

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

California Independent System) Docket No. ER04-835-010
Operator Corporation)

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE CALIFORNIA
INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (CAISO)¹ submits this motion for leave to answer and answer to the protest, request to reject compliance filing and require filing in accordance with order, and motion for stay submitted by Shell Energy North America (US) L.P. and the Alliance for Retail Energy Markets (collectively, the Coalition) in this proceeding on November 18, 2019.² The Coalition was the only party that submitted a substantive filing in response to the CAISO's October 28, 2019 compliance filing (October 28 Compliance Filing).³ For the reasons explained below, the Commission should find no merit in the arguments raised by the Coalition.

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

² 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 moves for waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to answer the Coalition's protest. Good cause for this waiver exists here because the answer will answer 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 proceeding. *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).

³ Pacific Gas and Electric Company filed a motion to intervene.

I. Background

As the Commission explained in its August 28, 2019 order that prompted the CAISO to submit the October 28 Compliance Filing, the proceeding in this Docket No. ER04-835 has a long history.⁴ Most recently, the August 28 Order addressed requests for rehearing and clarification of an October 2016 order in which the Commission had rejected two informational refund reports submitted by the CAISO and dismissed as moot arguments on whether interest should be applied to the refunds resulting from resettlements of the CAISO market.⁵

In the August 28 Order, the Commission granted in part and dismissed in part the requests for rehearing and denied the requests for clarification. Specifically, upon further consideration of relevant case law and recent Commission precedent, the Commission reversed its prior rejection of the refund reports, found that it was appropriate for the CAISO to administer the market resettlements, and found that interest should be applied to the refunds.⁶ The only compliance directive the Commission issued to the CAISO was to submit a compliance filing within 60 days reflecting the invoices it plans to distribute for interest.⁷ The Coalition and two other parties filed requests for rehearing of the August 28 Order, which are pending before the Commission.

⁴ See *Cal. Indep. Sys. Operator Corp.*, 168 FERC ¶ 61,127, at PP 3-5 (2019) (August 28 Order).

⁵ See *id.* at PP 5-10. The October 2016 order was *California Independent System Operator Corporation*, 157 FERC ¶ 61,033 (2016). See August 28 Order at P 1.

⁶ *Id.* at PP 12-29.

⁷ *Id.* at P 29.

The CAISO timely submitted the October 28 Compliance Filing, in which it explained that it is still in the process of calculating interest and plans to issue settlement statements and invoices by March 31, 2020. The CAISO also explained that it will submit a supplemental filing in the first quarter of 2020 reflecting interest calculations through March 31, 2020. In addition, the CAISO stated that when the calculations are available early in the first quarter of 2020, the CAISO Client Services will conduct outreach and provide affected scheduling coordinators with their interest calculations.⁸ In other words, *the CAISO plans to provide the same level of detail it provided in connection with the refund reports which the CAISO filed previously in this docket and the Commission accepted in the August 28 Order.*

II. Answer

A. The Commission Should Not Grant the Coalition's Request to Reject the October 28 Compliance Filing, Which Will Be Supplemented by the Further Compliance Filing Referenced Therein

The Coalition requests that the Commission reject the October 28 Compliance Filing, on the grounds that it does not provide the information required by the August 28 Order, and that the Commission direct the CAISO to submit a new filing to comply with that Order.⁹

The Commission should not grant the Coalition's request. The October 28 Compliance Filing described the CAISO's plans to invoice and distribute the interest amounts, including its plans to submit a supplemental filing that will

⁸ October 28 Compliance Filing at 2.

⁹ Coalition at 2-4.

reflect the interest calculations. Indeed, the Coalition itself concedes that “the supplemental filing may contain the information the Commission directed CAISO to submit in compliance with the [August 28] Order”.¹⁰ The Coalition goes on to complain, however, that this would be “part of the CAISO’s, not FERC’s process.”¹¹

This objection makes no sense. In the supplemental compliance filing, the CAISO plans to include the same level of detail regarding the interest to be invoiced that it provided regarding the reallocation of principal amounts in the refund reports the Commission accepted in the August 28 Order. Because these interest amounts will serve as the basis for the CAISO’s invoices, providing this information will satisfy the directive in the August 28 Order to reflect on compliance the invoices the CAISO plans to distribute for interest.¹² In addition, as the CAISO noted in the October 28 Compliance Filing, the CAISO will also provide each market participant with its individual interest calculations, similar to the calculations the CAISO provided in connection with the prior refund reports. These will also be available by March 1, 2019.

Therefore, the October 28 Compliance Filing and the supplemental filing will together constitute the CAISO’s full compliance with the August 28 Order. Just as the Coalition was free to file its protest, it will be free to submit any comments it wishes on the CAISO’s supplemental compliance filing. Thus,

¹⁰ *Id.* at 3 (internal quotation marks omitted).

¹¹ *Id.*

¹² See August 28 Order at P 29.

neither the Coalition nor any other party is at risk of losing the opportunity “to review the calculations and provide comment to the Commission”¹³ due to the fact that the CAISO will not be in a position to complete its interest calculations and submit a supplemental filing reflecting those calculations until the first quarter of 2020.

The CAISO plans to submit the supplemental compliance filing in this proceeding by March 1, 2020, *i.e.*, three months from now.¹⁴ The Coalition did not express any concern with the CAISO’s proposed timing for compliance in its protest. To the contrary, the Coalition requested that the Commission stay the implementation of the August 28 Order, which includes invoicing interest, until after the Commission acts on the pending requests for rehearing.¹⁵ Thus, the Coalition’s concerns are, at most, an academic matter of procedure.

Regardless, it was appropriate for the CAISO to submit the October 28 Compliance Filing in a timely fashion, containing the information available at the time, along with a commitment to provide further information in a supplemental compliance filing. The CAISO adopted a similar approach earlier in this proceeding. Specifically, the CAISO submitted a compliance filing on August 10, 2004 followed by a supplement to that compliance filing on September 2, 2004.

¹³ Coalition at 3.

¹⁴ The CAISO has determined that it would be infeasible to submit the supplemental compliance filing any sooner. The CAISO must manually reconstruct the settlement statements that will be used in the interest calculations, because the software system that was used to create the original settlement statements is no longer available. Staffing issues and the upcoming holidays will add to the amount of time required to complete this complex manual task.

¹⁵ Coalition at 4-5.

In its order on those filings, the Commission found that they complied with the relevant Commission directives, and made no suggestion that the CAISO should have taken a different course of action.¹⁶ The Commission has also accepted compliance filings followed by supplemental compliance filings in other proceedings.¹⁷ In light of the significant passage of time between orders in this proceeding, it is entirely understandable for the CAISO to require additional time to comply fully with the Commission's order.

B. The Commission Should Deny the Coalition's Motion for Stay

The Coalition argues that the Commission should stay implementation of the directives in the August 28 Order until the Commission acts on the pending requests for rehearing.¹⁸ However, the Coalition falls far short of meeting the standard required for the Commission to grant a stay.

As the Commission has explained, it considers several factors in considering whether the standard has been met, including (1) whether the party requesting the stay will suffer irreparable injury without a stay, (2) whether issuing a stay may substantially harm other parties, and (3) whether a stay is in the public interest.¹⁹ The first of these factors is a necessary precondition: "If the party requesting the stay is unable to demonstrate that it will suffer irreparable

¹⁶ See *Cal. Indep. Sys. Operator Corp.*, 109 FERC ¶ 61,097, at PP 32-33, 38-39 (2004).

¹⁷ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,053, at PP 37, 47 (2007) (accepting compliance filing and supplemental compliance filing subject to changes to be made in a further compliance filing); *N. Am. Elec. Reliability Council, et al.*, 125 FERC ¶ 61,330, at Ordering Paragraph (A) (2008) (same).

¹⁸ Coalition at 4-5.

¹⁹ *Am. Wind Energy Ass'n & The Wind Coalition v. Sw. Power Pool, Inc.*, 168 FERC ¶ 61,006, at P 20 (2019).

harm absent a stay, [the Commission] need not examine other factors”.²⁰ The movant must “substantiate that irreparable injury is likely to occur. . . . Bare allegations of what is likely to occur do not suffice. The movant must provide proof . . . indicating that the harm is certain to occur in the near future”.²¹ Further, “the standard for showing irreparable harm is strict”:

[T]he injury must be both certain and great; it must be actual and not theoretical . . . It is also well settled that economic loss does not, in and of itself, constitute irreparable harm . . . Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation weighs heavily against a claim of irreparable harm.²²

The Coalition fails to even address, much less meet, these requirements, including failing to make any showing of irreparable harm absent a stay. Instead, the Coalition makes only vague and unsupported claims that staying the requests for rehearing will allow the Commission to address resettlement issues in an orderly fashion and avoid unnecessary disruption.²³ Any resettlement issues solely concern economic matters that will be sorted out pursuant to the Commission orders issued in this proceeding and the CAISO’s settlements process.²⁴ Therefore, the Coalition does not meet the standard for a showing of irreparable harm, and the Commission should reject its request for stay.

²⁰ *Id.*

²¹ *Id.* at P 21 (citation omitted) (internal quotation marks omitted).

²² *Id.* at P 22 (quoting *Wis. Gas. Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)).

²³ Coalition at 5.

²⁴ In addition to the CAISO’s supplemental compliance filing, all market participants, including the Coalition, will have the opportunity to review the settlement statements the CAISO will issue and to dispute such settlement statements if they contain errors. See CAISO tariff section 11.29.8.4 *et seq.*

III. Conclusion

For the foregoing reasons, the Commission should deny the Coalition's protest.

Respectfully submitted,

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Dated: December 3, 2018

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, pursuant to the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, DC this 3rd day of December, 2019.

/s/ Bradley R. Miliauskas
Bradley R. Miliauskas