

126 FERC ¶ 61,207
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corp.

Docket No. ER08-1113-002

ORDER ON COMPLIANCE

(Issued March 6, 2009)

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1. In this order, we conditionally accept, subject to modification, the CAISO’s proposed tariff language on compliance with the Commission’s September 19, 2008 order.¹ We direct the California Independent System Operator Corporation (CAISO) to make a further compliance filing modifying several parts of the proposed tariff language, including: 1) clarifying that “actual pricing” under a Market Efficiency Enhancement Agreement (MEEA) is to be the locational marginal price (LMP) at the nodes where an import or export takes place; 2) eliminating the cap on eligible quantities under a MEEA; and 3) modifying the information it will require to execute a MEEA.

¹ *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,271 (2008) (September 19 Order).

I. Background

2. On June 17, 2008, the CAISO filed its proposal to establish an integrated balancing authority area (IBAA) and to apply the IBAA model to price import and export transactions with the Sacramento Municipal Utility District (SMUD) and Turlock Irrigation District (Turlock). The proposal established a single hub for modeling and pricing all imports and exports between the CAISO and SMUD and Turlock regardless of the 12 interconnection points that separate the CAISO from the SMUD and Turlock balancing authority areas.

3. 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 actually used to implement interchange transactions in exchange for an alternative pricing and modeling arrangement. The Commission's September 19 Order accepted the CAISO's proposal subject to modification and directed the CAISO to make a further compliance filing in response to several concerns.

II. Compliance Filing

4. On November 25, 2008, the CAISO filed revised tariff language to comply with the Commission's September 19 Order. The CAISO asserts that the revised tariff language it proposes will ensure that the CAISO's nodal pricing under MRTU will reflect the impacts of interchange transactions between the CAISO and the SMUD and Turlock balancing authority areas and that those transactions will be priced at just and reasonable levels.

III. Notice and Responsive Pleadings

5. Notice of the CAISO's filing was published in the *Federal Register*, 73 Fed. Reg. 75,425 (2008), with interventions and protests due on or before December 16, 2008. The City of Roseville, California (Roseville); the California Department of Water Resources: State Water Project (State Water Project); the City of Santa Clara, California (Santa Clara); Imperial Irrigation District (Imperial); SMUD; the City of Los Angeles Department of Water and Power (LADWP); Powerex Corp. (Powerex); Transmission Agency of Northern California (TANC); Modesto Irrigation District (Modesto); Northern California Power Agency (NCPA); Turlock; Southern California Edison (SoCal Edison); and Western Area Power Administration (Western) filed timely motions to intervene and comments or protests.

6. The CAISO filed an answer to protestors. Santa Clara, Turlock, Modesto, SMUD, TANC and Western filed responses to the CAISO's answer.

7. In the answers to CAISO's answer, the parties generally ask the Commission to deny the CAISO's answer or give other parties notice and a right to file an appropriate answer. First, they argue that the CAISO's answer is untimely. They state that the Commission's rules state that "[a]ny answer to a motion or to an amendment to a motion must be made within 15 days after the motion or amendment is filed, unless otherwise ordered,"² which would have required an answer to be filed by December 31, 2008. As a result, even if the Commission would have otherwise allowed the answer, they argue that the answer, which the CAISO filed on January 9, 2009, is nine days late. They maintain that the CAISO has not shown "extraordinary circumstances sufficient to justify the failure to act in a timely manner."³ Therefore, they argue that it would be arbitrary and capricious and contrary to the Commission's own regulation for the Commission to accept the CAISO's late answer without a showing by the CAISO of "extraordinary circumstances" which justify the CAISO's failure to timely file.

8. Further, the parties state that the Commission should enforce its general rule not to allow a party to file an answer to a protest because the CAISO does not provide appropriate reasons for accepting the answer. Further, they argue that the CAISO's answer is an attempt to get the Commission to rehear matters already decided.

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. 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 a protest unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

11. We find that no harm will be done if the Commission exercises its discretion to accept the CAISO's late filed answer. For this reason and because it aided us in our decision making, we hereby accept the CAISO's answer.

12. While the parties argue that the Commission should enforce its general rule not to allow a party to file an answer to a protest because the CAISO does not provide

² 18 C.F.R. § 385.213(d)(1) (2008).

³ 18 C.F.R. § 2008(b) (2008).

appropriate reasons for accepting the answer, the CAISO has acceded to several of the protestors' concerns. Therefore it has provided information that assisted us in our decision-making process. Further, as discussed below, the Commission rejects any argument in the CAISO's answer that attempt to get the Commission to rehear matters already decided.

B. Market Efficiency Enhancement Agreement Requirements

13. In the September 19 Order, the Commission found that several market flaws including mismatches between day-ahead and real-time markets, physically infeasible day-ahead schedules and insufficient information to enable accurate LMP calculations, while cured under MRTU for internal CAISO transactions, could still persist for interchange transactions.⁴ The Commission in the September 19 Order found the CAISO's IBAA proposal to be an appropriate means of addressing, consistent with MRTU, the impact and appropriate valuation of interchange transactions on its markets where little information is available for such transactions.⁵ However, the Commission also found that entities participating in the CAISO markets could receive a more favorable pricing structure if such entity provides the information necessary for the CAISO to more accurately model that entity's interchange transactions. Accordingly, in the September 19 Order the Commission determined that the "alternative pricing arrangement offered by the CAISO in exchange for the sharing of information is an integral part of the CAISO's proposal."⁶

14. The Commission approved the CAISO's IBAA proposal on the basis that the CAISO lacked the information necessary to model and price interchange transactions between the CAISO and the SMUD and Turlock balancing authority areas accurately. An integral component of the CAISO's IBAA proposal was that the CAISO provided the opportunity to enter into a MEEA as a means for any entity that is willing to provide the CAISO with the information needed to model their imports and exports with the CAISO a price that is more favorable than the proposed default price. The Commission found that the option to execute a MEEA will provide resources specifying the minimum information the CAISO requires to accurately model interchange transactions compensation commensurate with the LMP at the scheduling point.⁷ The Commission further determined that benefits from executed MEEAs will accrue to both the CAISO

⁴ September 19 Order, 124 FERC ¶ 61,271 at P 4-5.

⁵ *Id.*

⁶ *Id.* P 6, 181.

⁷ *Id.* P 181.

and the owners of such resources and thus it is necessary that MEEAs be developed in an open and equitable manner.⁸ The Commission, however, found that the MEEA proposal by the CAISO did “not offer a transparent and balanced agreement from which parties may develop an alternative pricing arrangement in a non-discriminatory manner.”⁹ Therefore, the Commission directed the CAISO to provide the Commission specific information regarding the MEEAs on compliance.¹⁰ Thus, the CAISO was directed to file, on compliance, tariff language describing the minimum information it will require an entity to provide to execute a MEEA and receive actual pricing for its interchange transactions with the CAISO.¹¹

15. In the September 19 Order, the Commission required that a MEEA would be available to any entity who opted to provide the information necessary for the CAISO to model its interchange transactions with the CAISO and that every transaction for which the CAISO received the requisite information would qualify for actual pricing.

16. While we accept several aspects of the CAISO’s compliance filing, we find that a few aspects of the CAISO’s compliance MEEA fail to offer a “transparent and balanced agreement for which the parties may develop an alternative pricing arrangement in a non-discriminatory manner.”¹² In particular, as discussed below, the CAISO does not adequately justify the need for a few of the limitations it includes in the MEEA and/or its proposed limitations are beyond the scope of compliance ordered in the September 19 Order. Accordingly, as discussed in the following sections, we reject those aspects of the CAISO’s compliance MEEA filing, and require the CAISO to file a new MEEA proposal consistent with this order within 60 days of the date of this order.¹³

⁸ *Id.*

⁹ *Id.* P 182.

¹⁰ For example, we directed the CAISO to propose the minimum information it needed to enter into a MEEA; state the limited purpose for which the CAISO will use the information; specify measures the CAISO must take to preserve the confidentiality of information; provide procedures with which the parties would have to comply in their negotiations; provide dispute resolution procedures; and establish audit rights for both parties.

¹¹ September 19 Order, 124 FERC ¶ 61,271 at P 182.

¹² *Id.*

¹³ It may be helpful for the CAISO to consult with its stakeholders in preparing its compliance filing. The Commission reminds the parties that they are free to avail

(continued...)

1. Eligibility Requirements

17. According to the CAISO, the purpose of a MEEA is to obtain sufficient information to verify the source and operation of resources within an IBAA that are dispatched to support an interchange transaction. The CAISO states that the information provided through a MEEA would make it possible to provide a resource-specific price for interchange transactions when appropriate, as opposed to the default price. In section 27.5.3.2 the CAISO proposes that it will “enter into a MEEA with any entity controlling supply resources within an IBAA to provide modeling and pricing for imports or exports between the IBAA and the CAISO Balancing Authority Area if the entity agrees to provide the requested information as specified herein.”

a. Comments and Answers

18. Santa Clara, TANC and Modesto generally protest the CAISO’s proposal that it will enter into a MEEA with “an entity controlling supply resources within an IBAA.” Santa Clara asserts that this contradicts the CAISO’s June 17, 2008 filing in which the CAISO stated that “any entity or group of entities that use the transmission system of an IBAA” would be able to execute a MEEA.¹⁴ TANC, Modesto and Santa Clara contend that it is unclear whether the CAISO’s proposed tariff language in section 27.5.3.2 is consistent with the CAISO’s representations. The definition of “control” provided by the CAISO is “ownership or any contractual arrangements that provide authority to schedule and/or receive the financial benefits of a transaction.”¹⁵ Protestors find this language to be unclear.

19. Protestors generally state that, by limiting MEEA eligibility to entities controlling supply resources within the currently established IBAA, the CAISO improperly precludes various entities from MEEA eligibility. TANC notes that the CAISO’s proposal precludes TANC from entering into a MEEA, although TANC has an 87 percent interest in the California-Oregon Transmission Project (COTP), simply because TANC does not control supply resources within an IBAA. TANC argues that since a supply resource that is imported into the CAISO via the COTP will receive the default price regardless of

themselves of the Commission’s Dispute Resolution Service in working through any such consultation process. The Dispute Resolution Service can be reached at 202-502-8702 or 877-FERCADR (337-2237).

¹⁴ CAISO June 17, 2008 Initial IBAA Filing, Attachments C and D, Appendix A: Master Definition Supplement (defining MEEA); *See also id.* at 9 (“[a]ll entities seeking to enter into commercial transactions in the CAISO markets may enter into MEEAs.”).

¹⁵ *See* Proposed MRTU Tariff section 27.5.3.2.1(b).

whether it is located within the IBAA, such resource should be eligible for MEEA treatment. TANC maintains that the September 19 Order does not preclude an entity that does not control supply resources within the IBAA from entering into a MEEA, therefore the proposal is a collateral attack on the September 19 Order.

20. In addition, TANC argues that the CAISO's proposed limitation on the types of entities that are eligible to execute a MEEA, and thus the number of entities that would be able to receive actual pricing under a MEEA, appears contradictory to its justifications for proposing the default pricing proposal in this proceeding. Specifically, TANC points out that the CAISO stated "the unwillingness of the IBAA Entities to exchange more useful data has been singularly instrumental in the CAISO's decision to propose a default modeling and pricing approach (which operates in the absence of data allowing the CAISO to verify the location and dispatch of the external resources used to implement interchange transactions)."¹⁶ Yet, the protestors argue that by limiting MEEA eligibility to only those entities "controlling supply resources within an IBAA," the CAISO is dramatically and unreasonably limiting the number of IBAA entities that could execute a MEEA and provide data in exchange for a more favorable pricing treatment than the default IBAA pricing.

21. Finally, protestors state the CAISO's proposed "within IBAA's" language in section 27.5.3.2 also fails to account for the fact that the Captain Jack substation, the default pricing point for imports into the CAISO balancing authority area, is not located within the currently established IBAA, but instead is located within the Bonneville Power Administration (Bonneville) balancing authority area. TANC argues that the CAISO proposal establishes a price for exports from the IBAA into the CAISO at a pricing point that is not part of the IBAA, or part of the CAISO balancing authority area, but rather located within Bonneville's balancing authority area.

22. Accordingly, TANC states that the Commission should reject the CAISO's proposal in section 27.5.3.2 to limit MEEA eligibility solely to "an entity controlling supply resources within an IBAA" as non-compliant with the Commission's September 19 Order directives, as inconsistent with the CAISO's June 17 IBAA filing and as unjust and unreasonable and unduly discriminatory towards entities using IBAA transmission facilities that will be precluded from MEEA eligibility. TANC argues that proposed section 27.5.3.2.3 is also unjust and unreasonable for similar reasons, as it appears to limit MEEA pricing to imports into the CAISO balancing authority area "at Scheduling Points that are part of an IBAA." TANC argues that, by so doing, the CAISO proposes to exclude schedules transmitted to the CAISO through the COTP or TANC Transmission Program that are not sourced from the SMUD and Turlock balancing authority areas from MEEA pricing. Similarly, TANC states that, based upon proposed section 27.5.3.2.4,

¹⁶ CAISO June 17, 2008 Initial IBAA Filing at 6.

exports from the CAISO that will use the COTP or the TANC Transmission Program but that will not ultimately sink in “Scheduling Points that are part of an IBAA,” will receive the default SMUD hub export price and will not be eligible for MEEA pricing. TANC claims that, as noted above, the proposed tariff language does not comport with the CAISO’s claim that all entities seeking to enter into commercial transactions in the CAISO markets may enter into MEEAs.

23. Santa Clara states that it is also concerned that the CAISO’s reference to “supply resources within an IBAA” casts doubt on the availability of an MEEA to an entity using the COTP to transmit energy from resources located beyond the IBAA. According to Santa Clara, the COTP is a transmission resource located in the IBAA that is capable of delivering energy to the CAISO grid. Although it is not clear if the CAISO intended to include the COTP as a supply resource for MEEA purposes, Santa Clara believes it should be eligible. According to Santa Clara, excluding the COTP as a resource eligible for MEEA pricing would be inconsistent with the CAISO’s statement that any entity or group of entities that use the transmission system of an IBAA would be eligible to execute a MEEA. Accordingly, Santa Clara asserts that, if an entity uses the COTP to import resources from beyond the IBAA into the CAISO’s system, that entity should be eligible for a MEEA.

24. Santa Clara also requests the Commission require the CAISO to modify the tariff language to clarify that supply resources located beyond the IBAA, that are transmitted on IBAA facilities, are eligible for a MEEA. Otherwise, Santa Clara argues that it could face unfair pricing with no access to a mechanism that the Commission deems is an “integral component of the CAISO’s IBAA proposal.”

25. Santa Clara believes the intent was to include Santa Clara’s rights to Western base resources as eligible for a MEEA. Santa Clara believes that its contractual rights to Western base resources meet that definition because Santa Clara’s Scheduling Coordinator schedules the import of Santa Clara’s share of the Western Base Resource into the CAISO balancing authority area, and Santa Clara receives the financial benefits of the energy delivery. Because it is critical to the ability of Santa Clara to utilize a MEEA, Santa Clara seeks clarification that its contractual rights to receive power from western base resources are eligible for a MEEA.

26. In its answer, the CAISO defends its proposed requirement that a MEEA signatory demonstrate that it controls supply resources within the IBAA to obtain MEEA pricing. The CAISO asserts that, without the requirement, it would be unable to ensure that bids for resources being scheduled into the CAISO markets were actually at the modeled locations. The CAISO asserts that its decision to define “control” as including ownership or contractual arrangements with generators within the IBAA ensures that entities with contractual arrangements are able to receive MEEA pricing if they can provide after-the-fact information to demonstrate that an interchange transaction was supported by a supply resource within the IBAA.

b. Commission Determination

27. The Commission accepted the CAISO's IBAA proposal as a reasonable means to account for the impacts of congestion on the CAISO's market caused by imports of energy from the Pacific Northwest.¹⁷ In the September 19 Order, the Commission stated that "the MEEA is an integral component of the CAISO's IBAA proposal," and that "resources capable of verifiably providing the CAISO with operational benefits should be valued and compensated appropriately."¹⁸ The Commission found that MEEAs were a necessary tool that would ensure that entities have the opportunity to receive actual pricing for interchange transactions between the CAISO and an IBAA in exchange for providing the information required for the CAISO to model their resource location.

28. The Commission approves limiting the eligibility for executing a MEEA to "any entity controlling supply resources" within an IBAA. The CAISO's original proposal was to allow any entity controlling generation, either physically or contractually, to enter into a MEEA.¹⁹ The Commission did not modify this requirement in the September 19 Order. For example, we stated that "[t]o the extent that [an IBAA entity] owns or controls resources, it will be able to enter into a MEEA with the CAISO."²⁰

29. Furthermore, prime purposes of the CAISO's IBAA proposal were to enable the CAISO to better model import/export transactions so as to calculate more accurate locational marginal prices and to better match day-ahead and real-time operations. To do this, the CAISO assumes under the IBAA proposal that import transactions are sourced from the Pacific Northwest (and are priced at Captain Jack based on such assumption), or, if the seller provides sufficient information to enable more accurate modeling, the CAISO will compute a location specific price. Under the second option, the seller must have sufficient control over the source of the energy so that it can obtain the necessary operational information and provide it to the CAISO. It is not apparent how an entity which does not control supply resources, either physically or contractually, can execute a MEEA when it can't demonstrate how its actions impact the CAISO system. Therefore, it is appropriate for the CAISO to limit MEEA eligibility to an entity controlling resources.

¹⁷ September 19 Order, 124 FERC ¶ 61,271 at P 5.

¹⁸ *Id.* P 181.

¹⁹ *See id.* P 160.

²⁰ *Id.* P 191.

2. Pricing

30. Section 27.5.3.2.1 of the CAISO's proposed tariff states that the data gathered through a MEEA would be used to determine "how the LMPs for transactions under the MEEA will be calculated." Section 27.5.3.2 describes the two types of data that the CAISO would require to price interchange transactions accurately: 1) historical hourly metered generation and load data from within the SMUD-Turlock IBAA; and 2) historical hourly information including data for all affiliates or entities over which the MEEA entity exercises control. The CAISO states that this information will permit the CAISO to provide signatories with the MEEA price as opposed to the default price for quantities that are deemed eligible.

a. Comments and Answers

31. Several Protestors argue that the CAISO's creation of a special "MEEA price" to indicate the price which parties executing MEEAs would be charged is inconsistent with the September 19 Order. Western points to the September 19 Order where the Commission ordered the CAISO to provide actual pricing to an entity executing a MEEA.²¹ According to SMUD, the intended meaning of "actual pricing" is clear enough; it refers to the LMP that the MEEA signatory would obtain based on the actual location of the resource, not the default LMP price contemplated under the IBAA tariff. SMUD argues that the CAISO's proposed tariff provisions render the promise of "actual pricing" almost illusory. Modesto contends that actual pricing is necessary to mitigate the adverse effects of the CAISO's default pricing. Western argues that, because the CAISO chose not to seek rehearing of the Commission's determination that MEEA signatories are to receive the LMP at the node, the CAISO should be ordered to delete the phrase "MEEA price" and substitute the phrase "actual price" in its proposed tariff amendment.

32. In its answer, the CAISO argues that protestors' assertions that its proposed tariff language does not offer an actual price under a MEEA are incorrect. The CAISO asserts that, under the proposed tariff language, the CAISO and MEEA signatories will negotiate which supply resources and loads support interchange transactions between the CAISO and the SMUD-Turlock IBAA and thus will receive LMPs for eligible imports and exports supported by those resources. The CAISO states that imports and exports that are deemed ineligible to receive MEEA pricing will receive the respective default LMP. The CAISO argues that the MEEA price is meant to reflect a supply resource or a group of supply resources that are dispatched to serve an interchange transaction, and thus should never be the LMP at the Tracy interchange point because there are no supply resources at

²¹ September 19 Order, 124 FERC ¶ 61,271 at P 182.

Tracy. The CAISO states that the actual price it proposes to provide to MEEA entities will be developed from a set of assumptions negotiated with the MEEA signatory.

33. The CAISO also disagrees with protestors that once a MEEA signatory has presented the CAISO with the minimum information required to model interchange transactions the entity is entitled to receive MEEA pricing for all interchange transactions. The CAISO argues that the fundamental purpose of a MEEA is to provide a price that reflects a specific interchange transaction, not every interchange transaction. The CAISO asserts that allowing MEEA entities to set a price for actual resources outside of the SMUD-Turlock IBAA would undermine the whole purpose of the MEEA.

b. Commission Determination

34. In the September 19 Order, the Commission determined that the appropriate compensation for entities executing a MEEA would be “actual pricing.”²² The Commission stated that, “the CAISO’s proposal further provides an opportunity for parties that can demonstrate the location of their resources to execute a MEEA and receive the LMP where the import actually enters the CAISO’s system.”²³ Therefore, “actual price” under a MEEA is to be reflective of the LMP at the nodes at which the actual import or export of energy associated with a particular interchange transaction has been demonstrated to have taken place. We find that this is consistent with the CAISO’s description of its IBAA proposal, which is to accurately model and price import and export transactions between the CAISO and the SMUD-Turlock IBAA.

35. The CAISO was required to propose on compliance what information it would require for the execution of a MEEA. The Commission expected that the CAISO would request the type of data necessary to accurately model and price external resources and thus accurately price all interchange transactions between the CAISO and a MEEA signatory.²⁴ The Commission made clear in the September 19 Order that such information was to be no more than the minimum required to perform price computations,²⁵ was to be used for limited purposes and was to be treated confidentially.²⁶ While the Commission agrees with the CAISO that the appropriate price for each interchange transaction is to be a reflection of the location of that particular

²² *Id.*

²³ *Id.* P 105.

²⁴ *See id.* n.6 and P 182.

²⁵ *See id.* P 182.

²⁶ *Id.* P 184.

import or export, it is the CAISO's obligation to ensure that accurate LMPs are determined for each and every interchange transaction with a MEEA signatory. If, as the CAISO asserts, numerous imports from the SMUD-Turlock IBAA originate north of Captain Jack, the data provided pursuant to a MEEA will show that the import originates from the Pacific Northwest, and the Captain Jack LMP will be the appropriate price under the MEEA. We will therefore require the CAISO to clarify that the price provided to a MEEA signatory will be reflective of the LMP at the nodes where a specific import or export between the SMUD-Turlock IBAA and the CAISO is demonstrated to be located. The CAISO should make a compliance filing reflecting this change within 60 days of the date of this order.

3. Eligible Quantities

36. The CAISO states that the MEEA price will apply when hourly information reflects that the incremental source of generation supporting an import to the CAISO, or being reduced as a result of an export from the CAISO, is actually located at the injection/withdrawal points used to model and price the system of resources and loads owned or controlled by the MEEA signatory within the SMUD-Turlock IBAA. The CAISO states that it requires a MEEA signatory to provide certain information, discussed below, to determine the volume of eligible imports or exports that will qualify an interchange transaction for a MEEA price as opposed to the default IBAA price. The CAISO states that for any energy sales from an IBAA into the CAISO balancing authority area in excess of eligible quantities, the MEEA signatory will receive the default pricing point for the corresponding volume and time period.

37. The CAISO states that only quantities as determined by the CAISO's formula set forth in sections 27.5.3.2.3 and 27.5.3.2.4 will qualify for the MEEA price. As discussed below, the CAISO's proposal does not allow an entity which imports and exports between the CAISO and the integrated SMUD-Turlock balancing authority areas within the same hour to receive MEEA pricing. In addition, the CAISO has included a methodology to determine a limit on the volume of imports or exports eligible for MEEA pricing. The CAISO maintains that this formula recognizes that MEEA signatories may also engage in bilateral transactions within the SMUD-Turlock IBAA and may import and/or export energy between the SMUD-Turlock IBAA and other balancing authority areas. As a consequence, in order to achieve the fundamental goal of a MEEA - to price external resources accurately within the SMUD-Turlock IBAA - the CAISO proposes to require the hourly historical information for its settlement processes.

38. First, the CAISO provides that, during any hour in which a MEEA signatory makes purchases from the CAISO at an interchange between the SMUD-Turlock IBAA and the CAISO in the same hour that the MEEA signatory is making an energy sale to the CAISO balancing authority area at an interchange between the SMUD-Turlock IBAA and the CAISO, the MEEA signatory will be charged and pay the default IBAA price for the corresponding volume and time period, rather than the MEEA price.

39. The CAISO explains that this practice is consistent with the eastern markets and that if there are imports and exports between the CAISO and the integrated SMUD-Turlock balancing authority areas within the same hour, it is more difficult for the CAISO to ensure that the interchange transactions are supported by external resources within the SMUD-Turlock IBAA. The CAISO acknowledges that this provision may disqualify volumes that would otherwise be eligible for a MEEA price and is willing to discuss instances where this tariff provision should not apply with entities seeking to negotiate a MEEA. However, the CAISO believes it is prudent to adhere to rules adopted by eastern markets until the CAISO and market participants develop some experience with modeling and pricing interchange transactions between the CAISO and the SMUD-Turlock balancing authority areas.

40. In addition, the CAISO proposes to limit the volume of imports and exports eligible for MEEA pricing. Section 27.5.3.2.3 of the compliance tariff states that during each Trading Hour, the volume of imports from the SMUD-Turlock IBAA into the CAISO balancing authority area by the MEEA signatory that would be eligible for MEEA pricing is limited to the MEEA maximum eligible imports to the CAISO balancing authority area.

41. The CAISO defines the MEEA maximum eligible imports to the CAISO balancing authority area as the MEEA metered generation²⁷ within the SMUD-Turlock IBAA less (i) the MEEA metered load,²⁸ (ii) MEEA gross exports from the SMUD-Turlock IBAA to other balancing authority areas other than the CAISO balancing authority area,²⁹ and (iii) the MEEA gross sales within the SMUD-Turlock IBAA.³⁰

42. The CAISO defines the MEEA maximum eligible exports from the CAISO balancing authority area as the MEEA metered load less the (i) MEEA metered

²⁷ The MEEA metered generation is the total metered output of the generating resources within the IBAA under the control of the MEEA signatory.

²⁸ The MEEA metered load is the total metered load served by the MEEA signatory in the IBAA.

²⁹ The MEEA gross exports from the IBAA to other balancing authority areas includes all Energy exports scheduled and delivered (as identified in the e-tags) by the MEEA signatory on interchanges between the IBAA and other balancing authority areas (excluding the CAISO balancing authority area).

³⁰ MEEA gross sales within the IBAA include all energy sales or exchanges made by the MEEA signatory at delivery points within the IBAA.

generation, (ii) MEEA gross imports into the SMUD-Turlock IBAA,³¹ and (iii) MEEA gross purchases within SMUD-Turlock IBAA.³²

43. The proposed tariff language states that for any energy imports into the CAISO balancing authority area in excess of this maximum limit, the MEEA signatory will be paid the default IBAA price for the corresponding volume and time period.

a. Comments and Answers

44. Protestors generally oppose the CAISO's proposal to limit MEEA eligibility, either by applying the default price to any entity that simultaneously imports to and exports from the CAISO or instituting a cap on eligible quantities. The protestors generally argue that these limitations inappropriately and unnecessarily expand the applicability of the default IBAA pricing, and limit the availability of MEEA pricing.³³ According to SMUD, Turlock and Santa Clara, the September 19 Order requires that once the MEEA signatory provides the CAISO the information it seeks, the CAISO must offer actual pricing. They state that the CAISO has violated this directive by denying actual pricing during periods of simultaneous sales and purchases and allowing actual pricing only on incremental sales of energy. Turlock further states that these changes were not directed by the Commission and should be rejected.³⁴

45. According to SMUD, the effect of the limitation regarding simultaneous imports and exports is dramatic.³⁵ If a MEEA signatory, for example, were to contract for a long

³¹ MEEA gross imports into the IBAA from other Balancing Authority Areas include all energy imports by the MEEA signatory into the IBAA scheduled and delivered on interchanges as identified in the e-tags between the IBAA and other Balancing Authority Areas (excluding the CAISO Balancing Authority Area).

³² MEEA gross purchases within the IBAA include all energy purchases or exchanges made by the MEEA signatory at delivery points within the IBAA.

³³ See SMUD, Santa Clara, TANC and Turlock.

³⁴ Turlock at 14, citing September 19 Order, 124 FERC ¶ 61,271, at P 182, 185; *Northwestern Corp.*, 113 FERC ¶ 61,215, at P 9 (2005); *California Power Exchange Corp.*, 101 FERC ¶ 61,330, at 62,371 (2002); *ISO New England, Inc.*, 91 FERC ¶ 61,016, at 61,060 (2000); *PJM Interconnection, LLC*, 101 FERC ¶ 61,135, at 61,572 (2002) (compliance filings should be limited to the specific directives ordered by the Commission).

³⁵ Several parties provide examples of this treatment. For example, if a MEEA signatory were to make a one MW purchase from the CAISO and a simultaneous 200

term purchase from within the CAISO balancing authority area, even the smallest hourly deliveries under the contract would force the MEEA signatory to accept the default price on any sales into the CAISO balancing authority area taking place during those same hours. Further, according to SMUD, the MEEA signatory would not learn that it had lost actual pricing eligibility until after-the-fact because section 27.5.3.2.2 allows the CAISO to apply default pricing if it determines, based on its subsequent review of the historical hourly data corresponding with the transaction, that a simultaneous sale and purchase occurred during the specific interval; again, without regard to volume.

46. SMUD, Turlock and Santa Clara state that the CAISO has not met its burden to justify the restriction on actual pricing it proposes in section 27.5.3.2.2. First, Santa Clara states that the “more difficult” standard of proof is insufficient to support the inclusion of the newly-proposed netting proposal in a compliance filing. Further, SMUD, Turlock and Santa Clara object to the CAISO’s argument that it is more difficult for the CAISO to ensure that the interchange transactions are supported by external resources within the SMUD-Turlock IBAA when there are simultaneous imports and exports. Santa Clara states that through the MEEA, the CAISO will have the information to determine that a simultaneous import/export occurred, and to determine the relative volumes imported and exported. More importantly, SMUD, TANC and Santa Clara note that the CAISO acknowledges that this provision may disqualify volumes that would otherwise be eligible for a MEEA price.³⁶

47. SMUD and Santa Clara note that the CAISO is “willing to *discuss* instances where this tariff provision should not apply with entities seeking to negotiate a MEEA.”³⁷ Both SMUD and Santa Clara maintain that such an “offer” flouts the Commission’s directive. SMUD argues that, by forcing parties into still further uncertain negotiations it does not offer a transparent and balanced agreement from which parties may develop an alternative pricing arrangement in a non-discriminatory manner.

48. Santa Clara, Turlock and TANC maintain that the CAISO’s arguments that this practice is consistent with that in the eastern markets are unfounded. According to Santa Clara, although the Commission ultimately found enough similarities to rely on the eastern markets as support for the gaming concerns articulated in the IBAA proposal, it acknowledged the differences established by Santa Clara. Santa Clara notes that the agreements used in the eastern markets were negotiated and never approved by the

MW sale into the CAISO, none of its sales or purchases would qualify for actual pricing – i.e., they would receive the IBAA default price. *See* SMUD protest at 5.

³⁶ CAISO November 25, 2008 Compliance Filing at 9.

³⁷ *Id.*

Commission, and therefore they provide no precedential guidance for the Commission's review of the terms proposed by the CAISO. Further, Santa Clara and Turlock assert that none of the eastern markets impose a limitation in actual pricing like that proposed by the CAISO and those agreements contain explicit exceptions allowing simultaneous imports and exports. Santa Clara maintains that the CAISO's attempt to use the Commission's comparisons as they relate to gaming to manufacture comparisons related to netting are not helpful. These comparisons do not exist in the order, which did not address the netting proposal.

49. Turlock states that, if the CAISO's proposed limitation on actual pricing is not rejected, it will result in unjust and unreasonable prices that are anti-competitive and violate the doctrine of cost causation because MEEA signatories' customers will be forced to subsidize the CAISO's customers' rates by paying and receiving the punitive default prices, solely to the benefit the CAISO's customers.³⁸ Such one-sided, discriminatory pricing would undermine the energy markets in both the west and in the Pacific Northwest.

50. Finally, Turlock states that if MEEA signatories are not guaranteed that they will receive actual pricing for their interchange transactions, even though they have provided the CAISO with the requisite information needed to do so, these entities will not sign a MEEA because the signing of a MEEA will not ensure that they will be able to recover their costs. If entities do not sign MEEAs, Turlock maintains that the default prices will stop entities from selling into the CAISO balancing authority area.

51. According to Santa Clara, to the extent the Commission is concerned with the CAISO's ability to ensure that the interchange transactions are supported by external resources within the SMUD-Turlock IBAA when there are imports and exports between the CAISO and the SMUD-Turlock IBAA within the same hour, the Commission should require two modifications. First, any limitation should be exclusively tied to import and export volumes between the CAISO and a specific IBAA. Otherwise, for example, the CAISO could limit MEEA pricing available to Santa Clara for exports on the COTP based on Santa Clara simultaneously importing Southwest resources at points in the southern portion of the CAISO balancing authority area. Second, Santa Clara and

³⁸ Turlock at 16, citing *New England Power Pool, New England Independent System Operator*, 105 FERC ¶ 61,317, at P 22 (2003) (“[t]he Commission agrees with Fitchburg that our cost causation principle requires that rates should as closely as practicable reflect the costs to serve each class of customers.”); *New York Independent System Operator, Inc.*, 102 FERC ¶ 61,284, at P 14 (2003) (“[c]ost causation principles require that cost responsibility match as closely as practicable the cost of providing the service”).

Turlock offer that default pricing should not be applied to net amounts above the simultaneous import/export volumes between a particular IBAA and the CAISO.³⁹

52. In addition, according to SMUD, the CAISO does not explain its proposal to cap the amount of transactions that qualify for MEEA pricing to a specific formula for imports to and exports from the CAISO by a MEEA entity. SMUD reads this provision to mean that, if SMUD's metered generation and metered load were equal, but SMUD were able to displace 200 MW of its metered generation with less expensive power from the Pacific Northwest, a sale of the displaced 200 MW into the CAISO balancing authority area would not qualify for actual pricing.

53. SMUD asserts that this is inconsistent with the CAISO's earlier representations to the Commission about the need for the data and what MEEA signatories would get in exchange. It argues that these tariff restrictions render irrelevant any data showing that SMUD's imports into the CAISO balancing authority area are from SMUD's internal resources.

54. TANC argues that the CAISO's attempt to restrict eligible MEEA transactions violates the Amended Owners Coordinated Operating Agreement (Coordinated Operating Agreement). According to TANC, the Coordinated Operating Agreement bars charges for power that flows over the three-line system. Section 8.4 of the Amended Coordinated Operating Agreement provides that "[n]o Party shall be charged any rate . . . for any power, which flows over the System" By excluding certain transactions from receiving MEEA pricing, the CAISO effectively charges that entity (by virtue of the CAISO's IBAA default pricing) for losses on the California-Oregon Intertie.

55. SMUD and Turlock argue that these limitations will unjustifiably prohibit a MEEA signatory from receiving actual pricing for its imports and exports into and out of the CAISO balancing authority area even if the resource-specific origin of a transaction is fully supported by the information that will be provided under section 27.5.3.2.2.⁴⁰

³⁹ Santa Clara notes that the CAISO's June 17, 2008 Initial IBAA Filing counterproposal included a netting proposal, but that the Commission specifically declined to reach the merits of alternate proposals. It argues that it is entirely inappropriate for the CAISO to attempt to reintroduce it in its compliance filing.

⁴⁰ For example, Turlock states that its internal generation often does not exceed its load. SMUD asserts that it has historically purchased energy from the Pacific Northwest which it has used to displace some of SMUD's more expensive metered generation and, where the incremental cost of SMUD's displaced generation was still lower than the cost of metered generation operated by its neighbors, SMUD has offered its surplus energy for sale at a price advantageous to both parties.

According to Turlock, such a proposal defies logic and will only result in the same unjust, unreasonable and unduly discriminatory prices and resource adequacy problems that were caused by the proposed limitation in section 27.5.3.2.2.

56. According to SMUD, section 27.5.3.2.3 assumes that an external entity would first sell into the CAISO any Pacific Northwest energy it acquires instead of serving its own customers and selling the excess. SMUD asserts that this assumption is illogical and unduly discriminatory. SMUD argues that it is given no means to disprove the assumption when, in analogous contexts, the CAISO either accepts a party's representation or works from its own assumption. For example, SMUD points to the fact that the CAISO allows a user to certify that it is eligible for the treatment of losses.

57. SMUD makes similar arguments with respect to section 27.5.3.2.4, which allows a MEEA signatory to pay actual prices for purchases (exports) from the CAISO only up to an arbitrary "eligible export" quantity. According to SMUD, there are two serious flaws in the tariff. First, similar to SMUD's arguments concerning the limits on the amount of imports eligible for MEEA pricing, SMUD asserts that the CAISO fails to offer any explanation for the quantity limitations it has imposed. Second, the CAISO nowhere defines *how* it will calculate actual prices for those quantities that do qualify for MEEA "actual pricing."

58. According to SMUD, even if the CAISO could have justified some limitation, the restriction it chose is, on its face, arbitrary and unreasonable. The CAISO has already explained its assumption that exports from the CAISO into the SMUD balancing authority area will be used to displace SMUD's metered generation.⁴¹ If that is the CAISO's assumption, then, assuming it is true, there would be no reason why SMUD should not qualify for actual pricing, at a minimum, up to the level of its metered generation.

59. Finally, SMUD argues that, whether or not some restriction on the quantities eligible for actual pricing of exports could be justified, the CAISO was still obliged to explain to MEEA signatories how their actual payments for exports would differ if they qualified for actual pricing. In this respect, the CAISO's tariff language poses a dual problem; would-be signatories are not told how either the default price or the actual price will be determined, making any comparison of their alternatives impossible.

⁴¹ September 19 Order, 124 FERC ¶ 61,271 at P 72, 191. *See also* CAISO June 17, 2008 Initial IBAA Filing, Ex. ISO-1 at 62.

b. Commission Determination

60. In its compliance filing, the CAISO states that the MEEA price will apply when hourly information reflects that the incremental source of generation supporting an import to the CAISO, or being reduced as a result of an export from the CAISO, is actually located at the injection/withdrawal points used to model and price the system of resources and loads owned or controlled by the MEEA signatory within the SMUD-Turlock IBAA.⁴² In its answer, the CAISO states that a fundamental purpose of a MEEA is to provide the pricing benefit associated with the location of a resource supporting a specific interchange transaction, not necessarily all interchange transactions.⁴³

61. We find that the CAISO's limits on quantities of transactions eligible for MEEA pricing are not justified by the CAISO and do not comply with the Commission's September 19 Order. First, the CAISO's original IBAA proposal did not propose to limit MEEA pricing in the manner proposed by the CAISO; nor did the Commission in the September 19 Order limit the availability of actual pricing based on a formula or if an entity simultaneously imports and exports power. As stated above, the Commission found that an entity may receive a more favorable pricing structure if it is willing to provide the CAISO with information that allows it to verify the location and operation of the resources used in interchange transactions between the CAISO-controlled grid and the SMUD-Turlock IBAA.⁴⁴ In addition, the Commission required the proposed MEEA to offer a transparent and balanced agreement from which parties may develop an alternative pricing arrangement in a non-discriminatory manner.⁴⁵ The CAISO's proposed limitations do not appear to satisfy such balancing. Further, the CAISO provides no Commission precedent supporting its claim that eastern markets disqualify volumes where there are simultaneous imports and exports. Therefore, if the MEEA signatory can verify the location and operation of an import or export, then it should receive actual pricing for the interchange transactions. For example, if the MEEA signatory which imports and exports in the same hour and can verify the location and operation of an import, but not the export, it should be eligible for actual pricing for the import and default pricing for the export. If that entity is able to verify the location and operation of both the import and the export, then it should receive actual pricing for both transactions. We also find the CAISO has not explained why its proposed restrictions are

⁴² CAISO November 25, 2008 Compliance Filing at 8.

⁴³ CAISO January 9, 2009 Compliance Answer at 4.

⁴⁴ September 19 Order, 124 FERC ¶ 61,271 at P 6.

⁴⁵ *Id.* P 182; *see also id.* P 181 (requiring that MEEA's be "developed in an open and equitable manner").

necessary to accurately model these transactions, or how such restrictions are consistent with its initial application and is in compliance with our prior order.

62. The CAISO asserts, but provides no support, that it is “more difficult for the CAISO to ensure that the interchange transactions are supported by external resources within the IBAA.” Regardless of whether such price treatment may be more difficult, we find that the need for a balanced, transparent and non-discriminatory MEEA dictate that such price treatment be made available, as we required in the September 19 Order. We hereby reject the CAISO’s proposal to disallow MEEA pricing for hours where a MEEA signatory simultaneously imports to and exports from the CAISO on the basis that it is inconsistent with the Commission’s September 19 Order and the CAISO has failed to justify such a divergence from its original proposal here. Similarly, we reject the CAISO’s proposal to limit the maximum amount of imports and exports as set forth in proposed section 27.5.3.2.3. Therefore, we will require the CAISO to remove reference to the import/export limitation and the maximum import/export limitations on eligible MEEA quantities from its tariff. The CAISO should make a compliance filing reflecting these changes within 60 days of the date of this order.

63. Finally, TANC’s concerns that the CAISO has attempted to restrict eligible MEEA transactions in violation of the Coordinated Operating Agreement should be satisfied by the Commission’s finding that the CAISO must modify its tariff to allow all transactions that can show their location to receive actual pricing, without a cap or a restriction on simultaneous imports and exports.

64. Given our determination, we need not address protestors’ proposals to net the imports and exports in a trading hour.

4. Data Requirements

65. Section 27.5.3.2.2 of the CAISO’s tariff filing provides the minimum information that would be required from a MEEA signatory in exchange for pricing under the MEEA. CAISO states that historical hourly data must be provided for: (a) total metered generation owned or under the control of the MEEA signatory within the IBAA; (b) total gross energy scheduled by the MEEA signatory into the IBAA from other balancing authority areas; (c) total gross energy purchases made by the MEEA signatory at delivery points within the IBAA, including purchases from third parties, and exchanges acquiring energy from third parties; (d) total metered load served by the MEEA signatory within the IBAA; (e) total gross energy scheduled by the MEEA signatory out of the IBAA into other balancing authority areas; and (f) total gross energy sales made by the MEEA signatory for delivery points within the IBAA, including sales to third parties, and exchanges.

66. The CAISO asserts that this information is necessary to determine for each MEEA: (a) the injection and withdrawal points to model for the MEEA entity’s imports

and exports between the IBAA and the CAISO balancing authority area; (b) which external supply resources and load within the IBAA the MEEA entity has control over; (c) the (resource identification numbers Resource IDs) that apply for the MEEA transactions; and (d) how LMPs for transactions under the MEEA will be calculated. The CAISO states that it would require updates to the historical data provided from time to time to update the modeling and pricing details under the MEEA.

a. Comments and Answers

67. Several parties, including Santa Clara, Turlock and TANC, argue that the CAISO has not adequately specified the minimum information required to enter into a MEEA. Imperial, on the other hand, asserts that the CAISO has failed to explain why the information it would require is necessary, particularly for purposes of verifying the location and operation of resources within an IBAA dispatched for interchange transactions. Imperial asserts that the only information the CAISO should need is the contract path and identified generation sources for sale, information that is already available to the CAISO on a tag required by the North American Electric Reliability Corporation (NERC).

68. SMUD asserts that there are three problems with the data requirement provisions of the compliance tariff: (1) the precise nature, granularity and production timetable associated with the data the CAISO expects of a MEEA signatory is unknown, (2) the CAISO's requirement for data to verify MEEA signatory compliance with arbitrary limits on quantities eligible for MEEA pricing goes beyond the minimum data collection the Commission has authorized, and (3) regardless of whatever data is ultimately required, the MEEA signatory still will not know until after the fact whether its transactions qualify for "actual pricing." According to SMUD, these problems, in and of themselves, render the MEEA provisions of the compliance tariff unworkable.

69. According to TANC, the CAISO's limitation on MEEA eligibility and use dramatically increases the amount and complexity of data needs for the MEEA. Only because it seeks to limit MEEA eligibility, as discussed above, does the CAISO require the magnitude of information it proposes. By eliminating these restrictions, TANC argues that the Commission will be able to significantly reduce the information burden the CAISO would impose on entities entering into a MEEA. Thus, TANC argues that the CAISO's proposal does not seek the "minimum" information necessary for the CAISO to accurately model interchange transactions as required by the September 19 Order.

70. NCPA expresses concern that the CAISO's filed tariff language in section 27.5.3.2.1-4 does not address the difficulty NCPA faces in providing the type of data the CAISO would require to execute a MEEA. NCPA asserts that, because Western dispatches its fleet as a whole to meet its obligations (including serving NCPA), Western does not designate which of its resources are serving which of its contractual obligations. Furthermore, NCPA explains that Western does not have a contractual obligation to

provide information about which resources were dispatched to serve NCPA. NCPA ask that the CAISO be required to indicate how it would determine for a MEEA what resource is dispatched to meet NCPA's increment of load.

71. Turlock, TANC and SMUD maintain that it is unclear what historical information will be required. TANC and Turlock assert that the CAISO has not provided information regarding the timeframe for the data it seeks and does not specify what it means by the term "historical." According to TANC, by not providing more specific guidance regarding the data it seeks, the CAISO fails to specify the minimum information it seeks under a MEEA, and therefore fails to provide the Commission with the necessary information to assess the data the CAISO should receive. According to TANC, permitting the CAISO to unilaterally determine what type of historical information it will require from each MEEA entity is inconsistent with the Commission's concern for a "transparent and balanced agreement." Accordingly, TANC asks the Commission to reject the CAISO's proposal to require information from entities seeking to execute a MEEA. In the alternative, TANC asks that the CAISO be required to modify its proposal in section 27.5.3.2.1 to resolve the above-noted deficiencies and concerns.

72. SMUD and TANC are also concerned that the CAISO has not explained the meaning of "standard electronic format" as that phrase is used in sections 27.5.3.2.1 and 27.5.3.2.2. Further, SMUD and TANC contend that providing data in a format acceptable to the CAISO still may require a MEEA signatory to change its data format methodology for purposes of a MEEA, which would be a significant administrative burden. TANC notes, for example, that Western maintains its data in a format consistent with the WECC requirements and cannot guarantee the accuracy of information in non-native format. TANC states that the CAISO is not clear if the WECC format would constitute a "standard electronic format," and asks the Commission to direct the CAISO to clarify that information provided in a format consistent with the WECC's requirements will be sufficient under MEEAs.

73. Similarly, TANC maintains that the CAISO proposal in section 27.5.3.2.2 requiring the MEEA signatory to provide the data to the CAISO in a "manner and timeline" that is consistent with the rules for the submission of meter data specified in section 10 of the MRTU tariff is also unreasonable. SMUD states that it is unclear how frequently data must be provided. According to TANC, by not providing more specific information regarding the data it seeks, the CAISO fails to specify the minimum information it seeks under a MEEA, and therefore fails to provide the Commission with the necessary information to assess the data the CAISO should receive. According to TANC, the CAISO's proposed tariff language fails to account for the fact that the CAISO's timeline and format requirements for maintaining scheduling, bidding and operational data is different from its neighboring balancing authority areas. SMUD and TANC argue that it would be unduly burdensome to require the neighboring balancing authority areas to change their commercial practices despite the fact that the Commission

determined in its September 21, 2006 Order conditionally approving the CAISO's MRTU tariff that existing commercial practices would be accommodated under MRTU.

74. According to SMUD, the CAISO previously represented to the Commission that its willingness to offer actual pricing would be based on the availability of information verifying that SMUD and Turlock dispatch their own internal resources to support imports to the CAISO.⁴⁶ SMUD maintains that the data required by the CAISO under its compliance tariff, however, is fashioned not merely to verify the sources used to support an interchange transaction, but to enable the CAISO to determine that a MEEA signatory only gets actual pricing for the so-called eligible quantities. But, according to SMUD, the CAISO has failed to justify the quantity limitations on a MEEA signatory's eligibility for actual pricing. SMUD reasons that *a fortiori*, data requirements used to enforce these quantity limitations go beyond the minimum needed by the CAISO to determine the actual sources used in the transactions.

75. Further, SMUD maintains that the compliance tariff leaves potential MEEA signatories uncertain whether they will qualify for a MEEA price before making sales or purchases. All of the CAISO's calculations to ascertain whether a transaction qualifies for the non-default price take place post-transaction. Therefore, even if it has executed a MEEA, a MEEA signatory will never know at the time of the transaction what price it will either be paid or pay, since the CAISO ultimately determines what sales or purchases are eligible. Moreover, according to SMUD, the MEEA's mechanism is a recipe for disputes – assuming a MEEA signatory was willing to execute one.

76. TANC states that proposed section 27.5.3.1, requiring historical hourly metered generation data for the entity's supply resources within the SMUD-Turlock IBAA as well as the entity's metered load data from within the SMUD-Turlock IBAA, goes beyond the bounds of the September 19 Order directives because the Commission did not allow the CAISO to require an entity seeking to execute a MEEA to provide any sensitive information as a precondition for establishing a MEEA. According to TANC, the CAISO failed to propose this pre-execution requirement as part of its June 17, 2008 Initial IBAA Filing, and the Commission did not order the CAISO to propose this requirement in the September 19 Order. TANC maintains that the CAISO's filing is also inconsistent with the Commission's determination that once the IBAA entity provides the "minimum information" the CAISO needs to more accurately model interchange transactions, that the CAISO should provide that entity with "actual pricing."

77. TANC also argues that the CAISO's proposed language fails to specify its obligation to change the model based on a MEEA signatory's updated information,

⁴⁶ SMUD Protest at 7, citing September 19 Order, 124 FERC ¶ 61,271 at P 65.

providing only that the “the CAISO or MEEA signatory may request updates....”⁴⁷ According to TANC, this omission fails to reflect an appropriate balance of a MEEA signatory’s interests with that of the CAISO. TANC argues that the CAISO should not be afforded the discretion to only make modeling changes based upon information it requested. The CAISO has not proposed criteria on when it will or will not accommodate a MEEA signatory’s request for an update of the modeling and pricing details under the MEEA. Imposing the burden of filing a complaint under section 206 to reflect the updated cost information may discourage MEEA participation and burden both the MEEA entity and the Commission with unnecessary proceedings.

78. In its answer, the CAISO reiterates that, in compliance with the Commission’s directives, the proposed tariff language describes two sets of information it would require a MEEA signatory to provide: (1) historical data to develop an IBAA network topology that underlies interchange transactions under the MEEA; and (2) after-the-fact information for the financial settlement of interchange transactions. The CAISO asserts that the proposed tariff language was written to permit the CAISO and an entity interested in executing a MEEA the flexibility to identify a representative set of historical data and that the amount of historical information may depend on factors such as weather, generator unit outages, and load growth. The CAISO contends that the after-the-fact information is necessary to verify the performance of the MEEA signatory to ensure that the LMPs received by the MEEA entity are for interchange transactions actually supported by resources within the SMUD-Turlock IBAA.

79. The CAISO disputes protestors assertions that it has failed to identify the minimum information necessary to accurately model and price external resources supporting interchange transactions. The CAISO argues that the proposed tariff language explains that the information required would be used to verify the location and operation of resources supporting interchange transactions and that the scope of the data is both well defined and consistent with the Commission’s September 19 Order.⁴⁸

b. Commission Determination

80. In the September 19 Order, the Commission stated that it would “require the CAISO to include tariff provisions that specify the minimum information it requires to accurately model interchange transactions,” and that “once it receives this information the CAISO must offer actual pricing to the party signing the MEEA.”⁴⁹ This information

⁴⁷ September 19 Order, 124 FERC ¶ 61,271 at P 65.

⁴⁸ CAISO January 9, 2009 Compliance Answer at 6.

⁴⁹ September 19 Order, 124 FERC ¶ 61,271 at P 182.

was intended 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,”⁵⁰ in order to properly model the LMP. The CAISO asserts that its proposed tariff language complies with this requirement and provides that entities interested in executing a MEEA must submit historical aggregate information on the entity’s metered load, metered generation, and energy sales and purchases. While the Commission finds that the proposed tariff provisions do include general information requirements for MEEAs, this information seems to be designed to implement the CAISO’s limitations on eligibility for MEEA pricing, particularly the CAISO’s “eastern market” netting proposal.⁵¹ Further, the CAISO has failed to provide adequate support to demonstrate how the type of data it seeks will allow it to verify the location and operation of the resources used to implement interchange transactions between the CAISO-controlled grid and the IBAA, as required by the September 19 Order.⁵²

81. In support of its information requirements, the CAISO states that the MEEA price will apply when hourly information reflects that the incremental source of generation supporting an import to the CAISO, or being reduced as a result of an export from the CAISO, is actually located at the injection/withdrawal points used to model and price the system of resources and loads owned or controlled by the MEEA signatory within the SMUD-Turlock IBAA. Given that the Commission has directed the CAISO to eliminate its limitations on eligible quantities to receive MEEA pricing, the CAISO is directed to eliminate those data requirements proposed in section 27.5.3.2.2 of the CAISO tariff or explain and support them to the Commission and file revised data requirements in a compliance filing within 60 days of the date of this order.

82. With respect to protestors’ concerns about the timeline and format that would be required for data submissions, we agree that the CAISO has failed to provide sufficient detail. It is unclear what the CAISO means by “standard electronic format” and whether or not the WECC format would be accepted. We agree with TANC that providing information in a format that is consistent with WECC’s requirements is a reasonable approach and, therefore, we will require the CAISO to clarify that the WECC format is an acceptable form for data submissions. We will also require the CAISO to clarify and support, on further compliance, the timeline it will require for data submissions under a MEEA.

⁵⁰ *Id.* P 6.

⁵¹ SMUD’s arguments regarding the appropriateness of these limitations are discussed, *infra*.

⁵² September 19 Order, 124 FERC ¶ 61,271 at P 6.

83. Further, we required the CAISO to specify the information it seeks by the type of entity involved in a potential MEEA.⁵³ The CAISO did not do so. The CAISO has provided no information as to how it intends to identify the resource supporting the interchange transactions and include this information in its tariff, as required in the September 19 Order.⁵⁴

84. The CAISO should make a compliance filing reflecting these changes within 60 days of the date of this order.

5. Confidentiality of Data

85. Section 27.5.3.5 of the CAISO's tariff compliance language sets forth the measures the CAISO intends to use to preserve the confidentiality of data under a MEEA. Specifically, the CAISO states that it intends to treat any information provided by a market participant to the CAISO during the negotiation of a MEEA or under an executed MEEA as confidential data subject to section 20 of the CAISO's tariff. According to the CAISO, this provision provides sufficient assurances that the CAISO will protect against the disclosure of commercially sensitive and proprietary data. The CAISO anticipates the terms and conditions of a negotiated MEEA would be consistent with the provisions of section 20 of the CAISO's tariff.

a. Comments and Answers

86. TANC states that section 27.5.3.5 of the tariff provides that the CAISO shall treat any information provided by a market participant to the CAISO during the negotiation of a MEEA or under an executed MEEA as confidential data subject to section 20 of the CAISO's tariff. TANC argues that the CAISO's reference to section 20 appears unduly vague and insufficient to protect the confidentiality of sensitive MEEA information. Specifically, according to TANC, the types of information that the CAISO will keep as confidential under section 20 does not appear to include "metered generation data" or "metered load data," such as that specified in proposed section 27.5.3.2.1 nor does it include "gross Energy schedules" or "gross Energy purchases" as proposed in section 27.5.3.2.2.

87. TANC is also concerned that section 20.2 provides that the composite information shall not be treated as confidential if it does not disclose confidential information of any scheduling coordinator, Market Participant or other third party or Critical Infrastructure Information and section 20.4 provides that the CAISO can publish individual bid

⁵³ September 19 Order, 124 FERC ¶ 61,271 at P 182.

⁵⁴ *Id.* P 183.

information that is six months after the trading day as to which the bid was submitted without revealing the resource or the name of the scheduling coordinator submitting the bid. Thus, TANC argues that the CAISO should be required to clarify its tariff language with respect to the measures it will take to preserve the confidentiality of data provided by entities seeking to execute MEEAs and MEEA signatories.

88. Western argues that, though the CAISO added tariff language to address how confidential information provided by an entity will be treated once it has executed a MEEA, the tariff language proposed provides no safeguard for information provided by an entity that ultimately fails to negotiate a MEEA with the CAISO. In order to ensure that entities can safely enter into negotiations before executing a MEEA, Western asks that the Commission require the CAISO to add the following language to the end of section 27.5.3.5 of its tariff:

Provided, however, in the event, the IBAA entity does not execute a MEEA, the CAISO shall either destroy or return the confidential data or any information developed from the confidential data.

89. In its answer, the CAISO states that Western's proposal to add tariff language specifying that, in the event an entity does not execute a MEEA, the CAISO will destroy or return confidential information provided during MEEA negotiations is reasonable and that the CAISO will so include such language on further compliance, if directed by the Commission.

90. In response to TANC's concerns that the confidentiality provisions specified by the CAISO are inappropriate, the CAISO states that these procedures have already been approved by the Commission and apply today to other disputes that arise with the CAISO. The CAISO argues that TANC provides no good reason why these procedures should not apply here.

b. Commission Determination

91. The Commission agrees with TANC that section 20 of the CAISO tariff fails to ensure the confidentiality of certain key pieces of data required in a MEEA. However, given that the Commission directs the CAISO to modify its data requirements, we need not reach the issue of the appropriate confidential treatment of specific data that the CAISO proposes to request. When the CAISO files its revised data requirements, the CAISO must ensure that any information provided by a market participant to the CAISO during the negotiation of a MEEA or under an executed MEEA is kept confidential.

92. The Commission also agrees with Western that the tariff language should safeguard information provided by an entity that ultimately fails to negotiate a MEEA

with the CAISO and the CAISO appears amenable to such a provision. Therefore, we direct the CAISO to amend section 27.5.3.5 of its tariff as specified by Western.

6. MEEA Process

93. Section 27.5.3.3 of the CAISO's tariff compliance language explains the process for establishing a MEEA. Under this provision, a market participant may submit a written request to negotiate a MEEA to the CAISO. The parties shall then enter into MEEA negotiations in good faith. Section 27.5.3.3 provides that the CAISO shall file an executed MEEA with the Commission pursuant to section 205 of the FPA.

94. The CAISO states that, in the event the parties are unable to complete negotiations and execute a MEEA within 180 days from the date an entity seeking to negotiate a MEEA submits a written request to the CAISO, the requesting entity shall have the right to invoke the dispute resolution procedures under section 13 of the CAISO's tariff. Under those procedures, if the dispute cannot be resolved, the requesting entity may initiate arbitration. Under the CAISO's procedures, an arbitration award is subject to an appeal before the Commission or a court of competent jurisdiction.

95. The CAISO states that, during its stakeholder process addressing draft tariff compliance language, interested parties argued that both the CAISO and an entity requesting to negotiate a MEEA should be subject to a requirement to negotiate in good faith. The CAISO agrees and the proposed tariff language reflects this requirement.

96. The CAISO states that interested parties also asked whether the CAISO intended to create a standard, *pro forma* MEEA. It maintains that, although MEEAs will likely have standard terms and conditions, at this time the CAISO believes it will need to negotiate MEEAs with individual entities as opposed to developing a *pro forma* agreement. The CAISO states that it intends to develop a sample MEEA for stakeholder review and comment during the first quarter of 2009. Notwithstanding this effort, the CAISO is ready to commence MEEA negotiations upon request.

a. Comments and Answers

97. TANC and Modesto argue that the 180-day timeline is unnecessary because any concern of unnecessary stalling on the IBAA entity's part is avoided by the requirement that parties negotiate in good faith. Modesto contends that the 180-day timeline is unnecessary because circumstances could arise delaying discussions and preventing the full opportunity to negotiate a MEEA within the timeline. Modesto asserts that the timeline creates an implicit cut-off to negotiations, thus placing the burden of reaching resolution on the market participant. Modesto asks that the Commission direct the CAISO to clarify that the provision would allow the market participant the option to resort to arbitration after 180 days, but not require it to do so.

98. TANC maintains that the CAISO's intent to limit dispute resolution to the CAISO's alternative dispute resolution procedures under section 13 is also unreasonable because the dispute resulting in the inability to execute a MEEA within the 180-day timeframe may be better resolved through other dispute resolution processes or may allow the CAISO to delay beyond the 180-day timeframe. Thus, TANC argues that the Commission should reject the CAISO's proposal to require dispute resolution as the only available option to an entity seeking to execute a MEEA if after 180 days the CAISO and IBAA entity are unable to execute a MEEA.

99. In response to concerns that the proposed tariff language provides a cut-off to MEEA negotiations after 180 days, the CAISO states that the proposed tariff compliance language does not provide for a negotiation cutoff. Instead, section 27.5.3.3 would permit a potential MEEA signatory to initiate a dispute resolution procedure with the CAISO in the event the potential MEEA signatory believes it has reached an impasse in negotiations. According to the CAISO, the language is permissive and in no way precludes ongoing MEEA negotiations. The CAISO states that section 27.5.3.3 complies with the Commission's directives to specify procedures to initiate negotiations and provide dispute resolution procedures.

b. Commission Determination

100. The Commission finds that the CAISO's proposed process for negotiating MEEAs is just and reasonable. We agree with the CAISO that each MEEA is likely to be unique, and therefore approve the proposal not to have a *pro forma* MEEA at this time. However, we encourage the CAISO to continue to work with stakeholders to develop a sample MEEA as a starting point for negotiations.

101. The Commission denies the protests regarding the dispute resolution provisions. Section 27.5.3.3 does not *require* the requesting entity to invoke alternative dispute resolution after 180 days if the negotiations are progressing. Instead, it provides the requesting entity the option to do so. Therefore, there is no deadline by which the negotiations must finish, which should satisfy the concerns raised by TANC and Modesto.

102. The Commission also rejects TANC's protest regarding the use of the CAISO's alternative dispute resolution procedures under section 13. TANC has provided the Commission no support for its assertions that a different dispute resolution process may be better or that the use of section 13 may allow the CAISO to delay beyond the 180-day timeframe. Once the requesting entity invokes alternative dispute resolution, the tariff language does not allow the CAISO to refuse to participate in alternative dispute resolution.

7. Section 205 Filings

103. As stated above, section 27.5.3.3 of the CAISO's tariff compliance language explains the process for establishing a MEEA. Section 27.5.3.3 provides that the CAISO shall file an executed MEEA with the Commission pursuant to section 205 of the FPA.

104. Section 27.5.3.8 of the proposed compliance tariff provides that any proposals to change the IBAA default pricing specifications must be filed with the Commission for approval under section 205 of the FPA.⁵⁵ Further, the CAISO is proposing to explicitly state in section 27.5.3.8 that upon the completion of the stakeholder process and having determined it necessary to establish a new IBAA or modify an existing IBAA, the CAISO will seek Commission approval under section 205 of the FPA of a proposed new IBAA or changes to an existing IBAA. The CAISO states that, upon the request of commenting parties, the CAISO also included additional language that makes it clear that at such time it will also provide its supportive findings for the establishment of any new IBAA or modification to an existing IBAA.

a. Comments and Answers

105. Turlock notes that, under sections 27.5.3.3 and 27.5.3.8, and in the definition of a MEEA, the CAISO proposes that the Commission has blanket authority over all aspects of the MEEAs and that any changes to the MEEAs are subject to the Commission's approval, pursuant to section 205 and presumably section 206 of the FPA. Turlock argues that this proposed blanket authority over the rates, terms and conditions of all sales, from any entity, is inappropriate because it exceeds the Commission's authority under the FPA. According to Turlock, jurisdiction under the FPA is always triggered by the entity selling energy or ancillary services.⁵⁶ Thus, Turlock reasons if the seller is exempt from the Commission's jurisdiction, the rates, terms and conditions of its sales are also exempt from Commission jurisdiction.

106. Turlock states that, under the FPA, neither the CAISO nor the Commission is authorized to set the rates, terms and conditions of governmental entities' bilateral, nonmarket sales into the CAISO controlled grid. With regard to sales into organized markets, Turlock states that the Commission is authorized to review the rates, terms and conditions of only those governmental entities that sell 4,000,000 MW or more of electricity per year. Turlock further asserts that any governmental entities that sell less than 4,000,000 MW are completely exempt from the Commission's jurisdiction and all

⁵⁵ 16 U.S.C. § 824d (2006).

⁵⁶ Turlock Protest at 23, citing *Bonneville Power Admin. v. FERC*, 422 F.3d 908 at 916, 918.

cooperatives are exempt no matter what volume of sales that they have pursuant to section 201(f) of the FPA.⁵⁷

107. In addition, Turlock states that section 206(e)(2) of the FPA limits the Commission's authority to sales by governmental entities into organized market; it does not give the Commission authority over bilateral sales.

108. Here, Turlock argues that, because the above referenced language in the compliance filing inappropriately makes the rates, terms and conditions of all MEEA sales subject to Commission review and approval, the compliance filing violates sections 201(f) and 206(e)(2) of the FPA. Accordingly, the CAISO's compliance filing should be rejected or the Commission should order the CAISO to clarify that, to the extent the compliance filing attempts to authorize the Commission to review and approve the rates, terms and conditions of sales by non-governmental entities it does so only for those sales that are not excluded by sections 201(f) and 206(e)(2) of the FPA.⁵⁸

109. Without this clarification of the compliance filing, the Commission would be inappropriately authorizing the CAISO to do indirectly what the Commission cannot do directly under the FPA (*i.e.*, setting the rates, terms and conditions of governmental entities).⁵⁹ Accordingly, Turlock argues that, as written, these provisions of the compliance filing should be rejected as violations of the sections 201(f) and 206(e)(2) of the FPA.

b. Commission Determination

110. The Commission is not setting the rates, terms and conditions of governmental entities' sales into the CAISO's controlled grid through the MEEAs. Rather, pursuant to section 205 of the FPA, the Commission has jurisdiction over the rates, terms and conditions of transmission service provided by the CAISO and the CAISO's energy markets, a Commission-jurisdictional entity.⁶⁰ The Commission previously addressed the argument raised here by Turlock in the September 19 Order where we disagreed with

⁵⁷ 16 U.S.C. §824(f).

⁵⁸ Turlock Protest at 24, citing *Bonneville Power Admin. v. FERC*, 422 F. 3d at 924.

⁵⁹ *Id.*, citing *Bonneville Power Admin. v. FERC*, 422 F.3d at 915; *Sunray Mid-Continent Oil Co. v. FPC*, 364 U.S. 137, 152 (1960); *Richmond Power & Light v. FERC*, 574 F.2d 610, 620 (D.C. Cir. 1978); *Transcon. Gas Pipe Line Corp. v. FERC*, 485 F.3d 1172, 1177 (D.C. Cir. 2007).

⁶⁰ *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,205, at P 16 (2008).

TANC that the IBAA proposal was an attempt to gain *de facto* control over non-jurisdictional facilities.⁶¹ The IBAA proposal governs charges applicable in the CAISO's energy markets. In the September 19 Order, we stated that the IBAA proposal sets a rate for voluntary interchange transactions under the CAISO tariff that impact the CAISO system.⁶² As we stated in that order, once the energy is imported into the CAISO system, it has an impact thereon and it is appropriate that the CAISO's pricing (which represents the CAISO's approximation of the energy value at that point based on the information it has available) should apply.⁶³ Similarly, under a MEEA the CAISO provides pricing for imports from within the SMUD-Turlock IBAA by appropriately valuing the impacts such transactions have on the CAISO system. In the September 19 Order, we found the MEEA to be an integral part of the CAISO's IBAA proposal that would be beneficial to both the CAISO and resource owners.⁶⁴ Furthermore, as we found in the September 19 Order, we reiterate here that the IBAA entities will retain full control of their own facilities. Given this integral link between the MEEA and the jurisdictional IBAA proposal, we find that the MEEAs should be filed at the Commission pursuant to section 205 of the FPA as proposed by the CAISO.⁶⁵

8. Audit Rights under the MEEA

111. Section 27.5.3.7 of the CAISO's tariff compliance language specifies the audit rights of the CAISO and a MEEA signatory. This section states:

The CAISO reserves the right to audit data supplied under a MEEA by giving written notice at least 10 Business Days in advance of the date that the CAISO wishes to initiate such audit, with completion of the audit occurring within 180 days

⁶¹ September 19 Order, 124 FERC ¶ 61,271 at P 190.

⁶² *Id.* P 251.

⁶³ *Id.* P 250.

⁶⁴ September 19 Order, 124 FERC ¶ 61,271 at P 6, 181.

⁶⁵ “All rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.” [16 U.S.C. § 824d\(a\) \(2006\)](#). The Commission also notes that it will be better able to monitor markets for fraud (*see* 18 C.F.R. § 1c.2 (2008)) by requiring the MEEAs to be filed.

of such notice. The audit shall be for the limited purposes of verifying that the MEEA signatory has accurately represented available resources and has met the maximum requirements for MEEA pricing. Upon request of the CAISO as part of such audit, any signatory to a MEEA shall provide information to support the hourly information provided under Section 27.5.3.2. A MEEA signatory may audit the price for any transaction entered into under a MEEA through the CAISO's Settlement and billing process set forth in Section 11 and through data provided to the MEEA signatory as a Market Participant under the CAISO Tariff. Each party will be responsible for its own expenses related to any audit.

112. According to the CAISO, under this provision, the CAISO proposes a reciprocal audit right, which would permit the CAISO to request information from a MEEA signatory to verify the hourly information provided to determine eligible quantities that would receive a MEEA price. A MEEA signatory would also have the rights set forth in the CAISO's tariff to audit its settlement statements through the CAISO's Settlement and Billing Process set forth in section 11 of the CAISO tariff and through data provided to the MEEA signatory as a Market Participant under the tariff.

113. The CAISO states that stakeholders raised questions about the scope of information the CAISO would seek to verify hourly transactional data. According to the CAISO, the proposed tariff language is intended to establish the audit rights under a MEEA as directed by the Commission. The CAISO anticipates that the parties to a MEEA would determine the scope of any necessary information to verify hourly transactional data in manner that does not create undue burdens for either party.

a. Comments and Answers

114. Santa Clara, TANC and Modesto raise concerns about a MEEA signatory's audit rights. First, Santa Clara states that proposed section 27.5.3.7 provides the CAISO the right to audit data supplied pursuant to a MEEA "for the limited purpose of verifying that the MEEA signatory has accurately represented available resources and has met the *maximum* requirements specified for MEEA pricing."⁶⁶ Santa Clara notes that the September 19 Order required the CAISO to specify the *minimum* information the CAISO requires to accurately model interchange transactions. Furthermore, it states that the Commission's order provided that an entity would need to provide the information specified in the tariff, as opposed to the maximum contained in the MEEA.⁶⁷ Thus, Santa

⁶⁶ Proposed MRTU Tariff Section 27.5.3.7 (emphasis added).

⁶⁷ September 19 Order, 124 FERC ¶ 61,271 at P 185.

Clara argues that the CAISO's right to audit data should be for the limited purpose of verifying that the MEEA signatory has accurately represented available resources and has met the *minimum* requirements specified by the tariff for MEEA pricing.

115. According to TANC and Modesto, the CAISO's audit provisions in proposed section 27.5.3.7 fail to specify what information the CAISO will require from the MEEA entity for purposes of the CAISO's audit and may result in an over-broad probing into confidential information that is not specified in section 27.5.3.2. The CAISO simply provides that the MEEA signatory shall provide "information to support the hourly information provided under section 27.5.3.2." TANC asserts that this failure to specify the type of information the CAISO may seek under an audit is thus inconsistent with the Commission's directive that the CAISO specify the minimum information required by the CAISO from a MEEA signatory by type of entity. Modesto requests that the Commission require the CAISO to specify limits for the type of data the CAISO will be allowed to audit. TANC further asserts that the CAISO should also be directed to clarify that the CAISO will maintain the confidentiality of data provided under an audit of a MEEA signatory.

116. Further, Santa Clara and TANC are concerned that the CAISO's reference to section 11 of the MRTU tariff, does not satisfy the requirement that the CAISO specify audit rights for MEEA signatories. TANC and Santa Clara argue that the CAISO should be required to establish tariff language that allows MEEA signatories to audit the CAISO's modeling processes to determine whether the CAISO is properly modeling MEEA resources in the Full Network Model. Without these audit rights, Santa Clara argues that MEEA signatories can never be certain that the information they provide is properly used to further the CAISO's stated modeling accuracy and pricing accuracy goals. Moreover, they contend that MEEA signatories should have the right to audit the CAISO's development of the LMP at the particular point(s) of delivery. Without this protection, these parties argue that the CAISO's tariff merely restates provisions already contained in the tariff. They conclude that restating rights is not compliant with a directive to establish rights.

117. In its answer, the CAISO states that section 27.5.3.7 specifies that the CAISO may request information from a MEEA signatory that supports data presented to develop and price transactions under a MEEA. This is a reasonable audit right in that it allows the CAISO to ask a MEEA signatory for a category of information directly related to historical and after-the-fact hourly information submitted to develop a MEEA and obtain MEEA pricing. The CAISO states that, to the extent a MEEA signatory objects to a request for information, it may initiate a dispute resolution process against the CAISO under the MEEA.

b. Commission Determination

118. We agree in part with Santa Clara's concern regarding the term "maximum requirements" in section 27.5.3.7 specified for MEEA pricing. It is unclear what the CAISO means by this term. In the September 19 Order, the Commission stated that the tariff should lay out the minimum information needed to accurately model interchange transactions, after which the CAISO must offer actual pricing to the MEEA signatory.⁶⁸ The minimum information required of a MEEA signatory is specified in the CAISO MRTU Tariff. However, we also believe that Santa Clara's proposal to insert the term "minimum" would add similar confusion to the provision and decline to order that result as unnecessary. The CAISO should make a compliance filing reflecting the deletion of the term "maximum" within 60 days of the date of this order.

119. With respect to Santa Clara's concern that the proposed tariff language provides that the audit will address information specified in the MEEA rather than the tariff, we find that this concern is unfounded. The proposed tariff language provides that the CAISO has a right to audit to verify that the MEEA signatory has met the requirements "for MEEA pricing." It does not specify that these requirements are in the MEEA, rather than in the tariff.

120. We disagree that the audit provisions fail to specify what information the CAISO will require in an audit. Section 27.5.3.7 specifically states that the CAISO "reserves the right to audit data supplied under a MEEA." The CAISO provides that a MEEA entity must "provide information to support the hourly information provided under section 27.5.3.2." The Commission finds this to be an appropriate scope for an audit of information provided pursuant to a MEEA; such a request cannot by the terms of section 27.5.3.7 probe into information unrelated to verifying the data supplied pursuant to the MEEA.

C. Default Pricing Points

121. The Commission directed that the CAISO must state in its tariff the default pricing points under the IBAA and to state that any change to these default pricing points must be filed with the Commission. The CAISO is proposing to specify in section G.1.1 of Appendix C that, unless they are subject to an existing MEEA, the default pricing for all exports from the IBAA to the CAISO balancing authority area will be based on the SMUD-Turlock IBAA Import LMP and all imports to the IBAA(s) from the CAISO will be based on the SMUD-Turlock IBAA Export LMP. The CAISO further specifies in that section that the SMUD-Turlock Import LMP will be calculated based on modeling of supply resources that assumes all supply is from the Captain Jack substation.

⁶⁸ *Id.* P 182.

Furthermore, the CAISO specifies in the tariff that the SMUD-Turlock Export LMP will be calculated based on the SMUD hub that reflects intertie distribution factors developed from a seasonal power flow base case study of the Western Electricity Coordinating Council (WECC) region using an “equivalencing” technique that requires that the SMUD hub is “equivalenced” to only the buses that comprise the system resources, with all generation also being retained at its buses within the IBAA. According to the CAISO, the resulting load distribution from the “equivalencing” technique within each aggregated system resource defines the intertie distribution factors for exports from the CAISO balancing authority area.

1. Comments and Answers

122. Both SMUD and TANC maintain that the tariff language detailing calculation of the default price for exports into the SMUD balancing authority area is unclear. They maintain that the CAISO does not explain how the distribution factors it references are calculated or where the distribution factors will be enumerated, or what “seasonal power flow base case study” it will use. Further, SMUD and TANC ask what the CAISO means by “an equivalencing technique” and whether there are several such techniques to choose from and how a technique would be chosen.

123. Because of these questions, SMUD asserts that no customer can reasonably tell, from this tariff language, how distribution factors are calculated, how often they are recalculated or what would prompt their recalculation. SMUD also maintains that the tariff provides no means to verify that the resulting default price comports with the methodology the CAISO has chosen. In sum, SMUD argues that the CAISO touts that its market design will result in more transparent pricing, yet as to SMUD and other parties affected by the IBAA proposal, the pricing methodology could not be more of a black box.

124. SMUD argues that the problem with the CAISO’s methodology for determining actual export prices is not that the tariff language is confusing, but that there is no tariff language at all. For imports into the CAISO, the CAISO proposes actual pricing tied to the location of the resources being sold as an alternative to the Captain Jack “approximation.” SMUD asserts that, if the CAISO is proposing a symmetrical offer of “actual pricing” for imports and exports, this would logically mean that, with the right data, the “actual price” for exports from the CAISO into the SMUD balancing authority area should be the LMPs at the sources of those exports (presumably somewhere within the CAISO balancing authority area), not the composite LMP at the SMUD Hub.

125. However, SMUD maintains that the CAISO tariff does not contain any explanation of how it will calculate actual pricing for its exports to the SMUD balancing authority area under a MEEA, even as to those limited quantities that would qualify for such pricing. The Commission, however, directed the CAISO to provide a compliance tariff that would limit the CAISO’s discretion and would create a more open and non-

discriminatory process for negotiation of MEEAs. According to SMUD, the failure to explain how MEEA pricing of exports to the SMUD balancing authority area would work, among the other deficiencies discussed above, renders the CAISO's filing non-compliant with the Commission's September 19 Order.

126. In its answer, the CAISO states that this language is not overly specific as to the distribution factors on which the hub price will be based because the CAISO does not have specific load information in the SMUD and Turlock balancing authority areas and therefore the CAISO will need to rely on the information it has available to determine how load is distributed at the SMUD hub for the purposes of calculating the hub price. More specifically, the CAISO states that it will determine the distribution of load through the use of an "equivalencing" technique using a seasonal power flow base case study of the WECC region.

127. With respect to SMUD and TANC's concerns regarding the use of the term "equivalencing", the CAISO states that this term is commonly used by electric industry professionals in electric power flow representations and refers to a technique that provides a more simplified but electrically equivalent representation of a more complicated underlying electrical system. The CAISO will use this technique with available WECC data to create the distribution factors for the aggregated set of load resources in the IBAA.

128. The CAISO states that it will use the most recent seasonal WECC model on the WECC web site at the time the CAISO calculates the seasonal distribution factors. The CAISO asserts that the WECC models are commonly used in the industry and are peer reviewed so that they represent a reliable and robust model that is appropriate for such uses. The CAISO states that the WECC process allows industry participants such as CAISO grid planning staff to produce enhanced versions of the WECC cases by improving the modeling of the CAISO system that is reflected in the larger WECC base case. When this occurs, the CAISO states that it ensures these versions are also published on the WECC web site for access by other industry participants. According to the CAISO, the tariff specifically states that the CAISO would use the *seasonal WECC model*. As a result, the default price for exports will likely change for each season based on the seasonal WECC base models available at the time the prices are calculated.

129. The CAISO argues that neither SMUD nor TANC articulate what additional language would be needed to clearly specify how the distribution factors will be determined. The Commission directed the CAISO to specify the default pricing points, and the CAISO asserts that the proposed tariff language complies with that directive. The CAISO states that the language provides the details as to how the CAISO will calculate the default pricing at those points so that the Commission and all market participants understand the calculation methodology. Moreover, the CAISO states that this language ensures that, were the CAISO to decide to deviate from the prescribed methodology by, for example, no longer calculating an IBAA export price that is based

on distribution factors that vary by season and are fixed throughout the year, the CAISO would be unable to do so without Commission-approval of a tariff change. The CAISO asserts that the same restriction would apply to changes if the CAISO were to use a model other than the WECC seasonal base case. The CAISO argues that indeed, the proposed tariff language provides the adequate level of detail to ensure that market participants have full notice and sufficient detail on how the CAISO will calculate the default export price at the SMUD hub at any given time.

2. Commission Discussion

130. The Commission approves this portion of the CAISO compliance filing as just and reasonable. The CAISO's answer satisfactorily addresses the questions posed by SMUD and TANC regarding which study and distribution factors it will use and its use of the term "equivalencing" technique. The CAISO has explained how the distribution factors it references are calculated, where the distribution factors will be enumerated and that it will use the WECC seasonal power flow base case study. In addition, the CAISO has explained its use of the term "equivalencing." Furthermore, the requirement that any changes made to the default pricing points must first be approved by the Commission ensures that the CAISO will not exert unilateral control over the pricing of import and export transactions between the SMUD-Turlock IBAA and the CAISO. As for SMUD's concerns about how the CAISO's proposal seeks to value exports under a MEEA, we address these issues above.⁶⁹

D. Losses

131. The CAISO states that it developed a mechanism that enables COTP users to pay the marginal cost of losses component of the LMP at the Tracy substation for imports scheduled at the Tracy scheduling points as opposed to the marginal cost of losses component of the default IBAA LMP. According to the CAISO, the losses adjustment will apply to all cleared import schedules into the CAISO balancing authority area at the southern terminus of the COTP at the Tracy substation that (a) use the COTP, and (b) are charged for transmission losses by Western or TANC for such use. For such schedules, the CAISO states that it will replace the marginal cost of losses at the otherwise applicable source for such schedules with the marginal cost of losses at the Tracy substation. The CAISO further explains that the marginal cost of losses component of the LMP at the Tracy substation will be calculated by the market clearing process which assumes that an actual physical injection to the integrated grid occurs at the Tracy substation. The CAISO believes this approach reflects the Commission's directive to apply the "marginal loss component of Tracy."⁷⁰ This marginal loss component of Tracy

⁶⁹ See *supra* P 30.

⁷⁰ September 19 Order, 124 FERC ¶ 61,271 at P 120.

will be different than the marginal losses component of the default IBAA LMP for imports.

132. In section G.1.2 of Appendix C of the CAISO's tariff compliance language, the CAISO proposes to apply this marginal cost of losses adjustment to schedules submitted under specific resource identification numbers (Resource ID) created specifically for this purpose. The CAISO states that it will establish Resource IDs that are to be used only to submit bids, including self-schedules, for the purpose of establishing schedules that are eligible for this loss adjustment. The CAISO states that, prior to obtaining such Resource IDs, the relevant scheduling coordinator shall certify that it will only use this established Resource ID for bids, including self-schedules, that originate from transactions that (a) use the COTP, and (b) are charged by Western or TANC for transmission losses for such use. Further, the CAISO states that, by actually using the Resource ID, the scheduling coordinator will be representing again that such Bids, including self-schedules, are consistent with its original certification.

133. Commenting parties expressed concerns over the CAISO's ability to ensure that the Resource IDs will be used appropriately. The CAISO states that, after considering alternative approaches, it determined that the requirement that the parties only use the Resource IDs for the stated purposes is consistent with its existing practices that similarly require limitations on the use of certain Resource IDs. In addition, the CAISO states that it included provisions in its proposed tariff that enable the CAISO from time-to-time to request information from scheduling coordinators to verify the legitimate use of the Resource IDs. In the event that the CAISO determines that the Resource ID is used inappropriately, the CAISO will calculate a re-adjustment of the marginal cost of losses for any settlement interval in which the CAISO has determined that the scheduling coordinator's payments did not reflect transactions that (a) use the COTP, and (b) are charged for losses by Western or TANC for the use of the COTP. Any amounts owed to the CAISO for such marginal cost of losses re-adjustments will be recovered by the CAISO from the affected scheduling coordinator by netting the amounts owed from payments due in subsequent settlement statements until the outstanding amounts are fully recovered.

1. Comments and Answers

134. Several protestors maintain that the CAISO has not complied with the Commission's directives regarding losses. Santa Clara believes the use of a certification in advance and on a continuing basis is a reasonable process for implementing the Tracy loss treatment. While Santa Clara states that, given the parties' and the Commission's acknowledgment that COTP users are charged losses, there is no need to demonstrate losses on a transaction by transaction basis, and Santa Clara believes the CAISO's certification proposal is a reasonable approach, it also raises concerns with the proposal, as discussed below.

135. Further, TANC asserts that the definition of “Resource IDs” shows that the term is not applicable for COTP imports.⁷¹ According to TANC, COTP imports may or may not qualify for inclusion under the MRTU definition of Resource ID. TANC states that the requirement that COTP imports be scheduled under the designation of Resource IDs would seem to limit the eligibility of COTP users to schedule resources into the CAISO markets. According to TANC, this further burdens the new market structure the CAISO is creating under MRTU, which will harm the COTP users, the COTP owners and load served by the CAISO markets.

136. According to TANC and Turlock, layering on the use of Resource IDs as a condition of qualifying for Tracy losses is unnecessary, burdensome and does not implement the requirement to show losses are paid to TANC and Western. They argue that it is sufficient that entities provide the CAISO with the requisite certification and agree to provide the CAISO with data and information on a going forward basis to support this certification, which would provide redundancy sufficient to satisfy the requirements of the September 19 Order. TANC argues that the further requirement of the use of distinctive scheduling terms is unnecessary to either establish the qualification for Tracy losses or verify that qualification. Further, according to Turlock, by adding additional requirements, the CAISO will deter entities from using the COTP to import power into the CAISO balancing authority area. According to TANC, distinct Resource IDs for COTP users will burden the market and should be rejected. For example, TANC argues that a COTP user that relies on resources both within and outside the IBAA would presumably be required to submit separate schedules for each resource to meet its obligation.

137. Powerex claims that, while it does not oppose the CAISO seeking to verify proper use of Resource IDs, it would be simpler and more economical for the CAISO to review the transaction specific e-tag information it already has at its disposal. Powerex requests that the Commission direct the CAISO to modify its proposal to rely on e-tag information instead of periodically requiring scheduling coordinators to provide additional information on the use of Resource IDs. Powerex asserts that, should the Commission find it reasonable for the CAISO to periodically review Resource IDs, the CAISO should be required to provide specifically what additional information would be required of scheduling coordinators and how long such information must be kept for review, as well

⁷¹ The CAISO’s tariff defines Resource IDs as: “[a] resource that is required to offer Resource Adequacy Capacity. The criteria for determining the types of resources that are eligible to provide Qualifying Capacity may be established by the CPUC or other applicable Local Regulatory Authority and provided to the CAISO.” MRTU Tariff, 4th Replacement, Appendix A Master Definitions Supplement.

as further detail on the scope and frequency of the review and the methodology to be utilized.

138. Santa Clara is concerned that requiring a schedule to pay Western or TANC for losses may not reflect the real-world circumstances of transactions along the COTP, and could therefore fail to implement the Commission's directive in its September 19 Order that the CAISO use Tracy losses for COTP imports. Santa Clara states that some users of the COTP do not necessarily *pay* TANC or Western for losses. Instead, some users actually make up losses in-kind.⁷² Santa Clara maintains that the CAISO's proposed tariff language could be interpreted to improperly deny Tracy loss treatment to entities that import on the COTP and are charged losses in-kind. According to Santa Clara, the basis for providing Tracy loss treatment, the avoidance of double loss charges, applies regardless of whether the entities pay a monetary losses charge or return losses in-kind.

139. Accordingly, Santa Clara requests that the Commission direct the CAISO to clarify the tariff language to specify that entities that use in-kind generation as compensation to TANC or Western for losses connected to COTP imports are entitled to Tracy loss treatment to prevent double losses charges.

140. Further, Santa Clara argues that proposed section G.1.2 of Appendix C does not contemplate the circumstances under which the entity that is the importer to the CAISO at Tracy is not the entity that imported the energy from the Northwest using the COTP. According to Santa Clara, if a third party uses the COTP to import energy from the Northwest and sells that energy to another party that imports the energy into the CAISO at Tracy, it is the first entity that is charged by Western or TANC for losses, not the entity that imports the energy to the CAISO. According to Santa Clara, the party that imports the energy to the CAISO would be faced with duplicative loss charges if the CAISO is not required to apply the Tracy marginal loss component to the transaction, because the price paid by the CAISO importing party will reflect the cost of COTP losses incurred by the Northwest importing party. Santa Clara notes that these transactions will be readily identifiable by NERC eTags indicating that the source of the energy originated in the Northwest. Santa Clara maintains that by using the designated Resource ID, the importer would certify that the energy was transmitted on the COTP, and incurred losses charged by Western or TANC.

141. Accordingly, Santa Clara requests that the Commission direct the CAISO to alter the language to simply state that Tracy loss treatment is eligible for those imports for

⁷² See Santa Clara Protest, Ex No. SVP-1 at 13. For example, Western makes up all losses on the COTP in real-time with its own generation. Santa Clara then schedules energy back to Western to compensate it for the losses associated with Santa Clara's schedules on the COTP.

which loss compensation has been charged by TANC or Western. Santa Clara proposes the following language, which would satisfy both its concern regarding in-kind payment for losses and third-party payment of losses: “(b) and for which an entity has been charged by the Western Area Power Administration or Transmission Agency of Northern California for losses.”

142. On rehearing, NCPA sought clarification or, in the alternative, rehearing that the same reasoning providing an adjustment in the marginal loss component of the price paid a COTP delivery applies equally to deliveries to the CAISO control area from Western at its interconnection point at Tracy, even if those resources are not using the COTP. NCPA states that it does not raise any issues with the mechanism that the CAISO has proposed in the instant docket to account for COTP losses under the Commission’s order, but notes that if clarification or rehearing is granted along the lines sought by NCPA, this compliance language would have to be amended accordingly.

143. Both TANC and Santa Clara protest proposed section G.1.2, which provides that the CAISO may “from time-to-time request information” that scheduling coordinators verify the “legitimate use” of these Resource IDs. First, Santa Clara maintains that the CAISO does not clearly specify what it means by “legitimate use.” To avoid confusion, Santa Clara requests that the Commission require the CAISO to clarify this provision to indicate that “legitimate use” means use of these Resource IDs for schedules that (a) originate from transactions that use the COTP; and (b) are charged losses by TANC or Western.

144. Santa Clara and Modesto are concerned that the CAISO did not specify what information would be required from scheduling coordinators to qualify for an adjustment to the marginal cost component of import prices. Similarly, according to Santa Clara, the “legitimate use” audit provision also fails to specify the information that would be required from the scheduling coordinators to verify the “legitimate use” of the Resource IDs, and thus is potentially unreasonable because it leaves to the CAISO’s unilateral discretion a determination as to the timing, frequency, and circumstances under which it would make such requests of the scheduling coordinators. Santa Clara requests that the Commission require the CAISO to clearly specify what information will be required in an audit of the issue of “legitimate use” and to specify reasonable limits on the frequency of such audits.

145. Modesto also maintains that the CAISO failed to specify how frequently requests for information would be made.

146. TANC further notes that the CAISO proposes that it will calculate a “re-adjustment” of the marginal cost of losses for any Settlement interval in which the CAISO determines that the scheduling coordinator’s payment did not reflect transactions that use the COTP and are charged for losses by TANC or Western. The CAISO notes that any amounts owed to the CAISO under such re-adjustments will be recovered by the

CAISO from the affected scheduling coordinator by netting the amounts owed from payments due in subsequent Settlement Statements until the amount owed is fully recovered. According to TANC, the CAISO's readjustment proposal does not comply with the Commission's directive requiring the CAISO to specify what showing will be necessary for COTP users to receive the marginal losses adjustment because it does not specify what showing would be required from the scheduling coordinators to verify the "legitimate use" of the Resource IDs. TANC also argues that the CAISO's proposal is also unjust and unreasonable because it fails to define in tariff language the circumstances and the frequency with which it would make such requests of the scheduling coordinators.

147. Finally, Santa Clara, TANC and Powerex question the CAISO's claim that the Commission's order will result in under-collection of losses.⁷³ Santa Clara and TANC argue that this is a collateral attack on the Commission's ruling on COTP losses and should be rejected. TANC asserts that the CAISO did not seek rehearing regarding the Commission's decision to order Tracy losses, and that the CAISO's argument is not proper for the compliance stage and should be ignored. Further, according to Santa Clara, the CAISO's arguments are flawed, conflict with Santa Clara's evidence demonstrating the CAISO would in fact over-collect losses if it makes realistic estimates of total COTP transactions, and are an inappropriate attack on the Commission's correct determination that the as-filed IBAA pricing scheme would subject COTP users to duplicative losses charges.

148. Santa Clara, TANC and Western also note that the CAISO states that it will monitor the impact of the Commission's decision on losses upon MRTU start-up and will make any necessary filings with the Commission to address this issue if the under-collection is found to be a significant problem. According to Santa Clara, the CAISO makes this statement despite its assurances that it has run market simulations testing the impact of its IBAA pricing scheme on the CAISO markets. In addition, the Commission conditionally accepted the IBAA proposal based on the fact that the CAISO would have several months prior to MRTU go-live in order to test the impact of the IBAA proposal through its market simulations. Western contends that the CAISO's statement represents an attempt to reserve the right under section 205 to re-litigate the issue of losses, for which the CAISO chose not to seek rehearing. Western states that such reservation of rights should not be permitted because the Commission has already decided on the matter.

149. Western cites the CAISO's statement that from the CAISO November 25, 2008 Compliance Filing:

⁷³ CAISO November 25, 2008 Compliance Filing at n.5.

In particular, because the California-Oregon Intertie (COI) consists of three 500 kV lines, of which two are within the CAISO balancing authority area, and because the underlying 230 kV transmission system within the CAISO balancing authority area is more extensive than in the SMUD/[Turlock] IBAA, approximately two-thirds of the overall losses for power imported from the Northwest from Malin and Captain Jack to Tesla and Tracy will occur within the CAISO balancing authority area.

150. According to Western, the CAISO's statement is incorrect because, in order to compensate for losses associated with Western's operation, Central Valley Project generation is increased in an amount equal to the real-time losses built into Western's Area Control Error calculation. Thus, Western asserts that the CAISO incurs virtually no losses on the California-Oregon Intertie for parallel operations on the Western and CAISO systems.

151. In its answer, the CAISO states that, although parties raise objections to the methodology for applying the marginal losses adjustment, none of these parties object to the proposal to apply the adjustment by replacing the marginal cost of losses for imports with a marginal cost of losses component based on an assumption that the actual physical injection is made at the Tracy interchange point. The CAISO states that the Commission should therefore approve the CAISO's proposed tariff language addressing marginal losses adjustment.

152. The CAISO states that the Commission should reject protests raising concerns that the CAISO's proposed tariff language fails to define what information scheduling coordinators will need to provide to obtain a marginal loss adjustment for COTP schedules. The CAISO states that its proposed tariff language restricts the adjustment to COTP users that make deliveries at Tracy. The CAISO states that the Commission should reject NCPA's claim that the losses adjustment should apply to deliveries at Tracy even if those transactions do not use the COTP because the September 19 Order clearly applied to COTP users and COTP customers.

153. The CAISO states that it recognizes that requiring the parties to make a demonstration of their payment of losses to TANC and Western could become a complicated matter over time. This is precisely why the CAISO proposed the simplified methodology which avoids actual production of proof of payment for each transaction and simply requires users of the COTP that schedule imports at Tracy to assert that they will use a specific Resource ID only for the purposes of transactions for which they pay losses to TANC or Western. According to the CAISO, this approach makes the demonstration on a regular basis as simple as possible because it only requires that the parties that pay TANC or Western for losses on COTP transactions make the assertion that they qualify and thereby receive the adjustment. The CAISO believes this is

appropriate because those parties that pay losses to TANC and Western know that they do and can safely make this assertion. According to the CAISO, this demonstration is not burdensome for market participants.

154. The CAISO states that it must, however, have the ability to verify that parties are appropriately using such Resource IDs and are not abusing this process in order to obtain a more favorable price. Therefore, the CAISO's proposed tariff language provides for a right to verify from time-to-time the legitimate use of such Resource IDs. The CAISO did not specify what type of documentation the parties may provide to make this demonstration because it is not clear that one approach or one category of documentation will fit all entities. For example, the CAISO maintains that a party may produce documentation from TANC or Western that certain COTP transactions were subject to TANC and/or Western charges for losses. However, as explained above, the CAISO does not believe it is necessary to burden day-to-day transactions with any such demonstrations to receive the adjustment and has provided a mechanism that avoids such complications.

155. The CAISO acknowledges Santa Clara's request that the Commission clarify that the adjustment should apply also to payments in-kind for losses. The CAISO states that its proposed methodology requires only that the parties certify their payment of losses to Western or TANC. Therefore, the CAISO states that, if the Commission confirms that the payment of in-kind losses to Western or TANC for COTP users also qualifies for the marginal loss adjustment, the proposed methodology can easily accommodate this clarification with no further changes.

156. The CAISO disagrees with Powerex that e-Tags should suffice for demonstration that COTP users pay for losses to Western or TANC for imports into the CAISO grid. According to the CAISO, e-Tags will not demonstrate that a party has paid for losses to Western or TANC for their COTP schedules. They will only demonstrate that they used COTP for the import into the CAISO grid at Tracy. That does not suffice to meet the Commission's requirement that the losses adjustment apply to customers that import at Tracy using COTP and demonstrate that they pay for losses to TANC or Western.

157. Finally, the CAISO states that footnote 5 of its November 25, 2008 Compliance Filing merely stipulated that the losses adjustment will result in the further undercollection of marginal losses from scheduled flow on the CAISO grid. The CAISO maintains that this outcome results from the fact that replacing the losses component of the default price for imports under the IBAA proposal with a losses component that is derived from a false assumption that there is an injection at Tracy results in a reduced collection of marginal losses than if the CAISO made no such adjustment. The CAISO maintains that its proposed tariff language fully implements the Commission's September 19 Order, but the loss adjustment directed by the Commission does result in a cost to the rest of the market and the CAISO wants to ensure that the impact of the adjustment is understood and minimized. The recovery of losses by transmission owners

within the SMUD-Turlock IBAA does not produce any recovery of the cost of losses within the CAISO balancing authority area.

2. Commission Determination

158. In the September 19 Order, the Commission stated that COTP users that import to the CAISO who demonstrate that they pay for losses to Western or TANC should receive an appropriate adjustment in the marginal loss component of the price paid for their import and directed the CAISO to allow COTP customers to make this demonstration and to propose what showing will be needed for this treatment.⁷⁴ While the Commission believes that the CAISO's proposal complies with this directive, we share protestors concerns that Resource IDs, as defined in the MRTU tariff, were not created with this task in mind. Accordingly, we accept the CAISO's compliance filing with respect to losses, except as set forth below and order a further compliance filing.

159. In its compliance filing, the CAISO stated that it was "proposing to apply this marginal cost of losses adjustment to schedules submitted under specific [Resource IDs] created specifically for this purpose. The CAISO will establish Resource IDs that are to be used only to submit Bids, including Self-Schedules, for purposes of establishing Schedules that are eligible for this loss adjustment."⁷⁵ However, the Commission agrees with TANC that the term Resource ID, as defined in the CAISO MRTU tariff, has a specific definition that is inapplicable to the purpose for which the CAISO would like to use it. The MRTU tariff defines Resource ID as:

A resource that is required to offer Resource Adequacy Capacity. The criteria for determining the types of resources that are eligible to provide Qualifying Capacity may be established by the CPUC or other applicable Local Regulatory Authority and provided to the CAISO.⁷⁶

160. The Commission finds the use of a Resource ID in the context of tracking IBAA losses is inconsistent with the definition of that term in the MRTU tariff as the use of such term could unintentionally limit the transactions to which the loss calculation should be available. Nevertheless, the Commission finds acceptable the concept proposed by the CAISO that there be an automatic process to assign an LMP either with or without losses to the transaction. Therefore, the Commission directs the CAISO to address TANC's

⁷⁴ September 19 Order, 124 FERC ¶ 61,271 at P 106.

⁷⁵ CAISO November 25, 2008 Compliance Filing at 5.

⁷⁶ CAISO Fourth Replacement Volume No. II, Original Sheet No. 932.

concerns on compliance by clarifying the definition of Resource IDs to ensure that any transactions that face charges for losses from TANC or Western could be tracked or by using another, more appropriate, defined term.

161. With respect to arguments that requiring each entity to use Resource IDs as a condition of qualifying for Tracy losses would be too burdensome, the CAISO has stated that a party may produce documentation from TANC or Western that certain COTP transactions were subject to TANC and/or Western charges for losses to allow the CAISO to verify the legitimate use of Resource IDs. The Commission does not understand how this differs from protestors' arguments that it should be sufficient that entities provide the CAISO with the requisite certification and agree to provide the CAISO with data and information on a going forward basis to support this certification, which would provide redundancy sufficient to meet the September 19 Order. The Commission notes that in TANC's example, in which a COTP user relies on resources both within and outside the IBAA, the COTP user would need to show for which of those resources it paid losses to TANC and Western and should receive the adjustment in the marginal cost component of the price paid for their import.

162. The Commission agrees with Santa Clara that the Tracy loss treatment should apply regardless of whether the entities pay a monetary losses charge or return losses in-kind. However, we do not find it necessary to direct the CAISO to clarify the tariff language. The requirement in the proposed tariff language is that the import schedules "pay" Western or TANC for losses for the use of the COTP.⁷⁷ This does not limit treatment to monetary payments only. Therefore, any entity that pays Western or TANC for losses for the use of the COTP, regardless of the form of payment, may receive the Tracy loss treatment, so long as it meets the other requirements.

163. The Commission agrees with Santa Clara that if a third party is charged by Western or TANC for losses, the party that imports the energy to the CAISO would be faced with duplicative loss charges if the CAISO is not required to apply the Tracy marginal loss component to the transaction. Therefore, the Commission directs the CAISO to modify its tariff to provide Tracy loss treatment for those imports for which loss compensation has been charged by TANC or Western.

164. With respect to NCPA's concern that the CAISO should apply the marginal loss component adjustment to resources not using the COTP, NCPA does not raise any issues with the mechanism that the CAISO has proposed in the instant docket. NCPA's concerns, as it acknowledges, are requests for clarification or rehearing and, as such, will be addressed in the order on rehearing of the September 19 Order.

⁷⁷ Proposed MRTU Tariff Section G.1.2.

165. While the CAISO should be able to periodically verify that the transactions continue to be eligible for the Tracy loss treatment, we find that the term “legitimate use” is unclear. We agree with Santa Clara that the CAISO must clarify this provision to indicate that “legitimate use” means schedules that (a) originate from transactions that use the COTP; and (b) are charged losses by TANC or Western.

166. With respect to the concerns raised by Santa Clara and Modesto that the CAISO did not specify what information would be required from scheduling coordinators to qualify for an adjustment to the marginal cost component of import prices, this information should be information needed to verify the documentation from TANC or Western that certain COTP transactions were subject to TANC and/or Western charges for losses to allow the CAISO to verify that the COTP user is eligible for Tracy loss treatment. Similar to our determination regarding audits, this information cannot probe into information unrelated to the reason for the audit – verifying the data supplied for the purpose of demonstrating that the entity pays TANC or Western for losses on the COTP. In other contexts, the CAISO has not been required to specify what information would be required for an audit, and we find that it is unnecessary to do so here.⁷⁸ With respect to Modesto’s concern that the CAISO has not specified how often it will need to verify this information, we will require the CAISO to clarify on further compliance how frequently it would need to verify this information.

167. We disagree with TANC’s concern about the CAISO’s proposal to calculate a readjustment of the marginal cost of losses. If the CAISO discovers that an entity is receiving the Tracy loss treatment, but did not meet the criteria for such treatment, the CAISO should correct the amounts it undercharged.

168. With respect to the CAISO’s claim in footnote 5 of its filing that the loss treatment required by the Commission will result in an under-collection of losses, if the CAISO believed that it was incurring any under-collection, it should have requested rehearing on that matter. It did not. A compliance filing is an inappropriate forum to raise such an argument.

169. In response to concerns regarding the CAISO’s statement that it will monitor the impact of the Commission’s decision on losses upon MRTU start-up and will make any necessary filings with the Commission to address this issue if the under-collection is found to be a significant problem, the CAISO has the right to file to change its tariff

⁷⁸ See CAISO MRTU Tariff, sections 8.9.8 through 8.9.14. For example, section 10.2.11 of the MRTU Tariff states that “[t]he CAISO will have the right to either conduct any audit or test it considers necessary or to witness such audit or test carried out by the CAISO Metered Entity or a CAISO Authorized Inspector engaged by the CAISO Metered Entity or the CAISO to carry out those audits or tests.”

under section 205 without reserving its rights in this proceeding. However, the Commission will evaluate any such filing in light of Commission precedent, including decisions in this proceeding.

E. Miscellaneous

170. Santa Clara is concerned that one issue raised in stakeholder comments was not fully resolved in the CAISO's compliance filing involving use of the term "MEEA signatory" in section 27.5.3.2.1(b). Santa Clara notes that an entity that is negotiating a MEEA would not yet be a MEEA signatory.

171. Western argues that it is imprudent for the CAISO to implement MRTU, including the IBAA, without first fully understanding the potential impacts to reliability and the economic burden upon market participants that will result. Western explains that, according to the invoices it received for October market simulations, the costs assigned to Western's scheduling coordinator identifier were 5,000 percent higher than the current actual CAISO charges. Western accepts that the CAISO has admitted that the October 2008 invoices were incorrect, but asserts that, according to indications from early "mini invoices" for the first 18 days in November 2008, the problem has gotten worse. According to Western, the early invoices for November 2008 have shown an increase for the same period of time in 2007 from approximately \$16,500 to over \$13,000,000, an increase of 79,000 percent. Western asserts that, rather than pushing to implement MRTU to meet some arbitrary deadline, the CAISO and the Commission should ensure that MRTU is properly functioning and producing reliable and reasonable results before it is implemented.

172. Santa Clara understands that the CAISO and market participants have put much effort into developing and implementing market simulations. Despite those efforts, Santa Clara states that the simulations completed to date have not included any representation of the effects of parallel flows from IBAA transactions that are not scheduled with the CAISO. Santa Clara remains concerned that IBAA modeling will lead to a divergence between prices in the integrated forward market and the real time market. Although Santa Clara has encouraged the CAISO to run simulations that would address the potential price divergence resulting from inconsistencies between the day-ahead integrated forward market modeling and the real-time market modeling, Santa Clara understands that the CAISO has not run such simulations. Santa Clara understands the CAISO has indicated that its decision not to model full COTP flows in the integrated forward market simulations is consistent with its planned approach to include only explicitly scheduled transactions in its integrated forward market runs under MRTU. However, Santa Clara maintains that the CAISO's real-time market simulation runs also have not included realistic estimates of parallel flows and are thus not consistent with the CAISO's planned modeling approach under MRTU. Because the CAISO has not simulated full COTP flows in the real-time market simulations, Santa Clara argues that

the true impact of the IBAA proposal on the CAISO's markets will remain unknown until some time after MRTU startup.

173. Santa Clara remains concerned that the failure to include realistic estimates of COTP transactions in the integrated forward market will cause inaccurate LMPs and will create a divergence between day-ahead and real-time pricing. Santa Clara requests that the Commission require the CAISO to perform appropriate simulations to test the impact of its planned IBAA modeling approach, by including realistic estimates of all COTP transactions in the real-time market simulations, as compared to integrated forward market simulations which do not include such estimates. At a minimum, if time and resource constraints prevent the CAISO from performing the full simulation outlined above, Santa Clara requests that the Commission require the CAISO to perform a simplified test case in the integrated forward market only. Santa Clara states that in a simplified test case the expected full COTP schedules would be modeled in the integrated forward market and compared to cases in which the full COTP schedules have not been modeled. According to Santa Clara, this simulation would avoid the difficulties involved in executing a real-time market simulation, could be done using Department of Market Monitoring's off-line model, and would isolate the effect of the parallel flow modeling. In any event, Santa Clara requests that the results should be shared with the Commission and Market Participants prior to commencing operations under MRTU.

174. In its answer, the CAISO states that the Commission should reject arguments that the Commission should not require the CAISO to implement its IBAA proposal simultaneously with MRTU absent the CAISO completing sufficient market simulations. According to the CAISO, the Commission's September 19 Order already addresses this issue and authorizes the CAISO to implement the IBAA simultaneous with MRTU. Consistent with the September 19 Order, the CAISO states that it continues to test the implementation of the IBAA through its market simulations and incorporate participant feedback.

Commission Determination

175. The Commission disagrees with Santa Clara that the reference to "MEEA signatory" in section 27.5.3.2.1(b) needs clarifying. Section 27.5.3.2.1 provides data that the CAISO will request from the entity seeking to negotiate a MEEA. This section provides that this data will be used to determine the details of the specific MEEA, including the list of external supply resources and loads within the IBAA over which the MEEA signatory has control or serves. Therefore, the subsection (b) of section 27.5.3.2.1 appropriately refers to the MEEA signatory.

176. The concerns raised by Western and Santa Clara regarding the CAISO market simulations are outside the scope of this proceeding. These issues are being dealt with in Docket No. ER06-615-038.

177. With respect to Santa Clara's argument that the CAISO should model all COTP transactions, in the September 19 Order, the Commission specifically found that modeling all COTP schedules is not necessary for purposes of modeling and pricing interchange transactions. Therefore, such arguments are better raised on rehearing of the order and we will address any arguments Santa Clara raised on rehearing.

The Commission orders:

(A) The CAISO's compliance is hereby conditionally accepted, as discussed in the body of this order.

(B) The CAISO is directed to submit an additional compliance filing, within 60 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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