

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

California Independent System)	Docket Nos. ER08-1059-000,
Operator Corporation)	ER06-615-024,
)	ER07-1257-000, and
)	ER08-519-002

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO MOTION TO INTERVENE AND COMMENTS OF
MORGAN STANLEY CAPITAL GROUP INC.**

On May 30, 2008, the California Independent System Operator Corporation (“CAISO”) filed in the above-referenced proceedings an amendment (“May 30 CRR Amendment” or “Amendment”) to both the current ISO Tariff (“ISO Tariff”) and the CAISO’s Market Redesign and Technology Upgrade (“MRTU”) Tariff to enhance provisions in those Tariffs relating to Congestion Revenue Rights (“CRRs”).¹ On July 7, 2008, the CAISO submitted an answer (“July 7 Answer”) to the motions to intervene, comments, and protests that were filed in response to the Amendment. In the July 7 Answer, the CAISO proposed to make certain specific Tariff modifications in a compliance filing. The Commission conditionally accepted the May 30 CRR Amendment for filing in an order issued July 29, 2008,² subject to modification and to the submission of a compliance filing reflecting the directives contained in the July 29 Order, including the modifications proposed in the July 7 Answer. On August 28, 2008, the CAISO

¹ Capitalized terms not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff, in Part G (Definitions) of Appendix BB to the ISO Tariff, and in the Master Definitions Supplement, Appendix A to the MRTU Tariff.

² *California Independent System Operator Corp.*, 124 FERC ¶ 61,107 (2008) (“July 29 Order” or “Order”).

submitted the required compliance filing (“August 28 Compliance Filing” or “Compliance Filing”). The Commission established a September 18, 2008, comment date, and in response Morgan Stanley Capital Group Inc. (“MSCG”) filed a motion to intervene and comments regarding the Compliance Filing.

The CAISO does not object to MSCG’s motion to intervene. However, pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213, the CAISO files its answer to MSCG’s comments. For the reasons explained below, the Commission should accept the August 28 Compliance Filing as submitted and should reject the efforts of MSCG to propose modifications to the ISO Tariff and MRTU Tariff that are inconsistent with the July 29 Order and that go far beyond the scope of the CAISO’s compliance obligations.

I. ANSWER

A. MSCG Is Mistaken in Arguing that the Commission Should Direct the CAISO to Make Tariff Modifications that Are Beyond the Scope of the CAISO’s Compliance Obligation.

MSCG argues that the changes in the August 28 Compliance Filing to Section 12.1.1 and to Section 39.9 of Part M of Appendix BB to the current ISO Tariff, and to Sections 12.1.1 and 39.9 of the MRTU Tariff, are “inconsistent with the stated purpose of the [May 30 CRR Amendment]” and should therefore be modified as proposed by MSCG.³ The modifications sought by MSCG are beyond the scope of the Tariff modifications required to comply with the July 29 Order and should be rejected.

³ MSCG at 1-2, 3-6.

The Commission has stated that it expects public utilities subject to a Commission-mandated compliance obligation to strictly adhere to that obligation, and will reject proposed changes in a compliance filing that are beyond the scope of the order in which the obligation was imposed.⁴ In the July 29 Order, the Commission directed the CAISO to include in the August 28 Compliance Filing the revisions to Sections 12.1.1 and 39.9 of its Tariffs proposed by the CAISO in the July 7 Answer:

In response to the Financial Group's concerns, the CAISO proposes first to modify tariff section 39.9 to state that each CRR holder or candidate CRR holder must notify the CAISO and all affiliates that are CRR holders, candidate CRR holders or market participants and their guarantors and any affiliate participating in an organized electricity market in North America. Second, the CAISO proposes to modify tariff section 12.1.1 to state that the CAISO has the authority to obtain from a market participant that requests an unsecured credit limit financial and/or other information concerning all of the market participant's affiliates.

....

*We accept the CAISO's proposed CRR affiliate disclosure requirement, subject to the CAISO making the revisions proposed in its Answer. . . . Accordingly, we direct the CAISO to make a compliance filing, within 30 days of the date of this order, revising tariff sections 39.9 and 12.1.1 . . . consistent with the additional modifications proposed in its Answer.*⁵

⁴ See, e.g., *Entergy Services, Inc.*, 117 FERC ¶ 61,055, at P 22 (2006) ("Compliance filings must be limited to the specific directives ordered by the Commission. Compliance filings are not to include new changes initiated by the filing entity, but only changes expressly directed by the Commission. . . . We direct Entergy to delete these [new] provisions.") (citations omitted); *NorthWestern Corp.*, 113 FERC ¶ 61,215, at P 9 (2005) ("The Commission will reject these proposed changes to NorthWestern's revised OATT submitted with the September 30, 2005 compliance filing as outside the scope of that compliance filing. The Commission reaffirms that compliance filings must only provide the changes directed by the Commission."); *Reliant Energy Aurora, LP, et al.*, 111 FERC ¶ 61,159, at P 3 (2005) ("[I]n this order, we reject as outside the scope of the compliance filings of Applicants certain proposed tariff revisions that they included with their updated market power analyses.").

⁵ July 29 Order at PP 68, 70 (emphasis added).

A side-by-side comparison of the relevant portions of the July 7 Answer, the July 29 Order, and the August 28 Compliance Filing makes it clear that the changes to Tariff Sections 12.1.1 and 39.9 contained in the August 28 Compliance Filing are identical to the changes to those Tariff sections that were proposed in the Answer and accepted in the July 29 Order.⁶ Therefore, the August 28 Compliance Filing appropriately follows to the letter the Commission's directives to revise Tariff Sections 12.1.1 and 39.9 consistent with the additional modifications proposed in the July 7 Answer. The CAISO would have gone beyond the scope of the July 29 Order if the August 28 Compliance Filing had included the changes to those Tariff sections that MSCG now proposes in its comments.

B. MSCG's Comments Constitute an Impermissible Request for Rehearing of the July 29 Order.

By arguing that the CAISO should go beyond the scope of the Tariff changes specifically required by the July 29 Order, MSCG is essentially arguing that the Order itself is in error. Therefore, although not styled as such, these arguments constitute a request for rehearing of the July 29 Order.

Court and Commission precedent clearly state that the Commission is barred by Section 313(a) of the Federal Power Act, 16 U.S.C. § 824l(a), from considering any request for rehearing that is submitted more than 30 days after

⁶ Compare July 7 Answer at 16 with July 29 Order at P 68 and with August 28 Compliance Filing at Attachment B (Section 12.1.1 and Section 39.9 of Part M of Appendix BB to the ISO Tariff) and Attachment D (Sections 12.1.1 and 39.9 of the MRTU Tariff).

the issuance of the order that the request for rehearing concerns.⁷ Also, the Commission has stated that it will reject comments on a compliance filing that constitute untimely requests for rehearing of, and thus collateral attacks on, the underlying order.⁸ In the instant proceeding, MSCG did not submit a request for rehearing within the required 30 days of the issuance of the July 29 Order.⁹ Instead, MSCG has filed comments that constitute an untimely request for rehearing. Therefore, the Commission should reject the comments as a collateral attack on the July 29 Order.

C. The Modifications Sought by MSGC Are Inconsistent with the July 29 Order.

As explained in Section I.A, above, MSCG's arguments concerning Tariff Sections 12.1.1 and 39.9 are premised on a supposed inconsistency between the Tariff changes contained in the August 28 Compliance Filing and the purpose of the CAISO's original proposals *in the May 30 CRR Amendment*. MSCG ignores the dispositive fact that the July 29 Order *accepted* the specific changes to those Tariff sections that were proposed *in the July 7 Answer* in response to comments on the May 30 CRR Amendment. Indeed, the only statement in the

⁷ See, e.g., *Cities of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985); *Boston Gas Co. v. FERC*, 575 F.2d 975, 977-78 (1st Cir. 1978); *Alabama Electric Cooperative, Inc.*, 116 FERC ¶ 61,115 (2006).

⁸ See, e.g., *California Independent System Operator Corp.*, 119 FERC ¶ 61,053, at P 13 (2007) (“[T]hese protests should have been raised on rehearing and/or clarification of the January 22 Order, and therefore we reject their requests to alter the CAISO's compliance filing as untimely and a collateral attack on the Commission's January 22 Order.”); *Southwest Power Pool, Inc.*, 116 FERC ¶ 61,053, at P 102 (2006) (“We find that the comments of the New Mexico Attorney General and Southwest Industrials . . . are untimely requests for rehearing of the *SPP Market Order* and outside the scope of the instant filing.”).

⁹ MSCG did not even file its motion to intervene and comments in these proceedings until more than 30 days after the July 29 Order was issued.

July 29 Order that MSCG cites or quotes is the Commission's finding that "We agree with the CAISO that in some cases it may be appropriate to consider affiliate relationships as one of the qualitative factors when determining unsecured credit limits."¹⁰

MSCG asserts that, in making this statement, the Commission was indicating that Market Participants are not required to proactively provide Affiliate information to the CAISO.¹¹ This assertion misconstrues the July 29 Order. The Commission's statement clearly relates solely to its acceptance of the CAISO's proposal in the July 7 Answer to "modify CAISO Tariff section 12.1.1.1 and MRTU Tariff section [12.1.1.2] to state that the CAISO will use such information [*i.e.*, financial and/or other information concerning Affiliates, as explained in the immediately preceding sentence of the Order] as one of the qualitative factors it considers in determining the market participant's or a guarantor's unsecured credit limit."¹² Section 12.1.1.1 of the ISO Tariff and Section 12.1.1.2 of the MRTU Tariff concern the use of qualitative factors in determining Unsecured Credit Limits. Tariff Sections 12.1.1 and 39.9 do not even mention qualitative factors. Thus, the Commission could only have been referring to Sections 12.1.1.1 of the ISO Tariff and Section 12.1.1.2 of the MRTU in making its

¹⁰ July 29 Order at P 70. Even here, however, MSCG quotes the Commission selectively by omitting the opening phrase "We agree with the CAISO that" but including the rest of the Commission language quoted above. See MSCG at 5.

¹¹ *Id.* at 4-5.

¹² July 29 Order at P 68; *see also* July 7 Answer at 16. The August 28 Compliance Filing includes revisions to Section 12.1.1.1 of the ISO Tariff and Section 12.1.1.2 of the MRTU Tariff to comply with the above-quoted Commission finding.

statement about consideration of Affiliate relationships as one of the qualifying factors in determining Unsecured Credit Limits.

Moreover, the current versions of Sections 12.1.1.1 of the ISO Tariff and Section 12.1.1.2 of the MRTU Tariff already state that “Information considered by the CAISO in this process [of determining Unsecured Credit Limits] may include” the qualitative factors listed in those Tariff sections. Therefore, in the above-quoted statement, the Commission was merely accepting the CAISO’s proposal to add consideration of Affiliate information to the list of qualitative factors that the CAISO may consider in determining Unsecured Credit Limits. A close read thus confirms that MSCG’s arguments are inconsistent with the July 29 Order.

II. CONCLUSION

For the reasons explained above, the Commission should accept the August 28 Compliance Filing as submitted by the CAISO and should reject the comments filed by MSCG.

Respectfully submitted,

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Dated: October 3, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service lists for the above-referenced proceedings, 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 Washington, D.C. this 3rd day of October, 2008.

/s/ Bradley R. Miliauskas
Bradley R. Miliauskas