

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

**California Independent System
Operator Corporation**

Docket No. ER12-1630-_____

**REQUEST FOR REHEARING OF THE CALIFORNIA INDEPENDENT
SYSTEM OPERATOR CORPORATION**

Pursuant to Section 313(a) of the Federal Power Act¹ and Rule 713 of the Commission's Rules of Practice and Procedure,² the California Independent System Operator Corporation (ISO)³ requests rehearing of the Commission's September 20, 2012 Order on Compliance in this proceeding.⁴ The ISO requests that the Commission vacate the directive in the Order on Compliance that the ISO make its tariff revisions to implement Order 755⁵ effective as of January 1, 2013. The ISO requests that the Commission make the tariff revisions effective as of May 1, 2013 pursuant to a separate motion for extension of time that the ISO is filing concurrently in this proceeding.⁶

Because January 1, 2013 is only a little more than 60 days from now, the ISO also respectfully requests an order granting this request for rehearing within 60 days,

¹ 16 U.S.C. § 825(a).

² 18 C.F.R. § 385.713.

³ The ISO is also sometimes referred to as the CAISO. Capitalized terms not otherwise defined herein have the meanings set forth in Appendix A to the ISO tariff.

⁴ *California Independent System Operator Corp.*, 140 FERC ¶ 61,206 (2012) ("Order on Compliance").

⁵ *Frequency Regulation Compensation in the Organized Wholesale Power Markets*, FERC Stats. & Regs. ¶ 31,324 (2011) ("Order 755"), *reh'g denied*, 138 FERC ¶ 61,123 (2012) (Order 755-A).

⁶ The ISO is filing this request for rehearing concurrently with the motion for extension of time out of an abundance of caution and in order to preserve ensure that its procedural rights.

i.e., no later than December 18, 2012. If the Commission grants the ISO's motion for an extension of time, it may reject this request for rehearing as moot.

I. Background

A. Order 755

The Commission issued Order 755 in October 2011. Order 755 required all Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs) to compensate resources providing regulation service through (1) a capacity payment that reflects the marginal unit's opportunity costs and (2) a performance payment that reflects the quantity of regulation service actually provided by a resource when the resource accurately follows a control signal. In addition, Order 755 required the use of a market-based price rather than an administrative price on which to base performance payments for regulation service. Order 755 did not require a specific methodology for how to determine that market-based price, but instead deferred to ISOs and RTOs to develop the bidding parameters to meet the directives set forth in Order 755.⁷ Order 755 directed ISOs and RTOs to file the tariff revisions needed to implement this compensation approach within 120 days of the effective date of Order 755 (*i.e.*, by April 30, 2012) and to implement the compensation approach within 180 days after that (*i.e.*, by October 27, 2012).⁸

ISO New England Inc. ("ISO-NE") filed a motion for extension of the implementation date directed in Order 755. Although the Commission denied ISO-NE's motion, the Commission stated that ISO-NE could "reassert arguments pertaining to the

⁷ Order 755 at P 130.

⁸ Order 755 at P 201; Order on Compliance at PP 51, 77.

implementation deadline when it submits its compliance filing to Order No. 755.”⁹ The ISO understood this Commission directive to permit ISO-NE, and likewise each of the other ISOs and RTOs, to propose a different implementation date when it submitted its filing to comply with Order 755.

B. The ISO’s Order 755 Compliance Filing

On April 27, 2012, the ISO timely submitted its Order 755 compliance filing in this proceeding. The ISO requested that the Commission make the tariff revisions contained in the compliance filing effective in the spring of 2013.¹⁰

As discussed in the Order 755 compliance filing, the ISO requested this effective date in order to have sufficient time to complete the design, testing, and market simulation efforts necessary to implement a performance payment for regulation services as required by Order 755. The ISO explained that failure to complete all of these necessary steps would be inconsistent with good utility practice.

In this regard, the ISO stated that its design to comply with Order 755 uses a two-part bid structure for regulation capacity and performance payments. The ISO will accept separate capacity and mileage bids for resources bidding to provide regulation service and will consider both types of bids in determining the marginal clearing price for both attributes of regulation service. This feature is a complex enhancement to the ISO’s market optimization and scheduling systems. In addition, since a performance payment reflects resources’ actual movement in response to a control signal, the ISO

⁹ “Notice Denying Extension of Time,” Docket No. RM11-7-000 (Dec. 13, 2011).

¹⁰ Transmittal letter for April 27, 2012 compliance filing at 17 (“Order 755 compliance filing”). Specifically, the ISO requested an effective date for the tariff revisions of April 9, 2013. *Id.* As explained above, the ISO is filing a motion for extension of time in this proceeding to make the tariff revisions effective as of May 1, 2013.

must modify its energy management system to record and deliver this information to downstream market systems, including its settlement system.¹¹

The ISO stated that when it undertakes a complex market enhancement that affects its market and settlement systems – such as the market enhancement to implement a performance payment for regulation services – sufficient time is required to design, test, and conduct the market simulation necessary to implement such a change. The ISO described the steps it must take as well as its work plan to implement this market enhancement to comply with Order 755 in the spring of 2013. The ISO explained that, even after it accelerated its work in an effort to meet Order 755's compliance timeline, its work schedule included the following steps:

- During the third quarter of 2012, the ISO would initiate the effort to build the necessary software code and system enhancements. These enhancements would take approximately three months to complete, *i.e.*, they would be completed during the fourth quarter of 2012.
- The ISO would then conduct system testing.
- Approximately in parallel with this work schedule, the ISO expected that market participants would make changes to their own business processes and market systems.
- The ISO would schedule a market simulation of enhancements to implement a performance payment for regulation services. The ISO anticipated that it could complete this market simulation in the first quarter of 2013, in advance of its scheduled spring 2013 market release.

¹¹ Transmittal letter for Order 755 compliance filing at 18-20.

- The ISO would then implement the market enhancement to comply with Order 755.¹²

The ISO explained that performing each of these steps in the work schedule, on the timeline set forth in the schedule, was necessary to enable the ISO to implement a performance payment for regulation services to comply with Order 755. The ISO stated that “[f]ailure to undertake these steps would not be consistent with good utility practice.”¹³ The ISO tariff requires the ISO to perform its tariff obligations, which include the implementation of market enhancements pursuant to tariff provisions, in accordance with good utility practice.¹⁴

The ISO also explained that it would perform the earlier portion of this work schedule while concurrently preparing nine other market enhancements that it planned to undertake in the fall of 2012. The ISO stated that many of those other market enhancements would require the time and attention of the same ISO and market participant resources dedicated to implement Order 755’s directives.¹⁵ The ISO further explained that implementing the Order 755 directives in the spring of 2013 would not prejudice new entrants into the ISO markets and would provide certainty for new

¹² Transmittal letter for Order 755 compliance filing at 18-20, and Attachment D thereto (Declaration of Janet Morris) at 2-6 (Morris Declaration).

¹³ Morris Declaration at 5-6.

¹⁴ See, e.g., ISO tariff section 7.4 (“When the CAISO is exercising Operational Control of the CAISO Controlled Grid, the CAISO and Market Participants shall comply with Good Utility Practice.”); ISO tariff section 22.6 (“The CAISO shall engage sufficient staff to perform its obligations under this CAISO Tariff in a satisfactory manner consistent with Good Utility Practice.”).

¹⁵ Transmittal letter for Order 755 compliance filing at 20-21.

entrants to make necessary resource investments to participate in the ISO's regulation market.¹⁶

C. The Order on Compliance

On September 20, 2012, the Commission issued its Order on Compliance conditionally accepting the ISO's tariff revisions to comply with Order 755.¹⁷ The Order on Compliance summarized the reasons why the ISO requested an effective date in the spring of 2013 and "recogni[zed] that CAISO must implement a number of changes to its business processes and software, among other things, to implement its compliance filing."¹⁸ Nevertheless, the Order on Compliance granted the ISO only "a limited extension of time" until January 1, 2013 to put its tariff revisions into effect.¹⁹ The sole reason provided in the Order on Compliance for this directive was that "a January 1, 2013 effective date is reasonable given [the Commission's] intent to have the findings of Order No. 755 implemented on a timely basis and the CAISO's need for software implementation and testing requirements."²⁰

II. Specifications of Error

In accordance with Rule 713(c)(1)²¹ of the Commission's Rules of Practice and

¹⁶ Transmittal letter for Order 755 compliance filing at 22.

¹⁷ The ISO will timely submit the compliance filing required by the Order on Compliance.

¹⁸ Order on Compliance at PP 51-52, 77.

¹⁹ Order on Compliance at P 77.

²⁰ Order on Compliance at P 77.

²¹ 18 C.F.R. § 385.713(c)(1).

Procedure, the ISO submits that the Order on Compliance erred in the following respects:

1. The Order on Compliance erred by failing to provide a rational explanation and substantial evidence to support requiring a January 1, 2013 effective date for the tariff revisions contained in the ISO's Order 755 compliance filing.
2. The Order on Compliance erred by failing to address the explanation in the ISO's Order 755 compliance filing that an effective date for the tariff revisions prior to the spring of 2013, including a January 1, 2013 effective date, is not achievable.

III. Statement of Issues for Rehearing Request

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

1. Whether the Order on Compliance provided a rational explanation and substantial evidence to support its directive requiring a January 1, 2013 effective date for the tariff revisions contained in the ISO's Order 755 compliance filing. *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Nat'l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831, 843-44 (2006); *Elec. Consumers Res. Council v. FERC*, 747 F.2d 1511, 1517 (D.C. Cir. 1984).
2. Whether the Order on Compliance addressed the explanation in the ISO's Order 755 compliance filing that an effective date for the tariff revisions prior to the spring of 2013, including a January 1, 2013 effective date, is not achievable. *Fed. Power Comm'n v. Texaco, Inc.*, 417 U.S. 380, 397 (1974); *TNA Merch. Projects, Inc. v. FERC*, 616 F.3d 588, 593 (D.C. Cir. 2010); *Cleveland Constr. Co. v. NLRB*, 44 F.3d 1010, 1016 (D.C. Cir. 1995).
3. Whether Commission precedent supports relieving the ISO of the obligation to satisfy the unachievable directive in the Order on Compliance to implement the tariff revisions effective January 1, 2013. *New York Independent System Operator, Inc.*, 132 FERC ¶ 61,030, at PP 1-14 (2010); *California Independent System Operator Corp.*, 110 FERC ¶ 61,333, at PP 12-15 (2005).

IV. Request for Rehearing

²² 18 C.F.R. § 385.713(c)(2).

A. The Order on Compliance Failed to Provide a Rational Explanation or Substantial Evidence to Support Its Directive Requiring a January 1, 2013 Effective Date.

The Order on Compliance granted only “a limited extension of time” until January 1, 2013 for the ISO to put its tariff revisions into effect, for the sole reason that “we believe a January 1, 2013 effective date is reasonable given our intent to have the findings of Order No. 755 implemented on a timely basis and the CAISO’s need for software implementation and testing requirements.”²³ However, the Order on Compliance provided no explanation of how a January 1 effective date is achievable in light of the acknowledged need for the ISO to enhance and test software.

This terse explanation for directing a January 1 effective date falls short of the Commission’s legal obligation. As with other Commission directives, the Commission may require this effective date only if its decision is supported by a rational explanation and substantial evidence.²⁴

The explanation provided in the Order on Compliance for the January 1 effective date fails to meet this legal standard. No rational explanation or substantial evidence were provided to justify why the Order on Compliance directed an effective date of January 1 rather than the ISO’s requested effective date in the spring of 2013. Nor did

²³ Order on Compliance at P 77.

²⁴ In order that a finding not be arbitrary and capricious, the Commission must “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks omitted). “Professing that an order ameliorates a real industry problem but then citing no evidence demonstrating that there is in fact an industry problem is not reasoned decision-making.” *Nat’l Fuel Supply Co. v. FERC*, 468 F.3d 831, 843-44 (2006), *citing State Farm*, 463 U.S. at 42-43. “[M]ere invocation of theory is an insufficient substitute for substantial evidence and reasoned explanations.” *Elec. Consumers Resource Council v. FERC*, 747 F.2d 1511, 1517 (D.C. Cir. 1984).

the Order on Compliance explain how a January 1 effective date is achievable for the ISO. And indeed, as discussed below, it is not achievable.

B. The Order on Compliance Failed to Address the Explanation in the ISO's Order 755 Compliance Filing that an Effective Date for the Tariff Revisions Prior to the Spring of 2013, Including a January 1, 2013 Effective Date, Is Not Achievable.

The Order on Compliance summarized the ISO's explanation of why it requested an effective date for its tariff revisions in the spring of 2013 and "recogni[zed] that CAISO must implement a number of changes to its business processes and software, among other things, to implement its compliance filing."²⁵ However, the Order on Compliance then failed to address any aspect of the ISO's explanation – let alone the entire explanation – in directing a January 1 effective date for the tariff revisions.

It was legally impermissible for the Order on Compliance to fail to address the arguments and explanation the ISO provided. A Commission order may be upheld on appeal only "on the same basis articulated in the order by the agency itself."²⁶ If the Commission fails to address an explanation in its order, a court cannot evaluate whether there is any reasonable basis for upholding the order.²⁷

The explanation provided by the ISO but not addressed in the Order on Compliance is incompatible with the directive to implement a January 1 effective date. As the ISO stated in its Order 755 compliance filing, it requires sufficient time to perform the design, testing, and market simulation work necessary to implement a complex

²⁵ Order on Compliance at PP 51-52, 77.

²⁶ *TNA Merch. Projects, Inc. v. FERC*, 616 F.3d 588, 593 (D.C. Cir. 2010) (quoting *Fed. Power Comm'n v. Texaco, Inc.*, 417 U.S. 380, 397 (1974) (internal quotation marks omitted)).

²⁷ *TNA Merchant Projects*, 616 F.3d at 593; *Cleveland Constr. Co. v. NLRB*, 44 F.3d 1010, 1016 (D.C. Cir. 1995) (stating that the court "cannot uphold silence" in an agency order).

market enhancement that affects its market and settlement systems, such as the market enhancement to implement a performance payment for regulation services. The ISO explained that its schedule for this work called for it to complete the necessary software code and system enhancements during the fourth quarter of 2012, then conduct approximately two months of system testing, then complete its market simulation in the first quarter of 2013, and lastly implement the market enhancement as part of the ISO's scheduled spring 2013 market release.²⁸ The ISO also explained that failure to perform each of these steps, including allowing sufficient time for market participants to test and validate their own systems, would be inconsistent with good utility practice.²⁹

Pursuant to the schedule described in the ISO's Order 755 compliance filing, implementation of a performance payment for regulation services by January 1 is not achievable. The Order on Compliance, however, failed to address the infeasibility of a January 1 effective date.

C. Commission Precedent Supports Relieving the ISO of the Obligation to Satisfy the Unachievable Directive in the Order on Compliance to Implement the Tariff Revisions Effective January 1, 2013.

For the reasons explained in the ISO's Order 755 compliance filing and this request for rehearing, the Commission should vacate the directive in the Order on Compliance that the ISO make its tariff revisions to implement Order 755 effective as of January 1, 2013.

The Commission has found in other proceedings that it should relieve ISOs and RTOs of the obligation to satisfy compliance directives that are infeasible. For example,

²⁸ Transmittal letter for Order 755 compliance filing at 18-20; Morris Declaration at 2-6.

²⁹ Morris Declaration at 5-6.

in one proceeding, the Commission issued an order in 2008 that directed the New York Independent System Operator, Inc. (NYISO) to file an implementation plan by 2010 to make long-term firm transmission rights (LTTRs) available to load-serving entities seeking non-historic points of injection and withdrawal. The NYISO, in its 2010 filing of an implementation plan to comply with the 2008 order, explained that it was infeasible to make such non-historic LTTRs available prior to the NYISO's planned implementation in 2012 of an automated auction system for transmission congestion contracts called the End-State Auction. A party in the proceeding then protested that the NYISO had failed to comply with the directive in the 2008 order to submit an implementation plan for making the non-historic LTTRs available. The Commission, in its order on the NYISO's 2010 filing, stated that "given the infeasibility" of making non-historic LTTRs available prior to the implementation of the End-State Auction in 2012, "we find that NYISO's Implementation Plan complies with the directives in the [2008 order] and we will accept NYISO's plan to coordinate implementation of non-historic LTTRs with the implementation of the End-State Auction."³⁰

In another proceeding, the Commission issued an order that directed the ISO to electronically file a revised tariff. The ISO sought rehearing of that order and argued in relevant part that it would be infeasible for the ISO to comply with the directive because there was no mechanism in place that would allow the ISO to submit a revised tariff electronically. On rehearing, the Commission found that the ISO did not have to electronically file a revised tariff.³¹

³⁰ *New York Independent System Operator, Inc.*, 132 FERC ¶ 61,030, at PP 1-14 (2010).

³¹ *California Independent System Operator Corp.*, 110 FERC ¶ 61,333, at PP 12-15 (2005).

As was the case in those earlier Commission proceedings, it is not feasible for the ISO to satisfy the directive in the Order on Compliance to implement the ISO's Order 755 tariff revisions on January 1, 2013. Therefore, the Commission should relieve the ISO of the obligation to meet that compliance directive.

V. Conclusion

The ISO respectfully requests that the Commission grant rehearing of its Order on Compliance within 60 days (*i.e.*, by December 18, 2012) and vacate the directive that the ISO implement its tariff revisions to comply with Order 755 effective as of January 1, 2013. If the Commission grants the ISO's motion for an extension of time filed concurrently with this request for rehearing, the Commission may reject this request for rehearing as moot.

Respectfully submitted,

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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, 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 19th day of October, 2012.

/s/ Jane Ostapovich
Jane Ostapovich