

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

California Independent System Operator Corporation)	Docket Nos. ER11-3149-000
)	ER11-3149-001
)	ER11-3149-002

**MOTION TO FILE RESPONSE AND RESPONSE OF THE CALIFORNIA
INDEPENDENT SYSTEM OPERATOR CORPORATION TO ANSWER OF
CALPINE CORPORATION**

The California Independent System Operator Corporation (“ISO”)¹ hereby submits a motion to file a response, and files its response, to the answer submitted by Calpine Corporation (“Calpine”) in opposition to the ISO’s June 3, 2011, motion for clarification or, in the alternative, request for rehearing of the Commission’s May 4, 2011, order in this proceeding.²

I. Response to Calpine’s Answer

As the ISO explained in its motion for clarification or, in the alternative, request for rehearing in this proceeding, one statement in the May 4 order could be misconstrued to be contrary to long-standing precedent concerning the authority of independent system operators and regional transmission

¹ The ISO is also sometimes referred to as the CAISO.

² *California Independent System Operator Corp.*, 135 FERC ¶ 61,110 (2011). The ISO submits this response pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213. The ISO requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to respond to Calpine’s answer. Good cause for this waiver exists here because the ISO’s response will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in the case. *See, e.g., Florida Gas Transmission Co., LLC*, 136 FERC ¶ 61,008, at P 8 (2011); *Northern Natural Gas Co.*, 113 FERC ¶ 61,060, at P 11 (2005); *Guardian Pipeline, L.L.C.*, 94 FERC ¶ 61,269, at 61,936 (2001). The ISO is filing this response one day later than the standard 15-day answer period due to the impact of the July 4th holiday weekend. The timing of this filing will have no effect on the conduct of the proceedings in this docket or adversely affect any party’s rights

organizations to correct prices and charges when computational errors cause such prices or charges to be inconsistent with the rate or tariff on file with the Commission. Specifically, paragraph 27 of the May 4 order could be read to suggest that the ISO must always file with the Commission prior to any action to resettle past charges that are not consistent with the filed tariff. Therefore, the ISO sought clarification that the Commission did not intend for the May 4 order to contravene precedent concerning the authority of independent system operators and regional transmission organizations under the filed rate doctrine. In the alternative, the ISO sought rehearing of the May 4 order in the unlikely event that the May 4 order was intended to contravene that precedent.

No party other than Calpine filed an answer to the ISO's June 3 motion. Moreover, although it opposes the ISO's filing, Calpine actually agrees with the specific clarification requested by the ISO concerning the filed rate doctrine. Calpine instead raises objections to matters that go beyond the scope of the ISO's clarification request.

Calpine claims that the ISO's June 3 motion is unnecessary because the May 4 order is perfectly clear. In particular, Calpine asserts that the ISO "totally misreads paragraph 27 of the May 4 Order as suggesting or implying that the CAISO and other independent system operators and regional transmission organizations must seek prior Commission approval to correct computational errors in their settlement calculations that result in charges contrary to the filed tariff."³ Calpine also states that "the CAISO's generic request for clarification of

³ Calpine at 5.

its authority to correct retroactively erroneous settlement calculations under the filed rate doctrine is not called into question in any way by paragraph 27 of the May 4 Order.”⁴

The simple fact is that the ISO concluded it was appropriate to seek clarification or in the alternative rehearing of the May 4 order precisely because paragraph 27 *could* be misconstrued to be contrary to long-standing precedent regarding corrections of erroneous prices and charges pursuant to the filed rate doctrine. The Commission has explained that, when a party believes a Commission order is ambiguous or unclear, the appropriate course of action is for the party to file a request for clarification, rehearing, or both.⁵ If the ISO had not timely sought clarification or rehearing, its opportunity to resolve the uncertainty created by paragraph 27 of the May 4 order may well have been lost.

Calpine suggests that the ISO’s clarification request was an attempt to “bootstrap” the ISO’s position concerning resettlements for bid cost recovery payments.⁶ Issues concerning the ISO’s proposal to recalculate bid cost recovery payments under the filed rate doctrine for some periods but not others are pending in Docket No. ER11-3173 – a separate proceeding addressing an

⁴ *Id.*

⁵ See, e.g., *Pipeline Posting Requirements Under Section 23 of the Natural Gas Act*, 130 FERC ¶ 61,040, at P 176 (2010) (“to the extent that commenters believed [the Commission’s directives] were unclear or ambiguous, they have been provided an opportunity to request clarification or rehearing”); *Aquila Power Corp. v. Entergy Services, Inc., et al.*, 101 FERC ¶ 61,328, at P 16 (2002) (“Nor has Entergy persuaded us that there is any reason to limit the ability of any party to seek timely clarification of a Commission order that it believes is unclear.”); *ISO New England Inc.*, 100 FERC ¶ 61,245, at P 22 (2002) (“And if, in fact, PG&E or ANP or other parties believed when the Commission issued the CMS/MSS Order that the Commission’s statement regarding self-supplying parties was ambiguous, they should have requested rehearing at that time.”).

⁶ Calpine at 4.

ISO waiver request. The ISO's June 3 motion makes it clear, however, that those issues are separate from the ISO's clarification request and that the Commission should grant the requested clarification even if it denies the waiver request:

The ISO wishes to emphasize that, even if the Commission determines that a waiver request is not justified for bid cost recovery resettlements in these circumstances, the Commission should not contravene long-standing precedent that ISOs and RTOs have the general authority to correct charges and prices that are not calculated in accordance with the filed rate.⁷

Calpine therefore is incorrect that granting the clarification request will pre-decide any issues regarding bid cost recovery resettlements.

No party opposes the substantive clarification requested by the ISO. For the reasons explained in the ISO's June 3 motion, the Commission should clarify that paragraph 27 of the May 4 order did not intend to contravene long-standing precedent concerning the authority of independent system operators and regional transmission organizations to correct erroneous prices and charges under the filed rate doctrine.

⁷ June 3 motion at 4.

II. Conclusion

For the reasons explained above, the Commission should grant the ISO's motion for clarification or, in the alternative, request for rehearing of the Commission's May 4, 2011, order in this proceeding.

Respectfully submitted,

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Dated: July 6, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the above-referenced proceeding, 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 Washington, D.C. this 6th day of July, 2011.

/s/ Bradley R. Miliauskas
Bradley R. Miliauskas