

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

**California Independent System
Operator Corporation**

Docket No. ER14-1386-_____

**REQUEST FOR REHEARING OR,
IN THE ALTERNATIVE, MOTION FOR CLARIFICATION, OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“CAISO”) respectfully submits this request for rehearing of one limited aspect of the Commission’s June 19, 2014, order.¹ This proceeding concerns proposed amendments to the CAISO’s tariff that provide other balancing authority areas the opportunity to participate in the real-time market for imbalance energy that the CAISO currently operates in its own balancing authority area. The set of rules and procedures governing this expansion of the real-time market is known as the “Energy Imbalance Market” or “EIM.”

The CAISO requests rehearing of a discrete issue that has no direct connection to the rules that govern participation in the Energy Imbalance Market and will have no effect on its implementation date. This issue concerns the details of a regulation governing credit rules for all ISOs and RTOs that FERC adopted in Order No. 741. Specifically, the CAISO seeks rehearing of the Commission’s rejection of tariff section 29.22(c) as proposed, and its directive that the CAISO revise its tariff so that it “takes

¹ *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,231 (2014) (“June 19 Order”). The CAISO submits this request pursuant to Section 313(a) of the Federal Power Act, 16 U.S.C. § 825(a) and Rule 713 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.713.

title to energy associated with EIM transfers.”² As explained below, that directive was issued in error, because it contradicts Commission precedent – specifically, the order in which the Commission found the CAISO had complied with Order No. 741. In that order, the Commission ruled that the CAISO does not take “title” to energy when the energy is delivered into, on, and through the CAISO’s grid. The Commission’s directive also should be reconsidered because it could potentially undermine the CAISO’s status as central counterparty to market transactions, thus risking harm to market participants.

I. Background

A. Order No. 741 and the CAISO’s Compliance.

In 2010, the Commission issued Order No. 741, which adopted several credit reforms for centralized markets.³ One of the requirements was that ISOs and RTOs must become counterparties to market transactions. The purpose of this rule was to facilitate financial netting in the settlement process by ensuring that, in the event a market participant files for bankruptcy protection, the ISO or RTO will have the right to “set off” – that is, to net amounts that would otherwise be due to the bankrupt market participant against the market participant’s debt to the market. The Commission found that the right to set off would be preserved if ISOs and RTOs were to restructure market transactions to become the counterparty to every market transaction.

The CAISO filed proposed tariff amendments in compliance with this requirement, two aspects of which are relevant here. First, the core of the CAISO’s

² *Id.* P 171.

³ *Credit Reforms in Organized Wholesale Markets*, 133 FERC ¶ 61,060 (2010) PP. 116-119, *on reh’g* Order No. 741-A, 134 FERC ¶ 61.126, *reh’g denied*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

amendment was to delete a provision stating that the CAISO acts as an agent for scheduling coordinators in market transactions, and replace it with a new provision, section 11.29(a), which states that the CAISO is counterparty “in its own name and right” to essentially all market transactions.⁴

Second, the CAISO added a separate provision to address concerns that counterparty status might have unintended negative consequences under California state law regulating emission of greenhouse gasses. Stakeholders had expressed concern that, if the CAISO were to take title to the energy bought and sold in its markets, the CAISO would have to be listed as a purchasing/selling entity on the e-Tags for some imports. This could have resulted in the CAISO becoming the entity responsible for procuring the associated emissions allowances.⁵ The general consensus was that the CAISO should not bear this responsibility because it would not be in a position to respond to the incentives by selecting a generation source with lower emissions. This, in turn, would both undermine the purpose of the state regulations and cause the CAISO to incur additional costs that it would have to pass along to market participants.

⁴ See the CAISO’s compliance filing, filed May 25, 2012 in Docket Nos. RM10-13, ER11-3973, and ER12-1856, p. 4.

⁵ Under the final rule of the California Air Resources Board, posted on December 14, 2011, Final Regulation Order for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms, title 17, California Code of Regulations, section 95800 to 96023, liability for procuring the emissions permits associated with electricity imported into California rests with the party that brings the energy into the CAISO grid. Specifically, section 95802 states that “[f]or electricity delivered between balancing authority areas, the electricity importer” – that is, the entity obligated to purchase emissions permits – “is identified on the NERC E-tag as the purchasing selling entity (PSE) on the last segment of the tag’s physical path with the point of receipt located outside the state of California and the point of delivery located inside the state of California.”

To address these concerns, the CAISO proposed to revise section 4.5.3.2.2 to preclude market participants from listing the CAISO as a purchasing-selling entity on the grounds that the CAISO is not part of the chain of title when energy is being delivered.

As revised in response to Order No. 741,⁶ section 4.5.3.2.2 stated:

For purposes of E-Tags, the CAISO is not, and shall not be listed as, the “Purchasing Selling Entity”; title to Energy shall pass directly from the entity that holds title when the Energy enters the CAISO Controlled Grid to the entity that removes the Energy from the CAISO Controlled Grid, in each case in accordance with the terms of this CAISO Tariff.

The Commission accepted the CAISO’s compliance filing, including both sections described above.⁷ The Commission’s order rejected protests focused on section 4.5.3.2.2 without any suggestion that this section might be an exception to or otherwise in tension with the CAISO’s status as counterparty.⁸ To the contrary, the Commission summarized the rule as “clarifying” the amendment.⁹ Moreover, as discussed below, the Commission agreed “with CAISO that this language applies to the delivery on energy into, on, and through the CAISO-controlled grid” – in other words, to all market transactions for energy – and rejected the “concern that the CAISO’s proposed ... language might be misconstrued as only applying to interchange transactions.”¹⁰

⁶ The CAISO later revised section 4.5.3.2.2 to clarify it in *Cal. Indep. System Operator Corp.*, 143 FERC ¶ 61,228 (2013), P. 32. See CAISO’s April 12, 2013 filing in Docket No. ER13-1274 at 3. As noted in the transmittal letter, this clarification was consistent with the order that is summarized below in Section IV.A.

⁷ *Cal. Indep. Sys. Operator Corp.*, 140 FERC ¶ 61,169 (2012).

⁸ See *Id.* P 28.

⁹ *Id.* P 10.

¹⁰ *Id.* P 28.

B. The CAISO's Tariff Filing for the Energy Imbalance Market and the Protest by Powerex.

To ensure that transactions in the Energy Imbalance Market have the same legal structure as other CAISO transactions, the CAISO's February 28, 2014 tariff filing proposed to include, among other things, the substance of both tariff provisions discussed above. First, the filing incorporated section 11.29(a) – *i.e.*, the section that makes the CAISO counterparty to market transactions — as one of many generally applicable provisions governing settlements and billing that were incorporated by reference.¹¹

Second, the filing also includes language tracking the latter part of section 4.5.3.2.2, about title to energy. This language was part of proposed new tariff section 29.22, which includes several miscellaneous provisions that parallel those applicable to market participants for transactions within the CAISO balancing authority area.¹²

Proposed section 29.22(c) states:

Title to Energy. Title to Energy in the Real-Time Market passes directly from the entity that holds title when the Energy enters the CAISO Controlled Grid or the transmission system of an EIM Transmission Service Provider, whichever is first following Dispatch, to the entity that removes the Energy from the CAISO Controlled Grid or the transmission system of an EIM Transmission Service Provider, whichever last precedes delivery to Load.¹³

¹¹ See sections 29.1(b)(2)(C) (incorporating tariff provisions that are not limited to the CAISO grid, CAISO balancing authority area, or market other than real-time) & 29.11(l) (incorporating section 11 of the CAISO tariff to the extent it governs assessment of settlement charges).

¹² Transmittal letter for February 28 tariff filing at 21-22.

¹³ February 28 tariff filing, attachment B (marked tariff amendments), at proposed CAISO tariff section 29.22(c).

The CAISO explained that proposed section 29.22(c), and the other provisions in section 29.22, would ensure equivalent treatment of the CAISO and EIM entities with respect to participation of EIM market participants in the real-time market.¹⁴

Powerex Corp. protested the CAISO's February 28 tariff filing. The protest argued section 29.22(c) was inconsistent with the CAISO's commitment, in its filing to comply with Commission Order No. 741, to serve as the "centralized counterparty" to sales in the CAISO market.¹⁵

The CAISO answered this argument, noting that proposed section 29.22(c) was identical in substance to tariff section 4.5.3.2.2, which the Commission approved in the ISO's compliance filing with Order No. 741, and CAISO explained again the purpose of that section.¹⁶ The CAISO also pointed out that, because the Commission accepted section 4.5.3.2.2 in its order on compliance with Order No. 741, Powerex's protest was an improper collateral attack on that order.

C. The June 19 Order

In its June 19 Order, the Commission rejected proposed section 29.22(c). The order stated that the language it tracked from section 4.5.3.2.2 represented an "exception" to the CAISO's role as central counterparty.¹⁷ The order found, moreover,

¹⁴ Transmittal letter for February 28 tariff filing at 22.

¹⁵ Powerex protest, Docket No. ER14-1386-000, at 89-91 (Mar. 31, 2014 (citing *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, FERC Stats. & Regs. ¶ 31,317 (2010), *order on reh'g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320, *order denying reh'g*, Order No. 741-B, 135 FERC ¶ 61,241 (2011) (collectively, "Order No. 741"))).

¹⁶ CAISO answer to comments and protests, Docket No. ER14-1386-000, at 14-16 (Apr. 15, 2014) ("April 15 Answer").

¹⁷ June 19 Order at P 171 (citing *Cal. Indep. Sys. Operator Corp.*, 140 FERC ¶ 61,169, at PP 27-28)).

that this “exception” applied only to e-Tags, and not to energy sold into the real-time market, which would include EIM transfers.¹⁸ Therefore, the Commission found that proposed tariff section 29.22(c) was “inconsistent with our findings on the CAISO’s Order No. 741 compliance filing.”¹⁹ Consequently, the Commission directed the CAISO to make a compliance filing to revise proposed section 29.22(c) so that the CAISO takes title to energy associated with EIM transfers, consistent with its role as the centralized counterparty.²⁰

II. Specification of Errors

In accordance with Rule 713(c)(1) of the Commission’s Rules of Practice and Procedure,²¹ the CAISO respectfully submits that the June 19 Order erred in the following respects:

1. The June 19 Order rejected proposed tariff section 29.22(c) on the basis that existing section 4.5.3.2.2 applies only to e-Tags and not to real-time transactions (or other CAISO market transactions). In this respect, the June 19 Order conflicts with Commission precedent – specifically, the Commission’s order that accepting the CAISO’s filing in compliance with Order No. 741.
2. The June 19 Order found that existing tariff section 4.5.3.2.2 is an “exception” to the CAISO’s role as central counterparty. This finding is erroneous because it
 - a) is inconsistent with the plain language of the tariff, specifically existing section 29.1(a), and
 - b) could undermine the CAISO’s status as central counterparty to market transactions in a way that imposes unnecessary risk to market participants, contrary to the Commission’s goals in Order No. 741.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ 18 C.F.R. § 385.713(c)(1).

III. Statement of Issues

In accordance with Rule 713(c)(2) of the Commission's Rules of Practice and Procedure,²² the CAISO states that this request for rehearing raises the following issues:

1. The June 19 Order rejected proposed tariff section 29.22(c) on the basis that existing section 4.5.3.2.2 applies only to e-Tags and not to real-time transactions (or other CAISO market transactions). This aspect of the June 19 Order departs without explanation from Commission precedent – specifically, *California Indep. Sys. Operator Corp.*, 140 FERC ¶ 61,169 (2012). See *Atchison, Topeka & Santa Fe Rwy. v. Wichita Bd. of Trade*, 412 U.S. 800, 816-17 (1973); *Hatch v. FERC*, 654 F.2d 825, 834 (D.C. Cir. 1981); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852-53 (D.C. Cir. 1971).
2. The June 19 Order fails to provide a reasoned explanation for its conclusion that section 4.5.3.2.2 of the CAISO tariff is an “exception” to the central counterparty requirement from FERC Order No. 741. This finding is inconsistent with the plain language of the CAISO's tariff, specifically existing section 29.1(a). See, e.g., *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1963).
3. The June 19 Order errs because it departs without explanation from Commission precedent. Specifically, the ruling that section 4.5.3.2.2 of the CAISO tariff is an “exception” to the central counterparty requirement is contrary to FERC's goals in Order No. 741. This aspect of the June 19 Order could undermine the CAISO's status as central counterparty to market transactions in a way that imposes unnecessary risk to market participants, contrary to the stated purpose of Order No. 741. See *Atchison, Topeka & Santa Fe Rwy. v. Wichita Bd. of Trade*, 412 U.S. 800, 816-17 (1973); *Hatch v. FERC*, 654 F.2d 825, 834 (D.C. Cir. 1981); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852-53 (D.C. Cir. 1971).

²² 18 C.F.R. § 385.713(c)(2).

IV. Request for Rehearing

The Commission should grant rehearing and accept tariff section 29.22(c) as proposed. The decision to reject this proposed section contradicts the Commission's order accepting the CAISO's compliance filing with Order No. 741. In addition, the finding that existing section 4.5.3.2.2 is an "exception" to the ISO's role as central counterparty contradicts the plain language of the tariff. Unless corrected, this statement could harm CAISO market participants by undermining the CAISO's status as central counterparty, and thus the protections the Commission sought to introduce through Order No. 741.

A. The June 19 Order is inconsistent with Commission precedent

The June 19 Order rejects proposed section 29.22(c) on the grounds that the language that it tracks from section 4.5.3.2.2, concerning how title passes during delivery of energy, is limited in application to e-Tags, and does not apply generally to real-time transactions.²³ Accordingly, the Commission reasoned, the proposed language would be inconsistent with the requirement of Order No. 741 that the CAISO serve as counterparty to market transactions. This aspect of the June 19 Order is inconsistent with the Commission's order on the CAISO's compliance with Order No. 741 which made quite clear that the language providing that the CAISO does not take title to energy applies to all transactions and is not limited to e-Tags.

In their protest of the CAISO's filing in compliance with Order No. 741, Silicon Valley Power and the M-S-R Power Agency asked the Commission to clarify that the

²³ June 19 Order P 171.

language at issue here from section 4.5.3.2.2 “applies to the entire CAISO grid, not just intertie transactions.”²⁴ They argued:

the negative impacts on entities such as [Silicon Valley Power] may be reduced ***if the CAISO clarified that it is not taking title on all transactions.*** CAISO’s change to its proposed Section 4.5.3.2.2, indicating that CAISO does not take title, is housed within a provision addressing intertie transactions. The corresponding provisions for transactions within the CAISO Grid are silent as to title transfer. Although it is difficult to comprehend how or why CAISO would structure transactions within its Grid differently than imports, the location of the provision, and the lack of a parallel statement with regard to transactions at points within the CAISO Grid, create confusion and uncertainty. ***The Commission should direct CAISO to clarify that it is not taking title under any transactions, not just those at the interties.***²⁵

The CAISO addressed this point in its answer, explaining that no change was necessary because the desired interpretation was consistent with section 4.5.3.2.2 as filed.

The [CAISO] did not intend to limit the following language in proposed section 4.5.3.2.2 to intertie transactions, but rather intends that it will apply generally to delivery of energy into, on and through the [CAISO]-controlled grid:

title to Energy shall pass directly from the entity that holds title when the Energy enters the CAISO Controlled Grid to the entity that removes the Energy from the CAISO Controlled Grid, in each case in accordance with the terms of this CAISO Tariff.

The CAISO believes this language is sufficiently clear.²⁶

²⁴ Motion to Intervene and Comments of the City of Santa Clara, California, and the M-S-R Public Power Agency, filed June 15, 2012 in Docket No. ER12-1856-000, P 12.

²⁵ *Id.* P 17 (emphasis added).

²⁶ Answer to Motions to Intervene and Comments, Motion to File Answer, and Answer to Protests, of the California Independent System Operator Corporation, filed July 3, 2014 in Docket No. ER12-1856-000, p. 7.

The Commission “agree[d] with CAISO that this language [from section 4.5.3.2.2] applies to the delivery of energy into, on, and through the CAISO-controlled grid,” and rejected the protest on this basis:

we reject [Silicon Valley Power’s and the M-S-R Power Agency]’s concern that CAISO’s proposed “E-Tag” language might be misconstrued as only applying to interchange transactions. We agree with CAISO that this language applies to the delivery of energy into, on, and through the CAISO-controlled grid and, by using the term “CAISO Controlled Grid,” does not require further revision.²⁷

The Commission thus explicitly adopted a broad interpretation of the language about not taking title to energy that cannot be reconciled with the more narrow interpretation upon which the June 19 Order is premised. As a result, the language in section 4.5.3.2.2 is not limited to e-Tags and instead applies to all energy transactions involving the CAISO, including transactions that do not require the use of e-Tags.

When the Commission issued Order No. 741, it recognized the argument of many commentators that “the central counterparty approach does not definitively eliminate the risk that a bankruptcy court would refuse an ISO/RTO’s netting obligations between the ISO/RTO and the debtor market participant.”²⁸ For instance, NYISO pointed out that “under PJM’s proposal, PJM is only obligated to pay market sellers to the extent of its collections from market buyers.”²⁹ From this, NYISO argued that “PJM may not truly be taking on the debt obligation for market purchases, but rather be acting as an agent for many different buyers.”³⁰

²⁷ Cal. Indep. Sys. Operator Corp., 140 FERC ¶ 61,169 (2012) P 28.

²⁸ Order No. 741, P 101.

²⁹ *Id.*

³⁰ *Id.*

Section 4.5.3.2.2 was adopted in this context. The ISO made many changes to its tariff to comply with Order No. 741, one or more of which might, as commentators suggested to the Commission prior to its adoption of Order No. 741, provide a basis to challenge the enforceability of the ISO's setoff rights. For example, like PJM, the ISO is only obligated under its tariff to pay market sellers to the extent of its collections from market buyers.³¹ Yet, notwithstanding the existence of this provision in the ISO's tariff, the Commission found that "CAISO's proposal to establish itself as the central counterparty to market related transactions complies with the requirements set forth in Order Nos. 741 and 741-A. The establishment of CAISO as the central counterparty addresses ambiguity regarding the identity of contracting parties in market related transactions by clarifying that there is a single, specified counterparty to market participants. *The CAISO's proposal represents a reasonable solution to address a potential mutuality risk . . .*"³²

Because section 4.5.3.2.2 was determined by the Commission, in conjunction with its review of the ISO's central counterparty tariff amendments, to be acceptable, so too should section 29.22(c). Section 29.22(c) precisely tracks the language of section 4.5.3.2.2 and, as a result, poses no greater risk to the ISO of a challenge to its central counterparty status than existed in 2012 when the Commission approved the ISO's

³¹ 140 FERC ¶ 61,169, at 9 ("CAISO states that it will remain revenue-neutral in the event of a default by allocating any payment shortfall to the market. CAISO also proposes to limit its liability for making any payments for any given settlement period to the aggregate amount that it has received or recovered for that settlement period.").

³² *Id.* P.27 (emphasis added).

central counter party tariff proposal.³³ For these reasons, and because the Commission's rejection of section 29.22(c) effectively repudiates its prior, final determination regarding section 4.5.3.2.2, rehearing is necessary.

B. It was error to find that section 4.5.3.2.2 is an “exception” to the CAISO’s role as central counterparty

The finding that section 4.5.3.2.2 is an “exception” to the CAISO’s role as counterparty could harm market participants by undermining the CAISO’s right to set off against a bankrupt debtor – an outcome that would directly conflict with the broader purpose of Order No. 741.

Under tariff section 11.29(a), the CAISO serves as counterparty to effectively all market transactions. This provision allows for only specific exceptions:

The CAISO shall be the contracting counterparty, in its own name and right, to each Scheduling Coordinator, CRR Holder, Black Start Generator, or Participating TO for any purchase or sale of any product or service, or for any other transaction that is financially settled by the CAISO under the CAISO tariff, ***except under the following circumstances***

(Emphasis added.) The only substantive exception is for certain energy procured for use in Mexico³⁴ – an exception that the CAISO estimates to include no more than

³³ Section 4.5.3.2.2 addresses title *to delivered energy*, not to the contract or transaction entered into by the ISO as the central counterparty. As such, it is debatable whether section 4.5.3.2.2, in any event, bears any relevance on whether the requisite mutuality is established, for bankruptcy purposes, to allow for set-off. As FERC correctly recognized in approving the CAISO’s Order No. 741 compliance filing, the key provision for establishing such mutuality is the express language in the ISO tariff stating that “the CAISO shall be the contracting counterparty, ***in its own name and right***, to each [market participant] for any purchase or sale of any product or service, or any other transaction, that is financially settled by the CAISO.” (Emphasis added.) As noted, this provision has been made applicable to EIM transactions through section 29.1(b)(2)(c), thus ensuring that EIM transactions have the same mutuality as is established for other transactions in the CAISO’s real-time market.

³⁴ See section 29(a)(i) of the CAISO tariff.

0.01% of market transactions. The same is true for the Energy Imbalance Market as well, because section 11.29(a) is incorporated by reference into section 29.³⁵

The June 19 Order could create confusion about the CAISO's status as counterparty because it recasts section 4.5.3.2.2 as an additional "exception" to the CAISO's central counterparty role for e-Tag transactions. This is contrary to the plain language of section 11.29(a). This new "exception" concept could potentially harm market participants by providing a basis for creative debtor's counsel to argue, incorrectly, that the CAISO is not central counterparty to interchange transactions. The possibility for confusion could be exacerbated by the fact that, as a result of the June 19 Order, Energy Imbalance Market Transfers would not have the same legal structure as other transactions in the CAISO market.³⁶ Such an outcome would fundamentally conflict with the Commission's objective in Order No. 741 to establish central counterparty status as a means to facilitate and preserve financial netting rights for ISOs and RTOs.

To avoid this risk, the Commission should reconsider its new interpretation of section 4.5.3.2.2 as an "exception" to the CAISO's counterparty role and instead allow the CAISO to achieve a parallel structure between EIM Transfers and other real-time transactions by permitting the CAISO to adopt section 29.22(c) as originally proposed.

³⁵ See fn. 11, above.

³⁶ Compare the provisions required by the June 19 Order with those accepted in the CAISO's compliance filing with Order No. 741, *California Indep. Sys. Operator Corp.*, 140 FERC ¶ 61,169 (2012).

V. Conclusion

For both of the reasons discussed herein, the CAISO respectfully requests that the Commission grant rehearing of the June 19 Order and accept proposed CAISO tariff section 29.22(c) as submitted in the February 28 tariff filing.

Respectfully submitted,

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Dated: July 21, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service list in the captioned 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 Folsom, California this 21st day of July, 2014.

Anna Pascuzzo
Anna Pascuzzo