

proposed to refund the time value of the money Panoche had received as a result of the sales, which it calculated to be \$58,107.00. CAISO has received this amount by wire from Panoche.

II. MOTION TO INTERVENE OUT-OF-TIME

CAISO only recently learned that Panoche Valley Solar expects to owe refunds based on transactions it entered under the CAISO tariff and that it expects CAISO to distribute the refunds. Up until that point, CAISO had no reason to intervene to participate in this proceeding as a party. However, with these new developments, CAISO now has a substantial interest in this proceeding which cannot be adequately represented by any other party, and its participation would be in the public interest. Thus, CAISO respectfully requests leave to intervene out-of-time with full rights to participate as a party.

Rule 214 (b)(3) establishes a test to determine whether late intervention should be granted, including consideration of whether: (1) good cause exists for the failure to file the motion within the time prescribed, (2) any disruption of the proceeding might result from permitting intervention, (3) the movant's interest is not adequately represented by other parties, (4) any prejudice to, or additional burdens upon, the existing parties might result from permitting the intervention, and (5) the motion conforms the content requirements for motions to intervene. As discussed below, CAISO satisfies each of these criteria.

First, CAISO's filing of this intervention out-of-time is caused by recent injection by Panoche Valley Solar of CAISO and its request for a Commission

determination in this proceeding that its payments of refunds to the CAISO discharges its obligation. Thus, good cause exists for the failure to file the motion within the time prescribed.

Second, CAISO takes the record as is. Thus, no party will be prejudiced or assume any additional burden as a result of the Commission granting this motion, nor will it cause any disruption of the proceeding.

In a similar situation, the Commission granted PJM's motion to intervene out-of-time. See *In re York Haven Power Company, LLC*, Order on Refund Report, 166 FERC ¶ 61,036 (2019), P 11 and *In re York Haven Power Company, LLC*, Motion to Intervene Out-of-Time of PJM Interconnection, L.L.C., filed April 25, 2018 (Docket ER17-2577-001).

For these reasons, CAISO hereby respectfully seeks leave to intervene out-of-time with full rights to participate as a party.

III. COMMENT – REQUEST FOR DIRECTION

CAISO takes no position on Panoche's refund reports. However, assuming the Commission accepts the 2019 Refund Report, it should in addition direct CAISO to distribute the refunds to CAISO market participants. Without an order directing the distribution, there could be uncertainty about whether CAISO's market participants have received, and whether the CAISO has paid, the filed rate.

The Commission previously issued such a direction to PJM in a similar case. Like Panoche, PJM market participant filed a refund report proposing to

refund the time value of money received for sales made without market based rate authority. At the request of PJM, the market participant's refund report asked the Commission to direct PJM to distribute the refunds to market participants. See *In re York Haven Power Company, LLC*, Refund Report, filed April 12, 2018 (Docket ER17-2577-001), p. 3. PJM appears to have requested this direction because its tariff specified that settlements become final after two years, and the proposed refunds concerned transactions that had occurred more than two years before. *Id.* In addition, the refund report asked the Commission to "provide guidance to PJM as to how PJM should process and distribute the refund amounts." *Id.* The Commission ordered as follows:

The two-year billing adjustment period in PJM's tariff does not limit the Commission's ability to direct PJM to distribute the refunds associated with York Haven's unauthorized sales. We clarify that PJM should distribute the refunds paid by York Haven on a pro-rata basis to market participants that were active in PJM between November 2015 and September 2017.

In re York Haven Power Company, LLC, Order on Refund Report, 166 FERC ¶ 61,036 (2019), P 15.

In this case, CAISO has no tariff provision that would direct it either to distribute the proposed refunds, or how to allocate them among its market participants. Accordingly, a direction from the Commission is necessary. CAISO proposes the Commission direct it to distribute the funds pro rata to all market participants who paid the ISO's Grid Management Charge during the refund period. An allocation based on the Grid Management Charge is appropriate because there is no basis to allocate the refunds to participants who made purchases in the market. As explained in Panoche's initial refund report, it made

these sales as a price-taker. Thus the sales that are subject to refund could not have affected market prices or caused losses for the market participants who made purchases. Accordingly, instead of allocating the refunds to purchasers, allocating them pro rata according to the portion of CAISO's operating costs (i.e., Grid Management Charge) that each market participant paid during the refund period would be equitable. It would also pose a lower administrative burden on the CAISO, which is appropriate given the relatively low amount at stake.

IV. COMMUNICATIONS

In accordance with Rule 203(b)(3) of the Commission's Rules of Practice and Procedure, the CAISO respectfully requests that service of all pleadings, documents, and all communications regarding this proceeding be addressed to the following individuals:

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V. CONCLUSION

For the foregoing reasons, the CAISO request the Commission grant the its motion to intervene and, assuming it accepts the 2019 refund report of Panoche Valley Solar, direct the ISO to distribute the refunds to its market

participants pro rata according to the amount of the CAISO's Grid Management Charge that they paid during the refund period.

Respectfully submitted,

By: /s/ Daniel J. Shonkwiler

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Dated: June 11, 2019

CERTIFICATE OF SERVICE

I certify that I have served the foregoing document upon the parties listed on the official service list in the captioned 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 Folsom, California, this 11th day of June, 2019.

Is/ Anna Pascuzzo

Anna Pascuzzo