138 FERC ¶ 61,156
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

California Independent System Operator Corporation Docket No. ER12-760-001

ORDER ACCEPTING IN PART AND REJECTING IN PART TARIFF REVISIONS AND DIRECTING COMPLIANCE FILING

(Issued March 2, 2012)

1. On January 4, 2012, California Independent System Operator Corporation (CAISO) submitted revisions to its open access transmission tariff to implement guidance from the Commission on its penalty allocation procedures.[1] CAISO states that the proposed tariff revisions set forth the process it will follow when seeking the Commission's approval on a case-by-case basis to allocate the cost of certain monetary penalties to market participants. In this order, we accept in part and reject in part CAISO's proposed tariff revisions, to be effective March 5, 2012, subject to a compliance filing, as discussed below.

I. <u>Background</u>

2. Section 1211 of the Energy Policy Act of 2005 (EPAct 2005)[2] added section 215 to the Federal Power Act (FPA),[3] which, among other things, provides for the development and enforcement of mandatory reliability standards by an electric reliability

[1] *Reliability Standard Compliance and Enforcement in Regions with Regional Transmission Organizations or Independent System Operators*, 122 FERC ¶ 61,247 (2008) (Guidance Order).

[2] Pub. L. No. 109-58, § 1211, 119 Stat. 594, 941 (2005).

[3] 16 U.S.C. § 824o (Supp. V 2005).

organization (ERO) and for the Commission to certify these standards.[4] Under section 215(e) of the FPA, the ERO may impose penalties for violations of reliability standards, subject to Commission approval.[5]

3. In order to implement the selection, standard-setting procedures, and operational aspects addressed in the EPAct 2005, the Commission issued Order Nos. 672 and 672-A.[6] In these orders, the Commission denied requests to (1) exempt non-profit regional transmission operators (RTOs) and independent system operators (ISOs) from monetary penalties for violations of the reliability standards, or (2) authorize RTOs and ISOs to recover such monetary penalties from their customers on an automatic basis. Rather, the Commission stated that it would consider proposals to recover the costs of any such penalties imposed on RTOs and ISOs under section 205 of the FPA on a case-by-case basis.[7]

4. Under section 215(e) of the FPA, an RTO or ISO that fails to comply with the requirements of the applicable reliability standards may be assessed a penalty by a Regional Entity,[8] the ERO, or the Commission. However, in Order No. 693, the Commission stated that it will not assess penalties against an entity that has not

---

[4] On July 20, 2006, the Commission certified the North American Electric Reliability Corporation (NERC) as the ERO. *N. American Elec. Reliability Corp*., 116 FERC ¶ 61,062, *order on reh'g*, 117 FERC ¶ 61,126 (2006).

[5] The Commission, on its own motion, may also investigate violations of the reliability standards and impose penalties. 16 U.S.C. § 824o(e)(3) (2006).

[6] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, at P 634-635, *order on reh'g,* Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

[7] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 634-635; Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 at P 55-58.

[8] A Regional Entity is an entity delegated by the ERO to have enforcement authority on Commission-approved Reliability Standards, pursuant to Order No. 672. *See* 18 C.F.R. § 39.8 (2008).

previously been put on notice, through the NERC registration process, that it must comply with particular reliability standards.[9]

5. Following a tariff filing submitted by Midwest Independent Transmission System Operator, Inc. (MISO), the Commission held a technical conference on September 18, 2007, to explore issues associated with the cost recovery of such penalties.[10] On March 20, 2008, the Commission issued an order to provide the RTOs and ISOs with guidance outlining how RTOs and ISOs seeking to recover costs they incur for reliability penalties assessed under section 215 of the FPA could provide notice of such potential recovery in their tariffs or contracts.[11] In the order, the Commission contemplated two methods for RTOs and ISOs to recover penalty costs: the direct assignment of costs to the responsible market participant and spreading the costs among all members or customers of the organization.

6. In the event that an RTO or ISO requests to assign the costs of a penalty directly to another entity, the Commission stated that the RTO or ISO must submit a section 205 filing, as well as notify the targeted entity during either the investigation or hearing process that it may be responsible for a violation.[12] The Commission also confirmed that it would entertain section 205 filings in which an RTO or ISO seeks to recover the cost of a penalty that it cannot pay or directly assign to another entity. In addition, the Commission listed several examples of mechanisms that the RTOs and ISOs could employ proactively to prevent the incurrence of penalties which the Commission stated it would consider in evaluating such requests.[13]

II. <u>CAISO Filing</u>

7. CAISO proposes to add new section 14.7 to its tariff to identify and clarify the procedures it will follow when submitting to the Commission a request to directly or indirectly allocate the cost of penalties. CAISO asserts that this section appropriately

---

[9] *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

[10] Docket No. AD07-12-000.

[11] Guidance Order, 122 FERC ¶ 61,247 at P 1.

[12] *Id.* P 23.

[13] *Id.* P 27.

distinguishes between direct and indirect allocation requests, consistent with the Guidance Order.

8. CAISO establishes its direct allocation procedures in section 14.7.2, which limits direct allocation requests to cases involving the violation of NERC reliability standards that it believes were caused by a particular market participant.[14] Of note, proposed section 14.7.2 also states that CAISO must give the targeted market participant notice of and the opportunity to participate in the underlying enforcement proceeding to ensure that due process is given.[15] Further, section 14.7.2.4 provides for CAISO to propose a specific direct allocation mechanism to the affected market participant, which CAISO must ultimately submit to the Commission in a section 205 filing.

9. CAISO explains that it may use its indirect allocation procedures, proposed in section 14.7.3, in the event that there is no market participant found to have directly contributed to the NERC Reliability Standards violation resulting in a monetary penalty, as well as for other monetary penalties imposed by the Commission or other regulatory bodies. CAISO asserts that the inclusion of monetary penalties imposed by other regulatory bodies is similar to and consistent with the Commission's approval of a similar penalty allocation provision proposed by New York Independent Operator Corporation, Inc. (NYISO).[16] This section also requires CAISO to submit all indirect allocation requests to the Commission through a section 205 filing.

III. Notice, Intervention, and Responsive Pleadings

10. Notice of the compliance filing was published in the *Federal Register*, 77 Fed. Reg. 2285 (2012), with interventions and comments due on or before January 25, 2012. Timely motions to intervene were filed by the California Department of Water Resources State Water Project and the Modesto Irrigation District. A motion to intervene and limited protest was filed by the City of Santa Clara, California, doing business as Silicon

---

[14] NERC's reliability standards are standards that the Commission has approved to ensure the reliability of the bulk power system, either developed by NERC or, with NERC's approval, the Regional Entity. The Western Electricity Coordinating Council (WECC) is the Regional Entity for CAISO. CAISO Transmittal Letter at 5.

[15] In addition, the applicable enforcement entity assessing the penalty to CAISO must find that the targeted market participant caused or contributed to the violation. *Id.*

[16] *Id.* at 6, *citing N.Y. Indep. Sys. Operator*, 127 FERC ¶ 61,196, at PP 19 and 30 (2009) (NYISO Order).

Valley Power (SVP) and the M-S-R Pubic Power Agency (M-S-R) (collectively, M-S-R/SVP). On January 27, 2012, CAISO filed an answer to M-S-R/SVP's protest.

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept CAISO's answer because it has provided information that has assisted us in our decision-making process.

B. M-S-R/SVP Protest

13. M-S-R/SVP requests that the Commission direct CAISO to revise the title of proposed section 14.7, "Allocation of Costs Associated with Penalties," to make clear that the provisions in this tariff section do not apply to penalties issued by entities other than the NERC and WECC. M-S-R/SVP explains that it originally asked CAISO to make this clarification in the title following a November 18, 2011 stakeholder call. However, M-S-R/SVP states that CAISO later responded that the title M-S-R/SVP proposed at that time exceeded the character limit for section titles. Here, M-S-R/SVP proposes this new title for tariff section 14.7: "Allocation of Costs from Reliability Standards Penalties." M-S-R/SVP explains that its new title complies with CAISO's character limit while still clarifying its concerns regarding the penalties to which proposed section 14.7 of the CAISO tariff applies.

C. CAISO Answer

14. CAISO argues that M-S-R/SVP's proposal to revise the title of proposed section 14.7 is inaccurate and would result in additional confusion. CAISO explains that new section 14.7.3, a subsection of 14.7, applies not only to the indirect allocation of reliability standards imposed by the Commission, NERC, and WECC, but also includes other monetary penalties imposed by the Commission or other regulatory bodies.[17] CAISO comments that the Commission accepted NYISO's proposal to incorporate an indirect allocation request procedure that applies to penalties imposed by other agencies

[17] CAISO Answer at 2.

in its tariff.[18] Therefore, CAISO asserts that the Commission should not adopt M-S-R/SVP's proposal and instead should accept its proposed tariff revisions as filed.

Commission Determination

15. We accept in part and reject in part CAISO's proposal to implement penalty cost allocation procedures. In the Guidance Order, the Commission provided guidance to RTOs and ISOs concerning the recovery of monetary penalties arising from non-compliance with mandatory and enforceable reliability standards. The Guidance Order provided RTOs and ISOs with a suggested methodology to directly assign reliability-related monetary penalties, as well as a methodology for RTOs and ISOs to allocate the costs of reliability-related penalties that cannot be directly assigned.[19] For both types of penalty allocation, the Commission explained that it would evaluate section 205 filings on a case-by-case basis to determine whether RTOs and ISOs may directly or indirectly allocate reliability-related monetary penalties among their members and/or customers. In keeping within the scope of the Guidance Order, we accept CAISO's proposal as it applies to the allocation of reliability-related monetary penalties. However, we reject CAISO's proposal as it applies to non-reliability related monetary penalties, as discussed below.

16. In the instant filing, CAISO proposes to directly allocate the costs of monetary penalties assessed by the Commission, NERC, and WECC for the violation of NERC Reliability Standards when a market participant or market participants has been identified as a contributing cause to the violation. CAISO also proposes to indirectly allocate such costs when one or more market participants cannot be identified as a contributing cause of the violation. We find that these procedures, addressed in proposed tariff section 14.7.2, fall within the scope of the Guidance Order. Therefore, we accept section 14.7.2 with no further modifications.

17. However, we do not accept CAISO's indirect allocation procedures as they relate to non-reliability related monetary penalties. As proposed, tariff sections 14.7.1 and 14.7.3.1 could include any monetary penalty assessed against CAISO by the Commission or other regulatory bodies for CAISO's actions or inaction. We find that these provisions go beyond the scope of the Guidance Order. In the instant filing, CAISO references the Commission's acceptance of NYISO's penalty cost allocation procedures as the basis for its proposal to indirectly allocate non-reliability related monetary penalties. In that proceeding, the Commission accepted NYISO's proposal to include reliability-related

---

[18] *Id.*, citing NYISO Order, 127 FERC ¶ 61,196.

[19] Guidance Order, 122 FERC ¶ 61,247 at P 25-27.

violations assessed by other regulatory agencies, specifically state reliability agencies.[20] NYISO did not propose, nor did the Commission approve, penalty cost allocation procedures that provided for the recovery of non-reliability related costs in the NYISO Order.[21] Furthermore, CAISO does not provide any other explanation or support for expanding on the Guidance Order's recommendations. Accordingly, we reject CAISO's proposal as it applies to non-reliability related violations. We also find merit to the protest of M-S-R/SVP regarding tariff section headings and direct CAISO to submit a compliance filing revising its tariff to exclude non-reliability related penalties from its allocation procedures, as explained herein, and to revise its tariff headings to reflect that exclusion.

The Commission orders:

(A) CAISO's filing is hereby accepted in part and rejected in part, as discussed in the body of this order.

(B) CAISO is hereby directed to submit a compliance filing in this docket within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

---

[20] NYISO Order, 127 FERC ¶ 61,196 at P 30.

[21] *Id.*

Document Content(s)