

**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 TO COMMENTS OF
POWEREX CORP. AND TO ANSWER OF THE COALITION**

The California Independent System Operator Corporation (CAISO)¹ submits: (1) this answer to the comments filed by Powerex Corp. (Powerex) on March 23, 2020 in this proceeding in response to the CAISO's March 2, 2020 supplemental compliance filing (March 2 Compliance Filing); and (2) this motion for leave to answer and answer to the motion for leave to answer and answer filed by Shell Energy North America (US) L.P. and the Alliance for Retail Energy Markets (collectively, the Coalition) on March 26, 2020, in response to the motion for leave to answer and answer the CAISO submitted to the Coalition's March 16, 2020 filing regarding the March 2 Compliance Filing.²

Powerex does not contend that the March 2 Compliance Filing fails to satisfy the directive in the Commission's August 28, 2020 order to submit a compliance filing reflecting the invoices it plans to submit for interest amounts.³

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

² The CAISO submits this motion for leave to answer and answer pursuant to Sections 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213.

³ See *Cal. Indep. Sys. Operator Corp.*, 168 FERC ¶ 61,127, at P 29 (2019) (August 28 Order). One other party, Pacific Gas and Electric Company, also filed comments on the March 2 Compliance Filing, supporting that filing.

Instead, Powerex requests that the Commission immediately grant its pending request for rehearing of the August 28 Order on the basis that further resettlement would be inequitable given the information available to the CAISO and market participants. Powerex's concerns are overstated. The challenges faced by the CAISO in calculating interest in compliance with the Commission's directives are solely process-related and do not go to the underlying accuracy of the data. Requests for rehearing, including Powerex's, are already pending before the Commission, and the CAISO's process for calculating and invoicing interest does not create any particular need for urgent Commission action, or argue in favor of granting rehearing.

The Coalition argues that the Commission must complete its review of the CAISO's filings to comply with the August 28 Order before the CAISO invoices interest amounts pursuant to that Order. However, the Commission has never issued any such directive in this proceeding. Instead, the August 28 Order found that it is appropriate to apply interest, directed the CAISO to submit a compliance filing reflecting those invoices, and in a subsequent order issued in this proceeding denied the Coalition's motion for stay of any interest charges that would be assessed pursuant to the August 28 Order. The Coalition also argues that the purported complexity of this proceeding requires a "Commission-run compliance process." However, the CAISO is already following the "Commission-run compliance process," and the Coalition fails to show otherwise.

I. Motion for Leave to File Answer

Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, the CAISO respectfully requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to answer the Coalition's March 26, 2020 answer. Good cause to grant the requested waiver exists because this CAISO answer will aid the Commission in understanding the issues in this proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in the case.⁴

II. Background

As the Commission explained in the August 28 Order, this proceeding has an extensive history.⁵ The CAISO has covered this history in previous pleadings and therefore limits its discussion here to the issue at hand: the March 2 Compliance Filing.

In the March 2 Compliance Filing,⁶ the CAISO explained that it had calculated the interest on the reallocated minimum load costs at issue in this proceeding through March 31, 2020, and planned to publish settlement statements and invoices on March 31, 2020 and perform market clearing on April 6, 2020. The interest on the reallocated minimum load costs, which totals \$88.3 million, constitutes the majority of the interest on the reallocated must-offer cost

⁴ See, e.g., *Xcel Energy Services, Inc.*, 124 FERC ¶ 61,011, at P 20 (2008); *Sw. Power Pool, Inc.*, 89 FERC ¶ 61,284, at 61,888 (2000); *El Paso Elec. Co.*, 72 FERC ¶ 61,292, at 62,256 (1995).

⁵ See August 28 Order at PP 3-5.

⁶ The CAISO submitted it on March 2 rather than March 1, because March 1 was a Sunday.

amounts at issue here.⁷ The CAISO stated that it had provided each market participant with specific details regarding its interest charges and allocation for those amounts, would reach out to affected scheduling coordinators to provide each of them with their scheduling coordinator-specific data, and would schedule a conference call to respond to any questions.⁸ That conference call took place on March 25, 2020.

Regarding interest on the reallocated start-up costs, which constitute the remainder of the reallocated must-offer cost amounts, the CAISO explained that it needed additional time due to the challenges involved in dealing with data and systems going back over 15 years. Specifically, the CAISO stated that it must manually reconstruct settlement statements used in the start-up cost interest calculations, because the software system that was used to create the original statements is no longer available.⁹ This task is further complicated because the start-up data needs to be reconstructed from archived data, which requires significant man-hours to complete the job, whereas the minimum load cost data was comparatively much more accessible. Further, the CAISO had not worked with the start-up cost data in more than five years, that data is between 10 and

⁷ March 2 Compliance Filing at 2, 4-5. The CAISO explained that these amounts include interest on the unpaid interest for the minimum load adjustments made in 2014 and additional interest on the unpaid interest from June 2014 through March 31, 2020. The CAISO also stated that it calculated the interest using the applicable quarterly interest rates determined pursuant to section 35.19a of the Commission's regulations. *Id.* at 4-5.

⁸ *Id.* at 7.

⁹ The CAISO systems used prior to 2009 have been retired for many years. This means that these systems are not available to resend original settlement statements, for example.

15 years old, and subject matter experts primarily responsible for the data have retired or are no longer working in settlements.¹⁰

Due to the challenges involved in dealing with the start-up cost data, the CAISO stated that it required additional time to calculate interest on the reallocated start-up costs. The CAISO explained that it planned to submit a further supplemental compliance filing by March 31, 2020 to update the Commission and parties on the status of the CAISO's efforts to document the interest on the start-up costs and to propose a timeline for issuing settlement statements and invoices for them.¹¹

III. Answer

A. The Process-Related Challenges to Calculating Interest on Reallocated Start-Up Costs Provide no Basis for Granting Rehearing of the August 28 Order

In its comments, Powerex is clear that its main concern is not with the March 2 Compliance Filing but rather with the directives in the August 28 Order for which Powerex has sought rehearing. Powerex explains that it is “submitting these comments because it is deeply concerned about the impact of the Commission requiring CAISO to engage in yet another resettlement process in a proceeding that was initiated nearly 20 years ago.”¹² Powerex distinguishes

¹⁰ *Id.* at 5. The CAISO also explained that it needed to rely on estimated cost data to comply with a Commission directive that start-up costs be allocated in the same manner as minimum load costs. *Id.* (citing December 2013 Report at 4).

¹¹ *Id.* at 2, 6. The CAISO still plans to submit that filing by March 31.

¹² Powerex at 6. *See also id.* at 7 (“In this case, proceeding with the proposed resettlement process would require market participants that have already been assessed hundreds of millions of dollars in surcharges as a result of the first resettlement . . . to pay tens, perhaps hundreds, of millions of dollars in additional surcharges for transactions that were executed 13 to 15 years ago.”).

between the CAISO's efforts to comply with the August 28 Order and the directives the CAISO is complying with:

To be clear, Powerex does not fault CAISO for attempting to move forward with implementation of the Commission's directive to proceed with the assessment of interest; as a FERC-jurisdictional public utility, CAISO has no choice but to comply with the Commission's directives. The fact remains, however, that conducting yet another market resettlement at this stage would be highly inequitable and serve only to further erode confidence in the markets.¹³

Powerex urges the Commission to "immediately" grant rehearing of the August 28 Order."¹⁴

Powerex's argument is flawed in two respects. First, Powerex seems to misunderstand the challenges to calculating the interest described in the March 2 Compliance Filing, which provide no basis for expediting a Commission ruling or substantively granting requests for rehearing of the August 28 Order. Powerex asserts that "neither CAISO nor market participants have the information necessary to evaluate the accuracy of the calculations at issue" and that "even if CAISO is able to stitch together sufficient information to come up with its own estimate of the amount of interest at issue, market participants will likely be in no position to independently verify or dispute the accuracy of these settlements."¹⁵

This is not the case. The CAISO has already calculated interest on the reallocated minimum load costs, will invoice those amounts on March 31, 2020,

¹³ *Id.* at 6. *See also id.* at 9 ("Powerex recognizes that CAISO is doing the best that it can given the Commission's actions – together with the protracted delays in taking those actions – and the limitations that CAISO is facing.").

¹⁴ *Id.*

¹⁵ *Id.* at 8-9.

and will clear the market on April 6, 2020.¹⁶ Scheduling coordinators can validate the interest charges using the settlement data that the CAISO provided on CDs in 2014.¹⁷ The only present challenges the CAISO faces are in calculating interest on the reallocated start-up costs. And those challenges are limited to process issues – specifically, the difficulties involved in manually reconstructing settlement statements using data from 2014 in order to perform the interest calculations.¹⁸ Although those challenges require additional time and effort on the part of the CAISO to resolve, they do not involve or call into question the underlying integrity of the data or the accuracy of the resulting calculations.

Moreover, as with the interest calculations relating to minimum load costs, the CAISO will provide each scheduling coordinator with its specific data for review and will host a stakeholder meeting to field any questions or concerns. Regarding Powerex's concern that market participants may not be able to effectively verify those amounts, again, the CAISO provided market participants with all market participant-specific refund data underlying the interest to be applied to those refunded amounts at the Commission rate in 2014 when it performed the resettlements, provided each scheduling coordinator with the underlying resettlement calculations, and will assist any scheduling coordinator

¹⁶ March 2 Compliance Filing at 7. The CAISO confirmed that it would follow this schedule in its March 25, 2020 conference call with stakeholders.

¹⁷ Pursuant to the discussion on the March 25 conference call with stakeholders, the CAISO is assisting any scheduling coordinator that cannot find or access the 2014 data.

¹⁸ *Id.* at 5-6. An additional factor contributing to the delay in start-up cost interest calculations was that none of the interest calculations had been performed in 2014. The CAISO had already performed interest calculation for minimum load costs prior to deferring invoicing interest pending resolution of requests for rehearing.

that cannot find or access the 2014 data. Thus, market participants should be able to verify the accuracy of the CAISO's interest calculations. If the settlement statements the CAISO will issue for reallocated start-up cost interest contain any errors, market participants can dispute the settlement statements under the existing process set forth in the CAISO tariff.¹⁹

As explained in the March 2 Compliance Filing, the CAISO will submit a further filing by March 31, 2020 to update the Commission and parties on the status of the CAISO's efforts to document the interest on start-up costs and to propose a timeline for issuing settlement statements and invoices on them.²⁰ Powerex and other parties will also have an opportunity to comment on that CAISO filing.

Powerex's argument for the Commission to grant rehearing is also flawed because even if Powerex was correct that there is significant "uncertainty" regarding the CAISO's ability to perform accurate interest calculations, granting rehearing of the August 28 Order would hardly resolve such uncertainty. Indeed, the opposite is true. The CAISO has long since calculated and invoiced the underlying principal reallocation amounts. It would seem far more likely to cause "harm to market participants and to market confidence" to require the CAISO to now reverse and resettle all of those reallocations, as opposed to taking a relatively short amount of additional time to complete its calculations on interest

¹⁹ See CAISO tariff section 11.29.8.4 *et seq.*

²⁰ March 2 Compliance Filing at 7.

relating to the reallocation of start-up costs (which, again, represents a relatively small amount of the overall interest at issue).²¹

B. The Coalition Fails to Show that the CAISO Should Postpone Resettling the Interest Amounts or that the Existing Resettlements Process Under the CAISO Tariff Is Deficient

The Coalition makes two arguments in its March 26, 2020 answer.

Neither has merit.

First, the Coalition asserts that the Commission must complete its review of the CAISO's filings to comply with the August 28 Order before the CAISO invoices the interest amounts.²² However, the Commission's orders contain no such directive. In the August 28 Order, the Commission found that "it is appropriate to apply interest from July 17, 2004, consistent with section 35.19a of the Commission's regulations" and directed the CAISO to submit a compliance filing reflecting the invoices it planned to issue.²³ Moreover, in the February 12 Order, the Commission explicitly recognized that the CAISO planned to "issue settlement statements and invoices by March 31, 2020"²⁴ (approximately one month after the CAISO committed to make its compliance filing) but said nothing whatsoever about the CAISO being required to cease invoicing activities pending

²¹ Powerex's request for rehearing of the August 28 Order argues that that order is deficient both in requiring refunds and by ordering interest thereon. In its comments, Powerex does not distinguish between these two issues, and therefore, the CAISO reads its request for the Commission to immediately grant rehearing to apply to all issues for which it sought rehearing. Nevertheless, even if Powerex's request was confined to granting rehearing on the issue of requiring interest, as explained above, there is nothing about the current process that militates in favor of granting rehearing.

²² Coalition at 2-3.

²³ August 28 Order at P 29.

²⁴ February 12 Order at P 4.

a Commission ruling on the compliance filing. Indeed, the Commission denied the Coalition's motion to stay the assessment of interest charges, finding that no "irreparable harm" would result.²⁵ In short, there is no basis for the Coalition's assertion that the CAISO's invoicing schedule contravenes the process directed by the Commission.

The Coalition's second argument is that the purported complexity of this proceeding requires a "Commission-run compliance process."²⁶ The CAISO agrees, and submits that the "Commission-run compliance process" should be the process actually directed by the Commission, which the CAISO has followed. The Coalition, on the other hand, argues that the hallmark of a "Commission-run compliance process," is that the CAISO simply ignore the applicable provisions of its tariff regarding the routine review, and if necessary, correction of settlement statements. Setting aside the obvious non sequitur involved in suggesting that an unauthorized departure from a Commission-approved tariff would constitute a "Commission-run" process, the Coalition provides no evidence that such tariff provisions are "complex and disruptive to the affected parties."²⁷ Finally, the Coalition's assertion that the Commission somehow "disfavors" the application of the CAISO's own Commission-approved tariff provisions is baseless on its face.²⁸

²⁵ *Id.* at P 15.

²⁶ Coalition at 3-5.

²⁷ *Id.* at 4.

²⁸ *Id.* The Commission orders that the Coalition cites are, unsurprisingly, inapposite. They involve cases in which the Commission has considered the imposition of market-wide rerun remedies, rather than the application of filed and approved tariff provisions that provide for the routine review and correction of settlements.

IV. Conclusion

For the foregoing reasons, the Commission should accept the March 2 Compliance Filing consistent with the discussion herein.

Respectfully submitted,

Roger E. Collanton
General Counsel
Anthony Ivancovich
Deputy General Counsel
Sidney L. Mannheim
Assistant General Counsel
California Independent System
Operator Corporation
250 Outcropping Way
Folsom, CA 95630
Tel: (916) 608-7144
Fax: (916) 608-7222
E-mail: smannheim@caiso.com

Michael Kunselman
Bradley R. Miliauskas
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, MW
Suite 800
1919 Pennsylvania Avenue, NW
Suite 800
Washington, DC 20006
Tel: (202) 973-4200
Fax: (202) 973-4499
E-mail:
michaelkunselman@dwt.com
bradleymiliauskas@dwt.com

Counsel for the California Independent System Operator Corporation

Dated: March 31, 2020

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 31st day of March, 2020.

/s/ Daniel Klein
Daniel Klein
Davis Wright Tremaine LLP