concludes that the Coordinated Operation Agreement prohibits charges associated with all unscheduled (loop) flows.¹⁷⁸

251. TANC contends that, though the Commission properly ordered the CAISO to amend its proposal to eliminate all losses assessed to COTP schedules that already pay losses, the Commission erred by requiring a showing that the COTP import pays losses to TANC or Western for power that flows over the COTP to Tracy. TANC argues that, because these charges are prohibited by the Coordinated Operation Agreement, it is improper to condition their exemption from losses on such a demonstration. TANC asserts that the Commission's decision to require COTP users to demonstrate that they pay losses would require that the Coordinated Operation Agreement be amended (which parties have not agreed to do), as it currently does not allow for charges on any COTP schedules.

252. TANC argues that, as a reflection of the CAISO's understanding of the strictures of the Coordinated Operation Agreement, the CAISO has never assessed its transmission access charge, Grid Management Charge, or any other charge to COTP imports that flow over the System or over the PG&E transmission facilities that deliver COTP power prior to reaching the Tracy Substation. TANC contends that the Commission ignored this history in finding that the IBAA Proposal does not violate the terms of the Coordinated Operation Agreement.

253. TANC also takes issue with the Commission's finding that the Coordinated Operation Agreement does not bar charges associated with the CAISO's price for energy once it enters the CAISO-controlled grid. TANC asserts that the COTP is indisputably not a CAISO-controlled facility and that both the CAISO and PG&E before it have long recognized that COTP imports are not within the CAISO's market until they leave the COTP at Tracy.

Commission Determination

254. The Commission denies rehearing of our finding that the IBAA Proposal does not violate the Coordinated Operation Agreement. A key element to considering the IBAA Proposal in relation to the Coordinated Operation Agreement is that under the IBAA

¹⁷⁸ TANC Rehearing Request at 35 (citing TANC July 8, 2008 Protest, Ex. TNC-5, section 8.4).

Proposal, the proposed charges apply to COTP transactions that include the scheduled use of the CAISO-controlled grid. If a COTP transaction is not scheduled to use the CAISO-controlled grid, the IBAA pricing proposal does not apply to that transaction, and thus does not violate the Coordinated Operation Agreement.

255. Claims that the IBAA Proposal conflicts with the terms of the Coordinated Operation Agreement are not correct. As the Commission explained in its prior order, the IBAA Proposal does not conflict with the terms of the Coordinated Operation Agreement when both are read in their complete contexts.¹⁷⁹ The scope of the Coordinated Operation Agreement is limited to the coordinated operation of the PACI and COTP, and the IBAA Proposal does not affect the coordinated operation of the PACI and COTP.¹⁸⁰ For instance, multiple parties claim that the IBAA Proposal violates section 8.4 of the Coordinated Operation Agreement, which provides that “[n]o Party shall be charged any rate... for any power, which flows over the System[.]”¹⁸¹ However, this provision does not prohibit the CAISO from setting a price that applies to energy that enters its system since that is beyond the scope of the Coordinated Operation Agreement. Once the scheduled energy enters the CAISO-controlled grid, it is subject to the applicable tariff. Thus, arguments such as the one made by Santa Clara that a charge for congestion, no matter if the congestion is on the California-Oregon Intertie or the CAISO-controlled grid is a violation of the Coordinated Operation Agreement, is not supportable because establishing prices for transactions on the CAISO-controlled grid where prices reflect the impact on the CAISO-controlled grid of such transactions, is beyond the scope of the Coordinated Operation Agreement.¹⁸² Other arguments such as TANC’s contention that the Coordinated Operation Agreement prohibits charges associated with power transmitted over the System similarly are not convincing when the limited scope of the Coordinated Operation Agreement is considered.

256. Similarly, the IBAA Proposal does not improperly charge for unscheduled parallel flows because in order to be subject to the IBAA pricing mechanism, the transaction must be *scheduled* to make use of the CAISO-controlled grid. Consequently, unscheduled parallel flows are not subject to the charge. But when a transaction is scheduled to use the CAISO-controlled grid, the applicable tariff rates apply, as the IBAA Proposal provides. Thus, TANC’s assertion that the COTP is not a CAISO-

¹⁷⁹ September 19 IBAA Order at P 248.

¹⁸⁰ *Id.*

¹⁸¹ Coordinated Operation Agreement § 8.4.

¹⁸² Coordinated Operation Agreement § 5 (“[t]his Agreement governs the coordinated operation of the PACI and COTP.”).

controlled facility misses the point. The IBAA Proposal only applies when the transaction impacts the CAISO-controlled facilities and not transactions, for instance, that use the COTP and not the CAISO-controlled grid. So, the IBAA Proposal does not claim that the COTP is a CAISO-controlled facility as TANC alleges.

257. The IBAA Proposal does not ignore the realities of an interconnected electrical grid as TANC contends. The IBAA pricing mechanism only applies to transactions that make use of the CAISO-controlled grid. Thereby acknowledging the reality that unscheduled parallel flows will occur, and the IBAA Proposal does not seek to charge for them.

258. The Commission is not persuaded by TANC's claim that it is improper to condition parties' exemption from loss charges on a demonstration that the party has already paid for losses. As stated above, the Commission addressed this issue in the March 6 Compliance Order.¹⁸³ Further, since the Commission does not find that the pricing is prohibited by the Coordinated Operation Agreement, it is not improper to condition exemption from losses on a demonstration. Also, if the party contends that the CAISO is improperly handling the situation, that party may file a complaint with the Commission.¹⁸⁴

259. Santa Clara and TANC's claim that the IBAA Proposal's pricing transactions at Captain Jack will necessarily include congestion charges for parallel flows, on the COTP and non-COTP lines, in violation of the Coordinated Operation Agreement is not convincing. As discussed above, the Commission agrees with the CAISO that, absent the necessary information from SMUD and Turlock, Captain Jack is an appropriate default pricing point. Further, as addressed above, the default pricing is only employed if the energy impacts the CAISO-controlled grid, otherwise the default price is not implicated. Also, Santa Clara and TANC's claim amounts to a collateral attack on the LMP pricing system generally. LMP prices contain a congestion element, which is a key aspect of MRTU.¹⁸⁵ As mentioned above, Captain Jack is the best modeling approximation available without better information. Thus, the LMP is as accurate as possible.

260. The Commission required an exemption in the September 19 IBAA Order, which rejected the use of losses at Captain Jack when it is demonstrated that a COTP user that imports to the CAISO pays for losses to Western or TANC receive an appropriate

¹⁸³ March 6 Compliance Order at P 158.

¹⁸⁴ Rule 206 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.206 (2008).

¹⁸⁵ *Cal. Indep. Operator Corp.*, 116 FERC ¶ 61,274, at P 47 (2006).

adjustment in the marginal cost component of the price paid for their import.¹⁸⁶ No party demonstrates a comparable duplicative charge with respect to congestion. Also, TANC's claims about the CAISO not assessing transmission access charges or grid management charges to COTP imports before reaching Tracy are immaterial to the IBAA Proposal, which is designed to address other impacts on the CAISO system. As the Commission stated above, the IBAA Proposal's charges for congestion impact on the CAISO-controlled grid are appropriate and should not be subject to the same exemption as certain loss charges.¹⁸⁷ Also, as discussed in the September 19 IBAA Order, when a party to an agreement requests transmission service from another party, under a different agreement, the terms of the original tariff still apply. Thus, the tariff provision concerning the congestion impact on the CAISO-controlled grid still apply.¹⁸⁸ Further, since the Coordinated Operation Agreement is not violated, the *Mobile-Sierra* doctrine is not implicated.¹⁸⁹

2. Path Operating Agreement

261. Modesto argues that the IBAA Proposal violates the Path Operating Agreement, asserting that the Path Operating Agreement contemplates a procedure for certain calculations related to unscheduled flows, but does not contemplate charges for those flows.¹⁹⁰ Also, Modesto notes that section 8.4 of the Path Operating Agreement does not allow the CAISO, as the path operator for the California-Oregon Intertie, to impose "any charge or rate under this Agreement for any service the CAISO renders to the Owners other than for services provided pursuant to this Agreement." To the extent that the CAISO considers the IBAA Proposal to entail compensation for its path operator duties, Modesto states that this compensation violates the Path Operating Agreement. Moreover, Modesto states that the CAISO does not propose to compensate SMUD or Turlock for unscheduled flows caused by entities within the CAISO over transmission in the SMUD-Turlock balancing authority areas.

262. Santa Clara asserts that the distinction the Commission draws in its discussion of the Path Operating Agreement, that the Path Operating Agreement concerns operations of

¹⁸⁶ September 19 IBAA Order at P 106.

¹⁸⁷ *Id.* P 105.

¹⁸⁸ *Id.* P 251.

¹⁸⁹ As addressed below, since the IBAA Proposal does not violate any existing contracts, TANC's *Mobile Sierra* claims are without basis.

¹⁹⁰ *See* Path Operating Agreement § 8.2.

the California-Oregon Intertie, not the pricing of transactions between balancing authority areas is false because pricing of interchange transactions affects operation of the California-Oregon Intertie. Santa Clara claims that since pricing and operations cannot be separated, if the CAISO claims it is entitled to compensation for congestion stemming from parallel flows, it cannot price interchange transactions in a compensatory manner without the written consent of the Administrative Committee.¹⁹¹

263. TANC asserts that the Commission erred in its rejection of its argument that the IBAA Proposal violates the Path Operating Agreement. First, TANC contends that the Commission's finding that "pricing under the IBAA Proposal is no different in this respect than pricing under the CAISO's existing tariff in that the CAISO is not changing its charges to other parties for transmission over the PACI or COTP, nor is it changing its tariff to reduce available transfer capability,"¹⁹² ignores the fact that, prior to the IBAA Proposal, the CAISO did not impose any unique charges for power flows on the System. TANC argues that, because this is the first time the CAISO has proposed charges on the System that might conflict with the Path Operating Agreement, the Commission's finding that no party has ever argued that the CAISO was imposing charges in violation of the Path Operating Agreement is unremarkable.

264. TANC states that the Commission's decision to accept a proposal that prices COTP imports at the California-Oregon border, and thus to ignore the 345 mile COTP transmission facility that runs south from the border to the Tracy Substation, allows the CAISO to apply congestion and losses from the border to the COTP import. TANC argues that the Commission's conclusion that the IBAA Proposal does not assess charges for power flows over the System is based on fiction and ignores the reality of the charges.

265. TANC contends that the Commission's ruling that, unless the IBAA Proposal applies to the operation or pricing of the System or the CAISO's obligations as Path Operator, there is no violation of the Path Operating Agreement, is mistaken in two respects. First, TANC states that the terms of section 8.3.19 of the Path Operating Agreement, which allegedly prohibits the application of a tariff to Path Operating Agreement parties without written consent pertain to any rate applied to a party by the California-Oregon Intertie Control Area Operators and that even the CAISO concedes that it is a California-Oregon Intertie Control Area Operator under the Path Operating Agreement. TANC asserts that the Commission's conclusion that the IBAA must apply to the System or the CAISO's obligations under the Path Operating Agreement is not

¹⁹¹ Santa Clara Rehearing Request at 29 (citing Path Operating Agreement § 8.3.19 (ii)).

¹⁹² TANC Rehearing Request at 39 (citing September 19 IBAA Order at P 267).

supported by the language of the agreement. Second, TANC argues that the Commission erred in finding that the IBAA Proposal does not impose a charge on the use of the System when in fact the September 19 IBAA Order specifically recognizes that the IBAA Proposal applies charges to power flows which involve the System.¹⁹³

Commission Determination

266. Rehearing is denied regarding whether the IBAA Proposal violates the Path Operating Agreement. As the Commission previously found, just like the analysis concerning the Coordinated Operation Agreement, the limited scope of the Path Operating Agreement and the limited application of the IBAA Proposal must be considered when determining whether the IBAA Proposal conflicts with the Path Operating Agreement.¹⁹⁴ Since the scope of the Path Operating Agreement is limited to the operation of the California-Oregon Intertie¹⁹⁵ and the IBAA Proposal only concerns prices for energy scheduled to use the CAISO-controlled grid, there is no conflict. The Commission addressed similar claims regarding the IBAA Proposal in the September 19 IBAA Order.¹⁹⁶

267. Modesto's claims that the Path Operating Agreement considers unscheduled flows but does not contemplate a charge for those flows, and the claim that the CAISO does not propose to compensate SMUD or Turlock for unscheduled flows caused by CAISO entities are not material.¹⁹⁷ As discussed above, the IBAA Proposal concerns *scheduled* flows that impact the CAISO-controlled grid. The IBAA Proposal does not concern unscheduled parallel flows. Further, the Path Operating Agreement's failure to charge for unscheduled flows does not affect the CAISO's efforts to more accurately price transactions that impact the CAISO-controlled grid. Similarly, Santa Clara's claim that the pricing of interchange transactions necessarily affects the operation of the System thus implicating the Path Operating Agreement is incorrect because the IBAA Proposal concerns impact on the CAISO-controlled grid and not the System.¹⁹⁸

¹⁹³ *Id.* at 42 (citing the September 19 IBAA Order at P 105).

¹⁹⁴ September 19 IBAA Order at P 267.

¹⁹⁵ Path Operating Agreement § 5.

¹⁹⁶ September 19 IBAA Order at P 267-71.

¹⁹⁷ Path Operating Agreement § 8.2.

¹⁹⁸ Further, Santa Clara relies on Path Operating Agreement § 8.3.19, which concerns an agreement that has not been included as an exhibit.

268. Also, Modesto's claim that the Path Operating Agreement prohibits the CAISO, as path operator, from imposing any charge other than for services provided under the Path Operating Agreement is based on an improper reading of the Path Operating Agreement. The provision on which Modesto relies concerns charges that the CAISO may impose as path operator, not as an ISO.¹⁹⁹ The IBAA Proposal is just a change to the CAISO's tariff, and the CAISO is certainly permitted to apply appropriate tariff charges, as it has routinely done.

269. TANC's efforts to distinguish the IBAA Proposal from other tariff provisions that it has not objected to are not convincing. TANC claims that it has objected to the IBAA Proposal's pricing and not to previous pricing schemes in the tariff because this is the first time the CAISO has proposed charges on the System that might conflict with the Path Operating Agreement.²⁰⁰ Thus, TANC seems to contend that the Path Operating Agreement should be narrowly construed. However, TANC also claims that section 8.3.19 of the Path Operating Agreement pertains to any rate applied to a party by the CAISO.²⁰¹ Thus, TANC seems to contend that the Path Operating Agreement should be broadly construed. Under either reading, the IBAA Proposal does not violate the Path Operating Agreement because it concerns charges related to the CAISO-controlled grid, not the System. Efforts to read the Path Operating Agreement otherwise contravene the scope of the Path Operating Agreement.²⁰²

270. Also, TANC's claim that the September 19 IBAA Order states that the IBAA Proposal applies charges to power flows over the System is incorrect. In fact, the September 19 IBAA Order states, "any congestion that is reflected in LMPs applicable to interchange transactions that use the California-Oregon Intertie will be attributable to binding constraints, not on the intertie, but on the other elements of the CAISO-controlled grid."²⁰³ Thus, the Commission states explicitly that charge were not on the System but on the CAISO-controlled grid.

271. Further, TANC and Modesto's concerns regarding the IBAA Proposal's default pricing points and congestion and loss charges are addressed elsewhere in this order.

¹⁹⁹ September 19 IBAA Order at P 267.

²⁰⁰ TANC Rehearing Request at 39.

²⁰¹ *Id.* at 41.

²⁰² Path Operating Agreement § 5.

²⁰³ September 19 IBAA Order at P 105.

Also, Modesto's concerns regarding whether the proper losses will be accepted is addressed in the March 6 Compliance Order.²⁰⁴

3. Interconnected Control Area Operating Agreement

272. TANC argues that the Commission erred in finding that pricing COTP imports at Captain Jack does not violate the Interconnected Control Area Operating Agreement. TANC states that the Tracy Substation was established as the COTP interconnection point under the Interconnected Control Area Operating Agreement- the point where the CAISO and the COTP participants agreed to transact with parties importing power over the COTP into the CAISO and the point for scheduling exports from the CAISO to the COTP.

273. TANC contends that pricing COTP imports at Captain Jack is contrary to the CAISO's agreement in the Interconnected Control Area Operating Agreement that it will transact with parties at Tracy and that the same is true of pricing exports at a point other than Tracy. TANC argues that the Commission's ruling would render the COTP interconnection point a nullity. TANC asserts that the Commission disregards this point by focusing its entire analysis of the Interconnected Control Area Operating Agreement on whether the Interconnected Control Area Operating Agreement provides for the application of CAISO charges to imports into the ISO markets, rather than considering whether the parties have previously agreed to a location at which they will transact.

274. Turlock explains that in its protest, it argued that the CAISO's IBAA Proposal will undermine the terms and conditions of the Interconnected Control Area Operating Agreement because it could be used by the CAISO to reduce its obligations under the Interconnected Control Area Operating Agreement. In addition, Turlock states that the single hub pricing proposal would devalue Turlock's investment in and use of dynamic scheduling, revenue metering and telemetry because it would require Turlock to enter into a MEEA before it could get a price other than Captain Jack. Turlock states that it concluded that the CAISO's proposal would cause the abrogation of Turlock's Interconnected Control Area Operating Agreement and therefore, should be rejected.

275. Turlock states that because transactions will become unreasonably cost prohibitive under the IBAA Proposal, Turlock will no longer do them. Turlock therefore states that all of its investment in the infrastructure to facilitate these transactions will be all but lost. Turlock claims that such a taking abrogates the Interconnected Control Area Operating Agreement because it devalues the fundamental bargain struck between Turlock and the

²⁰⁴ March 6 Compliance Order at P 160.

CAISO. Turlock claims that the Commission's acceptance of the September 19 IBAA Order is arbitrary and capricious and a departure from longstanding precedent.²⁰⁵

Commission Determination

276. The Commission denies rehearing requests regarding whether the IBAA Proposal violates the Interconnected Control Area Operating Agreement. As the Commission discussed in the September 19 IBAA Order, the Interconnected Control Area Operating Agreement specifies certain interconnection points, and the IBAA Proposal does not affect those interconnection points.²⁰⁶ The IBAA Proposal only affects pricing, which the Interconnected Control Area Operating Agreement does not address. Thus, the IBAA Proposal does not undermine the Interconnected Control Area Operating Agreement as Turlock suggests. As Turlock states, if it wishes to avoid the default pricing effects of the IBAA Proposal, it can enter a MEEA.²⁰⁷ The Commission addresses the alleged effects of the IBAA Proposal on investments elsewhere in this order.

4. San Francisco Existing Transmission Contracts

277. San Francisco maintains that its Existing Transmission Contracts rights under its Interconnection Agreement are violated by the IBAA Proposal. San Francisco contends that the Commission erred in approving the CAISO's request to use the IBAA default pricing mechanism that applies LMPs calculated at Captain Jack for San Francisco's Existing Transmission Contracts transactions utilizing its contract rights to schedule and settle at Tracy. It asserts that the CAISO's obligation to honor existing contracts includes refraining from interpreting or changing the obligations, terms or conditions without the consent of all parties to the contract, and specifically in this instance, includes settling Existing Transmission Contracts transactions using marginal cost of losses based on LMPs at the Existing Transmission Contracts sources and sinks.

278. According to San Francisco and Modesto, the Commission erred in finding that the IBAA Proposal does not violate its Existing Transmission Contracts because the agreement lacks specificity regarding pricing nodes and scheduling points.²⁰⁸ First, San Francisco asserts that it is not up to the CAISO to determine what is permissible under its

²⁰⁵ Turlock Rehearing Request at 41.

²⁰⁶ September 19 IBAA Order at P 288.

²⁰⁷ Turlock Rehearing Request at 40.

²⁰⁸ San Francisco Rehearing Request at 4 (citing September 19 IBAA Order at 291).

Interconnection Agreement.²⁰⁹ Second, San Francisco contends that in order to eliminate the need for the CAISO to interpret an existing contract, the MRTU Tariff requires the Participating Transmission Owner party to the agreement to submit Transmission Rights and Transmission Curtailment Instructions that specifically allow implementation without requiring the CAISO to interpret the underlying Existing Transmission Contracts.²¹⁰ The Transmission Rights and Transmission Curtailments must include the applicable Point(s) of Receipt and Point(s) of Delivery expressed as physical sources and sinks. San Francisco asserts that the CAISO is then obligated to accept valid Existing Transmission Contracts Self-Schedules.

279. According to San Francisco, Existing Transmission Contracts Self-Schedules are valid under the terms of the CAISO MRTU Tariff because they properly reflect existing rights consistent with the Transmission Rights and Transmission Curtailment instructions.²¹¹ Therefore, San Francisco states that it is clear that the only relevant reference for interpretation regarding San Francisco's Existing Transmission Contracts rights with respect to Tracy is its Transmission Rights and Transmission Curtailment.

280. San Francisco claims its Existing Transmission Contracts Transmission Rights and Transmission Curtailment explicitly show Tracy as a Pricing Location, not simply a delivery point. San Francisco claims its Existing Transmission Contracts Transmission Rights and Transmission Curtailments state with respect to Tracy that the Source/Sink Price Location is TRCYPMP_2_N059.²¹² San Francisco claims it negotiated for rights to scheduling, delivery and settlement at Tracy. San Francisco claims to ignore these Transmission Rights and Transmission Curtailments is to ignore the centerpiece of the MRTU Tariff provisions implementing the obligation to honor Existing Transmission Contracts rights. San Francisco urges the Commission to recognize the full breadth of San Francisco's rights at Tracy under its Existing Transmission Contracts by reversing the IBAA Order's authorization to impose a Captain Jack price on San Francisco's transactions at Tracy under its Existing Transmission Contracts.

281. San Francisco maintains that the September 19 IBAA Order dismissed San Francisco's concern that application of a Captain Jack price to transactions at Tracy

²⁰⁹ CAISO MRTU Tariff Section 16.4.8.6. *See also Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 901.

²¹⁰ San Francisco Rehearing Request at 4 (citing CAISO MRTU Tariff Section 16.4.1.7).

²¹¹ *Id.* at 5 (citing CAISO MRTU Tariff Section 16.6.1).

²¹² *Id.* at 5.

would result in higher losses than those resulting from pricing and settlement at Tracy. The Commission stated:

In addition, San Francisco's concerns regarding losses should be addressed by the Commission requiring the CAISO to provide that COTP users that import to the CAISO who demonstrate that they pay losses to Western or TANC should receive an appropriate adjustment in the marginal cost component of the price paid for their import.[²¹³]

282. San Francisco states that this response is inappropriate on two grounds. First, the Commission erred in authorizing the use of Captain Jack to calculate losses at Tracy for all the reasons stated above. In addition, San Francisco states that it is a violation of MRTU Tariff section 16.6.3. As discussed above, San Francisco asserts that the CAISO is obligated to accept and implement valid Existing Transmission Contracts Self-Schedules in honoring Existing Transmission Contracts rights under MRTU. According to San Francisco, Existing Transmission Contracts Self-Schedules are validated with reference to their Transmission Rights and Transmission Curtailments. With respect to calculating losses, the CAISO MRTU Tariff section 16.6.3(2) states that "[t]he CAISO shall base the Marginal Cost of Losses on LMP differentials *at the Existing Contract source(s) and sink(s) identified in the valid ETC Self-Schedule.*"²¹⁴ San Francisco claims the plain language of the CAISO MRTU Tariff requires the CAISO to use the sources and sinks identified by the parties to the Existing Transmission Contracts. Therefore, San Francisco contends that the Commission erred in authorizing substitution of Captain Jack for Tracy as the basis for calculating San Francisco's Existing Transmission Contracts Self-Schedule losses.

283. Turlock notes that under its long-term power sales agreement with San Francisco, Turlock purchases energy, capacity and spinning reserves from the San Francisco Hetch Hetchy Project and may sell energy to San Francisco at the Oakdale Interconnection (Turlock-San Francisco Agreement). Turlock states that, in its protest, it demonstrated that the IBAA Proposal will prevent it from utilizing its rights under this Turlock-San Francisco Agreement because the IBAA Proposal will inappropriately impose anti-competitive pricing that deters imports and exports from the CAISO-controlled grid, like those imports and exports contemplated in the Turlock-San Francisco Agreement. Turlock thus states that, because the IBAA Proposal would revalue the benefit of the bargain between Turlock and San Francisco, Turlock argued that the CAISO proposal would thereby cause the abrogation of Turlock's rights under Turlock-San Francisco

²¹³ *Id.* at 9 (citing September 19 IBAA Order at P 291).

²¹⁴ *Id.* at 6 (citing MRTU Tariff section 16.6.3(2) (emphasis added)).

Agreement. Turlock notes that in response to its protest, the Commission found, without any explanation or justification, that the CAISO's proposal did not abrogate or diminish Turlock's rights under the Turlock-San Francisco Agreement, stating:

The IBAA Proposal also does not violate Turlock's contract to use the San Francisco system. The IBAA Proposal does not alter whatever rights Turlock has to use the San Francisco transmission system... With respect to Turlock's assertion that the IBAA Proposal devalues its facilities, as we stated above, the IBAA Proposal only sets the just and reasonable price for interchange transactions into the CAISO market, it does not devalue external resources. The IBAA Proposal helps the CAISO to better manage congestion within its market by pricing interchange transactions as effectively as it can based on the information available to it. The CAISO market is a voluntary market, and IBAA's have a choice to sell into or purchase from the CAISO market. The IBAA Proposal does not impose prices on or devalue external facilities.^[215]

284. Turlock claims that the Commission's reasoning ignores the undisputed fact that when Turlock and San Francisco negotiated their agreement, the CAISO was not authorized to unilaterally set the prices of imports and exports so that they favor those entities in the CAISO-controlled grid and punish entities selling from the Turlock and SMUD balancing authority areas. Turlock states that, now, under the IBAA Proposal, the Commission has accepted this unilateral, punitive pricing structure for imports and exports. Turlock therefore states that the value and use of both Turlock's and San Francisco's rights under the Turlock-San Francisco Agreement have been fundamentally changed to Turlock's detriment. Turlock claims that this devaluation of Turlock's rights constitutes an unjust and unreasonable abrogation of Turlock's contract rights in direct contravention of established Commission precedent.²¹⁶

285. Turlock also states that this devaluation of its rights will almost certainly stymie transactions between Turlock and San Francisco, in the same way that it will stymie other entities' imports into and exports out of the CAISO-controlled grid. Turlock states that such a blatant, unjustified departure from longstanding Commission precedent, coupled with the Commission's failure to fully address the negative impacts of the CAISO's

²¹⁵ Turlock Rehearing Request at 42-43 (quoting September 19 IBAA Order at P 292-93).

²¹⁶ *Id.* at 43 (citing *PacifiCorp v. Reliant Energy Services, Inc.*, 103 FERC ¶ 61,355, at P 87 (2003); *PJM Interconnection L.L.C.*, 109 FERC ¶ 61,012, at 61,064-65 (2004); *Atlantic City*, 295 F.3d 1, 14-15 (D.C. Cir. 2003)).

proposal on Turlock's contract rights makes the September 19 IBAA Order arbitrary, capricious and an abuse of discretion.

Commission Determination

286. The Commission denies rehearing requests regarding whether the IBAA Proposal violates the San Francisco Existing Transmission Contracts. While section 16.2.3.1.1 of the CAISO Tariff provides that the CAISO "will have no role in interpreting Existing Contracts," that is not the complete text of that section of the CAISO Tariff. Nowhere does section 16.2.3.1.1 of the CAISO Tariff preclude the CAISO from advocating a position as to whether a tariff amendment violates an existing contract. In such cases, each party to the proceeding may advocate its position with regard to the existing contract, but the Commission ultimately interprets whether the tariff amendment violates the contract.²¹⁷ The IBAA Proposal does not require the CAISO to interpret the San Francisco Existing Transmission Contracts, however, the Tariff does not prohibit the CAISO from advocating for its position. Similar to the Interconnected Control Area Operating Agreement issues, the San Francisco Existing Transmission Contracts includes delivery points, and the IBAA Proposal does not affect the delivery points since the IBAA Proposal only concerns pricing. As the Commission stated in the September 19 IBAA Order, "[t]he Commission does not agree with San Francisco that the pricing point is necessarily the identified point of delivery. The point of delivery is just that – the point at which the energy is delivered."²¹⁸

287. San Francisco's claim that the Transmission Rights and Transmission Curtailment Instructions designate Tracy as the "Source/Sink Price Location"²¹⁹ is not inconsistent with the IBAA Proposal. Deliveries can be made using the Tracy delivery point, however, the Tracy price will be the price as calculated under the IBAA Proposal. Also, the Transmission Rights and Transmission Curtailment Instructions do not alter the terms of the Existing Transmission Contract.

288. San Francisco's claim that the losses exemption provided in the September 19 IBAA Order does not satisfy its concerns regarding the difference in losses between Captain Jack and Tracy is improper. Since the exemption will allow San Francisco to avoid the duplicative loss charge, this will have the same effect on losses as the CAISO's current provisions for San Francisco's Existing Transmission Contracts Self-Schedules. Therefore, the issue of *how* it avoids the duplicative loss charge is misplaced.

²¹⁷ September 19 IBAA Order at P 255.

²¹⁸ *Id.* P 291.

²¹⁹ San Francisco Rehearing Request at 5.

289. The IBAA Proposal will not abrogate the Turlock-San Francisco Agreement. As Turlock notes, the September 19 IBAA Order addressed its claims and found that the IBAA Proposal does not violate Turlock's contract, and it does not alter Turlock's rights.²²⁰ The IBAA Proposal sets just and reasonable rates in the absence of better information.²²¹

J. Congestion Revenue Rights

290. DOE-Berkeley claims that, under the IBAA Proposal, the CAISO attempts to issue Congestion Revenue Rights (CRRs) that it does not have authority to issue. DOE-Berkeley states that the CAISO currently only holds scheduling rights to 33 MW on the COTP, with the remaining 1,567 MW of the COTP capacity not part of or scheduled as part of the CAISO balancing authority area. However, DOE-Berkeley states that the IBAA Proposal intends to allocate CRRs based on its historic load. DOE-Berkeley states that this proposal assumes that the CAISO has the right to issue CRRs on the COTP and is based on DOE-Berkeley load rather than ownership of transmission rights. DOE-Berkeley finds unsatisfying the Commission's qualification that the CAISO will limit the issuance of CRRs to imports over the COTP that sink into the CAISO because this proposal still allocates CRRs on a facility external to the CAISO. Therefore, DOE-Berkeley requests that the Commission address by what means does the CAISO have the authority to allocate CRRs on a transmission facility external to the CAISO's balancing authority area and how far does the CAISO's authority extend.

291. DOE-Berkeley claims that the Commission's finding that CRRs will keep DOE-Berkeley whole relative to the firm transmission rights it presently owns on the COTP fails to consider that the COTP is not part of the CAISO balancing authority area, and fails to account for DOE-Berkeley's ownership rights on that facility.²²² DOE-Berkeley contends that it has firm, equivalent ownership rights to 100 MW of COTP capacities. Other than payment of its *pro rata* share of operating and maintenance costs and associated losses, DOE-Berkeley claims it is entitled to schedule these rights without additional cost. According to DOE-Berkeley, the proposal to issue CRRs to DOE-Berkeley imposes additional risks and potential costs that it does not now confront. Such CRRs would be subject to the CAISO's CRR allocation methodologies, which can result in the allocation of fewer CRRs to DOE-Berkeley than the rights to which it has ownership. DOE-Berkeley argues that the CAISO system for allocating CRRs to DOE-

²²⁰ Turlock Rehearing Request at 42-43.

²²¹ September 19 IBAA Order at P 292-93.

²²² DOE-Berkeley Rehearing Request at 12 (citing September 19 IBAA Order at P 306).

Berkeley does not recognize current ownership and DOE-Berkeley's congressional right to use the COTP without additional charges.

292. DOE-Berkeley also states that the unidirectional CRRs allocated by the CAISO are obligations and thus carry a risk that they could require a payment by DOE-Berkeley if the congestion is in the opposite direction of the CRR. DOE-Berkeley claims this situation opens it to additional financial risk, which DOE-Berkeley does not face under the current system.

293. DOE-Berkeley claims that its ownership rights in the COTP will be diminished under the IBAA Proposal because it is possible it will not receive a full allocation of CRRs, and could be required to pay congestion costs for use of a line outside of the CAISO to which it has ownership rights. Thus DOE-Berkeley contends that the Commission erred in concluding that the provision of CRRs "best ensures that both financial hedge positions and rights will be preserved under the single-hub default pricing mechanism."²²³

294. DOE-Berkeley asks the Commission to recognize that CRRs do not replace the scheduling rights DOE-Berkeley and others currently hold on the COTP. To the extent Tracy is not used to determine interchange pricing for COTP related energy, DOE-Berkeley claims that the Commission should ameliorate the adverse impact by ordering the CAISO to provide such capacity rights holders with full credit for congestion on the COTP in the form of an "Option" type CRR in the full amount of the holders' COTP rights.

295. SMUD explains that the CAISO's proposal to allow holders of previously released CRRs to reassign their designated source or sink designations is inadequate because it does not afford SMUD the ability to re-nominate its CRRs to reflect the level of CRRs it would have nominated had it known that the IBAA Proposal would be in effect. Therefore, SMUD asserts that the Commission should revise its order to direct that SMUD is entitled to re-nominate, not merely reassign its CRRs.

Commission Determination

296. The Commission denies rehearing requests of both DOE-Berkeley and SMUD regarding CRRs. DOE-Berkeley's claim that the CAISO does not have authority to issue CRRs on external facilities, like the COTP, is a mischaracterization of the CAISO's actions. The CRRs allocated to DOE-Berkeley represent DOE-Berkeley's use of, and impact on, the CAISO-controlled grid. The CAISO has the authority to charge congestion and issue CRRs for use of its transmission system, including external

²²³ *Id.* at 12 (quoting September 19 IBAA Order at P 306).

resources that utilize the CAISO-controlled grid. In this case, the CAISO has issued CRRs to DOE-Berkeley to recognize imports that sink into the CAISO. DOE-Berkeley makes no showing that it will not use, or have any impact on, the CAISO-controlled grid in addition to its use of the COTP. And since it is reasonable and appropriate for the CAISO to charge congestion for use of its grid, it is reasonable to offer CRRs to parties, such as DOE-Berkeley, that have material impacts on the CAISO-controlled grid. The fact that the impact on the CAISO-controlled grid stems from external resources to the CAISO is irrelevant; the CAISO is correct in extracting congestion charges and issuing CRRs for any and all usages and impacts on its grid.

297. Regarding DOE-Berkeley's claim that it should not be required to pay additional costs to schedule its firm transmission rights over the COTP, we note that the September 19 IBAA Order does not impose additional costs on DOE-Berkeley for the exercise of its rights on the COTP. Congestion charges to which DOE-Berkeley may be exposed relate to the usage of and impact on the CAISO-controlled grid, but not to the *per se* scheduling of firm rights of the COTP. DOE-Berkeley remains free to schedule its firm rights on the COTP free of additional charge. The only additional cost DOE-Berkeley may face derives from whether its external resources and use of COTP impacts the CAISO-controlled grid. Although no parties contest DOE-Berkeley's claim that it has a "congressional right" to use the COTP without additional charges, we note that DOE-Berkeley does not possess such a right – derived from the legislative branch or otherwise – to use the CAISO-controlled grid without cost. Thus, it is appropriate for the CAISO to recover congestion and issue CRRs to DOE-Berkeley for its use of the CAISO-controlled grid.

298. We also reject DOE-Berkeley's claim that the size of the CRR allocation it will receive is insufficient to match its firm transmission rights conveyed by partial ownership of COTP. The CRR allocation methodology – which is not at issue here – relies upon historical usage data or load forecasts,²²⁴ not ownership or firm transmission rights, and has been accepted as just and reasonable by the Commission.²²⁵ The purpose of CRR allocation is intended to most accurately model actual usage of and impact on the CAISO-controlled grid. Firm transmission rights are a more speculative predictor of actual usage; historical usage and load forecasts are superior predictors.

299. Regarding DOE-Berkeley's contention that the Commission erred in concluding that the provision of CRRs best ensures that both financial hedge positions and rights will

²²⁴ See section 36.8.2.2 of the MRTU Tariff.

²²⁵ *Cal. Indep. Sys. Operator Corp.*, 120 FERC ¶ 61,023 (2007); *reh'g denied*, 126 FERC ¶ 61,233 (2009).

be preserved, the Commission disagrees. First, we note that CRRs do provide participants with adequate hedging characteristics to avoid congestion costs on the CAISO system. Second, we reiterate that the CRR allocation process under MRTU awards CRRs based on historical usage amounts or load forecast amounts, not firm transmission rights. That process is not at issue in the instant proceeding.

300. DOE-Berkeley requests that the Commission recognize that CRRs do not replace the scheduling rights DOE-Berkeley and others currently hold on the COTP. The Commission notes that despite receiving CRR amounts that may be smaller than its firm transmission rights amount, nothing in the September 19 IBAA Order, this order, or the IBAA Proposal prevents DOE-Berkeley from exercising all of its firm transmission rights; however, to the extent DOE-Berkeley uses and impacts the CAISO-controlled grid, it will be required to pay congestion for that usage. We will not grant DOE-Berkeley's request to order the CAISO to provide it and other similar capacity rights holders with full credit for congestion on the COTP in the form of an option CRR. The Commission-approved MRTU Tariff does not provide for the relief sought by DOE-Berkeley.²²⁶ The Commission has accepted the CAISO's CRR allocation method as just and reasonable, and we will not review that decision here, nor circumvent the allocation process by granting DOE-Berkeley's request.²²⁷

301. We also deny SMUD's request to revise the September 19 IBAA Order in order to allow SMUD to re-nominate its CRRs. SMUD claims that it was not afforded the ability to re-nominate its CRRs to reflect the level of CRRs it would have nominated had it known that the IBAA would be in effect. Allowing CRR holders of previously released CRRs to reassign their designated source and sink provides those parties with reasonable flexibility in order to maintain both their hedging benefits and rights. If SMUD's request were granted, it could have dilutive effects on other CRR holders that are not necessarily parties to this proceeding; thus, we deny SMUD's request.

K. Requests for Hearing, Meetings and Negotiations

302. Multiple parties argue that the Commission acted arbitrarily and capriciously when it failed to set the IBAA Proposal for hearing. Western and TANC disagree with the Commission that an evidentiary hearing is not necessary. They argue that there are material issues of fact in dispute that cannot be resolved on the basis of a written record. For instance, Western submitted an affidavit by the CAISO's former MRTU Program Manager who concludes the IBAA Proposal would not minimize the difference between

²²⁶ See MRTU Tariff section 36.

²²⁷ *Cal. Indep. Sys. Operator Corp.*, 120 FERC ¶ 61,023 (2007); *reh'g denied*, 126 FERC ¶ 61,233 (2009).

the schedules and the actual flows which differs significantly from the Commission's conclusions that IBAA Proposal will help to minimize the difference between scheduled and actual flows. Western also argues that it provided evidence of the CAISO's unilateral, discriminatory, arbitrary, and protectionist selection of the Captain Jack price may have an impact on reliability. According to Western, such a contention goes to the core question of the reasonableness of the IBAA Proposal, and therefore, the testimony proffered presents a disputed issue of material fact. Western also claims that the Commission's failure to hold a technical conference or a hearing was error.

303. Also, Western claims that there is new data that demonstrates the artificial creation of a Captain Jack LMP may lead to absurd results, such as a negative \$11,500 LMP. Western claims that had the CAISO robustly tested its proposal before submitting it, there would be a more accurate record including evidence of the reasons for a negative \$11,500 LMP. Western contends that this is the type of information the Commission should consider through either technical conferences or a hearing. Western states that it ran preliminary studies and models and determined there could be significant flaws associated with the new proposal. In May 2008, as part of an alternative proposal, Western claims it presented these concerns to the CAISO. At the time, Western does not believe it occurred to anyone that the CAISO's market simulation would show a real time price for the on peak LMP at Captain Jack as minus \$11,493.82 and the off peak price at Captain Jack as minus \$11,434.10. Western claims it never received a technical response from the CAISO on Western's alternative to the CAISO's IBAA Proposal. According to Western, the CAISO's failure to even comment on the technical merits of Western's concerns was a failure to follow a stakeholder process.

304. SMUD claims that, though the Commission concluded that "[m]any of the issues identified by SMUD, TANC and Imperial are policy questions and not material issues of fact and the remaining issues can be resolved on the basis of the existing record,"²²⁸ the Commission failed to specify which issues that SMUD had identified as factual were actually policy questions and why, nor did the Commission state which factual issues could be resolved by the existing record. SMUD asserts that, because the Commission based its acceptance of the IBAA Proposal on the assumption that the SMUD and Turlock balancing authority areas had a greater impact on the CAISO's market operations than any other adjacent balancing authority area, the issue of relative impact was material to the outcome of the proceeding. SMUD argues that, in light of the evidence and testimony it presented that other balancing authority areas have a greater impact on the CAISO market than either SMUD or Turlock and the absence of evidence

²²⁸ SMUD Rehearing Request at 43 (citing the September 19 IBAA Order at P 324).

from the CAISO to support its claims to the contrary, the Commission had an obligation to set the matter for hearing so that the disputed issues of material fact could be resolved.

305. SMUD contends that the Commission also acted arbitrarily and capriciously by failing to hold a hearing to vet several other areas of contention between the CAISO and protesting parties.²²⁹ For one, SMUD states that it presented evidence that refuted the CAISO's claim that SMUD had refused to work cooperatively to provide the data needed for the CAISO to operate its market. In addition, SMUD states that it provided evidence that directly contradicted the CAISO's assertions that the MEEAs it proposed to execute were analogous to the Incentive Pricing Agreements executed by PJM and neighboring utilities. SMUD further contends that the scope of data that is needed by the CAISO to execute a MEEA is also a disputed issue of material fact that is ripe for hearing and that the Commission should likewise have addressed whether alternatives to MEEAs were appropriate where a MEEA would be infeasible.

306. Modesto argues that there are factual disputes in this proceeding, such as whether the CAISO's assumptions as to where power flows are correct in determining its proxy prices, and whether the SMUD-Turlock IBAA should qualify as a class to be singled out for IBAA default pricing treatment. According to Modesto, the Commission barely acknowledged these disputes, but never even attempts to explain how they can be resolved against Modesto based on the written record.

Commission Determination

307. The Commission denies rehearing on the issue of whether the information and arguments presented in this matter required more development through a conference or hearing. The Commission has broad discretion in determining whether additional process is necessary to determine a matter, and even if there are disputed issues of material fact, as some parties claim, additional development of this record is unnecessary.²³⁰ When there is a dispute among experts regarding an issue, such a technical dispute is amenable to resolution by resort to the written record, particularly where the parties had opportunities to submit evidence and criticize the evidence submitted by the other parties, as occurred here.²³¹

²²⁹ *Id.* at 14 (citing *General Motors Corp. v. FERC*, 656 F.2d 791, 794-95 (D.C. Cir. 1981)).

²³⁰ *Exxon Co. v. FERC*, 182 F.3d 30 (1999) (“FERC may resolve factual issues on a written record unless motive, intent, or credibility are at issue or there is a dispute over a past event.” [citations omitted]).

²³¹ *Id.*

308. As we stated in the September 19 IBAA Order:

As we have said many times before, the Commission encourages parties to mutually resolve these issues. While we encourage the parties here to continue to work together to resolve their concerns, we have reviewed the history of this matter, and it is evident that additional meetings, hearings, negotiations and delays are unlikely to lead to a mutual resolution of the significant issues presented.^[232]

We continue to encourage these parties to seek mutual resolution of these issues.

309. We also reiterate our disagreement that there are material facts in dispute requiring that we set this matter for hearing. The information available in the record remains sufficient for the Commission to determine and affirm this matter without an evidentiary hearing. The CAISO has provided the Commission with an adequate record of data and evidence to demonstrate that the IBAA Proposal, as accepted, is just, reasonable, and not unduly discriminatory. With regard to comments about the high negative prices at the Captain Jack pricing node, there has been no evidence provided that suggests that the pricing anomalies were related to the IBAA Proposal or IBAA modeling. Further, while the Commission maintains the position that hearing procedures are unnecessary, we note that anomalous pricing results have been observed and investigated by the CAISO, which has led to modifications, including correcting software flaws to prevent reoccurrences.²³³

L. Commission's Review

310. Western states that the CAISO has the obligation to demonstrate the IBAA Proposal is just and reasonable which would include demonstrating it does not have an adverse impact on the rights of neighboring balancing authorities. Western asserts that the Commission acknowledges there may be an adverse impact, but concludes Western can execute a MEEA to avoid the impact. According to Western, requiring an entity to execute an objectionable MEEA to avoid an adverse impact due to the CAISO's actions is not a reasonable solution.

311. According to Western, one of the primary purposes of the Administrative Procedure Act²³⁴ (APA) is to enable federal agencies to take a hard look at their actions

²³² September 19 IBAA Order at P 327; *see also* the March 6 Compliance Order at P 16 n.13 (where the Commission continued to encourage the parties to resolve their differences).

²³³ *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,221, at P 81 (2009).

²³⁴ 5 U.S.C. § 551, *et seq.* (2006).

and to make informed decisions based on the evidence available to them. It asserts that under the APA, agencies should not turn a blind eye to evidence. Western claims that the Commission did not take a hard look at the IBAA Proposal. Western notes that the formal adjudication provisions of the APA require an agency to base its decisions on the substantial evidence in the record. Western claims to have provided evidence of the serious flaws in the CAISO's proposal including potential adverse impacts. Western maintains that the Commission should take steps to establish a full and complete record and should not turn a blind eye to evidence including evidence that demonstrates there is a better way to approach it.

312. Western contends that its alternative proposal is superior to the IBAA Proposal. Under Western's proposal, the CAISO receives new data which it can use to model schedules and flows. Western claims this data would provide the CAISO with the opportunity to fine tune its models to make more accurate predictions. Western states that it continues to be willing to make its counter proposal available to the Commission as part of technical conferences. Western requests the Commission rehear this case and create a full and accurate record and consider such evidence to ensure there are no adverse impacts associated with the CAISO's proposal, including impacts on reliability.

313. SMUD contends that there is no evidence to support the Commission's conclusion that the IBAA Proposal is based upon reasonable assumptions as to the location of external resources. Rather, SMUD argues that the Commission's findings are based upon what the CAISO had admitted to be false- the assumption that all SMUD sales into the CAISO market originate from sources in the Pacific Northwest. SMUD asserts that the Commission arbitrarily and capriciously accepts the CAISO's unsubstantiated assumption that exports from the CAISO into the SMUD balancing authority area are used to displace SMUD's own generation. SMUD continues that, were this true, it would likewise be logical to conclude that imports to the CAISO from SMUD are often served by SMUD's own displaced generation.

314. SMUD cites the September 19 IBAA Order where the Commission states that "the default price may, in limited circumstances, create an artificially low price for energy."²³⁵ SMUD takes issue with the Commission's failure to address how even "limited" circumstance of artificially low energy prices can be considered just and reasonable and, furthermore, why the Commission would assume that, given that the CAISO had admitted that it knows not all energy imported from SMUD originates in the Pacific Northwest, it can reasonably be concluded that artificially low priced sales into the CAISO would be "limited."

²³⁵ SMUD Rehearing Request at 36 (citing September 19 IBAA Order at P 120).

315. SMUD asserts that the Commission's reliance upon the market simulation testing to be done before MRTU startup as a means of ironing out concerns about whether or not the IBAA pricing mechanism will improve or, as SMUD contends, do more harm than good for LMP pricing accuracy is tantamount to disregard of SMUD's point and demonstrates that the Commission has failed to consider the record as a whole.²³⁶ SMUD restates its concerns that, due to the nature of LMP pricing, using the IBAA default pricing will not only change LMPs at the SMUD-Turlock IBAA's pricing points, but also elsewhere across the CAISO. Thus, any pricing inaccuracies caused by the IBAA pricing mechanism have the potential for far reaching impacts.

316. TANC states that it previously demonstrated that the CAISO's proposed definition of "Integrated Balancing Authority Areas (IBAA)" allowed the CAISO to unduly discriminate and exercise unilateral discretion in determining which entities will be subject to unfavorable IBAA treatment. TANC also claims the CAISO's proposal to delete language in the MRTU Tariff that required consultation with embedded and adjacent balancing authority areas in order to determine PNodes represents another attempt by the CAISO to exercise unilateral authority. TANC concludes that, though the Commission determined that it is reasonable for the CAISO to consider the individual characteristics and market impacts of its neighboring balancing authority areas in determining whether and how to implement its IBAA Proposal, the CAISO's tariff language and justification for implementation of the IBAA Proposal crossed the line from an arguably reasonable consideration of characteristics to an unreasonable failure to provide any guidance to affected entities as to when the non-exclusive list of factors outlined in section 27.5.3.3 of the MRTU Tariff will be met. TANC argues that such unbridled discretion is unjust, unreasonable and unduly discriminatory.

317. TANC asserts that the Commission should have rejected the CAISO's proposed IBAA tariff language. TANC also contends that the Commission erred in failing to specifically rule on TANC's request that the CAISO be required to file the methodology for determining default Resource IDs in the tariff, as opposed to the Business Practice Manuals (as proposed in section 27.5.3.4 of the MRTU Tariff) because the methodology for determining Resource IDs significantly affects IBAA rates, terms and conditions. In addition, TANC argues that the Commission did not comport with the "rule of reason" in determining not to require the additional details regarding modeling specifications to be included in the tariff as opposed to the business practice manuals (as proposed in section 27.5.3.1 of the MRTU Tariff), since these specifications will significantly impact rates, terms and conditions as they relate to IBAA's. Thus, TANC contends that, if the Commission does not reject the IBAA Proposal on rehearing, the Commission should require the CAISO to include in its tariff, rather than relegate to the business practice

²³⁶ *Id.* at 39 (citing *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951)).

manuals, the methodology for determining default pricing points and additional details regarding modeling specifications.

Commission Determination

318. We deny parties' requests for rehearing. We have considered the entire record of evidence in approving the IBAA as just and reasonable. Further, under the Federal Power Act, we are not required to consider alternative proposals if we find the original proposal to be just and reasonable. Pursuant to section 205 of the Federal Power Act, the Commission limits its evaluation of a utility's proposed tariff revisions to an inquiry into "whether the rates proposed by a utility are reasonable – and not to extend to determining whether a proposed rate schedule is more or less reasonable to alternative rate designs."²³⁷ The proposed revisions "need not be the only reasonable methodology."²³⁸ As a result, even if an intervenor develops an alternative proposal, the Commission must accept a section 205 filing if it is just and reasonable, regardless of the merits of the alternate proposal.²³⁹ Western's proffered alternative proposal is not before the Commission for consideration, and because we have found the CAISO's IBAA Proposal to be just and reasonable, we do not consider the merits of Western's alternative option.

319. Regarding Western's charge that neighboring balancing authorities will be required to enter into an "objectionable" MEEA to avoid adverse impacts of the IBAA, the Commission notes that MEEAs are subject to Commission review, ensuring that the terms of each MEEA will be required to meet the just and reasonable standard.

320. SMUD's contention that the Commission erred in accepting the IBAA Proposal's assumptions as to the locations of external resources is also unfounded. The September 19 IBAA Order never assumed that all interchange transactions would be sourced at Captain Jack. Rather, the September 19 IBAA Order found that "Pacific Northwest resources are likely to support interchange transactions since they are generally less expensive."²⁴⁰ The September 19 IBAA Order also based the selection of the default pricing points on reasonable assumptions by the CAISO given the lack of information.

²³⁷ *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984).

²³⁸ *Oxy USA v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995).

²³⁹ *Southern California Edison Co., et al.*, 73 FERC ¶ 61,219, at 61,608 n.73 (1995) ("[h]aving found the Plan to be just and reasonable, there is no need to consider in any detail the alternative plans proposed by the Joint Protestors." (*citing City of Bethany v. FERC*, 727 F.2d at 1136)).

²⁴⁰ September 19 IBAA Order at P 83.

The resources in the Pacific Northwest are generally less expensive than the resources in California and, as pointed out in the CAISO's expert testimony,²⁴¹ it remains a reasonable assumption that entities within the SMUD-Turlock IBAA will procure generally less expensive power available from the Pacific Northwest. SMUD has not provided sufficient evidence to persuade the Commission that the assumptions accepted in the September 19 IBAA Order are not reasonable. Also, entering a MEEA provides the option for parties to become eligible for different pricing..

321. Regarding SMUD's assertion that the Commission failed to address how "limited" circumstances of artificially low energy prices can be considered just and reasonable, we point out that in the September 19 IBAA Order, we found multiple mitigating factors explaining why. We stated:

...the IBAA will not result in any out-of-pocket losses or underrecovery of costs over the COTP. The devaluation referred to by TANC, Santa Clara and Modesto is simply the loss of the higher payments they projected by making sales into the CAISO markets. The Commission believes that any price decrease will be partially mitigated by the Commission's determination above to require the CAISO to allow COTP users that import to CAISO that demonstrate that they pay for losses to Western/TANC to have the marginal loss component of Tracy applied to their import. In addition, further mitigation of this potential effect is available as parties may remedy any further unintended consequences by entering into a MEEA and supplying data to the CAISO. In light of both the limited circumstances of any unintended harm and the offer of the CAISO to avoid these consequences, the CAISO's application of the IBAA is reasonable.^[242]

322. SMUD's concern that use of IBAA default pricing will impact LMPs at the SMUD-Turlock IBAA's pricing points and CAISO-wide is without merit. We note that any LMP-pricing system that is interconnected to neighboring systems will necessarily have an impact on those systems. Thus, "impact" on neighboring LMPs is not an unjust and unreasonable result. Further, the CAISO will not set the SMUD-Turlock LMPs, and will only have an indirect impact on external prices. As the Commission noted in the September 19 IBAA Order, the CAISO has had ample additional time to continue to test the MRTU software to determine if it was ready for implementation on its scheduled launch date. If the CAISO had determined that the IBAA, in conjunction with MRTU,

²⁴¹ CAISO June 17, 2008 Filing, Ex. ISO-1 at 60-61.

²⁴² September 19 IBAA Order at P 125.

would have caused “more harm than good” upon implementation, the CAISO was required to note that finding in its certification of market readiness, a final status report on MRTU implementation filed 60 days prior to launch. The CAISO made no such report in its readiness filing.²⁴³ SMUD provides no additional evidence that the IBAA will cause more harm than good on neighboring systems, and thus must be dismissed as speculative.

M. Stakeholder Process

323. Western requests rehearing of the finding that the CAISO’s stakeholder process appears to have been robust. Western states that it provided evidence the CAISO created a new proposal that was a dramatic departure from the models the CAISO, Western and others had developed and been studying and modeling from 2007 to April 2008.²⁴⁴ Western notes that the CAISO officially detailed its proposal to use Captain Jack as the single pricing point for imports on April 18, 2008. Western reiterates its protest that this was also the first time the CAISO officially picked a node that was not on the CAISO grid and that this proposal was not fully vetted. Western states that this was a bait and switch technique and is inconsistent with what the Commission had in mind when it approved the CAISO’s original MRTU proposal. According to Western, had the CAISO and the IBAA Participants reached an impasse on the negotiations and the CAISO filed its last jointly studied proposal, Western would not have objected to the stakeholder process.

324. SMUD contends that the Commission’s finding that the stakeholder process conducted by the CAISO to address the IBAA Proposal was robust because the CAISO extended the process several times and agreed to file the proposal as a section 205 filing is arbitrary. SMUD asserts that the fact that the September 19 IBAA Order itself states that the Commission will require the CAISO to file any new IBAA or any modification to an existing IBAA under section 205 indicates that the CAISO was only complying with the existing statute by filing the IBAA Proposal as a section 205 filing. SMUD further asserts that the CAISO only filed the IBAA Proposal with the Commission after numerous complaints were lodged with the Commission’s Office of Enforcement claiming that the CAISO had no intention of filing its IBAA Proposal with the Commission at all. As for the stakeholder process that preceded the CAISO’s filing with the Commission, SMUD states that most of that stakeholder process addressed an

²⁴³ See CAISO January 16, 2009 Certification of Readiness Filing, Docket No. ER06-615-038.

²⁴⁴ Western Rehearing Request at 10 (citing Western’s Protest at P 11-15, Ex. WPA-3 at 2-8).

entirely different IBAA Proposal that was eventually abandoned by the CAISO in favor of a proposal that responded to the concerns of the CAISO's Market Surveillance Committee and not the concerns of stakeholders.

Commission Determination

325. The Commission denies rehearing on its finding that the stakeholder process was "robust." The Commission recognizes that the term "robust" is a subjective one, and must rely on the evidentiary record to determine if stakeholders had a reasonable opportunity to be heard. Based on submittals from the CAISO and market participants, we can come to no other conclusion. As we pointed out in the September 19 IBAA Order, the CAISO made substantial concessions based on comments from stakeholders, including to extend the stakeholder process "several" times and file the IBAA pursuant to Section 205 of the Federal Power Act instead of as a compliance filing.²⁴⁵ These are non-trivial concessions, and are evidence of the flexibility and willingness of the CAISO to work with its stakeholders in addressing a contentious set of issues. In proceedings such as these, parties inevitably reach impasses on issues they deem as of the highest import; however, impasse among stakeholders and the CAISO does not imply non-robust stakeholder processes. In fact, impasses may be reached at the end of productive stakeholder discussions, a point at which further discussions would be fruitless and a waste of participants' resources. The Commission reiterates that the IBAA proceeding reached precisely that point, and had garnered all of the value it could have out of the stakeholder process. It is also important that demands for further stakeholder process not be permitted to stymie a utility from making a filing with the Commission. We have encouraged and continue to encourage the parties to mutually resolve these issues, including through utilizing the Commission's Dispute Resolution Service.²⁴⁶

N. Waiver

326. SMUD contends that the Commission's decision to grant the CAISO waiver of its 120 Day Prior Notice Rule was arbitrary and an abuse of the Commission's discretion. SMUD asserts that the Commission has previously acknowledged that differences between actual and scheduled flows were not issues related to the start up of MRTU and that the Commission even rejected the CAISO's basis for requesting a waiver when it concluded in the September 19 IBAA Order that the "CAISO already has access to the necessary data to reliably operate its system."²⁴⁷ SMUD argues that the Commission's

²⁴⁵ September 19 IBAA Order at P 342.

²⁴⁶ *Id.* P 323; *see also* March 6 Compliance Order at P 16 n.13.

²⁴⁷ SMUD Rehearing Request at 2 (citing the September 19 IBAA Order at 48).

finding of good cause to grant a waiver of its notice requirements for a proposal it has found to be unrelated to MRTU and unnecessary to protect reliability fails to demonstrate reasoned decision-making.

Commission Determination

327. We deny SMUD's request for rehearing regarding the Commission's waiver of the 120-day notice requirement. SMUD's argument that the IBAA Proposal is unrelated to MRTU and unnecessary to protect reliability, thus making it inappropriate for the grant of waiver, is irrelevant. We found good cause in the September 19 IBAA Order to grant waiver of the 120-day notice requirement because:

[i]n order to allow the IBAA Proposal to be incorporated into the MRTU market systems and fully tested in time for the start of MRTU, which will take several months, we find good cause to grant waiver of the 120-day maximum prior notice requirement.²⁴⁸

We maintain that granting a waiver was appropriate to allow the CAISO to fully integrate the IBAA in order to be ready for MRTU implementation, a monumental task requiring a large investment of the CAISO's resources.

The Commission orders:

(A) Requests for rehearing or clarification of the September 19 IBAA Order are hereby denied in part and granted in part, as discussed in the body of this order.

(B) The CAISO is hereby directed to make compliance filings, within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁴⁸ September 19 IBAA Order at P 412.