

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

**3 Phases Energy Services, LLC )      Docket No. ER14-2609-000**

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION'S  
INTERVENTION AND COMMENTS ON WAIVER REQUEST**

The California Independent System Operator Corporation (“CAISO”) files this motion to intervene and comments in response to the request submitted on August 12, 2014, by 3 Phases Energy Services, LLC to waive meter data penalties that the CAISO otherwise would be required to levy on 3 Phases under sections 37.5.2 and 37.11 of the CAISO tariff. 3 Phases’s filing asserts that the late meter data corrections for which it would be penalized were caused by factors that were largely out of its control and that the circumstances meet the Commission’s three-part test for granting tariff waivers: (1) the waiver is limited in scope; (2) it does not produce undesirable consequences; and (3) there are benefits to customers.

The CAISO does not take a position on the specific question of whether the facts and circumstances 3 Phases present meet the Commission’s test for granting a tariff waiver. Through these comments, the CAISO raises two other points. First, the CAISO has properly implemented and applied the tariff provisions in question, which the Commission previously approved as just and reasonable and upheld two years ago in a complaint proceeding under section 206 of the Federal Power Act. Second, the circumstances underlying the waiver do not appear different from those faced by other electric service providers similarly situated to 3 Phases. Therefore, granting this request risks creating a

precedent that could lead to a potential wave of additional waiver requests from similarly situated entities and a *de facto* penalty exemption for electric service providers. This would undermine the very purpose of the strict liability meter data submission rules and leave the CAISO with no recourse to ensure the timely and accurate submission of meter data from electric service providers.

## **I. MOTION TO INTERVENE**

The CAISO is a non-profit public benefit corporation organized under the laws of the State of California. The CAISO is responsible for implementing its Commission-approved tariff. The CAISO tariff includes provisions regarding the timeliness of submitting meter data that is used for financially settling its markets. The CAISO tariff additionally contains penalty provisions for scheduling coordinators that do not meet these timelines. As such, the CAISO has an interest in this proceeding that cannot be represented adequately by any other party. Accordingly, the CAISO requests that the Commission permit it to intervene in this proceeding.

## **II. BACKGROUND ON DIRECT ACCESS SERVICE AND METER DATA SUBMISSION**

Retail electric choice in California is referred to as direct access service. A direct access customer purchases its electricity from a load serving entity called an electric service provider (ESP). The incumbent utility continues to deliver the electricity to the direct access customer over the incumbent utility's transmission and distribution systems. ESPs rely on a meter data management agent (MDMA) to read customer meters and validate the meter data. The MDMA

function is regulated by the California Public Utilities Commission. While ESPs have a choice of which entity performs the MDMA function on its behalf, they generally select as the MDMA the investor-owned utility in whose service territory the ESP's customers are located.

ESPs participate in the CAISO markets as scheduling coordinator metered entities. Scheduling coordinator metered entities, which typically are load serving entities, submit their meter data directly to the CAISO. This meter data submitted to the CAISO serves as the basis for that entity's CAISO market settlement.

Under section 10.3.6.3 of the CAISO tariff, scheduling coordinator metered entities must submit their Actual Settlement Quality Meter Data (ASQMD) values to the CAISO by 48 business days after the trading day to which the meter data applies. Sections 37.5.2 and 37.11 impose sanctions if a scheduling coordinator metered entity either submits their ASQMD or corrects their ASQMD after the 48-day deadline. If the scheduling coordinator fails to submit their ASQMD by the 48-day deadline, then the CAISO imposes a \$1,000 penalty for each trading day that has late ASQMD. If the scheduling coordinator fails to submit their ASQMD in time to be included on the rerun settlement statement published at nine months after the trading day, then the sanction increases to \$3,000 for each trading day that has late ASQMD. If the scheduling coordinator amends its ASQMD after the 48-day deadline (as opposed to having never submitted ASQMD by the 48-day deadline), then the CAISO imposes a \$1,000 sanction for each affected trading day.

### **III. COMMENTS**

The meter data penalty provisions have been a longstanding feature of the CAISO tariff, existing in some form since 2004. The Commission approved the current version of the penalty provisions as just and reasonable in 2011. 3 Phases does not allege that the CAISO implemented its Commission-approved tariff provisions improperly.

Application of the meter data penalties to an ESP in cases where the MDMA provides revised meter data after the 48-day deadline does not represent an unanticipated or unintended outcome. Approximately two years ago, another ESP brought a Section 206 complaint against the CAISO, arguing that it was unjust and unreasonable for the CAISO to impose meter data penalties on an ESP where the MDMA's conduct created inaccurate data. In response, the CAISO explained that the scheduling coordinator is the party ultimately responsible for submitting complete and accurate meter data to the CAISO and that any penalties appropriately are imposed on them in the first instance. The CAISO also explained that the CAISO's tariff-defined settlements timeline reflects important policy considerations regarding early market settlement and financial certainty. The penalties for missing the meter data submission deadline create the proper incentive for scheduling coordinators to timely submit meter data, which in turn allows the CAISO to achieve earlier market settlement. Both the ISO's stakeholders and the Commission have previously recognized that earlier market settlement creates less credit risk and greater financial certainty for wholesale market participants. After considering the complaint and the CAISO's

response, the Commission found that the complaint failed to establish that the CAISO's meter data penalty provisions were unjust and unreasonable.

3 Phases's untimely meter data submissions constitute behavior intended to be penalized under sections 37.5.2 and 37.11. Thus, in considering the waiver request, the Commission should be mindful of how granting this waiver will influence future meter data penalties assessed against ESPs and the likelihood that those ESPs also would seek a penalty waiver. ESPs are reliant on the MDMA for providing them meter data which they in turn provide to the CAISO; so, any time there is a late data submission an ESP almost always would be able to demonstrate that the MDMA bore some responsibility for the violation. If the Commission were to grant the waiver based on the facts 3 Phases alleges, then the CAISO questions how the CAISO ever could apply the meter data penalties to an ESP except in the most clear-cut case of complete ESP fault. The CAISO questions whether it is appropriate essentially to create a *de facto* penalty exemption for ESPs and whether this current waiver proceeding is the proper venue for considering such an exemption.

If the Commission were interested in scrutinizing the underlying facts and circumstances beyond what 3 Phases asserts in its filing, then the Commission would also have to determine the comparative fault of 3 Phases and the MDMA and consider how much MDMA fault justifies excusing 3 Phases's penalty. For example, in discussing the meter error spanning March 2013 through August 2013, 3 Phases states in its waiver request that it reviews its CAISO settlement statement by looking at "the general volume of load served on an aggregated

basis, and cannot reasonably analyze all individual customer account meter reads for each trading day.” In analyzing this waiver, the Commission might consider the validity and importance of 3 Phases’s statement that it “cannot reasonably analyze all individual customer account meter reads” and determine whether there were other reasonable steps that 3 Phases could have taken to help identify the malfunctioning meter earlier. Assuming 3 Phases could have identified the malfunction earlier but could not have prevented it entirely, the Commission might then have to consider whether to excuse 3 Phases from the penalty entirely or reduce the penalty and by how much.

Requiring the Commission to scrutinize the facts on a case-by-case basis every time would eliminate the effectiveness of the rule, which is essentially a strict liability rule. Strict liability is beneficial to: (1) ensure parties have adequate notice of the implications of their actions; (2) ensure that the CAISO does not have discretion regarding the parties against whom it may or may not apply the penalty; and (3) incent market participants to submit accurate meter data in a timely manner to preserve the integrity and efficacy of the CAISO’s settlements process. The Commission has been clear that penalties administered by an ISO/RTO must be non-discretionary and based on objective determinations. Establishing and allocating fault in response to individual market participant waiver requests is an inherently subjective and discretionary process and is contrary to the CAISO’s and the Commission’s “traffic ticket” penalty framework. Because the CAISO is not permitted to evaluate the comparative fault between the ESP and the MDMA, the end result would essentially be direct Commission

administration of CAISO meter data penalties for ESPs and elimination of the “traffic ticket” approach.

The CAISO believes that the underlying issues raised by 3 Phases are better addressed through the rules promulgated by the California Public Utility Commission. The CAISO will continue to support changes in the California Public Utility Commission rules and believes that appropriate changes would effectively address these issues prospectively.

#### **IV. CONCLUSION**

The CAISO takes no position on the merits of 3 Phases’s specific waiver request. The CAISO believes, however, that in evaluating whether or not to grant the requested relief the Commission should consider the broader factors the CAISO discusses in these comments.

Respectfully submitted,

**By: /s/ David S. Zlotlow**

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## **CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing document upon the parties listed on the official service list in the captioned 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 Washington, DC, this 2nd day of September, 2014.

/s/ Daniel Klein

Daniel Klein