

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>California Independent System Operator Corporation</b>	) ) )	<b>Docket No. ER23-474-000</b>
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**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE CALIFORNIA  
INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (CAISO)<sup>1</sup> submits this answer<sup>2</sup> to protest and comments filed in this proceeding.<sup>3</sup>

**I. Background and Summary**

The CAISO’s tariff revisions propose to incorporate the cost to comply with the State of Washington’s cap-and-invest program into generating units’ variable costs associated with their default energy bids and commitment costs. The Commission should find these tariff revisions are just and reasonable. They will allow the CAISO’s market to reflect a resource’s cost of compliance with Washington’s program when the CAISO utilizes a default energy bid to mitigate a resource’s bid through the market power mitigation process. The proposed tariff revisions will also allow the CAISO’s

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings set forth in Appendix A to the CAISO tariff.

<sup>2</sup> Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure (18 C.F.R. §§ 385.212, 385.213.), the CAISO respectfully requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to answer the protest filed in the proceeding. Good cause for the waiver exists because the answer will aid the Commission in understanding the issues in the proceeding, inform the Commission in the decision-making process, and help ensure a complete and accurate record in the case. See, e.g., *Equitrans, L.P.*, 134 FERC ¶ 61,250 at P 6 (2011); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,023 at P 16 (2010); *Xcel Energy Servs., Inc.*, 124 FERC ¶ 61,011 at P 20 (2008).

<sup>3</sup> The Utah Division of Public Utilities (UDPU) filed a protest to the CAISO’s tariff amendment. The Department of Market Monitoring (DMM) filed comments supporting acceptance of the CAISO’s tariff amendment.

market to reflect these costs when determining whether to commit a resource through security constrained economic dispatch. The Commission has approved similar tariff revisions in the CAISO's market to reflect cost of compliance with California's cap-and-trade program.<sup>4</sup> The proposed reforms were broadly supported in the stakeholder process.<sup>5</sup>

The UDPU, the only party to protest the CAISO's filing, argues that the tariff revisions impose an unlawful border tax, "violate" the Supremacy Clause, and fail to fully integrate all of the compliance paths Washington's law allows.<sup>6</sup> The CAISO proposes only to reflect greenhouse gas (GHG) emissions costs incurred by generators incur pursuant to state law. The UDPU's arguments, however, take issue with the Washington program itself. The Commission need not consider such arguments in this proceeding, and should accept the CAISO's tariff revisions as just and reasonable.

## **II. Answer**

### **A. The CAISO Tariff Amendment Allows Generators to Reflect their Variable Costs in Commitment Costs and Default Energy Bids**

The CAISO's tariff revisions will allow the market optimization to recognize the costs generators incur.<sup>7</sup> These costs will vary with the output of the facility, and as such these costs are appropriately included in reference levels. The CAISO uses reference

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<sup>4</sup> The CAISO filed the tariff revisions on October 29, 2012, to reflect the fact that the California Air Resources Board was going to implement a cap-and-trade program for greenhouse gas emissions on January 1, 2013. The Commission accepted the tariff revisions effective as of January 1, as requested by the CAISO. *California Independent System Operator Corp.*, 141 FERC ¶ 61,237 (2012); Commission letter order, Docket No. ER13-219-001 (Feb. 26, 2013).

<sup>5</sup> See Attachment C to tariff amendment (Board of Governors Memorandum) at pp. 3-4.

<sup>6</sup> Motion to Intervene and Protest of the UDPU, at p. 4 (UDPU Protest).

<sup>7</sup> The CAISO's tariff amendment addresses only in-state Washington resources at this time due to the limited details around the compliance obligation for imports into Washington. See CAISO's tariff amendment at p. 3.

levels in the market as part of default commitment cost and the default energy bids. Default commitment costs serve as the cap for the values that scheduling coordinators may submit for minimum load cost bids, start-up cost bids, and transition cost bids. Including the compliance costs generators face under Washington's cap-and-invest program serves to raise the cap to allow resources to include these costs in their commitment costs bids, but it does not require the resources to include them. The CAISO's market processes use these bids to determine whether to commit the resource as part of a security constrained unit commitment.

Relatedly, the default energy bid seeks to mirror competitive outcomes in situations where participants can exercise local market power. In such cases, the CAISO adjusts a resource's submitted energy bid downward to the resource's default energy bid or the competitive locational marginal price, whichever is higher. Each resource subject to the Washington cap-and-invest program will bear a per-megawatt-hour cost. The CAISO's tariff revisions propose to allow generators to reflect these costs in their reference levels, which will help ensure greater market efficiency.

The Commission previously approved tariff amendments that allow generators to recover similar costs.<sup>8</sup> Specifically, the Commission accepted the CAISO's tariff amendments related to implementation of California's cap-and-trade program, finding that doing so "properly account[s] for the variable costs of generation and provide generators a reasonable opportunity to recover their costs."<sup>9</sup> The CAISO proposes to

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<sup>8</sup> See, *supra*, footnote 4.

<sup>9</sup> 141 FERC ¶ 61,237 at P 30.

use this existing methodology to determine the reference levels in the context of reflecting the Washington program.

In its 2021 Policy Statement entitled “Carbon Pricing in Organized Wholesale Electricity Markets”, the Commission stated it “has long permitted generating resources to recover through wholesale rates the costs of complying with environmental regulations, including the costs of emissions pricing regimes.”<sup>10</sup>

The CAISO’s proposal reflects the methodology the Commission approved for California’s cap-and-trade program. The CAISO only proposes to include Washington-specific inputs. For each resource registered with the Washington Department of Ecology as having a compliance obligation, the CAISO will calculate a greenhouse gas cost adder in setting reference levels, which will be the product of the fuel consumed, the greenhouse gas emissions rate authorized by that state authority, and the applicable GHG allowance price.<sup>11</sup> The CAISO further proposes to use the existing methodology to determine the Washington GHG allowance price: averaging index prices available from two vendors specified in the tariff.<sup>12</sup> In the case of Washington, the CAISO also proposes to use interim measures, first utilizing a price calculated for the Washington Department of Ecology, followed by the clearing price of the most

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<sup>10</sup> Federal Energy Regulatory Commission, *Carbon Pricing in Organized Wholesale Electricity Markets* [Policy Statement], 175 FERC ¶ 61,036 (2021) (citations omitted). (FERC Carbon Pricing Policy Statement).

<sup>11</sup> Proposed Sections 30.4.5.1(b)(ii), 30.4.5.1 (c)(iii), and 39.7.1.1.1.1(b) of the CAISO Tariff.

<sup>12</sup> Proposed Section 39.7.1.1.1.4 of the CAISO Tariff. The CAISO also notes an error in footnote 15 of the original filing which indicates that the CAISO will move the identification of the specific vendors used to the Business Practice Manuals. This is incorrect and not supported by other areas of the filing or the proposed tariff language filed.

recent Washington auction, until such vendor indices are available.<sup>13</sup> The Commission previously found the methodology to establish a greenhouse gas allowance price by averaging at least two prices from two or more publications just and reasonable because it avoids gaps in index availability.<sup>14</sup>

The UDPU contends that the proposed revisions “effectively impose an unlawful border tax on imported energy.”<sup>15</sup> UDPU’s argument is directed at the legality of the Washington program, not whether the CAISO’s tariff revisions are just and reasonable. The tariff revisions recognize the costs incurred by suppliers as the result of compliance associated with Washington State’s cap-and-invest program, and do not themselves impose any cost or compliance scheme. The tariff revisions reflect costs resulting from a state policy for resources operating in Washington, which they will incur regardless of how Commission rules on the CAISO’s tariff revisions. Failing to allow inclusion of these costs through Washington-specific GHG reference levels tariff risks distorting the market by not allowing for a more complete reflection of a generator’s costs in the optimization.

The UDPU’s protest opposes the overall structure of the Washington law and, specifically, the way the statute allocates allowances to Washington load-serving entities. If the UDPU believes the allowance system improperly discriminates against out-of-state generators or out-of-state ratepayers, it should seek a remedy in an appropriate venue.

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<sup>13</sup> The CAISO further explains this on page 8 of the initial filing, noting that each phase is severable for Commission review.

<sup>14</sup> *California Independent System Operator Corp.*, 141 FERC ¶ 61,237 (2012) at P 31.

<sup>15</sup> UDPU Protest at p. 4.

## **B. The Tariff Amendment Does Not Contravene FERC's Exclusive Jurisdiction**

The UDPU argues that the proposed tariff revisions “violate the Supremacy Clause by allowing one state’s policies to materially affect the clearing of a wholesale electricity market, which the Federal Power Act [(FPA)] leaves to FERC.”<sup>16</sup> The UDPU states that “incorporation of state-levied greenhouse gas adders for wholesale generators located in other states runs afoul of FERC’s ‘exclusive authority to regulate the sale of electric energy at wholesale in interstate commerce.’”<sup>17</sup>

The Commission has exclusive jurisdiction over wholesale rates.<sup>18</sup> The CAISO’s tariff revisions do not contravene the Commission’s exclusive jurisdiction by proposing to reflect the costs of a Washington program in wholesale market rates. To the contrary, the CAISO is requesting the Commission to exercise its exclusive jurisdiction and approve the CAISO’s tariff revisions.

### **1. The Tariff Amendment is Not State Law and Thus Cannot Be Preempted**

In its protest, the UDPU relies on *Hughes v. Talen Energy Mktg., LLC* to argue that wholesale rates are entirely within the Commission’s jurisdiction, and the CAISO’s tariff amendment is preempted. In *Hughes*, the Supreme Court held that a Maryland program that provided additional payments to generators participating in the PJM capacity market was preempted by the FPA. The program sought to incentivize development by guaranteeing a price from that market through a contract for differences. The Court invalidated the state’s program because it “disregard[ed] an

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<sup>16</sup> *Id.*

<sup>17</sup> UDPU Protest at p. 4, citing *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 154 (2016).

<sup>18</sup> 16 U.S.C.A. § 824(b)(1).

interstate wholesale rate required by FERC,” and, more specifically, because it “condition[ed] payment of funds on capacity clearing the auction.”<sup>19</sup>

The UDPU’s reliance on *Hughes* is misplaced. In *Hughes*, the Court found that a state statute was preempted. The circumstances here are different. The CAISO’s proposed tariff revisions are not a state statute. They seek to establish wholesale rates and thus are appropriately before the Commission. Regardless of this case law precedent, the tariff amendment is not a state law, so by its nature it cannot be preempted. The Washington cap-and-invest program is not before the Commission in this proceeding and the CAISO tariff amendment filing is not the venue to undertake a collateral attack of Washington’s program or the implementation PacifiCorp’s multi-state rate protocol.

## **2. The Tariff Amendment Meets the Two-Part Jurisdiction Test Articulated in *EPSA***

The Commission considered the relevant precedent and addressed the issue of jurisdiction regarding state GHG programs directly in its Policy Statement. The Commission stated, “[p]ermitting generating resources to recover through wholesale rates in the RTO/ISO markets the costs associated with a state-determined carbon price is consistent with [Commission] precedent”.<sup>20</sup> Explicitly, the Commission stated, “wholesale market rules that incorporate a state-determined carbon price into RTO/ISO markets can fall within the Commission’s jurisdiction as a practice affecting wholesale rates.”<sup>21</sup>

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<sup>19</sup> *Hughes*, 578 U.S. at 166.

<sup>20</sup> FERC Carbon Pricing Policy Statement at P 9.

<sup>21</sup> *Id.* at P 10.

The CAISO’s tariff amendment filing clearly meets both elements of the test established in the Policy Statement. First, the tariff revisions directly affect wholesale rates in the CAISO market, which are indisputably within the Commission’s jurisdiction. Second, the tariff revisions allow Washington to retain authority over the carbon price by utilizing inputs into the optimization derived from the Washington allowance auction mechanism. In the Policy Statement, the Commission uses the CAISO’s model for reflecting California’s cap-and-trade program into the Western Energy Imbalance Market as an example to demonstrate a program that meets this test.<sup>22</sup> This tariff amendment filing follows that same precedent, and only changes the inputs to be relevant to the newly adopted Washington program. Thus, the tariff amendment satisfies the Policy Statement and falls squarely within the Commission’s jurisdiction.

**C. The Commission Should Approve the Tariff Amendment as Just and Reasonable**

The CAISO’s tariff revisions allow in-state Washington generators to reflect the costs of compliance with Washington’s cap-and-invest program in their default energy bids and commitment costs. In addressing a proposed tariff revision under FPA section 205, the Commission considers the specific proposal in front of it.<sup>23</sup> The Commission need not assess whether that proposal is more or less reasonable than alternative approaches.<sup>24</sup> In this case, the CAISO’s proposed tariff changes will ensure the market

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<sup>22</sup> *Id.*

<sup>23</sup> See *Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656, 662 (D.C. Cir. 2017) (under section 205, the Commission undertakes an essentially passive and reactive role, restricted to evaluating the confined proposal); *PacifiCorp*, 173 FERC ¶ 61,016, at P 20 (2020) (“Under FPA section 205, the Commission is limited to considering whether the proposal before it is just and reasonable . . . .”)

<sup>24</sup> See, e.g., *Cities of Bethany v. FERC*, 727 F.2d 1131, 1135–37 (D.C. Cir. 1984) (holding that the Commission properly applied the governing standard under section 205, inquiring “into whether the rates



can consider the costs Washington generators will face when they generate electricity. The Commission need not consider other potential rules changes; it only need consider whether the CAISO's proposed rules are just and reasonable.

The UDPU contends that the proposed tariff revisions fail to fully integrate all of the compliance paths Washington's law allows.<sup>25</sup> The UDPU claims that the compliance cost mechanism "forecloses compliance pathways in some circumstances," arguing that the CAISO's tariff revisions do not allow utilities to bid in the free allowances they receive to offset the cost of compliance to Washington customers. But there is no such mechanism to bid allowances into the CAISO market. Washington's cap-and-invest program in which allowances are relevant is a separate program from the CAISO's market. The CAISO wholesale markets reflect the cost of generation, which for Washington resources includes a cost of compliance with the cap-and-invest program. The CAISO wholesale markets do not set a cost for the allowances or clear the compliance instrument price. Regardless of the availability of free allowances to any entities within the state of Washington, the allowance auction will set a carbon price that some emitting resources will incur when they generate electricity. That cost should be included in reference levels so the CAISO market recognizes the costs generators incur. Default commitments costs and default energy bids simply provide the mechanism to allow generators to bid their marginal costs. Moreover, allowing generators to include these costs as a Washington-specific GHG reference level does not create any requirement that they actually s either (a) include these costs in their

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proposed by a utility are reasonable" and does not "extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs.)

<sup>25</sup> UDPU Protest at p. 4.

commitment costs, or (b) submit an energy bid into the market that includes these costs that would then potentially be subject to bid mitigation. The option to self-schedule will still be available. Resources can also potentially utilize different reference levels for their default energy bid through the negotiated option.<sup>26</sup>

### **III. Conclusion**

The CAISO's tariff revisions will allow generators the ability to reflect the costs of compliance in the optimization through the use of Washington-specific GHG reference levels, adding efficiency and transparency to the market. For the reasons explained in the CAISO's November 21, 2022 tariff filing and this answer, the Commission should approve them as just and reasonable without condition or modification.

Respectfully submitted,

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<sup>26</sup> Section 39.7.1.3 of the CAISO tariff.

**CERTIFICATE OF SERVICE**

I certify that I have served the foregoing document upon the parties listed on the official service list in the captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 19th day of December, 2022.

*/s/ Ariana Rebancos*

Ariana Rebancos  
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