

170 FERC ¶ 61,168
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

California Independent System
Operator Corporation

Docket No. ER20-536-000

ORDER ON IMPLEMENTATION AGREEMENT

(Issued February 28, 2020)

1. On December 6, 2019, the California Independent System Operator Corporation (CAISO) filed, pursuant to section 205 of the Federal Power Act,¹ an Implementation Agreement between itself and Bonneville Power Administration (Bonneville) setting forth the terms under which CAISO will extend its existing real-time energy market systems to provide energy imbalance market (EIM) service to Bonneville, pursuant to CAISO's EIM tariff. In this order, we accept the Implementation Agreement for filing, effective March 2, 2020, as requested.

I. Background

2. The EIM enables entities outside the CAISO balancing authority area to participate in the CAISO-administered real-time market for imbalance energy. CAISO states that, since its inception in 2014, the EIM has developed and expanded, attracting the interest of a diverse array of participants throughout the Western Interconnection.²

II. Implementation Agreement

3. The Implementation Agreement³ between CAISO and Bonneville details the contractual terms under which CAISO will take the steps necessary to incorporate

¹ 16 U.S.C. § 824d (2018).

² Transmittal at 2.

³ In addition to the provisions discussed below, the Implementation Agreement includes a variety of other provisions, including those that address confidentiality; limitations of liability; representations and warranties; general provisions such as notices and amendments; governing law and venue; communication; and dispute resolution. *Id.*

Bonneville into the EIM consistent with the identified key milestones and associated payment provisions. CAISO anticipates that Bonneville will commence EIM participation no later than March 2, 2022.⁴

A. Project Scope and Schedule

4. According to CAISO, the Implementation Agreement establishes the scope and schedule of implementing the EIM service and requires CAISO and Bonneville (collectively, Parties) to complete a variety of project tasks necessary for implementation by March 2, 2022. CAISO explains that the Parties chose this date to allow for completion of all necessary activities based on the size, complexity, and compatibility of Bonneville. CAISO notes that the Implementation Agreement is modeled after implementation agreements previously accepted by the Commission and, therefore, adopts provisions substantially similar to those which have been accepted by the Commission.⁵

5. According to the Implementation Agreement, either party may propose a change in the project scope or to the implementation date as set forth in Exhibit A to the Implementation Agreement. Such a proposed change would require the Parties to negotiate in good faith to reach agreement as to the proposal and any necessary changes to the scope and schedule, provided that any such change must be mutually agreed to by the Parties and filed with the Commission.⁶ The Implementation Agreement also allows for monthly meetings of the Parties' executives, or their designees, to discuss the continued appropriateness of the project scope and to ensure that the project can meet the implementation date.⁷

B. Implementation Fee

6. The Implementation Agreement specifies that Bonneville will pay to CAISO a fixed implementation fee of \$1,870,000, subject to the completion of six specified milestones for recovery of the costs attributable to CAISO's effort to configure its real-time market systems to incorporate Bonneville into the EIM.⁸ CAISO states that the methodology used to determine the implementation fee for Bonneville is the same

at 3; Implementation Agreement, §§ 5-11.

⁴ Transmittal at 1-2.

⁵ *Id.* at 2 & n.7.

⁶ *Id.* at 3; Implementation Agreement, § 3(c).

⁷ *Id.* § 3(d).

⁸ The agreed-upon milestones are: (1) an effective date of the Implementation

methodology that CAISO used to determine the previously-accepted implementation fees of other EIM participants.⁹ CAISO states that it confirmed the reasonableness of the implementation fee by comparing it to an estimate of the costs CAISO projects it will incur to configure its real-time energy market to function as an EIM that serves both CAISO and Bonneville.¹⁰

7. Section 4(b) of the Implementation Agreement provides that the implementation fee shall be subject to adjustment only by mutual agreement of the Parties in either of two circumstances: (1) the Parties agree to a change in the project scope, schedule, or implementation date, and the Parties agree that an adjustment to the fee is warranted in light of such change; or (2) CAISO provides notice to Bonneville that the sum of its actual costs and its projected costs to accomplish the balance of the project exceed the implementation fee.

C. Other Key Principles

8. Section 2 of the Implementation Agreement allows either party to terminate the agreement for any reason, provided it has first entered into good faith discussions for 30 days in an effort to resolve differences. Bonneville may provide a notice to terminate the agreement and CAISO must discontinue work on the project and will not invoice Bonneville for any subsequent milestone payments. In such circumstances, after 30 days' good faith negotiations, CAISO will invoice Bonneville for any milestones completed but not already invoiced.¹¹

9. Section 12 of the Implementation Agreement provides the opportunity for CAISO and Bonneville to work with third parties to facilitate the project.¹² Section 13 states that

Agreement; (2) a detailed project management plan by April 2020; (3) system implementation and connectivity testing by June 2021; (4) market simulation by November 2021; (5) start of parallel operations by February 2022; and (6) system deployment and "go live" by March 2, 2022. *Id.*, Exhibit A.

⁹ CAISO states that it derived a rate that would allocate the projected \$19.65 million to potential entrants into the EIM according to their proportionate share of the total Western Electricity Coordinating Council (WECC) load (excluding CAISO's load). CAISO explains that it applied this amount to Bonneville's share of the WECC load to obtain the implementation fee amount. Transmittal at 3-4.

¹⁰ *See* Implementation Agreement, Attachment B, Declaration of April D. Gordon, December 5, 2019.

¹¹ Implementation Agreement, § 2.

¹² *Id.* § 12.

both Parties will continue to abide by their respective compliance obligations, including WECC and North American Electric Reliability Corporation Reliability Standards.¹³

10. Section 14 of the Implementation Agreement recognizes various principles regarding implementation of Bonneville's potential participation in the EIM. Specifically, the Implementation Agreement provides that Bonneville's participation in the EIM will be consistent with its statutory, regulatory, and contractual requirements including its continued responsibility for reliable operation of federal power and transmission systems. Another participation principle included in the Implementation Agreement recognizes that Bonneville's participation is voluntary and, among other things, states that Bonneville can voluntarily make transmission available for EIM Transfers and can voluntarily forego engaging in EIM transfers in one or more specified operating intervals. Other participation principles involve federal generation participation, automation support, greenhouse gas attributes, base schedule submission timeframes, and EIM enhancements.¹⁴

III. Notice and Responsive Pleadings

11. Notice of CAISO's December 6, 2019 filing was published in the *Federal Register*, 84 Fed. Reg. 67,938 (2019), with interventions and protests due on or before December 27, 2019. Timely motions to intervene were filed by Southern California Edison Company, Pacific Gas and Electric Company, the Modesto Irrigation District, the City of Santa Clara, California, the City of Redding, California, the Public Power Council, the Balancing Authority of Northern California, Northwest Requirements Utilities, and Public Utility District No. 1 of Snohomish County, Washington. Timely motions to intervene and comments were filed by Bonneville, Nevada Power Company and Sierra Pacific Power Company (together, NV Energy), and PacifiCorp. On December 31, 2019, Powerex Corp. filed a motion to intervene out-of-time. On January 13, 2020, Bonneville, the Bonneville Stakeholder Group (Bonneville Stakeholders),¹⁵ and CAISO filed answers to NV Energy's and PacifiCorp's comments. NV Energy and PacifiCorp filed a joint answer to CAISO's, Bonneville's, and the Bonneville Stakeholders' answers on January 22, 2020.

¹³ *Id.* § 13.

¹⁴ *Id.* § 14. Exhibit B to the Implementation Agreement also contains federal government contract provisions that are necessary for Bonneville to enter into the Implementation Agreement including provisions concerning contingent fees, contract work hours and safety standards, equal opportunity employment practices, and use of convict labor.

¹⁵ Bonneville Stakeholders include the Public Power Council and Powerex Corp.

A. Comments

12. Bonneville explains that section 14 of the Implementation Agreement notes four CAISO enhancements that are of particular importance to Bonneville. While Bonneville notes that its participation in the EIM is not expressly contingent upon these enhancements, it believes these are important items for CAISO to consider. Specifically, Bonneville states that it has or will propose the following enhancements in CAISO's stakeholder process: (1) changing the market closing deadline from T-40 minutes to T-30 minutes; (2) permitting resource sufficiency obligation transfers; (3) improving the flexible ramping sufficiency test by means such as incorporating variable energy resource forecasts into the flexible ramping requirement computation; and (4) increasing transparency of data required for validation of EIM settlement.¹⁶

13. NV Energy and PacifiCorp state that they strongly support the expansion of the EIM and welcome the addition of Bonneville.¹⁷ However, they both express concerns regarding the participation principle in section 14(b) of the Implementation Agreement reflecting Bonneville's proposal of "voluntarily making transmission available for EIM Transfers and the ability to voluntarily forego engaging in EIM Transfers in one or more specified operating intervals consistent with the ISO tariff and the Bonneville Tariff."¹⁸ NV Energy and PacifiCorp assert that such an approach is inconsistent with the approach utilized by current EIM entity transmission providers of making firm and non-firm Available Transfer Capability (ATC) available for EIM transfers.¹⁹

14. NV Energy and PacifiCorp acknowledge that there are two means by which EIM entities make transmission available to the market: (1) the interchange transmission rights (ITR) mechanism; and (2) ATC mechanism. PacifiCorp and NV Energy explain that while PacifiCorp initially participated in the EIM using the ITR methodology, following NV Energy's entrance into the EIM, all of the EIM entities that operate transmission systems, including PacifiCorp, have offered both the ITR and the ATC mechanisms. NV Energy and PacifiCorp contend that, once a transmission provider elects to join the EIM, there should be a common understanding that firm and non-firm ATC will be made available to further efficient trading in the market. They assert that this practice should be applied on a common basis through CAISO's tariff to ensure equal

¹⁶ *Id.* at 4.

¹⁷ NV Energy Comments at 1; PacifiCorp Comments at 1.

¹⁸ NV Energy Comments at 1-2 (citing Implementation Agreement, § 14(b)); PacifiCorp Comments at 1 (same).

¹⁹ NV Energy Comments at 1-2; PacifiCorp Comments at 1-2.

treatment by Commission-jurisdictional and non-jurisdictional entities operating in a joint market.²⁰

15. NV Energy and PacifiCorp assert that Bonneville proposes to be the first EIM entity transmission provider to fail to make its ATC available to the market.²¹ NV Energy expresses concerns that this will prevent EIM transfers from occurring on an intertie that interconnects NV Energy to Bonneville because the amount of ATC available on an interface between two EIM entities is based upon the lower of the amount of ATC calculated for each EIM entity at that interface. NV Energy asserts that if Bonneville has zero ATC available at that interface, no EIM transfers will occur.²² NV Energy and PacifiCorp contend that free use of transmission on the EIM is on a reciprocal basis.²³ They argue that Bonneville not making ATC available would result in a free rider problem as Bonneville would be a beneficiary of the EIM but would not provide transmission in a manner commensurate with the other EIM entity transmission providers.²⁴ They contend that it is important that CAISO and EIM entities maintain a consistent approach to making transmission available in the EIM. NV Energy also states that it supports Bonneville's concern over proper compensation for EIM wheeling, but withholding transmission is not the answer. NV Energy argues that instead, CAISO should engage in a stakeholder process to evaluate the issue before Bonneville joins the EIM in 2022.²⁵

B. Answers

16. In their answers, CAISO, Bonneville, and Bonneville Stakeholders all note that the CAISO tariff provides EIM entities with options to make transmission available for EIM transfers, and that the Implementation Agreement is consistent with the CAISO tariff and established precedent. Specifically, they note that the existing CAISO tariff provides the ITR mechanism and the ATC mechanism as two options for an EIM entity to make transmission available for EIM transfers, and that the CAISO tariff does not dictate how the EIM entity must select among these options. CAISO, Bonneville, and Bonneville Stakeholders argue that Commission precedent supports this conclusion given that prior to 2015, the only mechanism available for EIM transfers was the ITR mechanism. CAISO, Bonneville, and Bonneville Stakeholders further contend that subsequent

²⁰ NV Energy Comments at 5-9; PacifiCorp Comments at 3-6.

²¹ NV Energy Comments at 9-11; PacifiCorp Comments at 6.

²² NV Energy Comments at 11-13.

²³ *Id.* at 13-14.

²⁴ PacifiCorp Comments at 7-8.

²⁵ NV Energy Comments at 14-16.

introduction of ATC as another viable model within the CAISO tariff has never been contingent on a requirement for EIM entities to use the ATC mechanism exclusively.²⁶

17. CAISO, Bonneville, and Bonneville Stakeholders argue that commenters' assertions that ATC be the required mechanism for making transmission available for EIM transfers is at odds with the foundational tenet that participation in the EIM is voluntary, and they contend that such an assertion constitutes an attempt to redesign the EIM as it currently exists. They note that the voluntary nature of the EIM is a necessary aspect for Bonneville's participation and contend that attempting to modify this core philosophy by mandating use of an ATC mechanism would potentially jeopardize Bonneville's participation in the EIM.²⁷

18. CAISO, Bonneville, and Bonneville Stakeholders also agree that CAISO should continue to address incentives for voluntary contribution of additional capacity for EIM

transfers and compensation for EIM wheeling transactions in an ongoing stakeholder process.²⁸

19. CAISO states that it is not proposing any changes or exceptions to its existing tariff provisions and, therefore, the request to condition Bonneville's participation on the requirement that it make transmission capacity available under the ATC mechanism is beyond the scope of the proceeding. Accordingly, CAISO states that the Commission should accept the Implementation Agreement without condition or modification.²⁹

20. Bonneville argues that since the beginning of the EIM, it has worked extensively with CAISO and PacifiCorp to facilitate transactions across the Bonneville transmission system, and therefore dismisses the notion that the use of the ITR mechanism would result in free ridership. Bonneville states that existing EIM entities already rely on the ITR mechanism across Bonneville's transmission system and have received substantial benefits from the EIM.³⁰ Bonneville states that if it joins the EIM, it will provide the

²⁶ CAISO Answer at 3, 6-9; Bonneville Answer at 3; Bonneville Stakeholders Answer at 4, 7-10.

²⁷ CAISO Answer at 2, 4, 7, 13, 15-18; Bonneville Answer at 1, 10-11; Bonneville Stakeholders Answer at 3-10.

²⁸ CAISO Answer at 18-21; Bonneville Answer at 10; Bonneville Stakeholders Answer at 12-13.

²⁹ CAISO Answer at 10.

³⁰ Bonneville Answer at 6-7 (citing CAISO, *Western EIM Benefits Report 4* (Oct.

opportunity for even more transmission customers to donate transmission to facilitate EIM transfers.³¹

21. In response, NV Energy and PacifiCorp assert that no party to this proceeding refutes that benefits of the EIM are further maximized if EIM entity transmission providers provide ATC in a commensurate manner.³² They also state that they appreciate CAISO's commitment to address the issues NV Energy and PacifiCorp have raised in future stakeholder processes.³³ In addition, NV Energy and PacifiCorp clarify that they have not proposed to modify the ITR mechanism, but rather have raised the question of what is a reasonable commitment of an EIM entity transmission provider with regard to transmission capacity that has not been scheduled or donated by an interchange rights holder.³⁴ NV Energy and PacifiCorp also contend that it is unclear how offering ATC would impact Bonneville's ability to fulfill its statutory mandate because ATC in the EIM is a last call on otherwise unused transmission, and they suggest that potential compensation for wheeling can be discussed in CAISO's stakeholder processes.³⁵

IV. Discussion

A. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

23. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), we grant Powerex Corp.'s late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept CAISO's, Bonneville's, Bonneville Stakeholders', and

2019), <https://www.westerneim.com/Documents/ISO-EIMBenefitsReportQ3-2019.pdf>).

³¹ *Id.* at 6-9.

³² Joint Answer at 3-4.

³³ *Id.* at 4-6.

³⁴ *Id.* at 6-7.

³⁵ *Id.* at 7-8.

NV Energy and PacifiCorp's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

25. We find that the terms of the Implementation Agreement are just and reasonable and not unduly discriminatory or preferential and therefore accept it, effective March 2, 2020, as requested. The Implementation Agreement is a bilateral agreement between CAISO and Bonneville that sets forth the terms under which CAISO will extend its existing real-time energy market systems to provide energy imbalance service to Bonneville and its OATT customers. The Implementation Agreement also provides for Bonneville to pay CAISO a fixed implementation fee of \$1,870,000, subject to the completion of specified milestones. The implementation fee is based on CAISO's estimate of the costs it would incur to configure its real-time energy market to function as an EIM available to all balancing authority areas in the WECC. The implementation fee allocates a portion of that projected overall cost to Bonneville in an amount proportionate to Bonneville's benefits from the EIM, as measured by usage.

26. We are not persuaded by NV Energy's and PacifiCorp's assertions that Bonneville should be required to make firm and non-firm ATC available in order to participate in the EIM. As NV Energy and PacifiCorp acknowledge, the CAISO tariff expressly allows for the use of either the ITR or ATC mechanisms and does not require that an EIM entity use a specific mechanism to make transmission available for EIM transfers.³⁶ Bonneville's choice to use the ITR mechanism is therefore consistent with the CAISO tariff. The Commission accepted the ITR mechanism in 2014 to facilitate PacifiCorp's EIM participation, finding that PacifiCorp's proposal to make available for use in the EIM transmission capacity that would ordinarily be used for bilateral transactions was a novel approach that appeared to be reasonable.³⁷ Moreover, in later accepting CAISO's tariff provisions to facilitate the use of ATC for EIM transfers, the Commission found that incorporating the ATC mechanism "appropriately addresses the added complexity of EIM Transfers that result from the increase in the number of transmission interfaces among a growing number of EIM Entity BAAs."³⁸ Nothing in the Commission's order accepting the ATC mechanism rendered the use of an ITR mechanism obsolete.

27. As to NV Energy's and PacifiCorp's interest in further refining the EIM in future stakeholder processes, the instant filing concerns the Implementation Agreement between CAISO and Bonneville and is not a proposed revision to the CAISO tariff. Therefore,

³⁶ See CAISO Tariff, § 29.17(f).

³⁷ See *PacifiCorp*, 147 FERC ¶ 61,227, at PP 113-14 (2014) (accepting PacifiCorp's proposal to use the ITR method for EIM participation).

³⁸ See *Cal. Indep. Sys. Operator Corp.*, 153 FERC ¶ 61,087, at P 44 (2015).

arguments seeking to modify the terms of the currently-effective CAISO tariff are outside the scope of this proceeding.

The Commission orders:

The Implementation Agreement is hereby accepted, effective March 2, 2020, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.