

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

**California Independent System
Operator Corporation**

Docket No. ER19-308-000

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO COMMENTS**

The California Independent System Operator Corporation (CAISO)¹ files this answer to the Comments of Public Citizen, Inc. (Public Citizen) filed on December 3, 2018, in this docket.

The purpose of this docket, initiated by the CAISO's November 8 filing, is to secure Commission approval for how the CAISO intends to distribute two pools of funds collected in the 2017 calendar year: (1) financial penalties collected for violations of the CAISO's Rules of Conduct; (2) forfeited non-refundable study deposits for projects interconnecting to Southern California Edison Company's distribution system. The CAISO tariff specifies a methodology for distributing these funds but requires the CAISO to seek Commission approval before making the distribution.

The November 8 filing publicly stated the total amounts to be distributed in both categories. For the Rules of Conduct distribution, the CAISO also publicly stated the number of violations for each type of violation and the associated penalty amounts. The CAISO, however, requested confidential treatment under 18 C.F.R. § 388.112 for two charts, Attachment A and Attachment B, that state the specific dollar amounts proposed

¹ Capitalized terms not otherwise defined herein have the meanings set forth in appendix A to the CAISO tariff.

for distribution to individual scheduling coordinators related to the Rules of Conduct and study deposit refunds, respectively. The CAISO stated that confidential treatment was warranted because “the scheduling coordinators involved would consider their CAISO settlement information to be confidential business information, which is information of the type that the CAISO typically does not release to the public.”²

Neither Public Citizen nor any other party expressed concern about the procedure or methodology the CAISO used to calculate the distributions. Instead, Public Citizen, the sole commenter in this proceeding, requests public release of parts of Attachment A. Specifically, Public Citizen argues for release of the name of each scheduling coordinator receiving a Rules of Conduct distribution and the amount of its distribution. Public Citizen argues that such disclosure would serve the public interest because “[t]he public has a right to know the identities of Scheduling Coordinators that commit Rule of Conduct violations, and the amount of financial penalties assessed for such violations” and that violation of “market rules is not a legitimate business practice, and therefore information associated with such violations cannot be considered ‘confidential business information.’”³

The CAISO respectfully disagrees with Public Citizen’s request to deny confidential status to Attachment A because their request is inconsistent with the CAISO tariff; would not serve their stated objective; and raises matters outside the narrow scope of this proceeding.

The CAISO’s confidentiality request seeks to protect the business information of

² November 8 filing, at 1.

³ Public Citizen comments, at 2.

the scheduling coordinators that *were not* assessed a Rules of Conduct sanction in 2017. Details of the specific payments that would be made to these *non-violators* is protected information under the CAISO tariff. Section 6.2.1.5 of the CAISO tariff mandates that information the CAISO provides to scheduling coordinators through its secure communication system “shall be subject to the confidentiality obligations contained in Section 20.” Section 20, in turn, obligates the CAISO not to disclose publicly confidential or commercially sensitive information. The Rules of Conduct penalty distribution, once approved, will be included on scheduling coordinators’ settlement statements, which are provided through the CAISO’s secure communications systems. Accordingly, the CAISO was obligated to seek confidential status for Attachment A and the affected scheduling coordinators have a reasonable expectation grounded in the CAISO tariff that the information covered in Attachment A will remain non-public.

Public release of Attachment A would not promote Public Citizen’s stated objective because it would provide only minimal information regarding the underlying Rules of Conduct violations in 2017. If Attachment A were released members of the public could cross-reference the list of scheduling coordinators receiving a distribution with the list of all scheduling coordinators posted on the CAISO website.⁴ The November 8 filing identified 21 distinct Rules of Conduct sanctions assessed for 2017. Public release of Attachment A effectively would identify the scheduling coordinators that, in the aggregate, the CAISO assessed for those 21 events. Release of

⁴ The list is available at the following link: <https://www.caiso.com/Documents/ListofSchedulingCoordinatorsCRRHoldersandConvergenceBiddingEntities.pdf>.

Attachment A, however, would not identify: (a) how much each of those scheduling coordinators were sanctioned; (b) which violations corresponds to which scheduling coordinator; (c) which scheduling coordinators were assessed multiple sanctions; or (d) whether the sanction was the result of action or inaction on the part of the scheduling coordinator as opposed to the market participant that scheduling coordinator represents. Without this additional information, which was not included in the November 8 filing, the public would gain very little additional insight into the issues over which Public Citizen seeks transparency.

At its core, Public Citizen argues that the CAISO must disclose publicly the details of what parties have been assessed Rules of Conduct penalties in a year. Section 6 of the CAISO tariff, and particularly section 6.2.2, states in detail what information the CAISO must disclose publicly and at what intervals. It provides no such disclosure obligation regarding Rules of Conduct violators. Arguments that Section 6 should impose such a disclosure requirement are far beyond the narrow scope of this docket, *i.e.*, affirming that the CAISO properly applied the required distribution methodology. Additionally, such a public disclosure requirement contradicts the Commission's approach in granting Independent System Operators (ISO) and Regional Transmission Organizations (RTO) penalty authority separate from the Commission's own enforcement procedures.

The Commission has granted ISOs/RTOs authority over "traffic ticket" penalties for minor tariff violations objectively determined and addressed by formulaic penalties.⁵ Adding an element of public shaming is out of proportion to the nature of these relatively

⁵ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,050, PP 34-35 (2011).

minor infractions. Where a Rules of Conduct violation, however, separately raises concerns about market manipulation or submission of false information, such conduct is subject to referral to the Commission's Office of Enforcement.⁶ Per the Commission's existing procedures, the public would be notified of the conduct through a Notice of Alleged Violation when staff preliminarily determines that a violation may have occurred.⁷ These existing processes provide a balance between preventing unwarranted reputational harm to market participants and the public interest in disclosing when Commission staff have a credible belief market participants have engaged in serious wrongdoing. Public Citizen's request in this matter would disturb that balance and should not be granted.

Respectfully submitted,

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December 17, 2018

⁶ CAISO tariff, Appendix P, 11.1.3.

⁷ *Order Authorizing Secretary to Issue Staff's Preliminary Notice Of Violations*, 129 FERC ¶ 61,247 (2009).

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 17th day of December, 2018.

/s/ Anna Pascuzzo

Anna Pascuzzo