

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

**California Independent System            )  
Operator Corporation                        )**       **Docket No. ER04-835-010**

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

The California Independent System Operator Corporation (CAISO)<sup>1</sup> submits this motion for leave to answer and answer to the protest, emergency motion for immediate Commission action, and request to shorten time for answer submitted by Shell Energy North America (US) L.P. and the Alliance for Retail Energy Markets (collectively, the Coalition) in this proceeding on March 16, 2020.<sup>2</sup> The Coalition was the only entity that submitted a filing in response to the CAISO's March 2, 2020 supplemental compliance filing (March 2 Compliance Filing). The Coalition provides no good reason for the Commission to reject the March 2 Compliance Filing or halt the CAISO's process of settling and invoicing interest that the Commission itself ordered. In particular, there simply is no basis for the Coalition's allegations that parties lack a meaningful opportunity to review

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings set forth in appendix A to the CAISO tariff.

<sup>2</sup> The CAISO submits this answer pursuant to 18 C.F.R. § 385.213. To the extent that this answer involves an answer to the Coalition's protest, the CAISO respectfully moves for waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to answer the Coalition's protest. Good cause for this waiver exists here because the answer will 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 the proceeding. See, e.g., *Equitrans, L.P.*, 134 FERC ¶ 61,250 at P 6 (2011); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,023 at P 16 (2010); *Xcel Energy Servs., Inc.*, 124 FERC ¶ 61,011 at P 20 (2008).

the CAISO's calculations. As such, the Commission should reject the Coalition's motion for an "immediate" order on the March 2 Compliance Filing, and the findings requested therein.<sup>3</sup>

## **I. Background**

As the Commission explained in its August 28, 2019 order in this proceeding, the proceeding has an extensive history.<sup>4</sup> The August 28 Order addressed requests for rehearing and clarification of an October 2016 order in which the Commission rejected two informational refund reports submitted by the CAISO in December 2013 and May 2014,<sup>5</sup> and dismissed as moot arguments whether interest should be applied to the refunds resulting from resettlements of the CAISO market.<sup>6</sup>

In the August 28 Order, the Commission granted in part and dismissed in part the requests for rehearing and denied the requests for clarification. Specifically, upon further consideration of relevant case law and recent Commission precedent, the Commission reversed its prior rejection of the refund reports, found that it was appropriate for the CAISO to administer the market

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<sup>3</sup> The CAISO is filing this answer within the five-day answer period requested by the Coalition. However, the CAISO does not concede that such a shortened answer period is necessary or appropriate, and urges the Commission to reject it.

<sup>4</sup> See *Cal. Indep. Sys. Operator Corp.*, 168 FERC ¶ 61,127, at PP 3-5 (2019) (August 28 Order).

<sup>5</sup> Respectively, the December 2013 Report (submitted on December 20, 2013) and the May 2014 Report (submitted on May 14, 2014).

<sup>6</sup> See August 28 Order at PP 5-10. The October 2016 order was *California Independent System Operator Corporation*, 157 FERC ¶ 61,033 (2016). See August 28 Order at P 1.

resettlements, and found that interest should be applied to the refunds.<sup>7</sup> The only compliance directive in the August 28 Order was for the CAISO to submit a compliance filing “reflecting the invoices it plans to distribute for interest amounts”.<sup>8</sup>

On October 28, 2019, the CAISO submitted a compliance filing that explained it was still in the process of calculating interest and planned to issue settlement statements and invoices by March 31, 2020 (October 28 Compliance Filing). The October 28 Compliance Filing also explained that the CAISO would submit a supplemental filing in the first quarter of 2020 reflecting interest calculations through March 31, 2020. In response, the Coalition filed a protest, a request to reject compliance filing and to require filing in accordance with the August 28 Order, and a motion for stay of any interest charges that would be assessed pursuant to that Order.

On February 12, 2020, the Commission issued an order denying the Coalition’s motion for stay.<sup>9</sup> The Commission stated that it would address the October 28 Compliance Filing and any responsive pleadings after the CAISO submitted its supplemental compliance filing.<sup>10</sup>

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<sup>7</sup> *Id.* at PP 12-29. As the August 28 Order noted, the CAISO had already implemented the refunds. *Id.* at P 22. That happened in 2014. March 2 Compliance Filing at 1-2, 4.

<sup>8</sup> August 28 Order at P 29. The Coalition and two other parties filed requests for rehearing of the August 28 Order, which are pending before the Commission.

<sup>9</sup> *Cal. Indep. Sys. Operator Corp.*, 170 FERC ¶ 61,094, at PP 12-15 (2020) (February 12 Order).

<sup>10</sup> *Id.* at P 11 & n.20.

In the March 2 Compliance Filing,<sup>11</sup> the CAISO explained that it had calculated the interest on the minimum load cost adjustments at issue in this proceeding through March 31, 2020, and planned to publish settlement statements and invoices on March 31, 2020 and perform market clearing on April 6, 2020. The interest on the minimum load cost adjustments, which totals \$88.3 million, constitutes the majority of the interest on the reallocated must-offer cost amounts at issue here. The CAISO explained that these amounts include interest on the unpaid interest for the minimum load adjustments made in 2014 and additional interest on the unpaid interest from June 2014 through March 31, 2020.<sup>12</sup> The CAISO also stated that it had provided each market participant with specific details regarding its interest charges and allocation for those amounts, would reach out to affected scheduling coordinators to provide each of them with their scheduling coordinator-specific data, and would schedule a conference call to respond to any questions.<sup>13</sup> That conference call has been scheduled for March 25, 2020.

Regarding interest on reallocated start-up costs, which constitute the remainder of the reallocated must-offer cost amounts, the CAISO explained that it needed additional time due to the challenges involved in dealing with data and systems going back over fifteen years. Therefore, the CAISO planned to submit

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<sup>11</sup> The CAISO submitted it on March 2 rather than March 1, because March 1 was a Sunday.

<sup>12</sup> March 2 Compliance Filing at 2, 4-5. The CAISO explained that it calculated the interest using the applicable quarterly interest rates determined pursuant to section 35.19a of the Commission's regulations. *Id.* at 4.

<sup>13</sup> *Id.* at 7.

a further supplemental compliance filing by March 31, 2020 to update the Commission and parties on the status of the CAISO's efforts to document the interest on the start-up costs and to propose a timeline for issuing settlement statements and invoices for them. The CAISO requested Commission authorization to submit the further supplemental filing as of this date, to the extent necessary.<sup>14</sup>

## **II. Answer**

### **A. The Commission Should Deny the Coalition's Request to Reject the March 2 Compliance Filing and to Change the CAISO's Compliance Process**

The Coalition protests the March 2 Compliance Filing on the grounds it is deficient, fails to comply with the August 28 Order, and contemplates a process that is contrary to the principles of due process. Therefore, the Coalition requests that the Commission reject the March 2 Compliance Filing and direct the CAISO to change its compliance process.<sup>15</sup>

The Commission should reject the Coalition's requests. The March 2 Compliance Filing (1) explained the nature and time period of the CAISO's interest calculations (*i.e.*, for the minimum load adjustments made in 2014 and additional interest on the unpaid interest from June 2014 through March 31, 2020), (2) described the calculation methodology the CAISO used (*i.e.*, the applicable quarterly interest rates under the Commission's regulations), and (3) reported that the resulting interest on the minimum load cost adjustments totals

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<sup>14</sup> *Id.* at 2, 5-6.

<sup>15</sup> Coalition at 3-6, 8.

\$88.3 million. The CAISO also explained that it would provide each affected scheduling coordinator with its individual data prior to publishing settlement statements and invoices on March 31, 2020 and perform market clearing on April 6, 2020.<sup>16</sup> Finally, the CAISO provided each scheduling coordinator with a CD that reflected all of the underlying resettlement calculations in 2014.

Because the aggregated interest amounts described in the March 2 Compliance Filing will serve as the basis for the CAISO's invoices for interest on the minimum load cost adjustments, the March 2 Compliance Filing satisfies the directive in the August 28 Order to reflect the invoices the CAISO plans to distribute for interest.<sup>17</sup>

The level of detail contained in the March 2 Compliance Filing is also comparable to that provided in the December 2013 Report and the May 2014 Report. All of those CAISO filings provide aggregated refund information for all CAISO market participants, rather than market participant-specific information. After parties had an opportunity to review and comment on the December 2013 Report and the May 2014 Report, the Commission accepted them in the August 28 Order.<sup>18</sup> Likewise, the Commission should find that the level of detail provided in the March 2 Compliance Filing satisfies the compliance directive in the August 28 Order.

There is no need for the Commission to take any special action in response to the Coalition's filing, with regard to the market participant-specific

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<sup>16</sup> March 2 Compliance Filing at 2, 4-5.

<sup>17</sup> See August 28 Order at P 29.

<sup>18</sup> *Id.* at P 12.

information contained in the invoices the CAISO plans to distribute for interest on the minimum load cost adjustments. The CAISO provided market participants with all market participant-specific refund data underlying the interest to be applied to those refunded amounts at the Commission rate in 2014 when it performed resettlements and provided each Scheduling Coordinator with the underlying resettlement calculations. Thus, market participants are able to verify the accuracy of the CAISO's interest calculations. The CAISO has also provided each market participant with specific details regarding its interest charges and allocation for those amounts, will be performing outreach to affected scheduling coordinators to provide each of them with their scheduling coordinator-specific data, and will be scheduling a conference call to respond to any questions.<sup>19</sup>

Consequently, all market participants, including the Coalition, will have an adequate opportunity to review their own settlement statements and discuss them with the CAISO. If they contain any errors, market participants can dispute the settlement statements under the existing process set forth in the CAISO tariff.<sup>20</sup> Such resettlement issues solely concern economic matters that will be sorted out under the Commission orders issued in this proceeding and the CAISO's settlements process. The Commission has never stated or suggested that the CAISO should utilize some alternative or extra-tariff process for settling and invoicing the interest amounts calculated in this proceeding.

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<sup>19</sup> March 2 Compliance Filing at 7.

<sup>20</sup> See CAISO tariff section 11.29.8.4, *et seq.*

The same will be true after the CAISO determines a target timeline for invoicing settlement statements and invoices regarding the interest on start-up costs. However, as explained in the March 2 Compliance Filing, the CAISO needs until March 31, 2020 to submit a further supplemental compliance filing that will address those matters.<sup>21</sup> The Coalition incorrectly asserts that “CAISO plans to send invoices to affected entities on March 31, 2020 for an amount, *inclusive of start-up costs*, which it will disclose simultaneously with such invoices through a further supplemental filing.”<sup>22</sup> The Coalition also incorrectly states that the CAISO did not satisfy the instruction in the February 12 Order to seek an extension if it is unable to meet a compliance deadline.<sup>23</sup> The March 2 Compliance Filing stated in relevant part that, “[t]o the extent necessary, the CAISO respectfully requests Commission authorization for additional time to submit a further supplemental compliance filing by March 31, 2020 [that] will include a target time-line for issuing settlement statements and invoices for start-up costs.”<sup>24</sup> Thus, the Coalition’s arguments are without merit.

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<sup>21</sup> March 2 Compliance Filing at 2, 5-6.

<sup>22</sup> Coalition at 4 (emphasis added).

<sup>23</sup> *Id.* at 4-5.

<sup>24</sup> March 2 Compliance Filing at 6.



**B. The Commission Should Deny the Coalition’s Emergency Motion for Immediate Commission Action**

The Coalition makes an emergency motion for immediate Commission action – specifically, issuing an order by March 30, 2020 that instructs the CAISO not to issue invoices or resettle the market for interest amounts without prior Commission approval.<sup>25</sup> The Commission should deny the Coalition’s motion.

In requesting that the Commission take the extraordinary step of halting the CAISO’s market invoicing and resettlement process for the interest amounts, the Coalition is essentially asking in a different way for the same outcome (*i.e.*, a stay) the Commission rejected in the February 12 Order. The Commission explained in that Order it was denying the Coalition’s motion for stay of any interest charges because “the Coalition has failed to establish that the inclusion of interest in the refund calculation meets the standard of irreparable harm required to justify a stay.”<sup>26</sup> The Commission noted the Coalition’s concession that “money damages are not an irreparable injury.”<sup>27</sup> The Coalition provides no more convincing showing of irreparable harm in its motion, nor do its arguments improve with age and repetition.

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<sup>25</sup> Coalition at 2, 7-8. The Coalition also requests that the Commission shorten the time for answers to its emergency motion to five days. *Id.* at 7. However, under the Commission’s Rules of Practice and Procedure, any answer to a motion requesting a shortened time period for action must be filed within five days anyway (unless otherwise ordered). See 18 C.F.R. § 385.213(d)(1)(i).

<sup>26</sup> February 12 Order at 15.

<sup>27</sup> *Id.* (quoting page 6 of the motion for leave to answer and answer filed by the Coalition on December 16, 2019).

The Coalition states that, in its experience, “once a market is resettled it is difficult to reverse.”<sup>28</sup> This assertion is puzzling given the clear resettlement provisions in the CAISO tariff and the CAISO’s own experience implementing them. The CAISO tariff contains provisions specifically designed to permit economic outcomes in the CAISO markets to be adjusted, repeatedly if necessary, to achieve more accurate results.<sup>29</sup> Indeed, from time to time the Commission orders resettlements of the CAISO markets to be performed or to continue,<sup>30</sup> including in this very proceeding.<sup>31</sup>

In the February 12 Order, the Commission stated that it “will review any compliance filing, as well as any responsive pleadings, after that supplemental filing is made.”<sup>32</sup> The Coalition incorrectly interprets this statement as requiring the CAISO to stop resettlements in this proceeding until after the Commission conducts its review.<sup>33</sup> The CAISO must comply with the Commission’s order because it has not been stayed. Further, any resettlement issues concern only economic matters that will be resolved pursuant to the Commission’s orders in this proceeding and the CAISO’s settlements process. The Coalition’s motion

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<sup>28</sup> Coalition at 7.

<sup>29</sup> See CAISO tariff, section 11.29.7 *et seq.*

<sup>30</sup> See, e.g., *Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,211, at P 21 (“[W]e authorize the bid cost recovery resettlements already completed by CAISO and direct CAISO to complete resettlements for the remainder of the period between April 1, 2009 and July 31, 2010.”).

<sup>31</sup> See August 28 Order at P 24 (“[W]e find that the resettlements reflected in CAISO’s Refund Report render the most fair and equitable outcome under the circumstances of this proceeding.”). This is the 2014 resettlement that the Coalition characterizes as being “unauthorized and unlawful”. Coalition at 6.

<sup>32</sup> February 12 Order at P 19.

<sup>33</sup> See Coalition at 5.

seems to be little more than a stalking horse for its attempt to delay the outcome of the CAISO's interest calculations pending what it hopes will be a favorable outcome on rehearing.<sup>34</sup> As the Commission has already made clear, this does not constitute a good reason for delay, and the Commission should similarly reject the Coalition's request for "emergency" action to halt the settlements and invoicing process.

### **III. Conclusion**

For the foregoing reasons, the Commission should deny the Coalition's protest and emergency motion for immediate Commission action.

Respectfully submitted,

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Dated: March 20, 2020

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<sup>34</sup> See *id.* at 5 n.25.

## **CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the above-referenced proceeding, pursuant to 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 20<sup>th</sup> day of March, 2020.

/s/ Daniel Klein

Daniel Klein

Davis Wright Tremaine LLP