

175 FERC ¶ 61,234
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, Allison Clements,
and Mark C. Christie.

California Independent System Operator Corporation

Docket No. ER04-835-014

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued June 17, 2021)

1. Shell Energy North America (US), L.P. (Shell) seeks rehearing of the Commission's March 1, 2021 order in this proceeding.¹ In the March 2021 Order, the Commission accepted California Independent System Operator Corporation's (CAISO) compliance filing submitted in response to the Commission's August 28, 2019 order on rehearing.² The August 2019 Order on Rehearing directed CAISO to file a final refund report within 30 days of issuing its final invoices.

2. Pursuant to *Allegheny Defense Project v. FERC*,³ the rehearing request filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 313(a) of the Federal Power Act (FPA),⁴ we are modifying the discussion in the

¹ *Cal. Indep. Sys. Operator Corp.*, 174 FERC ¶ 61,166 (2021) (March 2021 Order).

² *Cal. Indep. Sys. Operator Corp.*, 168 FERC ¶ 61,127 (2019) (August 2019 Order).

³ 964 F.3d 1 (D.C. Cir. 2020) (en banc).

⁴ 16 U.S.C. § 825l(a) ("Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.").

March 2021 Order and continue to reach the same result in this proceeding, as discussed below.⁵

I. Background

3. This proceeding dates back more than a decade, and therefore this order omits much of the case history, which has been recounted in earlier orders.⁶ As relevant here, on December 20, 2013, CAISO submitted what it termed an “informational” refund report (Refund Report) which explained that, consistent with prior orders regarding the allocation of must-offer generation costs in this proceeding,⁷ it would be conducting resettlements for the relevant time period, i.e., July 1, 2004 through March 31, 2009. On October 20, 2016, the Commission rejected CAISO’s Refund Report, finding that CAISO had not been directed to pay refunds or file a refund report, and dismissed as moot a related complaint.⁸

4. However, in the August 2019 Order, the Commission granted rehearing in part and accepted CAISO’s Refund Report.⁹ The Commission further determined that interest should be applied to the resettlements consistent with 18 C.F.R. § 35.19a (2020) of the Commission’s regulations,¹⁰ and it directed CAISO to submit a compliance filing within 60 days reflecting the invoices it planned to distribute for interest amounts.¹¹

⁵ *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the March 2021 Order. See *Smith Lake Improvement & Stakeholders Ass’n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

⁶ See August 2019 Order, 168 FERC ¶ 61,127 at PP 3-5 (recounting case history).

⁷ *Cal. Indep. Sys. Operator Corp.*, 108 FERC ¶ 61,022 (2004); *Cal. Indep. Sys. Operator Corp.*, Opinion No. 492, 117 FERC ¶ 61,348 (2006), *order on reh’g*, 121 FERC ¶ 61,193 (2007), *order on reh’g*, 136 FERC ¶ 61,197 (2011), *aff’d*, *City of Anaheim v. FERC*, 540 F. App’x 13 (D.C. Cir. 2013).

⁸ *Cal. Indep. Sys. Operator Corp.*, 157 FERC ¶ 61,033, at PP 1, 27-28 (2016) (October 2016 Order).

⁹ August 2019 Order, 168 FERC ¶ 61,127 at P 12.

¹⁰ *Id.* PP 12, 26-29.

¹¹ *Id.* P 29. The Commission subsequently denied rehearing. *Cal. Indep. Sys. Operator Corp.*, 171 FERC ¶ 61,109 (2020) (May 2020 Order), *order on reh’g*, 172 FERC ¶ 61,273 (2020) (September 2020 Order).

5. On October 28, 2019, CAISO submitted its original compliance filing in response to the August 2019 Order. In that filing, CAISO explained that it was in the process of calculating interest and planned to issue settlement statements and invoices by March 31, 2020. CAISO also stated that it would supplement the filing in the first quarter of 2020 to reflect the interest calculations.¹²

6. On March 2, 2020, CAISO submitted its first supplemental compliance filing, stating that it has calculated the interest on the minimum load cost adjustments through March 31, 2020 to be \$88.3 million.¹³ CAISO stated that it planned to publish settlement statements and invoices for the minimum load cost adjustments on March 31, 2020 and perform market clearing on April 6, 2020, but it required additional time to calculate interest on reallocated start-up costs, and it planned to submit another supplemental compliance filing on March 31, 2020.¹⁴

7. On March 31, 2020, CAISO submitted its second supplemental compliance filing, stating that it calculated the amount of interest to be charged and allocated for start-up cost adjustments through March 31, 2020 to be \$6 million in total.¹⁵

8. On May 21, 2020, Commission staff issued a deficiency letter requesting additional information. Specifically, the deficiency letter requested detailed information regarding how interest was calculated for both the minimum load adjustment costs and start-up costs, and it sought either the invoices CAISO intended to distribute to market participants or a table summarizing how interest costs will be allocated and invoiced among market participants. CAISO responded to this deficiency letter on June 22, 2020 and submitted a correction to this response on August 10, 2020.

9. On August 25, 2020, Commission staff issued a second deficiency letter. This letter sought information regarding how CAISO arrived at the \$6 million in interest for start-up costs, and it requested that CAISO provide any further information to reconcile the apparent \$3 million in interest for start-up costs in its June 22, 2020 deficiency response. The deficiency letter also asked CAISO to provide the resettlement principal and interest amount for each market participant and to explain and reconcile revised totals in the 2014 Refund Report. CAISO submitted its response to this deficiency letter on September 24, 2020.

¹² CAISO Original Compliance Filing at 2.

¹³ CAISO First Supplemental Compliance Filing at 2, 5.

¹⁴ *Id.* at 2, 5, 7.

¹⁵ CAISO Second Supplemental Compliance Filing at 4.

10. In the March 2021 Order, the Commission found that CAISO's compliance filings regarding the interest calculations for the reallocated minimum load costs and start-up costs, as supplemented and amended, were consistent with the directive in the August 2019 Order. The Commission therefore accepted CAISO's compliance filings.¹⁶ The Commission also denied a request by CAISO not to calculate interest past March 31, 2020, which the Commission found was inconsistent with its general policy concerning interest calculations.¹⁷

11. The Commission granted Shell's request that the Commission deny CAISO's request for a waiver of 18 C.F.R. § 388.112(b) (2020), which creates procedures for obtaining privileged material. The Commission directed that Shell be permitted, pursuant to a protective agreement, access to the Shell-specific information that CAISO provided to the Commission. The Commission agreed with CAISO that Shell and other intervenors should not be able to review the privileged data submitted in this proceeding regarding other market participants, and it granted CAISO's request to waive the requirements of 18 C.F.R. § 388.112(b) to the extent a scheduling coordinator seeks information regarding another scheduling coordinator.¹⁸

II. Rehearing Request

12. Shell maintains that the Commission made four errors in the March 2021 Order. First, Shell argues that the Commission violated the parties' right to due process because it failed to provide parties with a meaningful opportunity to review and comment on the record evidence CAISO submitted to the Commission. Shell asserts that the Commission stated in the May 2020 and September 2020 Orders that it would conduct a separate proceeding to investigate the accuracy of the Refund Report and the resettlement conducted in 2014 (2014 Resettlement), which Shell refers to as the "Accuracy and Transparency Proceeding."¹⁹ Shell goes on to state that, without notice, the Commission initiated and conducted the proceeding by way of deficiency letters. Shell states that the data CAISO submitted was provided solely to the Commission, and CAISO sought a waiver that would prevent the parties from reviewing the data. Shell states that the Commission granted the waiver, while requiring that scheduling coordinators be provided access to their own data pursuant to a non-disclosure agreement, which Shell states CAISO has not provided. Shell maintains that the data in question is no longer commercially sensitive, and the Commission failed to support its decision that the data

¹⁶ March 2021 Order, 174 FERC ¶ 61,166 at P 37.

¹⁷ *Id.* P 38.

¹⁸ *Id.* P 43.

¹⁹ Rehearing Request at 3-4, 6.

may not be shared with the parties even under confidentiality conditions. Shell argues that because the March 2021 Order summarily concludes the compliance proceeding, the Commission's decision allowing scheduling coordinators to review their own data comes too late to be meaningful.

13. Second, Shell argues that the Commission failed in the March 2021 Order to address arguments concerning the accuracy and transparency of the resettlement process. Shell maintains that the Commission stated in the May 2020 and September 2020 Orders that it would sever arguments regarding accuracy and transparency and would address them in a separate accuracy and transparency proceeding. Shell states that the Commission nevertheless failed in the March 2021 Order to address previously-raised arguments concerning accuracy and transparency.²⁰

14. Third, Shell maintains that the March 2021 Order violates the filed rate. According to Shell, the Commission found in the September 2020 Order that the resettlement must be conducted pursuant to section 11.14 of the CAISO Tariff, which, Shell states the Commission found to be the applicable filed rate. Shell argues that the resettlement was not conducted in accordance with the filed rate because section 11.14 provides that charges and payments made pursuant to that section are to be allocated pro rata based upon "Measured Demand" as defined in the CAISO Tariff, and under such a process, Shell could not be subject to surcharges in the amounts it has paid. According to Shell, a charge assessed pursuant to section 11.14 would have been much lower for Shell Energy and much higher for load serving utilities, which have larger measured demand.²¹

15. Finally, Shell maintains that the Commission failed to provide a reasoned basis for rejecting CAISO's motion that interest calculations and invoices extend no later than March 31, 2020. Shell argues that while the Commission denied the request on the grounds that it is inconsistent with the Commission's general policy on awarding interest, the facts demonstrate that this general policy should not be applied here. Shell states that if no party had contested the 2014 Resettlement, there would be no interest at all, and interest is being assessed now only because the Commission reversed itself on the lawfulness of the resettlement in the August 2019 Order. Shell states that multiple parties argued on rehearing of the August 2019 Order that it is inequitable to require interest on the 2014 Resettlement. In addition, Shell states that in the August 2019 Order, the Commission required interest calculations from CAISO within sixty days, but it took CAISO over nine months to submit them. Shell concludes that the length of time

²⁰ *Id.* at 2, 6-12.

²¹ *Id.* at 3, 12-13.

involved and the fact that the Commission earlier determined not to order refunds and surcharges make the additional interest inequitable.²²

III. Discussion

16. We find Shell's allegations of error unconvincing and therefore sustain the result of the March 2021 Order.

17. First, we disagree with Shell's assertions regarding the adequacy of the Commission's proceeding for addressing the CAISO Refund Report. As an initial matter, Shell's arguments do not accurately reflect the Commission's process for addressing issues raised concerning the accuracy and transparency of the CAISO Refund Report. According to Shell, "the Commission stated that it would conduct a proceeding to investigate the accuracy and transparency" of this report,²³ which Shell refers to as the "Accuracy and Transparency Proceeding."²⁴ Shell does not fully specify what this proceeding would consist of, but it does describe it as a "separate" proceeding that would "validate the fundamental accuracy" of the amounts charged.²⁵ According to Shell, this proceeding would involve a broader dissemination of data than has been afforded here and a comment process addressing that information.²⁶

18. However, neither the May 2020 Order nor the September 2020 Order, which Shell asserts contemplated this process, either mentions or can be read as envisaging the proceeding that Shell speaks of. In both of these orders, the Commission stated that it would not address arguments regarding the accuracy and transparency of CAISO's resettlement process at the time but instead would address them "in connection with the Commission's review of CAISO's compliance filings."²⁷ The May 2020 Order indicates that these the matters would be "addressed separately in connection with the Commission's review of CAISO's compliance filings,"²⁸ but it also makes clear that the

²² *Id.* at 3, 13-14.

²³ *Id.* at 3.

²⁴ *Id.*

²⁵ *Id.* at 6, 10-11.

²⁶ *See id.* at 3, 5.

²⁷ May 2020 Order, 171 FERC ¶ 61,109 at P 31; September 2020 Order, 172 FERC ¶ 61,273 at P 7.

²⁸ May 2020 Order, 171 FERC ¶ 61,109 at P 31.

matter would be addressed “in connection with,” i.e., as part of the compliance filing process, not as a separate proceeding. In the May 2020 and September 2020 Orders, the Commission simply agreed with Shell that it was not addressing concerns about the Refund Report in that earlier phase of this proceeding, which was focused on legal challenges to the resettlements. In other words, the Commission specified that such arguments would be addressed at this phase of the proceeding, i.e., the compliance phase, and not, as Shell argues, that some other proceeding would be instituted.

19. We also find no merit in Shell’s argument that it has been deprived of due process in this proceeding. The Commission specified in the March 2021 Order that “Shell should have access to the Shell-specific data that CAISO provided to the Commission in this compliance proceeding.”²⁹ Moreover, CAISO has provided Shell with complete data concerning how it determined both the principal and interest associated with the reallocation of start-up and minimum load costs adjustments that the Commission directed CAISO to calculate in this proceeding.³⁰

20. Shell thus has all the information that was available to the Commission regarding the charges assessed on Shell, and it is therefore not clear what further procedures Shell considers to be necessary or what further findings they could produce. Indeed, Shell does not assert on rehearing that data it currently possesses, along with the data it is entitled to receive pursuant to the March 2021 Order, is insufficient for assessing the accuracy and transparency of the charges applicable to it. It only argues that its due process rights are being violated because the data is being supplied too late and is “meaningless” because this process is not complete, subject to rehearing.³¹ However, this compliance proceeding is not a forum for litigating disputes over individual charges. The CAISO Tariff provides specific procedures for resolving such disputes,³² and Shell has been provided the information necessary to pursue its claims in that process.

21. We also find unconvincing Shell’s assertion that the Commission failed to respond to arguments raised in earlier pleadings that Shell maintains should have been dealt with in a separate proceeding.³³ A number of these arguments simply assert in general terms the importance of ensuring the accuracy of refunds and surcharges and of providing an

²⁹ March 2021 Order, 174 FERC ¶ 61,166 at P 43.

³⁰ CAISO November 25, 2020 Answer at 2.

³¹ Rehearing Request at 5.

³² CAISO Tariff section 11.29.8.4 *et seq.*

³³ *See* Rehearing Request at 6-12.

opportunity to contest the amounts assessed.³⁴ These are indeed important matters, and the process that has been conducted meets the standards specified in those arguments. Shell also argues that there are material issues regarding the validity of the 2014 Resettlement that arise from the lack of data needed to verify the core input elements of an invoice, i.e., price and quantity, and errors regarding required billing techniques, data inputs, and provision of monthly data where trading interval data is required.³⁵ On this point, Shell raises matters that go beyond what was contemplated in the May 2020 and September 2020 Orders.

22. In the May 2020 and the September 2020 Orders, the Commission stated that it would address the accuracy and transparency of the CAISO's resettlement process.³⁶ In doing so, the Commission was referring to the accuracy and transparency of the Refund Report.³⁷ However, in arguing that there is a lack of data needed to verify the core input elements of an invoice, Shell is referring to price and quantity data reflected in daily settlement statements that CAISO issued to Shell, which is a separate matter from whether the resettlement process itself was accurate and transparent. Moreover, as CAISO previously explained, Shell, like all other market participants responsible for refunds, has already received the original daily settlement statements as part of the original CAISO settlement process. In the 2013-2014 timeframe, CAISO addressed the issue of historical data by explaining that market participants already have this data, and CAISO was not in a position to reproduce the granularity of the daily settlement statements.³⁸ In light of this, we find that Shell has failed to explain what additional, necessary data it lacks.

23. Shell's contention that the March 2021 Order violates the filed rate misconstrues the significance of section 11.14 of the CAISO Tariff section and misconstrues what the September 2020 Order held in this regard. Shell maintains that the filed rate has been misapplied because the charges it has been assessed would be much lower if section 11.14 had been properly applied. However, the Commission cited section 11.14 in the September 2020 Order as a factor that placed the parties on notice of the possibility of

³⁴ *Id.* at 7-8.

³⁵ *Id.* at 8-9.

³⁶ May 2020 Order, 171 FERC ¶ 61,109 at P 31; September 2020 Order, 172 FERC ¶ 61,273 at P 7.

³⁷ *See* September 2020 Order, 172 FERC ¶ 61,273 at P 7.

³⁸ CAISO November 25, 2020 Answer at 5-7.

surcharges in this proceeding.³⁹ Section 11.14 provides that CAISO is a revenue-neutral, non-profit corporation. Such an entity has no retained earnings from which to pay refunds, and this means that a resettlement will necessarily require that refunds be recouped through surcharges. But the September 2020 Order did not hold that CAISO is only permitted to apply section 11.14 in conducting its resettlements in this proceeding, while ignoring other provisions of the CAISO Tariff addressing resettlements. Such an overly narrow reading of the Tariff would mean that CAISO's status as a revenue-neutral entity must be disregarded in circumstances falling outside the four corners of this provision. This reading of the Tariff is untenable. Shell's contention regarding the filed rate in this instance in effect asserts that the relevance of CAISO's revenue neutrality depends on the applicable allocation methodology; to the contrary, CAISO's revenue neutrality represents a fundamental fact regardless of the methodology CAISO applies. We continue to find that CAISO followed the appropriate Tariff procedures in conducting the resettlements, as explained in the March 2021 Order.⁴⁰

24. Finally, we find unconvincing Shell's argument that the Commission's general policy of awarding interest is an insufficient reason for denying CAISO's motion that interest on resettlements should not be calculated beyond March 31, 2020. As the Commission explained in the August 2019 Order, "interest is simply a way of ensuring full compensation."⁴¹ In addition, as further noted in the August 2019 Order, "interest not only makes customers whole by accounting for the time value of money they would not have paid had the appropriate allocation been in place; it also prevents windfalls that would accrue to other parties from the retention and use of money they otherwise would have paid."⁴² The Commission's general policy is thus supported by significant equitable considerations. Shell argues that delay and the long history of this proceeding justify the termination of interest calculations as of March 31, 2020, but these factors do not support declining to make some parties whole and allowing windfalls for others.

³⁹ September 2020 Order, 172 FERC ¶ 61,273 at P 6.

⁴⁰ March 2021 Order, 174 FERC ¶ 61,166 at P 43.

⁴¹ August 2019 Order, 168 FERC ¶ 61,127 at P 28 (quoting *Anadarko Petroleum Corp. v. FERC*, 196 F.3d 1264, 1267 (D.C. Cir. 1999) (*Anadarko*)).

⁴² May 2020 Order, 171 FERC ¶ 61,109 at P 35 (citing *Anadarko*, 196 F.3d at 1267 (citing *Natural Gas Policy and Procedures*, Order No. 44, FERC Stats. & Regs. ¶ 30,079 (1979) (cross-referenced at 8 FERC ¶ 61,197), *aff'd United Gas Pipe Line Co. v. FERC*, 657 F.2d 790, 794-96 (5th Cir. 1981) (one purpose of the policy of requiring interest on overcharges is to "reflect the benefits which were available to companies which collected excessive rates"))).

The Commission orders:

In response to Shell's request for rehearing, the March 2021 Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission. Commissioner Danly is not participating.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.