

185 FERC ¶ 61,098
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

El Dorado Irrigation District
v.

Docket No. EL23-82-000

California Independent System Operator Corporation

ORDER DENYING COMPLAINT

(Issued November 3, 2023)

1. On July 12, 2023, pursuant to section 206 of the Federal Power Act (FPA)¹ and Rules 206 and 218 of the Commission's Rules of Practice and Procedure,² El Dorado Irrigation District (El Dorado) submitted a complaint (Complaint) against the California Independent System Operator Corporation (CAISO). In the Complaint, El Dorado alleges that CAISO wrongly imposed sanctions on El Dorado for alleged violations of the telemetry requirements set forth in section 37.6.1(d) of CAISO's Open Access Transmission Tariff (Tariff). El Dorado requests that the Commission overturn those sanctions. In this order, we deny the Complaint, as discussed below.

¹ 16 U.S.C. § 824e. El Dorado did not specify that its Complaint was submitted pursuant to FPA section 206. However, in promulgating Rule 206, the Commission explained that its authority is necessarily limited to that provided by statute. *See Revision of Rules of Prac. & Proc. to Expedite Trial-Type Hearings*, Order No. 225, FERC Stats. & Regs. ¶ 30,358, at 30,174, *order on reh'g*, Order No. 225-A, FERC Stats. & Regs. ¶ 30,385, *order on petition for procedural rulings with respect to Order No. 225*, Order No. 225-B, 20 FERC ¶ 61,178, *order denying petition for a stay of final rule*, 20 FERC ¶ 61,200 (1982). In this case, El Dorado asserts that CAISO's imposition of sanctions is inconsistent with the requirements of its Tariff. Accordingly, we find that the relevant statutory provision is section 206 of the FPA, and our analysis herein considers whether El Dorado has met its burden under that statute.

² 18 C.F.R. §§ 385.206, 385.218 (2022).

I. Background

2. El Dorado is the owner and operator of the El Dorado Powerhouse (Powerhouse), a two-unit hydropower generation facility in El Dorado County, California. Pursuant to CAISO's Tariff, Pioneer Community Energy (Pioneer) is the Scheduling Coordinator for the Powerhouse, and El Dorado is the Market Participant that the Scheduling Coordinator represents. The Powerhouse has an AT&T T1 line that connects to CAISO's remote intelligence gateway (RIG), which collects telemetry data from various generators and transfers information to CAISO. The T1 line is maintained by AT&T and transmits telemetry data from the Powerhouse generators to CAISO's systems.³

3. El Dorado explains that in early October 2022, it commenced a scheduled outage of the Powerhouse. El Dorado states that it notified CAISO of the scheduled outage, which originally was to commence on October 3, 2022, and continue through December 15, 2022. Due to construction delays of a canal to transport water to the Powerhouse, El Dorado filed eight extensions of the outage, which extended the outage through March 27, 2023. El Dorado states that in January 2023, the region experienced severe winter storms, which resulted in significant power and communication loss, including power loss to the AT&T telemetry communication lines connecting the Powerhouse's two units (Units 1 and 2) to CAISO's RIG. El Dorado indicates that these telemetry lines experienced loss of communication during two periods in January: first, from January 8, 2023 through January 12, 2023, and second, from January 17, 2023 through January 20, 2023.⁴

4. In late February, El Dorado received notice from CAISO that it was investigating possible violations of the telemetry requirements provided in Tariff Section 7.6.1(d).⁵ Section 7.6.1(d) provides, in relevant part:

Each Participating Generator shall take, at the direction of the CAISO, such actions affecting such Generator as the CAISO determines to be necessary to maintain the reliability of the CAISO Controlled Grid. Such actions shall include (but are not limited to):

[. . .]

the provision of communications, telemetry and direct control requirements, including the establishment of a direct communication

³ Complaint at 1.

⁴ *Id.* at 1-2.

⁵ *Id.* at 2.

link from the control room of the Generator to the CAISO in a manner that ensures that the CAISO will have the ability, consistent with this CAISO Tariff, to direct the operations of the Generator as necessary to maintain the reliability of the CAISO Controlled Grid...

5. According to El Dorado, CAISO indicated in two Notices of Review that “El Dorado ... was required to restore telemetry, or request an accepted exemption for [Units 1 and 2] by January 27, 2023 to be in compliance with the Direct Telemetry BPM, Section 8.4” and that “[c]ompliance was restored on February 10, 2023, 14 days late.”⁶ On March 7, 2023, El Dorado responded to the Notices of Review, stating that the sanctions were unwarranted, as explained below. On April 6, 2023 and May 4, 2023, CAISO responded with electronic notices stating it had determined the events in question to be violations of CAISO Tariff section 37.6.1.⁷ On June 15, 2023, CAISO issued two settlement statements to El Dorado for separate violations by Powerhouse Units 1 and 2, each imposing \$7,000 in sanctions for alleged violations of section 37.6.1.⁸

⁶ *Id.* at 6.

⁷ *Id.* at 6, 8. CAISO, CAISO eTariff 37.6.1 (Required Information Generally) (1.0.0) provides:

37.6.1.1 Expected Conduct

Except as provided below in Section 37.6.4 (Review by FERC), all information that is required to be submitted to the CAISO under the CAISO Tariff must be submitted by the specified deadline. For the purposes of this Section 37.6.1.1, the specified deadline is either the deadline established directly in the CAISO Tariff or, where the CAISO Tariff does not establish a specific deadline, by the deadline that the CAISO has authority to establish under the CAISO Tariff.

37.6.1.2 Sanctions

Except as otherwise provided below, in Section 37.6.2 and Section 37.6.3, the Sanction for a violation of Section 37.6.1.1 shall be \$500 for each day that the required information is late.

⁸ Complaint at 6-7.

II. El Dorado's Complaint

6. In its Complaint, El Dorado asserts that the sanctions that CAISO imposed are unwarranted and not supported by the facts or applicable regulations.⁹ According to El Dorado, the sanctions are based upon CAISO Tariff section 37.6.1 (Required Information Generally) and CAISO Direct Telemetry Business Practice Manual (BPM) section 8.4.¹⁰ El Dorado seeks review of the sanctions, and requests that the Commission direct CAISO to rescind the sanctions.

7. First, El Dorado argues that at the time of the alleged telemetry communication losses, El Dorado's generation facilities were already in a scheduled outage for annual maintenance activities that had commenced on or about October 3, 2022 and was extended through March 2023 due to construction project delays. El Dorado states that no generation occurred during the time in question, nor was any generation scheduled. Therefore, El Dorado contends that the loss of the telemetry communication lines during the scheduled maintenance outage did not affect CAISO's ability to maintain the reliability of the CAISO-controlled grid.¹¹

8. Second, El Dorado alleges it did not receive timely notice from CAISO of the telemetry failure and was therefore unable to pursue the telemetry exemption process provided by section 8.4 of the BPM. Section 8.4 specifies a five-day period for the resource owner to resolve the telemetry issue or to request that CAISO grant an exemption from the requirement to provide telemetry data. El Dorado asserts it did not receive notice of the January telemetry failure until February 24, 2023, because CAISO was using outdated contact information for the preliminary Notices of Review. El Dorado states that, following the retirement of an El Dorado contact person in 2022, it ensured all contact information with CAISO was current, which included updating the Access and Identity Management (AIM) system and the Resource Interconnection

⁹ Complaint at 2.

¹⁰ CAISO Direct Telemetry Business Practice Manual (BPM), Section 8.4 Temporary Telemetry Exemption. Section 8.4 of the BPM states that CAISO may grant a temporary telemetry exemption if telemetry is lost or not in good quality during participation in CAISO's markets, though an exemption is not guaranteed. A resource owner or scheduling coordinator must either resolve the telemetry failure or request an exemption within five business days of CAISO's notice.

¹¹ Complaint at 10.

Management System (RIMS) in September 2022, but, despite those updates, CAISO still used outdated contact information.¹²

9. Third, El Dorado asserts that it did in fact meet the five-day period for restoring the telemetry communication lines following the two January failures. El Dorado states it investigated and confirmed that loss of communication on any portion of the communication line under El Dorado's control never exceeded five consecutive days. According to El Dorado, the first loss of communication occurred on January 8, 2023 and extended until January 12, 2023.¹³ and the second loss occurred on January 17, 2023 and extended until January 20, 2023.¹⁴ El Dorado states that, during both incidents, AT&T records confirm communication was restored in no more than four days, and that any other time period CAISO believes there was an interruption in communication would have occurred downstream of AT&T and El Dorado's control.¹⁵

10. Fourth, El Dorado asserts that, during the time in question, El Dorado County and many adjoining regions were under a federal disaster declaration due to extreme storms that caused significant facility damage and resulted in significant power and communication loss, including to the Powerhouse.¹⁶ Notwithstanding these challenges, El Dorado states that its crews, along with AT&T's crews, worked to restore communication within four days on both occasions. Further, El Dorado states that it has worked diligently to address all communication failures.¹⁷

11. Fifth, El Dorado requests that if the Commission determines that the sanctions are warranted, then the sanctions be adjusted to account for the actual periods of telemetry failure. El Dorado asserts that CAISO calculated the challenged sanctions based on a duration of a single 14-day period of failure for each generation unit, but that instead, there were two distinct failures, the first for a duration of four days and the second for a duration of three days. Therefore, El Dorado argues that the maximum sanction for each

¹² *Id.* at 10-11.

¹³ *See id.*, Ex. 1.

¹⁴ *See id.*, Ex. 2.

¹⁵ *Id.* at 11.

¹⁶ *Id.* (referring to FEMA, California Severe Winter Storms, Flooding, and Mudslides EM-3591-CA).

¹⁷ *Id.*

generation unit would be \$3,500 calculated at the rate of \$500/day for seven days, for a total of \$7,000.¹⁸

III. Notice of Filing and Responsive Pleadings

12. Notice of El Dorado's Complaint was published in the *Federal Register*, 88 Fed. Reg. 46,152 (July 10, 2023), with interventions, answers, and protests due on or before July 24, 2023. CAISO filed an answer on July 24, 2023.

IV. CAISO's Answer

13. CAISO states that it believes it calculated the penalty correctly and that El Dorado's Complaint has not explained the alleged error with specificity.¹⁹ CAISO asserts that it followed the procedures outlined in its Tariff and BPM when it assessed penalties against Pioneer in its role as El Dorado's Scheduling Coordinator.²⁰ CAISO also argues that El Dorado or Pioneer could have raised concerns regarding the severe winter storms that occurred in January 2023 at that time and requested a telemetry exemption pursuant to CAISO's Tariff. CAISO states that neither El Dorado nor Pioneer requested such an exemption.²¹

14. In response to El Dorado's assertion that it restored telemetry for the Powerhouse within the five-day period outlined in the BPM and any communication interruption beyond that five-day period would have occurred downstream of AT&T and El Dorado's control, CAISO explains that AT&T serves as CAISO's telecommunications backbone and feeds data directly to CAISO's systems. Thus, CAISO explains, any error downstream of AT&T's system necessarily would involve an error in CAISO's systems. CAISO states that it has no record of such errors in its systems for the days in question and that any such error would not have been limited to the Powerhouse. CAISO argues that a failure on CAISO's side would have likely involved telemetry failures for other resources, but that CAISO has identified no such widespread systems failure on those days.²²

¹⁸ *Id.* at 11-12.

¹⁹ CAISO Answer at 4-5.

²⁰ *Id.* at 2.

²¹ *Id.* at 4.

²² *Id.*

15. In response to El Dorado's assertion that CAISO used outdated contact information to send the initial outage Notices of Review, CAISO explains that it uses the AIM system for requesting, obtaining, updating, and maintaining user access to CAISO applications.²³ CAISO states that it is the responsibility of each market participant to manage its own designated contacts through AIM.²⁴ CAISO asserts that it confirmed the initial Notices of Review were sent to the contacts designated in AIM. CAISO also states that it has found no evidence of failures in AIM when El Dorado or Pioneer may have attempted to update the designated contacts.

16. CAISO identifies several policy reasons why there is no exception to CAISO's telemetry requirements for generators on outage. First, CAISO explains that its Tariff and outage management system treat both full outages and derates as "outages."²⁵ CAISO argues that it needs visibility in the form of functioning telemetry over output from any available capacity not affected by a derate. CAISO also explains that, even when units report their entire capacity as being on outage, this does not necessarily mean that the resource will inject zero MW onto the grid.²⁶ For example, at the end of maintenance work, a resource on outage may generate some amount of electricity as part of testing before fully returning to service. CAISO argues that, in those cases, it needs telemetry over the unit to understand what the unit's output is and how that output may affect the broader grid. Finally, CAISO maintains that its systems need ongoing telemetry of units on full outage so CAISO systems continue to recognize when a unit is out of service.²⁷ Regardless, CAISO states that it agrees the Commission could order the penalties be set aside in the narrow circumstances of this specific case because this unique confluence of events is unlikely to recur.²⁸

²³ *Id.* at 3.

²⁴ *Id.* (citing AIM User Guide at 8 ("It is the responsibility of each entity's [user access administrator] to coordinate and validate the user's identity and access requirements.")).

²⁵ *Id.* at 2 (citing CAISO, CAISO eTariff, app. A (Definitions) (0.0.0) (defining outage as a disconnection, separation, or reduction in capacity, planned or forced, of one or more elements of an electric system)).

²⁶ *Id.*

²⁷ *Id.* at 3.

²⁸ *Id.* at 5-6.

V. Discussion

17. As discussed below, we find that El Dorado has not met its burden under section 206 of the FPA, and, therefore, we deny El Dorado's Complaint. Under section 206, "the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon . . . the complainant."²⁹ In this case, as discussed below, we find that El Dorado has not shown that CAISO acted inconsistently with its Tariff in imposing sanctions on El Dorado.

18. El Dorado asserts that CAISO incorrectly found it had violated section 7.6.1(d) of the Tariff, which requires a participating generator to maintain telemetry between the generator's control room and CAISO. As discussed above, El Dorado provides the following justifications for why the sanctions should be reversed: (1) the El Dorado Powerhouse generation facility was already in a scheduled outage during the events subject to the investigation, so no communication regarding facility generation could have been lost; (2) the region in which the Powerhouse is located experienced severe winter storms during the time in question; (3) both AT&T and El Dorado crews restored the communication lines in less than five days following each January failure; and (4) El Dorado did not receive timely notice from CAISO regarding the loss of telemetry communication, as it appears that CAISO records of El Dorado's contact information were not up-to-date.³⁰

19. However, we find that neither El Dorado's arguments nor the record are sufficient to satisfy El Dorado's burden under FPA section 206. Nothing that El Dorado asserts demonstrates that CAISO's assessment of sanctions is inconsistent with CAISO's Tariff. First, as CAISO explains, its Tariff provides no exception to the telemetry requirements for generators on outage because CAISO needs visibility in the form of functioning telemetry over output from any available capacity not affected by a derate. As CAISO also explains, ongoing telemetry of units on full outage allows CAISO systems to continue to recognize when a unit is out of service.³¹ Moreover, CAISO states that such telemetry is necessary because a generator on full outage may still inject electricity onto the grid.³² Thus, nothing in CAISO's Tariff supports El Dorado's assertion that it should

²⁹ 16 U.S.C. § 824e(b).

³⁰ Complaint at 6, 8.

³¹ See CAISO Answer at 3.

³² See *id.* at 3.

not be assessed sanctions for loss of telemetry because it was on outage during the relevant time period.

20. Second, we are not persuaded to reverse the sanctions assessed by CAISO due to severe winter weather in the region of the Powerhouse during the time in question. Although El Dorado argues that it could not have sought an exemption from CAISO of the telemetry requirements because it did not receive CAISO's notice of the outages until it was too late, El Dorado appears to acknowledge in the Complaint that it was aware of power loss to the AT&T telemetry communication lines connecting the Powerhouse's Units 1 and 2 to CAISO's RIG from January 8, 2023 through January 12, 2023, and from January 17, 2023 through January 20, 2023.³³ Despite its knowledge of the power loss, we find nothing in the record indicating that El Dorado took any steps to seek relief from CAISO, either through the process set forth under section 8.4 of the BPM or otherwise. An exemption under section 8.4 of the BPM would have prevented CAISO from imposing any sanctions while El Dorado and AT&T worked to restore telemetry between the Powerhouse and CAISO's systems. However, nothing in the record indicates that El Dorado or Pioneer requested a telemetry exemption from CAISO, despite the impacts of the severe weather on the Powerhouse; as a result, no exemption was granted by CAISO.

21. Third, we find that the record is insufficient to support El Dorado's contentions that it restored telemetry on the portion of the communication line under its control within the five-day period outlined in the BPM, and that any telemetry interruption beyond that five-day period must have occurred downstream of AT&T and El Dorado's control. Nothing in the record demonstrates that all communication lines under El Dorado's control were restored within five days. While El Dorado provides AT&T service tickets to support having restored telemetry, we find that those tickets lack specificity; they do not state to which unit they apply, and simply provide the dates of the tickets and the log notes.³⁴ In contrast, we find persuasive CAISO's explanation that any error downstream of AT&T's system necessarily would also involve an error in CAISO's systems, and that CAISO has no record of such an error in its systems for the days in question. Moreover, as CAISO explains, any such error would not have been limited to

³³ Complaint at 1-2 (explaining that "it appears that these telemetry lines experienced loss of communications during two periods in January" – from January 8 until January 12 and from January 17 until January 20 – and citing two AT&T service tickets that were created on January 9 and January 16, 2023, respectively).

³⁴ In Exhibits 1 and 2 of its Complaint, El Dorado includes two AT&T service tickets that coincide with the dates El Dorado provides for its two outages. However, these tickets do not specify the units that are being serviced and whether they are the same units described in CAISO's Notices of Review.

the Powerhouse, but CAISO has identified no widespread systems failure on the relevant days.³⁵

22. Fourth, we find that the evidence in the record is insufficient to demonstrate that CAISO failed to notify El Dorado of the telemetry outages while the outages were ongoing, as required by Tariff section 37.8.4.³⁶ El Dorado asserts that it did not receive timely notice of the telemetry failure because CAISO was using outdated contact information, and El Dorado was therefore unable to pursue the telemetry exemption process set forth in the BPM. In contrast, CAISO states that it has confirmed it sent the initial Notices of Review to the contacts designated in the AIM system, which is the system by which CAISO contacts market participants. Further, CAISO indicates that it has found no evidence of failures in the AIM system when El Dorado or Pioneer may have attempted to update the designated contacts.³⁷ We agree with CAISO that it is the responsibility of each market participant to manage its own designated contacts in AIM,³⁸ and we find that it is reasonable for CAISO to rely on the information in the AIM system to provide notice of a telemetry outage to market participants. Once CAISO sent notification to the El Dorado contacts in AIM, it had fulfilled its notice obligation under its Tariff.

23. Having found that El Dorado has not met its burden under FPA section 206 to show that CAISO acted inconsistently with its Tariff in assessing sanctions against El Dorado, we now turn to El Dorado's assertions that CAISO's sanctions calculation was incorrect. Tariff section 37.6.1.2 states that the sanction for a telemetry violation is \$500 for each day that the required information is late.³⁹ In sanctioning El Dorado, CAISO

³⁵ CAISO Answer at 4.

³⁶ See CAISO, CAISO eTariff, § 37.8.4 (Notice) (2.0.0):

Notice. The CAISO shall provide notice of the investigation in sufficient detail to allow for a meaningful response to the Scheduling Coordinator and, as limited below, to all Market Participants the Scheduling Coordinator represents that are the subject(s) of the investigation..

³⁷ See CAISO Answer at 3.

³⁸ See *id.* (citing AIM User Guide at 8, http://www.caiso.com/documents/accessandidentitymanagement_aim_userguide.pdf (“It is the responsibility of each entity’s [user access administrator] to coordinate and validate the user’s identity and access requirements.”)).

³⁹ See *supra* note 7.

indicated that El Dorado restored compliance 14 days late for both Units 1 and 2,⁴⁰ thus resulting in two \$7,000 penalties, or \$14,000 in total penalties.⁴¹ El Dorado argues against these penalties, contending that the telemetry communication line was restored within four days for the first outage and within three days for the second outage, and thus the maximum penalty for each generation unit would be \$3,500, or \$7,000 in penalties for the two units combined.⁴² However, as discussed above, we find that the information in the record is insufficient to demonstrate that all communication lines under El Dorado's control were restored within five days.⁴³ Moreover, while El Dorado presents its alternative penalty calculations, it has not shown that CAISO's calculations were incorrect and thus violated Tariff section 37.6.1.2. As such, we find that El Dorado has not satisfied its FPA section 206 burden to demonstrate that CAISO's sanctions calculation is inconsistent with the requirements of Tariff section 37.6.1.2.

24. For the reasons discussed above, we deny the Complaint.

The Commission orders:

The Complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

⁴⁰ Complaint at 18, 37, *see* Exhibits 3 & 7.

⁴¹ *Id.* at 4.

⁴² *Id.* at 11.

⁴³ *See supra* note 34.