UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	))	**Docket No. ER06-700-004**

MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO PROTESTS

On May 31, 2007, the California Independent System Operator Corporation ("CAISO")[1] submitted a filing in the above-captioned proceeding ("Compliance Filing") to comply with the Commission's "Order on Rehearing and Compliance Filings," 119 FERC ¶ 61,053, issued on April 19, 2007 ("April 19 Order"). The Commission established a June 21, 2007, comment date, and in response, one party filed comments in support of the Compliance Filing and two parties filed very similar protests.[2]

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the CAISO respectfully requests leave to file an answer, and files its answer, to the protests of the Compliance Filing.[3] For the reasons explained below, the Commission should accept the Compliance Filing as submitted and should reject the protests.

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[1] Capitalized terms not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

[2] The Northern California Power Agency filed supporting comments. M-S-R Public Power Agency and the City of Santa Clara, California (doing business as Silicon Valley Power) (jointly, "SVP/M-S-R") and the Transmission Agency of Northern California ("TANC") filed protests.

[3] The CAISO requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to make an answer to the protests. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case. *See, e.g., Entergy Services, Inc.*, 116 FERC ¶ 61,286, at P 6

I. ANSWER

A. SVP/M-S-R and TANC Are Mistaken in Arguing that the CAISO Should Have Included Tariff Modifications in the Compliance Filing that Are Beyond the Scope of the CAISO's Compliance Obligation.

SVP/M-S-R and TANC both argue that the CAISO erred in not including in the Compliance Filing: (i) the provisions in Section C-4 of Part C of the CAISO's Credit Policy and Procedures Guide ("Credit Guide") concerning debtor/creditor Market Participants leaving the market or incurring substantial activity level changes ("Section C-4 provisions"), and (ii) the entirety of Section C-6.1 of Part C of the Credit Guide, which concerns requests for Financial Security ("Section C-6.1 provisions").[4] These protests should be rejected because they argue that the CAISO should have included in the Compliance Filing changes to the ISO Tariff that are beyond the scope of Tariff modifications required to comply with the April 19 Order.

The Commission has stated that it expects public utilities subject to a Commission-imposed compliance obligation to strictly adhere to that obligation, and will reject components of a compliance filing that are beyond the scope of the order in which the obligation was imposed.[5] In the April 19 Order, the Commission directed the CAISO to include in the ISO Tariff, pursuant to the

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(2006); *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,124, at P 11 (2006); *High Island Offshore System, L.L.C.*, 113 FERC ¶ 61,202, at P 8 (2005).

[4] SVP/M-S-R at 4-6; TANC at 4-6. For ease of reference, the CAISO includes the Section C-4 provisions and the Section C-6.1 provisions in Attachment A to this Answer.

[5] *See, e.g.*, *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.").

Compliance Filing, "the process that the CAISO will use to calculate an entity's estimated aggregate liability, as described in Part C of the Credit Guide."[6] This is the only directive in the April 19 Order that is relevant here, as SVP/M-S-R and TANC concede.[7] The CAISO would have gone beyond the scope of the April 19 Order if the Compliance Filing had included anything other than the process for calculating Estimated Aggregate Liability ("EAL").

In the Compliance Filing, the CAISO added to the ISO Tariff those portions of Part C of the Credit Guide that govern the process the CAISO uses to calculate an entity's EAL.[8] However, neither the Section C-4 provisions nor the Section C-6.1 provisions are part of the process the CAISO uses to calculate EAL. Instead, the Section C-4 provisions concern – as Section C-4 itself states – a residual Financial Security posting requirement applicable to Market Participants that are exiting the CAISO markets, or that have changed their business practices, resulting in substantially reduced participation in the CAISO markets. The Section C-6.1 provisions concern Financial Security requests by the CAISO. Because neither of these sets of provisions is part of the process the CAISO uses to calculate EAL, the CAISO was correct not to include either set of provisions in the Compliance Filing.

The fact that the Commission did not specifically direct the CAISO to include the substance of Sections C-4 and C-6.1 of the Credit Guide in the ISO

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[6] April 19 Order at P 16.

[7] *See* SVP/M-S-R at P 9 & n.7; TANC at P 9 & n.6. To be sure, the Commission imposed compliance obligations with regard to other subjects in the April 19 Order, which the CAISO satisfied in the Compliance Filing, but SVP/M-S-R and TANC do not contend that the CAISO failed to satisfy its other compliance obligations.

[8] *See* Compliance Filing, Transmittal Letter at 3.

Tariff cannot be seen as a mere oversight. The April 19 Order expressly affirmed the CAISO's proposal to include certain details concerning its credit policies in the Credit Guide and only required specific provisions in the Credit Guide to be moved to the ISO Tariff. The Commission held that the CAISO "need not file the entire Credit Guide as part of its tariff."[9] The Commission elaborated on this finding by expressly approving the CAISO's alternative compliance approach, with certain specified modifications:

> [W]e find that the CAISO's alternative compliance filing has struck a reasonable balance by describing the CAISO's credit practices in the tariff and providing additional details in the Credit Guide, which it will post on the CAISO web site. As stated above, given the frequency with which some components of the unsecured credit limit calculation process are updated, having such details in the tariff would be impractical and would present a burden to the CAISO and stakeholders in keeping the tariff up-to-date. Therefore, we accept the alternative set of changes submitted by the CAISO, with certain modifications.[10]

Against this backdrop, the CASO would only be required to include the Section C-4 and Section C-6.1 provisions in the ISO Tariff if the Commission specifically identified these provisions as a modification of its general approval of the CAISO's alternative compliance filing. The Commission did not do so.

B. SVP/M-S-R's and TANC's Protests Constitute Impermissible Requests for Rehearing of the April 19 Order.

By arguing that the CAISO should go beyond the scope of the Tariff changes required by the April 19 Order and should move the Section C-4 and Section C-6.1 provisions to the ISO Tariff, SVP/M-S-R and TANC are essentially

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9 April 19 Order at P 15.

10 April 19 Order at P 37.

arguing that the April 19 Order itself is in error. Therefore, although not styled as such, these arguments constitute requests for rehearing of the April 19 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. §825l(a), from considering any request for rehearing that is submitted more than 30 days after the issuance of the order that the request for rehearing concerns.[11] Also, the Commission has stated that it will reject protests of a compliance filing that constitute untimely requests for rehearing of, and thus collateral attacks on, the underlying order.[12] In the instant proceeding, neither SVP/M-S-R nor TANC submitted a request for rehearing within the required 30 days of the issuance of the April 19 Order. Instead, SVP/M-S-R and TANC have filed protests that constitute untimely requests for rehearing. Therefore, the Commission should reject both protests as collateral attacks on the April 19 Order.

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[11] *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, 977-98, 979 (1st Cir. 1978); *Alabama Electric Cooperative, Inc.*, 116 FERC ¶ 61,115 (2006).

[12] *California Independent System Operator Corp.*, 119 FERC ¶ 61,240, at P 13 (2007) ("Moreover, these 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."); *California Independent System Operator Corp.*, 104 FERC 61,128, at P 13 (2003) ("None of PG&E's arguments concerning the CAISO's allocation formula pertains to the CAISO's compliance with the March 12 Order's directives. Rather, they are arguments that should have been raised on rehearing but were not. Thus, we reject them as an impermissible collateral attack on the March 12 Order."); *PJM Interconnection, LLC*, 104 FERC ¶ 61,020, at P 13 n.8 (2003) ("First Energy's protest on this issue is a collateral attack on the November 1 Order. First Energy should have sought rehearing of the November 1 Order if it believed the compliance obligation was incorrect, rather than raising in a protest to the compliance filing.").

C. Inclusion of the Identified Provisions of Section C-4 in the ISO Tariff Would Have Been Inappropriate Because that Would Have Limited the CAISO's Authority Under the Approved Provisions of Section 12.3 of the ISO Tariff.

SVP/M-S-R and TANC argue that the CAISO should have included in the Compliance Filing the provisions of Section C-4 of the Credit Guide that they identify. However, SVP/M-S-R and TANC overlook the fact that Section 12.3 of the ISO Tariff contains provisions that address the same subject as Section C-4: the Financial Security Amount the CAISO may retain for a Market Participant that leaves or significantly reduces its participation in the CAISO's markets. Section 12.3 states that the CAISO "may decline to reduce or release a Financial Security Amount or may release a lesser amount" for reasons that include the following:

> The Market Participant has provided notice or otherwise demonstrated that it is terminating or significantly reducing its participation in the ISO markets. The ISO may retain a portion of the Financial Security Amount to ensure that the Market Participant is adequately secured with respect to pending liabilities that relate to settlement re-runs or other liabilities for which the Market Participant may be responsible under the ISO Tariff.

By approving these provisions of Section 12.3, the Commission granted the CAISO the flexibility to determine the appropriate amount of Financial Security the CAISO may retain in order to cover liabilities for which a departing or much less active Market Participant may be responsible. The identified provisions of Section C-4 simply provide guidelines for the CAISO to apply the authority the Commission granted in Section 12.3. Therefore, inclusion of the provisions of Section C-4 in the ISO Tariff, as part of the Compliance Filing,

would have inappropriately limited the Commission-approved authority that Section 12.3 gives the CAISO.

D. Inclusion of Section C-6.1 in the ISO Tariff Would Have Been Inappropriate Because the Directives Contained in Section C-6.1 Are Already in the ISO Tariff.

In arguing that the CAISO should have included Section C-6.1 of the Credit Guide in the Compliance Filing, SVP/M-S-R and TANC ignore the fact that the directives in the Section C-6.1 provisions are already contained in Sections 12.4 and 12.5 of the Tariff. The Section C-6.1 provisions require each Market Participant to maintain an Aggregate Credit Limit (*i.e.*, Unsecured Credit Limit plus Financial Security Amount) that is at least equal to its EAL and to post an additional Financial Security Amount to the extent that the Market Participant's Aggregate Credit Limit is less than its EAL. Section 12.4 of the ISO Tariff contains the same requirements. The Section C-6.1 provisions also state that the CAISO will calculate EAL. Section 12.4 of the Tariff states the same thing. Further, Section C-6.1 provides that the CAISO will notify a Market Participant if its Estimated Aggregate Liability exceeds 90% of its Aggregate Credit Limit, and notes that "[t]he 90% level is specified in the ISO Tariff." Section 12.4 specifies this 90% level and states that the CAISO will notify a Market Participant in the event it is exceeded. In addition, the Section C-6.1 provisions state that the CAISO may take enforcement action in the event that a Market Participant's EAL exceeds its Aggregate Credit Limit. Section 12.5 of the Tariff states this as well.

Thus, the directives contained in the Section C-6.1 provisions are duplicated in Sections 12.4 and 12.5 of the Tariff. Consequently, it would have been inappropriate for the CAISO also to include them in the Compliance Filing.

II. CONCLUSION

For the reasons explained above, the Commission should accept the Compliance Filing as submitted by the CAISO and should reject the protests filed by SVP/M-S-R and TANC.

Respectfully submitted,

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Dated: July 6, 2007

ATTACHMENT A

[Relevant Provisions of Section C-4 of Part C of the Credit Policy and Procedures Guide:]

Debtor/Creditor Market Participants leaving the market or incurring substantial activity level changes – Those Market Participants that are exiting the ISO markets, or that have changed their business practices resulting in substantially reduced participation in the ISO markets, will be required to maintain a Financial Security Amount at least equal to five percent (5%) of the absolute value of the peak monthly net charges from their beginning participation date to their last participation date or the date the substantial change occurred. The ISO will use this Financial Security posting requirement as a base amount and reserves the right to increase or decrease the base amount depending on the number of settlement reruns in the queue and the estimated value of those settlement reruns. The five percent (5%) residual Financial Security posting will be retained for a period of one year, unless specific circumstances warrant a change in this retention period (e.g., pending FERC ordered adjustments).

[Section C-6.1 of Part C of the Credit Policy and Procedures Guide:]

C-6.1. Financial Security Requests

As described above, to the extent a Market Participant's Unsecured Credit Limit is less than its Estimated Aggregate Liability, the Market Participant must post a Financial Security Amount. The determination of a required/recommended Financial Security Amount is based on a Market Participant's most recent ISO Estimated Aggregate Liability calculation. The ISO recommends that each Market Participant maintain an Aggregate Credit Limit such that its Estimated Aggregate Liability does not exceed 90% of its Aggregate Credit Limit. The calculation is as follows:

Recommended Aggregate Credit Limit = (Estimated Aggregate Liability) / (0.90)

The 90% level is specified in the ISO Tariff and is used as the basis for the Financial Security Amount recommended by the ISO. A Market Participant must provide an additional Financial Security Amount when its obligations reach 100 percent of its Aggregate Credit Limit. However, the ISO recommends providing additional Financial Security at the 90% level, because when a Market Participant's Estimated Aggregate Liability exceeds 100% of its Aggregate Credit Limit, the ISO may be required to impose enforcement actions.

The Estimated Aggregate Liability calculated by the ISO for a Market Participant may fluctuate, and at times this may result in swings in Financial Security posting requirements. To the extent that the Estimated Aggregate Liability exceeds the Aggregate Credit Limit at any time, a Market Participant may be subject to enforcement actions including not being entitled to submit a schedule to the ISO. Thus, the ISO recommends that Market Participants maintain a margin of Aggregate Credit Limit above their maximum anticipated Estimated Aggregate Liability.

The Estimated Aggregate Liability is updated weekly for each Market Participant and is used to determine if additional Financial Security needs to be posted. Based on a Market Participant's Aggregate Credit Limit utilization level (which is the EAL divided by Aggregate Credit Limit), the following actions will be taken at each level listed:

Aggregate Credit Limit Utilization %	**Action**
< 50%.	No notice or action taken.
≥ 50% and < 70%	Market Participant notified for information only.
≥ 70% and < 90%	Market Participant notified of a *recommended* security increase. The ISO recommends, but does not require, that an additional posting is made to maintain the SCALE at or below 70%.

≥ 90%	The ISO *requests* that a Market Participant increase the posting amount within five business days so that the security utilization does not exceed 90 percent. If the Market Participant takes no action in response to the recommendation to post additional security, upon reaching 100 percent security utilization, they will be subject to the enforcement provisions of the ISO Tariff as described in Section D, Enforcement, including potential rejection of schedules.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all parties on the official service list compiled by the Secretary in the above-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 Folsom, California this 6th day of July, 2007.

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