

144 FERC ¶ 61,192
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

California Independent System
Operator Corporation

Docket No. ER13-1971-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued September 9, 2013)

1. On July 12, 2013, the California Independent System Operator Corporation (CAISO) filed revisions to its Open Access Transmission Tariff (tariff) to implement new minimum criteria for direct participation in the CAISO markets. The proposed revisions are designed to allow CAISO and its market participants to qualify for an exemption of specified market transactions from the provisions of the Commodities Exchange Act (CEA)¹ and Commodity Futures Trading Commission (CFTC) regulations. This order accepts CAISO's proposed tariff revisions, effective September 16, 2013, as requested.

I. Details of the Filing

2. CAISO states that on March 28, 2013, the CFTC issued an order² granting certain ISOs and RTOs exemptive relief from CFTC regulation under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).³ CAISO explains that it

¹ 7 U.S.C. § 1 *et seq.* (2006), as amended by Pub. L. No. 111-203, 124 Stat. 1376 (2010).

² *See* Final Order in Response to a Petition From Certain Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs) to Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in the Act, 78 Fed. Reg. 19,880 (Apr. 2, 2013) (CFTC Final Order).

³ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

has satisfied all but one of the requirements set forth in the CFTC Final Order.⁴ CAISO states that the remaining requirement is to limit participation in its market to entities that qualify as (1) an “appropriate person,” as defined in the CEA,⁵ (2) an “eligible contract participant,” as defined in the CEA,⁶ or (3) a “person who actively participates in the generation, transmission, or distribution of electric energy,” which is defined in the CFTC Final Order as a person that is in the business of (i) “[g]enerating, transmitting, or distributing electric energy” or (ii) “providing electric energy services that are necessary to support the reliable operation of the transmission system.”⁷

3. To meet this requirement, CAISO proposes to augment the minimum participation criteria already set forth in its tariff⁸ to require that each market participant with a direct financial relationship with CAISO satisfy at all times the criteria to be one or more of the following: (1) an “appropriate person,” as defined in the CEA; (2) an “eligible contract participant,” as defined in the CEA and the CFTC’s regulations; or (3) “in the business of generating, transmitting, or distributing electric energy,” as defined in the CFTC Final Order.⁹ As an alternative to satisfying (1), (2) or (3), a market participant that participates as a scheduling coordinator only, and not as a congestion revenue rights (CRR) holder, candidate CRR holder, or a convergence bidding entity, is deemed to satisfy the criteria if it is in the business of providing electric energy services that are necessary to support the reliable operation of the transmission system, as defined in the CFTC Final Order.

4. Further, CAISO proposes that each year, beginning September 16, 2013, market participants must submit to CAISO an officer’s certificate stating, under penalty of perjury, that (i) the market participant is in compliance with the minimum participation criteria and (ii) if the market participant no longer satisfies the criteria, it will

⁴ The Commission has previously accepted CAISO’s tariff revisions to provide similar treatment to information requests from the CFTC and its staff as is already provided for information requests from the Commission and its staff. *Cal. Indep. Sys. Operator Corp.*, 142 FERC ¶ 61,069 (2013).

⁵ 7 U.S.C. § 6(c)(3) (2006).

⁶ 7 U.S.C. § 1a(18) (2006). *See also* Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant,” and “Eligible Contract Participant,” 77 Fed. Reg. 30,596 (May 23, 2012).

⁷ CFTC Final Order, 78 Fed. Reg. 19,880 at 19,897.

⁸ The proposed tariff revisions supplement, but do not replace, the currently applicable minimum participation criteria set forth in CAISO tariff section 12.1.

⁹ *See* proposed CAISO tariff section 12.1(b)(i)(5), 12.1(b)(iv).

immediately notify CAISO and cease all participation in the CAISO markets.¹⁰ CAISO also proposes that a market participant that no longer satisfies the new minimum criteria for direct participation will be subject to CAISO's enforcement authority already set forth in the tariff, including CAISO's authority to restrict or suspend participation in its markets by non-compliant market participants.¹¹ CAISO states that it has no reason to believe that any market participant will either decline to submit an officer's certificate or fail to meet the deadline.

5. CAISO requests that the Commission accept the proposed tariff revisions effective September 16, 2013. CAISO states that this effective date is necessary because it will require market participants to submit initial officers' certificates stating that they satisfy the new minimum criteria for direct participation by September 16, 2013. CAISO also states that this requested effective date is also essential to allow CAISO to ensure compliance in advance of the September 30, 2013 deadline specified in the CFTC staff's March 29, 2013 no-action letter.¹²

II. Notice of Filing and Responsive Pleadings

6. Notice of CAISO's filing was published in the *Federal Register*, 78 Fed. Reg. 43,875 (2013), with interventions and protests due on or before August 2, 2013. Motions to intervene were filed by the City of Santa Clara, California; Exelon Corporation; Modesto Irrigation District; Northern California Power Agency; Pacific Gas and Electric Company; Southern California Edison Company; and Trans Bay Cable LLC. No protests or comments were filed.

III. Commission Determination

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

¹⁰ See proposed CAISO tariff section 12.1(b)(i) (requiring the annual submission of an officer's certificate as detailed in the Business Practice Manual).

¹¹ See proposed CAISO tariff section 12.5.1.

¹² See Extension of Staff No-Action Relief with Respect to Certain CEA Provisions that May Apply to Certain RTOs, ISOs, and/or Their Participants at 2 (Mar. 29, 2013).

8. We find CAISO's proposed tariff revisions to be just and reasonable and not unduly discriminatory. In Order No. 741,¹³ the Commission gave each ISO and RTO discretion to develop minimum criteria through their individual stakeholder processes.¹⁴ Upon further consideration, the Commission finds that the minimum criteria for participation in the organized wholesale electric markets set forth in the CFTC Final Order are appropriate. The proposed tariff revisions are designed to address the requirements of the CFTC Final Order and strengthen the minimum criteria for participation in the CAISO market. Therefore, we find that the proposed tariff revisions are consistent with the requirements of Order No. 741, and accept them to become effective September 16, 2013, as requested.

The Commission orders:

CAISO's proposed tariff revisions are hereby accepted, effective September 16, 2013, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹³ *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, FERC Stats. & Regs. ¶ 31,317 (2010), *order on reh'g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 (2011), *reh'g denied*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

¹⁴ Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 132.