

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

**California Independent System     )     Docket No.   ER11-\_\_\_\_  
Operator Corporation             )**

**PETITION OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
TO WAIVE SANCTIONS FOR MULTIPLE SCHEDULING COORDINATORS'  
VIOLATIONS OF SECTION 37.5.2.1 OF ITS TARIFF**

Pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.207, the California Independent System Operator Corporation (ISO) petitions the Commission to modify Sanctions<sup>1</sup> that otherwise would be levied upon Scheduling Coordinators under Sections 37.5.2.2 and 37.11 of the ISO's FERC Electric Tariff for submitting untimely amendments of their meter data.

**I.     EXECUTIVE SUMMARY**

The ISO petitions the Commission to excuse Sanctions that otherwise would be levied under Sections 37.5.2.2 and 37.11 of the Tariff against Scheduling Coordinators which make amendments to their meter data during the time between forty-three (43) calendar days after a Trade Date (T+43C)<sup>2</sup> and

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<sup>1</sup> Capitalized terms, unless otherwise defined, are used in accordance with the definitions of Appendix A to the ISO's Tariff.

<sup>2</sup> Under the ISO's settlements nomenclature, a date following a Trade Date is identified by either a "C," "B," or "M" to specify how many calendar days, business days, or months, respectively, after the Trade Date the date falls. For example, T+43C refers to the day forty-three calendar days following a Trade Date, T+76B refers to the day 76 business days following a Trade Date, and T+18M refers to the day 18 months following a Trade Date.

T+61B.<sup>3</sup> Specifically, the ISO requests that the Commission excuse all such penalties starting from the November 1, 2009 Trade Date (*i.e.*, implementation of the ISO's payment acceleration initiative) to the February 1, 2011 Trade Date.

The ISO believes that a waiver is justified in this instance because of the confusion regarding the submission of meter data amendments that arose among numerous Scheduling Coordinators as the result of implementing payment acceleration. Prior to payment acceleration, the final settlement statement generated in the ordinary course of business was published at T+51B and had a data submission deadline of T+47B. Data submitted after T+47B was subject to penalty under Sections 37.5.2.2 and 37.11. Such late submissions required the ISO to generate special settlement statements, which imposed administrative burdens for the ISO. The penalties were implemented as a disincentive for Scheduling Coordinators to make untimely amendments to their meter data.

As a result of payment acceleration, the deadline to submit meter data for the final settlement statement prepared in the ordinary course of business was changed to T+61B (to be used for the Recalculation Settlement Statement T+76B), but the ISO's Tariff imposes a penalty for meter data amendments submitted after T+43C, which is the submission deadline for the penultimate settlement statement (*i.e.*, the Recalculation Settlement Statement T+38B). Multiple Scheduling Coordinators that have been penalized for submitting amended meter data between T+43C and T+61B have indicated that they were

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<sup>3</sup> T+61B is the deadline for submitting data to be included on the second Recalculation Settlement Statement, which is published at T+76B. The ISO does not wish to excuse or waive penalties for submission of amended meter data after T+61B.

confused about how payment acceleration altered the point at which amendments to meter data would result in Sanctions. Additionally, because Scheduling Coordinators are now charged interest starting at T+7B, those Scheduling Coordinators whose penalties would be excused pursuant to the instant filing have already suffered consequences for their tardy amendments. In prior similar circumstances, the Commission has granted the ISO a waiver of the type it seeks here.<sup>4</sup> For the same reasons that the Commission granted a waiver in those instances, the Commission should grant one here.

## **II. BACKGROUND ON PAYMENT ACCELERATION AND METER DATA SUBMISSION TIMELINES IN THE ISO TARIFF**

On November 1, 2009, the ISO implemented its payment acceleration initiative, the goal of which was to “accelerate the process by which the CAISO invoices and settles market transactions . . . .”<sup>5</sup> One of the major features of payment acceleration was to shorten the timelines for Scheduling Coordinators to submit meter data and the ISO to issue settlement statements.

Prior to payment acceleration, the first meter data submission deadline was at T+43C.<sup>6</sup> This data was used in the Initial Settlement Statement, which was published at T+38B. Market participants then had until T+47B to resubmit meter data to be included on a Recalculation Settlement Statement, which was published at T+51B. Under this meter data timeframe, Scheduling Coordinators could correct errors in meter data up to T+47B without penalty under Section

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<sup>4</sup> *Cal. Indep. Sys. Operator Corp.*, 117 FERC ¶ 61,353 (2006); *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,226 (2006).

<sup>5</sup> *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,265, P 1 (2009).

<sup>6</sup> Before the start of the ISO’s new market on April 1, 2009, the first meter data submission deadline was T+45C. Thus, T+43C was the first data submission deadline for a period of seven months.

37.5.2.1 and 37.11. A special settlement statement rerun was required for the ISO to incorporate revised data submitted after T+47B. Additionally, no interest was charged to parties that ended up owing the ISO as a result of the amended meter data. The ISO established penalties to dissuade parties from making such revisions after market settlements were issued and to encourage the market to implement controls to assure the submission of accurate Settlement Quality Meter Data within the payment calendar timelines.

Payment acceleration shortened the time frame for Scheduling Coordinators to report meter data and for the ISO to issue settlement statements. Under payment acceleration, Scheduling Coordinators must report either actual or estimated meter data by T+5B. That data is included on the Initial Settlement Statement issued at T+7B. If a Scheduling Coordinator does not report actual or estimated meter data by T+5B, the ISO will generate the T+7B statement with its own estimate of the data. There is no Sanction associated with an Initial Settlement Statement based on estimated data. Under payment acceleration the ISO does, however, charge or pay interest based on any changes made after T+7B. After the Initial Settlement Statement T+7B, the ISO publishes additional statements at T+38B and T+76B.<sup>7</sup> The deadlines for submitting Settlement Quality Meter Data for the T+38B and T+76B Recalculation Settlement Statements are T+43C and T+61B, respectively. Section 10.3.6.3 and the ISO's

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<sup>7</sup> These are the only statements that are published in the normal course of business. Where there are disputes or other special circumstances, the ISO may publish additional settlement statements at T+18M, T+35M, and T+36M.

Payment Calendar make clear that data for the T+76B statement will be accepted up to T+61B.<sup>8</sup>

Further, Section 37.5.2.1 of the ISO's Tariff states: "Failure to provide complete and accurate Settlement Quality Meter Data, as required by Section 10 and that results in an error that is discovered after issuance of an Initial Settlement Statement T+7B or Recalculation Settlement Statement, as relevant, shall be a violation of this rule." Section 10.3.6.2(a) further provides that if "Actual Settlement Quality Meter Data is not received by the CAISO . . . by forty-three (43) calendar days after the Trading Day (T+43C), the Scheduling Coordinator has failed to submit complete and accurate meter data as required by Section 37.5.2.1 . . . ." Thus, Section 37.5.2.1 establishes a deadline for Scheduling Coordinators to submit accurate Settlement Quality Meter Data at T+43C for use on the first Recalculation Settlement Statement, which is published at T+38B. The Sanction for violations of Section 37.5.2.1 is set forth in Sections 37.5.2.2 and 37.11 and depends on whether the ISO or the Scheduling Coordinator identifies the error in the reported meter data. If the Scheduling Coordinator identifies the error, the Sanction is 30% of the dollar value of the error (*i.e.*, the misreported MWH multiplied by the applicable market price) and if the ISO identifies the error, then the Sanction is 70% of the error.

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<sup>8</sup> Section 10.3.6.3 states: "Scheduling Coordinators may continue to submit Actual Settlement Quality Meter Data for the Scheduling Coordinator Metered Entities they represent to the CAISO for use in Recalculation Settlement Statements subsequent to the Recalculation Settlement Statement T+38B according to timelines established in the CAISO Payment Calendar." The ISO's 2010 Payment Calendar lists the following milestone: "Payment Acceleration - Meter Data Resubmittal Deadline T+61B 12:00pm."

Thus, under these Tariff provisions, any new data that is submitted after T+43C is considered a violation of the rule against submitting inaccurate meter data (Section 37.5.2.1) and subject to Sanction under Sections 37.5.2.2 and 37.11. This applies whether the Scheduling Coordinator provided its own estimated meter data by T+5B or failed to provide any data by T+5B (in which case the ISO generated estimated data). Under payment acceleration, the ISO's goal is to make the Recalculation Settlement Statement T+38B as accurate as possible.

The application of penalties is thus significantly different before and after payment acceleration. Prior to payment acceleration, a submission of amended meter data was not subject to Sanction so long as the Scheduling Coordinator submitted the amended meter data by T+47B for inclusion on the T+51B settlement statement that was prepared in the ordinary course of business. Under payment acceleration, however, an error in submitted Settlement Quality Meter Data that is discovered after T+43C for inclusion on the Recalculation Settlement Statement T+38B is a violation, even though the ISO prepares another Recalculation Settlement Statement in the ordinary course of business at T+76B.

### **III. SCHEDULING COORDINATORS' SUBMISSIONS OF AMENDED METER DATA AFTER T+43C**

Since payment acceleration was implemented, the ISO has identified and investigated ten parties that violated Section 37.5.2.1 a total of 70 times by submitting amended meter data after T+43C. The penalties for these 70 violations would total \$1.29 million under Sections 37.5.2.2 and 37.11 of the

Tariff. All of these amended meter data submissions were made before T+61B, *i.e.*, the meter data submission deadline for inclusion on the Recalculation Settlement Statement T+76B.

In response to the ISO's investigation, several parties explained that they did not understand payment acceleration to lead to penalties in instances where Scheduling Coordinators submit the best available meter data by T+43C, but more accurate data subsequently becomes available. Many of the Scheduling Coordinators specifically pointed to what they believe is an internal inconsistency in the ISO Tariff between Section 37.5.2.1, which penalizes Scheduling Coordinators for the submission of amended meter data after T+43C, and Section 10.3.6.3, which permits such submissions up to T+61B. These dates are also reflected in the Business Practice Manual for Metering and various training materials.<sup>9</sup> Additionally, Scheduling Coordinators argued that Sanctions were unwarranted because: (1) the untimely submittals did not pose any negative financial or system impacts to the ISO's operations; (2) the Sanctions penalized Scheduling Coordinators for making diligent efforts to provide the most accurate meter data possible; and (3) the Sanctions would be a deterrent to a fair market settlement.

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<sup>9</sup> CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORP., BUSINESS PRACTICE MANUAL FOR METERING § 6.1.1 (3<sup>rd</sup> Version Aug. 10, 2010) ("Scheduling Coordinators must submit Actual Settlement Quality Meter . . . no later than midnight on . . . T+43C . . . to avoid possible Sanctions pursuant to CAISO Tariff Section 37.5") ("Scheduling Coordinators may continue to submit Actual Settlement Quality Meter Data . . . subsequent to the Recalculation Settlement T+38B according to the timelines established in the CAISO Payments Calendar").

#### IV. TARIFF WAIVER & PENALTY MODIFICATION REQUEST

The ISO respectfully requests that the Commission waive Sections 37.5.2.2 and 37.11<sup>10</sup> and excuse penalties that otherwise would be assessed under those Sections against Scheduling Coordinators that submitted amended meter data between T+43C and T+61B.<sup>11</sup> The ISO requests that the waiver be limited to such Sanctions that would apply for violations starting from the November 1, 2009 Trade Date (*i.e.*, the implementation of payment acceleration) through the February 1, 2011 Trade Date.<sup>12</sup>

The Commission historically has granted waiver requests where either an emergency situation or unintentional error has occurred.<sup>13</sup> Outside of these circumstances, the Commission has indicated it will evaluate three criteria in considering temporary waivers of Tariff requirements. The waiver must: (1) be limited in scope; (2) not have undesirable consequences; and (3) be of benefit to customers.<sup>14</sup> The Scheduling Coordinators involved in the instant filing did not willfully violate Section 37.5.2.1. Additionally, the ISO believes that the three

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<sup>10</sup> Section 37.9.1 of the Tariff provides that a Sanction specified in Section 37 “may be modified by FERC when it determines that such adjustment is just and reasonable” and that adjustments “generally shall be deemed appropriate if the prescribed Sanction appears to be insufficient to deter the prohibited behavior, or if the circumstances suggest that the violation was inadvertent, unintentional, or some other mitigating circumstances exist.” Given the questionable status of this Tariff provision, the ISO makes the instant request purely in the form of a Tariff waiver. See *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,050, P 61 (2011).

<sup>11</sup> Under Section 37.9.4, the ISO pools all penalties collected under the Rules of Conduct in a given year and distributes the funds pro-rata to “those Market Participants that were not assessed a financial penalty pursuant to this Section 37 during the calendar year.” If the Commission approves the instant petition, then the Scheduling Coordinators whose penalties are excused would not lose their eligibility to receive funds from the penalty pool solely because of their late submission of amended meter data.

<sup>12</sup> Per the ISO’s Payment Calendar, T+43C for the February 1, 2011 Trade Date is March 16, 2011, and T+61B is April 28, 2011. Having the waiver apply up to the February 1 Trade Date, rather than the February 1 calendar date, provides some degree of lead time and adequate notice to all Market Participants regarding the clarification of the meter data penalty deadline.

<sup>13</sup> *California Independent System Operator Corp.*, 118 FERC ¶ 61,226, P 24 (2007).

<sup>14</sup> *Id.*



more general Tariff waiver requirements also are also satisfied in this instance. For these reasons, there is good cause to grant the requested waiver.

As explained above, prior to payment acceleration, Scheduling Coordinators were allowed to submit data up to the last regularly-produced settlement statement. Scheduling Coordinators have indicated that Section 10.3.6.3, when viewed in conjunction with the ISO's Payment Calendar, gave them the impression that this general principle continued into the payment acceleration paradigm. In that regard, Section 10.3.6.3 states that "Scheduling Coordinators may continue to submit Actual Settlement Quality Meter Data . . . for use in Recalculation Settlement Statements subsequent to the Recalculation Settlement Statement T+38B according to timelines established in the CAISO Payment Calendar." The Payment Calendar in turn indicates that the meter data submission deadline for the Recalculation Settlement Statement T+76B is at T+61B. In explicitly contemplating submission of new or amended data after T+43C, the ISO's intent was to indicate to Scheduling Coordinators that the data submitted after that point would be processed, but that this processing would result in the imposition of Sanctions under Sections 37.5.2.2 and 37.11. Given the large number of Scheduling Coordinators that submitted amended meter data after T+43C and did not expect to be penalized, the ISO now recognizes that Scheduling Coordinators could have drawn a different inference from looking at Section 10.3.6.3 and the Payment Calendar. Specifically, because Scheduling Coordinators were permitted to submit meter data up to T+61B, Scheduling Coordinators could have believed that submissions up to that point were allowed

without Sanction. Because this behavior was consistent with the practice prior to implementation of payment acceleration, there was some support for the Scheduling Coordinators' conclusion as to the permissibility of submitting the amended meter data.

In support of this motion, the ISO notes that none of the ten Scheduling Coordinators have committed any further violations once the ISO advised them that their untimely amendments of meter data constituted a Rules of Conduct violation. This suggests that the violations were inadvertent, rather than willful.

The instant circumstances also meet the three-factor test the Commission has established for considering Tariff waivers. First, the requested waiver is limited in scope. It covers a specifically identified period of time. Also, while the waiver covers at least 70 separate violations, that number is exceedingly small considering that Section 37.5.1 can be violated for every Trade Date for every resource that has meter data submitted for it. Relative to the volume of funds that flow through the ISO, the total amount of penalties involved with the instant request is also limited in scope.

Granting the requested waiver also would not create undesirable consequences. The untimely submissions at issue did not impact system reliability or the competitiveness of the ISO's markets. As described above, the need for having deadlines to submit final meter data is driven by market settlement concerns. Specifically, the deadlines were created as a disincentive for Scheduling Coordinators to submit meter data after the final regularly-produced Recalculation Settlement Statement. Given that the ISO generates

another Recalculation Settlement Statement after T+43C, there was no significant adverse impact on the ISO as a result of the untimely amendments. Furthermore, under payment acceleration Scheduling Coordinators are now charged (and paid) interest starting from T+7B. For this reason, the Scheduling Coordinators covered by the instant waiver already have paid a price for their untimely amendments. Allowing the Sanctions to stand (rather than waiving them) would create undesirable consequences to the extent that the Scheduling Coordinators essentially would have to pay twice for the same conduct.

Finally, granting the waiver would benefit the ISO's customers. As explained above, many Scheduling Coordinators have indicated that they did not understand payment acceleration to create Sanctions for submitting amended meter data after the penultimate Recalculation Settlement Statement. Additionally, in submitting the amended meter data, the Scheduling Coordinators were helping to promote a more accurate settlements process. Penalizing customers in such circumstances could undermine customers' confidence in the ISO and the fairness of its processes.

The ISO has been judicious in requesting Commission approval to alter Sanctions under the Rules of Conduct, making such a request in only two prior instances. In September 2006, the Commission excused all penalties for late reporting of generator outages because experience with enforcing that new rule reflected that the rule was overly broad and had the potential to penalize conduct that had no discernible negative impact on the market.<sup>15</sup> In October 2007, the Commission excused all penalties for Market Participants' failure to submit timely

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<sup>15</sup> *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,226 (2006).

daily demand forecasts.<sup>16</sup> The waiver excused 107 identified violations committed by 16 separate Scheduling Coordinators. The requirement to submit such daily demand forecasts was a new requirement and the ISO argued that it was just and reasonable for the Commission to recognize a natural transition period while Market Participants gained experience in complying with their new reporting requirement. The ISO additionally argued that a waiver would not have meaningful negative consequences because the rule in question was an administrative tool used to ensure compliance with a separate requirement and was not related directly to maintaining reliability or competitive markets.

Consistent with the Commission's actions on these two prior requests, the Commission should grant the remedies that the ISO is proposing herein. In all three circumstances, changes to the ISO's market rules lead to penalties that were unwarranted based on the specific factors involved. In the case of daily demand forecasts – as well as the instant case – changes in underlying market processes lead many Market Participants to violate the Tariff unwittingly. Also, in both cases the rule that was violated did not directly or adversely affect – and was not related directly to – reliability or the markets.

#### **V. REQUEST FOR EXTENSION OF TIME UNDER SECTION 37.10.1**

Under Section 37.10.1 of the Tariff, the ISO may impose Sanctions “up to one year after discovery of the events constituting the violation . . . .” The ISO discovered the first violation covered by the instant filing on June 10, 2010. Thus, the ISO would have to levy the first penalty by June 10, 2011. The ISO wishes to have this matter resolved in advance of that point. However, if the

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<sup>16</sup> *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,011 (2007).

Commission's consideration of the instant issue should somehow approach May 27, 2011,<sup>17</sup> then the ISO additionally requests that the Commission grant a one-year extension of time in which to levy the penalties at issue in this matter, or if necessary a limited waiver of this Tariff provision so that it can defer issuing penalties until the Commission acts on the instant filing. If the Commission's consideration of this matter approaches May 27, 2011, the ISO could levy Sanctions against the Scheduling Coordinators at that point and then refund the Sanctions if and when the Commission approves the instant filing. The ISO believes, however, that following this approach would create unnecessary complexity and result in unnecessary workload. Accordingly, the ISO would prefer to levy penalties against the parties once and be finished with the matter. The Commission previously has indicated that it would entertain such requests upon a showing of good cause.<sup>18</sup> For the above-stated reasons, the ISO believes that it has demonstrated such good cause.

## **VI. COMMUNICATIONS**

Communications regarding this filing should be addressed to the following individual, whose name should be placed on the official service list established by the Secretary with regard to this submittal:

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<sup>17</sup> The ISO's Settlements Department has estimated that the final penalty amount must be known two weeks in advance to ensure that the penalty can be levied in time to meet the one-year deadline under Section 37.10.1.

<sup>18</sup> *Cal. Indep. Sys. Operator Corp.*, 107 FERC ¶ 61,118, P 55 (2004) ("We clarify that the Commission will entertain requests for extensions of the time limitation on assessing penalties, as modified above, upon a proper showing by the ISO that good cause exists.").

David Zlotlow  
Counsel  
The California Independent  
System Operator Corporation  
250 Outcropping Way  
Folsom, CA 95630  
Fax: (916) 608-7222  
Tel: (916) 608-7007  
E-mail: dzlotlow@caiso.com

## **VII. SERVICE**

The ISO has served copies of this petition on the California Public Utilities Commission and the California Energy Commission, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. In addition, the ISO is posting a copy of this petition on the ISO website.

## **VIII. CONCLUSION**

The ISO requests that Sanctions against Scheduling Coordinators for submitting amended meter data between T+43C and T+61B be suspended starting with the November 1, 2009 Trade Date until the February 1, 2011 Trade Date. The violations appear to have been inadvertent. Further, the requested waiver is limited in scope, would not have any undesirable consequences, and would benefit the ISO and its customers. Finally, granting a waiver is consistent with Commission precedent in handling similar requests to modify sanctions under the Rules of Conduct. For these reasons, there is good cause to grant the requested waiver.

Respectfully submitted,

By: /s/ David S. Zlotlow  
Nancy J. Saracino  
Vice President, General Counsel and  
Chief Administrative Officer  
Anthony J. Ivancovich  
Assistant General Counsel  
David S. Zlotlow  
Counsel  
The California Independent  
System Operator Corporation  
250 Outcropping Way  
Folsom, CA 95630  
Tel: (916) 608-7007  
Fax: (916) 608-7222  
[dzlotlow@caiso.com](mailto:dzlotlow@caiso.com)

Attorneys for the California Independent  
System Operator Corporation

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