

126 FERC ¶ 61,209
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 6, 2009

In Reply Refer To:
California Independent System Operator Corporation
Docket No. ER09-292-000

Alston & Bird LLP
Attn: Bradley R. Miliauskas, Esq.
The Atlantic Building
950 F Street, NW
Washington, DC 20004

Dear Mr. Miliauskas:

1. On November 13, 2008, the California Independent System Operator Corporation (CAISO) filed a unilaterally-executed Amended and Restated Metered Subsystem Agreement (MSS Agreement) between the CAISO and the City of Santa Clara, doing business as Silicon Valley Power (Santa Clara). The CAISO states that the MSS Agreement was revised to comport with the new provisions of the CAISO's Market Redesign and Technology Upgrade (MRTU) Tariff.
2. The CAISO states that it has made similar filings for all five of its metered subsystem agreements.¹ Santa Clara's MSS Agreement governs Santa Clara's balancing of its loads and resources in the CAISO system and allows Santa Clara to operate within the CAISO control area. The CAISO states that the MSS Agreement in this proceeding includes revisions addressing Santa Clara's obligations regarding CAISO charges and settlements. The CAISO also states that it updated the use of MRTU Tariff-defined terms, recognized certain reliability standards and updated technical and contact information in the attachments to the MSS Agreement.²

¹ See Docket Nos. ER09-188-000, ER09-259-000, ER09-321-000 and ER09-332-000.

² CAISO, November 13, 2008, Transmittal Letter at 3.

3. The CAISO submitted this MSS Agreement unexecuted by Santa Clara because, although the parties had not agreed on all of the proposed changes, the CAISO needed to file the MSS Agreement to allow the Commission to act on the filing before MRTU implementation. The CAISO requests an effective date for the MSS Agreement to coincide with the implementation date of the MRTU Tariff. The CAISO also requests the Commission waive section 35.3 of its regulations, because MRTU will be implemented more than 120 days after the submittal of the instant filing.³

4. Notice of the CAISO's filing was published in the *Federal Register* with comments due on or before December 4, 2008.⁴ A timely motion to intervene was filed by Southern California Edison Company. Timely motions to intervene and protest were filed by the Northern California Power Agency (NCPA) and Santa Clara. The CAISO filed an answer to Santa Clara's protest on December 19, 2008.

5. Santa Clara believes that the MSS Agreement filed by the CAISO is, in general, a fair compromise. However, Santa Clara proposes specific additions to the MSS Agreement concerning emergency sales compensation and deletions to broad references involving the MRTU Tariff.

6. Specifically, Santa Clara argues that the currently-effective CAISO Tariff does not provide adequate compensation for emergency energy supplied by Santa Clara to the CAISO. Santa Clara believes that the MSS Agreement should explicitly state that, when Santa Clara responds to a CAISO request for emergency energy it shall recover all of its costs, including the opportunity costs of supplying energy from use-limited resources. Santa Clara suggests revisions to the MSS Agreement including a list of the types of costs it would recover through a default energy bid under the negotiated rate option. Santa Clara also submits that this section of the MSS Agreement should become effective upon Commission approval of the MSS Agreement, whether or not the MRTU Tariff has become effective. Santa Clara explains its concern over delays on MRTU implementation and states that it does not want to experience another summer season with the currently-effective CAISO Tariff's emergency sales provisions.⁵

7. Santa Clara also argues that the CAISO used overly broad references to the MRTU Tariff in drafting the MSS Agreement. Santa Clara cites three sections of the MSS Agreement that contain either a broad reference to the overall CAISO Tariff or an overly broad reference to a tariff section, and states these references result in ambiguity

³ 18 C.F.R. § 35.3 (2008).

⁴ 73 Fed. Reg. 80,386 (2008).

⁵ Santa Clara, December 4, 2008, Motion to Intervene and Comments at 14.

regarding Santa Clara's specific obligations. Santa Clara states that the Commission should order the CAISO to modify these sections with revised language provided by Santa Clara.

8. NCPA is the scheduling coordinator for Santa Clara under its MSS Agreement. NCPA states that it supports Santa Clara's request for modifications to the MSS Agreement. NCPA also notes that if Santa Clara's modifications are granted, then NCPA may need to make similar changes to its MSS Agreement to ensure coordinated operations.⁶

9. In its answer the CAISO argues that the Commission should reject Santa Clara's suggested modifications and accept the MSS Agreement as filed. The CAISO argues that the default energy bid provides assurance that Santa Clara will be adequately compensated and that the MRTU Tariff, once implemented, will fully address Santa Clara's concerns over compensation for emergency assistance. The CAISO states that Santa Clara's request to make the emergency sales provision of the MSS Agreement effective prior to MRTU implementation should be rejected because it is beyond the scope of this proceeding and would be extraordinarily burdensome to the CAISO. Lastly, the CAISO argues that Santa Clara's three suggested deletions to MRTU Tariff references are overly-restrictive and inappropriate.

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁷ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,⁸ 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.

11. The Commission agrees with the CAISO that Santa Clara's suggested MSS revisions on compensation are unnecessary, because the MRTU Tariff provides sufficient information on negotiated default energy bids. The MSS Agreement provides that Santa Clara's scheduling coordinator will receive compensation for emergency capacity and/or energy in accordance with the CAISO Tariff, and that Santa Clara's default energy bid shall be calculated under the negotiated rate option unless Santa Clara elects another option.⁹ The MRTU Tariff, in turn, specifies that under the negotiated option the first

⁶ See Docket No. ER09-259-000.

⁷ 18 C.F.R. § 385.214 (2008).

⁸ 18 C.F.R. § 385.213(a)(2) (2008).

⁹ MSS Agreement, section 7.1.3.

step in the process is for Santa Clara to submit its bid to the CAISO.¹⁰ In developing this negotiated option process, the CAISO and the Commission have indicated that opportunity costs should be included in a scheduling coordinator's bid.¹¹ Previously, the Commission agreed with the CAISO that the supporting documentation for a negotiated default energy bid need not be enumerated in the MRTU Tariff, because this rate may require frequent updates to capture changes in costs, and therefore it is best suited for inclusion in the Business Practice Manual.¹² The Commission noted that "the supporting documentation prescribed in the Business Practice Manual should include but not be limited to a seller's operating cost (e.g., fuel costs, operation and maintenance costs), opportunity costs or any other inputs calculated in the default energy bid under the negotiated option."¹³ Consequently, the current draft of CAISO's relevant MRTU Business Practice Manual lists the information a scheduling coordinator should provide when submitting a negotiated rate default energy bid stating, "3. A descriptive explanation and justification of the basis or need for the proposed bid, including numerical calculations and supporting documentation including the Generating Unit's operating costs (e.g. fuel costs, operation and maintenance costs) and opportunity costs."¹⁴

12. In the event that Santa Clara and the CAISO cannot agree on the amount of opportunity costs in a default energy bid, the MRTU Tariff provides that after a sixty day period, the "Scheduling Coordinator has the right to file a proposed Default Energy Bid

¹⁰ CAISO, FERC Electric Tariff, Fourth Replacement Volume No. 1, Original Sheet No. 749, section 39.7.1.3.1.

¹¹ See *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 1048 (2006) (The Commission recognized the opportunity costs for hydroelectric units and encouraged market participants concerned about under-recovery to elect the negotiated option for establishing a default energy bid); *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076, at P 508 (2007) (CAISO cited opportunity costs from resources subject to environmental restrictions or resources facing a disruption to or limitation of its fuel supply as the type of changing conditions that requires generators and the CAISO to modify default energy bids).

¹² *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271, at P 22 (2008); *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,313, at P 344 (2007).

¹³ *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,313 at P 344.

¹⁴ California ISO, *Business Practice Manual for Market Instruments, Version 7* Attachment D (April 2008), available at <http://www.caiso.com/1fb3/1fb3f20e19530.pdf>.

with FERC pursuant to section 205 of the Federal Power Act.”¹⁵ If the CAISO must calculate a fallback temporary default energy bid, the MRTU Tariff specifically includes opportunity costs as an appropriate input.¹⁶ Finally, the Commission will monitor this rate mechanism through a report the CAISO must file with the Commission 12 months after implementation of MRTU detailing its experience with default energy bids and, in particular, what information the CAISO used in developing the negotiated default energy bid.¹⁷ Therefore, the Commission finds that opportunity costs have been sufficiently addressed in the MRTU Tariff negotiated rate default energy bid process, and that Santa Clara’s proposed language for the MSS Agreement is unnecessary.

13. The Commission also denies Santa Clara’s request to modify the effective date of section 7 of the MSS Agreement. Because this section and specifically the compensation provisions in subsection 7.1.3 of the MSS Agreement, are dependent on numerous cross-references to the MRTU Tariff, it is not practical for the MSS Agreement to be effective before the MRTU Tariff. If Santa Clara wishes to modify the currently-effective CAISO Tariff section 11.2.4.2, it has the option of making a Federal Power Act section 206 filing with the Commission.

14. The Commission denies Santa Clara’s request to require the CAISO to modify three sections of the MSS Agreement to limit the scope of the references to the CAISO Tariff as unnecessary, overly restrictive, and inconsistent with the other MSS Agreements. Furthermore, the Commission finds that section 3.3.1 of the MSS Agreement, which states that “[i]f and to the extent a matter is specifically addressed by a provision of this Agreement...the provisions of this Agreement shall govern notwithstanding any inconsistent provision of the CAISO Tariff or any CAISO Business Practice Manual,” clarifies the predominant status of the MSS Agreement.

15. The Commission grants the CAISO’s request for waiver of section 35.3 of the Commission’s regulations to file this rate schedule more than 120 days before the approaching MRTU Tariff implementation. We direct the CAISO to make an informational filing specifying the effective date of the MSS Agreement accepted herein

¹⁵ CAISO, FERC Electric Tariff, Fourth Replacement Volume No. 1, Original Sheet No. 749, section 39.7.1.3.1.

¹⁶ *Id.* at section 39.7.1.5.

¹⁷ *Cal. Indep. Sys. Operator Corp.*, 120 FERC ¶ 61,271, at P 26 (2007).

prior to implementation of the MRTU Tariff. In addition, we suggest the CAISO address a potential clerical error to section 2.1 of the MSS Agreement as needed.¹⁸

By direction of the Commission. Commissioner Kelliher is not participating,

Kimberly D. Bose,
Secretary.

¹⁸ Santa Clara, December 4, 2008, Motion to Intervene and Comments at 15 (noting that in the third sentence of Section 2.1 of the MSS Agreement it appears that the CAISO mistakenly referred to the “pre-MRTU ISO Tariff” where it likely intended to refer to the “version of the MSS Agreement in existence prior to this Agreement.”).