

120 FERC ¶ 61,147
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket No. ER06-700-004

ORDER ON COMPLIANCE FILING

(Issued August 10, 2007)

1. On May 31, 2007, the California Independent System Operator Corporation (CAISO) submitted revised tariff sheets to comply with the Commission's April 19, 2007 order on rehearing and compliance filings regarding the CAISO's credit policy procedures.¹ In this order we accept the proposed tariff sheets, as discussed below.

I. Background

2. On May 12, 2006, the Commission conditionally accepted tariff revisions filed by the CAISO to amend its credit policy.² These revisions allow the CAISO to determine entity-specific unsecured credit limits, replacing the previous system in which market participants had an unlimited line of unsecured credit if they maintained an approved credit rating. The revisions clarify which entities are subject to the credit provisions of the CAISO tariff. Further, the revisions specify that the credit requirements apply to the acceptance of schedules and transactions in the CAISO markets, as well as the payment of charges. The CAISO states that these changes will provide greater assurance that each market participant and firm transmission rights bidder can satisfy its financial obligations and not present undue credit risk to CAISO market creditors.³

¹ *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,053 (2007) (April 19 Compliance Order).

² *Cal. Indep. Sys. Operator Corp.*, 115 FERC ¶ 61,170 (2006) (May 12 Order).

³ See CAISO March 7, 2006 Transmittal Letter, Docket No. ER06-700-000, at 5.

3. The Commission's May 12 Order required the CAISO to make tariff revisions beyond those the CAISO initially proposed, and directed the CAISO to submit a compliance filing to effectuate those tariff modifications. Most notably, the Commission required the CAISO to include in its tariff the eight-step process that it would use to calculate unsecured credit limits, and to file its Credit Policy and Procedures Guide (Credit Guide) as an attachment to its tariff.⁴ The Commission also urged the CAISO to work with stakeholders to develop an alternative measure for calculating the financial strength of non-profits' unsecured credit limits, which could be included in the Credit Guide.

4. In response to the May 12 Order, the CAISO submitted a compliance filing on July 11, 2006. This compliance filing contained two separate sets of proposed tariff revisions. The first set of revisions contained the changes required by the May 12 Order by including the Credit Guide as an amendment to the CAISO tariff, incorporating the eight-step process for determining unsecured credit limits into the tariff, and including other required revisions. The alternative set of revisions did not include the Credit Guide as an attachment, but rather presented it as a reference manual not intended to be part of the tariff. However, the alternative set of revisions did contain a description of the eight-step process for determining unsecured credit limits in the tariff and made other changes that the Commission required in the May 12 Order.⁵

5. Then, on August 9, 2006, as corrected on August 10, 2006, the CAISO submitted a further compliance filing. This compliance filing included measures for calculating unsecured credit limits for local publicly-owned electric utilities; measures for calculating unsecured credit limits for unrated governmental entities that receive federal or state government appropriations; and two new, related definitions in Appendix A of the CAISO tariff. In the Commission's April 19 Compliance Order, the Commission conditionally accepted the August 9, 2006 and August 10, 2006 compliance filings and also accepted, subject to conditions and modifications, the alternative set of revisions submitted by the CAISO in its July 11, 2006 compliance filing. The April 19 Compliance Order required the CAISO to submit a compliance filing within 60 days of the filing of that order.

II. The CAISO's Compliance Filing

⁴ See May 12 Order, 115 FERC ¶ 61,170 at P 21.

⁵ See CAISO July 11, 2006 Compliance Filing Transmittal Letter, Docket No. ER06-700-003, at 2 (CAISO stating that, if the Commission accepts the alternative set of changes it should not accept the first set of changes, and vice versa, and urging the Commission to accept the alternative set of changes rather than the first set of changes).

6. To comply with the April 19 Compliance Order, the CAISO submitted its compliance filing on May 31, 2007. The CAISO states that the revised tariff sheets incorporate the following provisions: (1) inclusion of the eight-step process for calculating an entity's unsecured credit limit; (2) inclusion of the process used to calculate an entity's estimated aggregate liability; (3) specific information about where publicly-available information from third parties can be found; (4) capitalization of select terms; and (5) provisions concerning the calculation of unsecured credit limits of local publicly-owned electric utilities and of unrated governmental entities that receive appropriations from the federal or state government.

III. Notice of Filing and Responsive Pleadings

7. Notice of the CAISO's filing was published in the *Federal Register*, 72 Fed. Reg. 33,482 (2007), with interventions and protests due on or before June 21, 2007. Protests were filed by the Transmission Agency of Northern California (TANC) and by M-S-R Public Power Agency and the City of Santa Clara, California, d/b/a Silicon Valley Power (jointly, SVP/M-S-R). The Northern California Power Agency filed comments in support of the CAISO's filing.

8. The CAISO filed an answer to the protests. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the CAISO's answer because it has provided information that assisted us in our decision-making process.

IV. Discussion

A. Protests

9. TANC and SVP/M-S-R (collectively, Protestors) argue that the CAISO's compliance filing failed to include provisions of the Credit Guide pertaining to estimated aggregate liability calculations (specifically, Credit Guide sections C-4 and C-6.1), as required by the Commission's April 19 Compliance Order.

10. Protestors state that the CAISO failed to include a provision found in section C-4 of the Credit Guide, which details the amount of financial security required of "Debtor/Creditor Market Participants leaving the market or incurring substantial activity level changes."⁶ Protestors aver that the provision in Credit Guide section C-4 — which states that market participants that are "exiting ISO markets, or have . . . substantially

⁶ SVP/M-S-R June 21, 2007 Protest, Docket No. ER06-700-004, at 4.

reduced participation in the ISO markets will be required to maintain a Financial Security Amount at least equal to five percent (5%) of the absolute value of the peak monthly net charges from their beginning participation date to their last participation date” — should be included in the CAISO’s tariff. Protestors point out that the five percent residual financial security will be retained by the CAISO for a period of one year, unless specific circumstances warrant a change in this retention period. Protestors argue that the above provision creates an obligation to maintain a level of financial security, and appears to fall within the purview of the April 19 Compliance Order requirement that the CAISO include in its tariff essential terms for calculating estimated aggregate liability, but that such provision does not appear to be included in the CAISO’s tariff revisions.

11. Protestors also argue that the CAISO failed to include in its proposed tariff sheets Credit Guide section C-6.1, which pertains to financial security requests. Protestors explain that section C-6.1 provides that “each market participant maintain an aggregate credit limit such that its estimated aggregate liability does not exceed 90% of its aggregate credit limit.”⁷ Protestors argue that this provision should be included in the CAISO tariff because it addresses the criteria used to determine when additional financial security is required by the CAISO.

B. CAISO Answer

12. In its answer, the CAISO states that the protests should be rejected because they are beyond the scope of modifications required in the April 19 Compliance Order. The CAISO states that the Commission expects public utilities subject to a Commission-imposed compliance obligation to strictly adhere to that obligation, and will reject components of a compliance filing that are beyond the scope of the order. The CAISO asserts that including anything other than the process for calculating estimated aggregate liability in its compliance filing would have gone beyond the scope of the April 19 Compliance Order.

13. The CAISO asserts that SVP/M-S-R and TANC are essentially arguing that the April 19 Compliance Order itself is in error for not directing the CAISO to include certain sections in its tariff. Therefore, the CAISO concludes, these arguments constitute an untimely request for rehearing of the April 19 Compliance Order, which the Commission should reject.

⁷ *Id.* at 5 (citing CAISO Credit Guide section C-6.1, Docket No. ER06-700-003 (filed July 11, 2006); *see also* TANC June 21, 2007 Protest, Docket No. ER06-700-004, at 5.

14. Finally, the CAISO points out that tariff section 12.3 contains provisions that address the same subject as Credit Guide section C-4. Similarly, tariff sections 12.4 and 12.5 contain the same requirements as those in Credit Guide section C-6.1. Consequently, the CAISO states, it would have been inappropriate for the CAISO to include these provisions in the compliance filing.

C. Commission Determination

15. We accept the CAISO's tariff sheets as in satisfactory compliance with the April 19 Compliance Order, and direct no further tariff modifications at this time. We find the Protestors' objections to the compliance filing go beyond the scope of compliance. The April 19 Compliance Order directed the CAISO to include in its tariff, among other things, "*the process* that the CAISO will use to calculate an entity's estimated aggregate liability, as described in Part C of the Credit Guide."⁸ The additional information requested by the Protestors does not pertain to that calculation process and, therefore, is beyond the scope of the compliance requirements set forth in the April 19 Compliance Order. The Protestors' issues with respect to the scope of the compliance filing should have been raised in the context of a request for clarification or rehearing of the April 19 Compliance Order; but they failed to do so. Consequently, we reject their requests as an impermissible collateral attack on the April 19 Compliance Order.⁹

16. In addition, and significantly, it is not necessary to direct the tariff modifications the Protestors seek because the tariff already contains the requested provisions, in pertinent part. Protestors seek to include in the tariff section C-6.1 of the Credit Guide. However, such inclusion would be redundant because, as the CAISO points out in its answer, the directives contained in C-6.1 are already contained in sections 12.4 and 12.5 of the tariff.¹⁰ Similarly, the requirements of Credit Guide section C-4 (which Protestors also seek to include in the tariff) are already generally contained in section 12.3 of the tariff. Tariff section 12.3 gives the CAISO flexibility to determine the appropriate amount of financial security necessary to cover liabilities of a departing or significantly less active market participant. While section C-4 of the Credit Guide provides more detail, it simply builds upon what is already provided for in section 12.3 of the CAISO's approved tariff. We find that this additional detail contained in section C-4 of the Credit Guide does not significantly affect the rates, terms and conditions of transmission service,

⁸ April 19 Compliance Order, 119 FERC ¶ 61,053, at P 16 (emphasis added).

⁹ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,240 (2007).

¹⁰ See CAISO July 6, 2007 Answer, Docket No. ER06-700-004, at 7.

and thus need not be included in the tariff.¹¹ Accordingly, we deny the request of Protestors to require further modification of the CAISO's tariff.

The Commission orders:

The tariff sheets submitted by the CAISO in its May 31, 2007 compliance filing are hereby accepted, as designated.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.

¹¹ See, e.g., May 12 Order, 115 FERC ¶ 61,170 at P 21 & n.9 (*citing City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985)).