

181 FERC ¶ 61,035  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;  
James P. Danly, Allison Clements,  
Mark C. Christie, and Willie L. Phillips.

California Independent System Operator Corporation      Docket No. ER21-2455-002

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING AND  
GRANTING CLARIFICATION

(Issued October 20, 2022)

1. On July 19, 2021, as amended on November 1, 2021, California Independent System Operator Corporation (CAISO) submitted proposed revisions to its Open Access Transmission Tariff (Tariff)<sup>1</sup> in compliance with the requirements of Order No. 2222,<sup>2</sup> which removes barriers to the participation of distributed energy resource aggregations in the capacity, energy, and ancillary service markets operated by Regional Transmission Organizations and Independent System Operators (RTO/ISO markets). On June 17, 2022, the Commission accepted CAISO's compliance filing subject to a further compliance filing to be submitted within 60 days of the date of issuance of the Compliance Order, and directed CAISO to notify the Commission of the actual effective date of certain Tariff revisions within five business days of their implementation.<sup>3</sup>
2. On July 15, 2022, Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company (collectively, California Utilities) submitted a request for clarification of the Compliance Order. On July 18, 2022,

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<sup>1</sup> Capitalized terms that are not defined in this order have the meaning specified in Appendix A to CAISO's Tariff.

<sup>2</sup> *Participation of Distributed Energy Res. Aggregations in Mkts. Operated by Reg'l Transmission Orgs. & Indep. Sys. Operators*, Order No. 2222, 172 FERC ¶ 61,247 (2020), *order on reh'g*, Order No. 2222-A, 174 FERC ¶ 61,197, *order on reh'g*, Order No. 2222-B, 175 FERC ¶ 61,227 (2021).

<sup>3</sup> *Cal. Indep. Sys. Operator Corp.*, 179 FERC ¶ 61,197 (2022) (Compliance Order).

Advanced Energy Economy (AEE) submitted a request for rehearing of the Compliance Order. Pursuant to *Allegheny Defense Project v. FERC*,<sup>4</sup> the rehearing request filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 313(a) of the Federal Power Act (FPA),<sup>5</sup> we are modifying the discussion in the Compliance Order and continue to reach the same result in this proceeding, as discussed below.<sup>6</sup> We also grant California Utilities' request for clarification of the Compliance Order, as discussed below.

## I. Background

3. In Order No. 2222, the Commission adopted reforms to remove barriers to the participation of distributed energy resource aggregations in the RTO/ISO markets.<sup>7</sup> The Commission modified section 35.28 of its regulations,<sup>8</sup> pursuant to its authority under FPA section 206,<sup>9</sup> to require each RTO/ISO to revise its tariff to ensure that its market rules facilitate the participation of distributed energy resource aggregations. The Commission found that, by removing barriers to the participation of distributed energy resource aggregations in the RTO/ISO markets, Order No. 2222 will enhance competition and, in turn, help ensure that the RTO/ISO markets produce just and reasonable rates.

4. On July 19, 2021, as amended on November 1, 2021, CAISO submitted proposed revisions to its Tariff in compliance with the requirements of Order No. 2222. In the Compliance Order, the Commission accepted CAISO's compliance filing, subject to a further compliance filing.

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<sup>4</sup> 964 F.3d 1 (D.C. Cir. 2020) (en banc).

<sup>5</sup> 16 U.S.C. § 825l(a) ("Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.").

<sup>6</sup> *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the Compliance Order. See *Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

<sup>7</sup> Order No. 2222, 172 FERC ¶ 61,247 at P 1.

<sup>8</sup> 18 C.F.R. § 35.28 (2021).

<sup>9</sup> 16 U.S.C. § 824e.

## I. Discussion

### A. Substantive Matters

#### 1. Commission Jurisdiction

##### a. Compliance Order

5. To demonstrate on compliance that its Tariff protects against double counting, CAISO cited to section 4.17.3(d), which prevents a Distributed Energy Resource from participating in a Distributed Energy Resource Aggregation if that resource already participates in a retail net energy metering program that does not expressly permit wholesale market participation.<sup>10</sup> CAISO stated that this provision allows for dual participation in a net energy metering program and the CAISO markets when the retail tariff authorizes participation in the wholesale markets, and that this provision ensures that the applicable Utility Distribution Company will work with CAISO and the Distributed Energy Resource Provider to resolve concerns about Distributed Energy Resources that participate in net energy metering programs should they arise. In addition, CAISO stated that the provision reflects that California net energy metering tariffs do not allow wholesale market participation and that the Commission has expressly ruled net energy metering customers are not Commission-jurisdictional.<sup>11</sup>

6. The Commission found that Tariff section 4.17.3(d) did not comply with Order No. 2222.<sup>12</sup> The Commission disagreed with CAISO that Commission precedent establishes that net energy metering *customers* are not Commission-jurisdictional and explained that Commission precedent holds that net energy metering *sales* are not subject to the Commission's jurisdiction.<sup>13</sup> The Commission noted that this same precedent states that the Commission has jurisdiction over "the sale of electric energy at

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<sup>10</sup> Compliance Order, 179 FERC ¶ 61,197 at P 76 (citing Transmittal at 14).

<sup>11</sup> *Id.* P 91 (citing Answer at 17).

<sup>12</sup> *Id.* PP 108-109.

<sup>13</sup> *Id.* P 110 (citing *Sun Edison LLC*, 129 FERC ¶ 61,146, at PP 19-20 (2009) (explaining that Sun Edison did not make a wholesale sale subject to the Commission's jurisdiction because the net metering participant purchasing from Sun Edison did not make a net sale to a utility) (original emphasis included)).

wholesale,”<sup>14</sup> which can be made by Distributed Energy Resource Aggregations,<sup>15</sup> including those composed of Distributed Energy Resources that may also be participating in retail programs, such as net energy metering programs.<sup>16</sup>

**b. California Utilities Clarification Request**

7. California Utilities seek clarification that the Compliance Order does not modify or reverse Commission precedent that wholesale sales by net metering customers are subject to Commission jurisdiction.<sup>17</sup> California Utilities take issue with the Commission’s use of the word “sales” in paragraph 110 of the Compliance Order. California Utilities assert that *Sun Edison* did not hold that sales by net metering customers are not subject to the Commission’s jurisdiction, but instead held that certain types of exchanges (i.e., credits) between utilities and net metering customers were not sales at all. California Utilities urge the Commission to clarify that the Compliance Order did not modify precedent regarding Commission jurisdiction over net metering wholesale sales.<sup>18</sup> They argue that clarification is needed because a wholesale sale is a sale for resale in interstate commerce subject to Commission jurisdiction, whether the seller is behind or in front of a retail meter (unless the seller is exempt from FPA rate regulation under the regulations for Qualifying Facilities).<sup>19</sup> They contend that, if Commission policy is modified or overturned, then wholesale sales may no longer be subject to Commission jurisdiction.<sup>20</sup> They also express concern that, in paragraph 110 of the Compliance Order, the Commission failed to mention that it has jurisdiction over a sale by a distributed energy resource to a distributed energy resource aggregator.<sup>21</sup> According to California Utilities, *Sun Edison* demonstrates that this is the case.

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<sup>14</sup> *Id.* (citing *Sun Edison*, 129 FERC ¶ 61,146 at PP 19-20).

<sup>15</sup> *Id.* (citing Order No. 2222, 172 FERC ¶ 61,247 at P 40).

<sup>16</sup> *Id.*

<sup>17</sup> California Utilities Clarification Request at 5.

<sup>18</sup> *Id.* at 3-5.

<sup>19</sup> *Id.* at 3-4.

<sup>20</sup> *Id.* at 4.

<sup>21</sup> *Id.* at 5.

**c. Commission Determination**

8. As California Utilities request, we clarify that Paragraph 110 of the Compliance Order does not reverse or otherwise modify Commission precedent, specifically, *Sun Edison*.

**2. Settlement Rules and Bidding Parameters**

**a. Compliance Order**

9. In their protest of CAISO's compliance filing, AEE and NRDC/Sustainable FERC Project (SFP) (together, AEE/SFP) contended that CAISO's existing Distributed Energy Resource Aggregation model requires Distributed Energy Resources to commit to participate exclusively in the CAISO markets, in such a way that it does not provide them a pathway to participate in one or more retail programs and the wholesale markets as required by Order No. 2222.<sup>22</sup> According to AEE/SFP, CAISO requires that participating Distributed Energy Resources be settled at wholesale prices for charging and discharging every hour, 24 hours a day, seven days per week; thus, AEE/SFP alleged, CAISO prevents participating Distributed Energy Resources from using offer parameters or other tools to hold themselves out to the wholesale market so that they can be available to participate in one or more retail programs.<sup>23</sup> AEE/SFP also contended that the Distributed Energy Resource Aggregation model effectively forces Distributed Energy Resources to choose exclusively between participating in either retail or wholesale markets.<sup>24</sup> In the Compliance Order, the Commission found AEE/SFP's arguments on CAISO's settlement practices to be beyond the scope of Order No. 2222.<sup>25</sup> The Commission explained that the directive in Order No. 2222 to allow distributed energy resources that participate in one or more retail programs to also participate in RTO/ISO wholesale markets did not mean that RTOs'/ISOs' settlement rules are unjust and unreasonable or should be revised to allow for such participation.<sup>26</sup>

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<sup>22</sup> Compliance Order, 179 FERC ¶ 61,197 at P 79 (citing AEE/SFP Protest at 6).

<sup>23</sup> *Id.* (citing AEE/SFP Protest at 6-7).

<sup>24</sup> *Id.* (citing AEE/SFP Protest at 6).

<sup>25</sup> *Id.* P 112.

<sup>26</sup> *Id.*

**b. AEE Rehearing Request**

10. AEE requests rehearing of the Commission's finding concerning CAISO's requirement that Distributed Energy Resources participating in a Distributed Energy Resource Aggregation be settled at CAISO wholesale prices for charging and discharging every hour, 24 hours a day, seven days per week (24-hour settlement requirement).<sup>27</sup> AEE contends that the barriers created by the 24-hour settlement requirement run afoul of the provisions of Order No. 2222 requiring each RTO/ISO "to allow distributed energy resource aggregators to register distributed energy resource aggregations under one or more participation models in the RTO's/ISO's tariff that accommodate the physical and operational characteristics of the distributed energy resource aggregation."<sup>28</sup> AEE argues that the Commission erroneously rejected AEE's arguments against the 24-hour settlement requirement solely as one of compliance with Order No. 2222's provisions requiring CAISO to allow dual participation and avoid double counting, and failed to address whether the 24-hour settlement requirement accommodates the unique technical and operational characteristics of Distributed Energy Resources, particularly those consisting of behind-the-meter Distributed Energy Resources.<sup>29</sup>

11. AEE maintains that, operationally, behind-the-meter Distributed Energy Resources are on a retail tariff, not a wholesale tariff.<sup>30</sup> But, AEE continues, under CAISO's aggregation model, for these behind-the-meter assets to participate in the wholesale market, they must participate 24/7, if the assets inject power onto the grid. Therefore, according to AEE, the assets can no longer fulfill the primary purpose as determined by the ratepayer that installed the asset. AEE explains that many behind-the-meter Distributed Energy Resources have the ability to offer wholesale market services in an aggregation, but the 24-hour settlement requirement prevents these Distributed Energy Resources from offering their unique services.<sup>31</sup> AEE asserts that the Distributed Energy Resource Aggregation model therefore fails to accommodate the physical and operational characteristics of these behind-the-meter Distributed Energy Resources to participate in the wholesale market, and does not fully comply with Order No. 2222. AEE asks that the Commission grant rehearing on this issue and direct CAISO to revisit its settlement rules and bidding parameters to ensure that they account for the physical and operational

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<sup>27</sup> AEE Rehearing Request at 3-4.

<sup>28</sup> *Id.* at 4 (citing Order No. 2222, 172 FERC ¶ 61,247 at P 130).

<sup>29</sup> *Id.* at 5-6.

<sup>30</sup> *Id.* at 6.

<sup>31</sup> *Id.* at 7.

characteristics of Distributed Energy Resource Aggregations, as required by Order No. 2222.<sup>32</sup>

**c. Commission Determination**

12. The Commission addressed in the Compliance Order the same general issues AEE raises on rehearing, and we remain unpersuaded by its claims on rehearing. Just as in its initial protest, AEE argues on rehearing that CAISO's 24-hour settlement requirement effectively forces Distributed Energy Resources to commit to participate either in the CAISO markets or at the retail level. AEE adds on rehearing that, because of CAISO's settlement requirement, CAISO fails to accommodate the physical and operational characteristics of behind-the-meter Distributed Energy Resources to participate in the wholesale market, as required by Order No. 2222. The basis of AEE's argument continues to be that a CAISO settlement requirement does not allow Distributed Energy Resources that participate in one or more retail programs to also participate in its wholesale markets, which the Commission addressed in the Compliance Order.<sup>33</sup> We note that AEE fails to cite to any CAISO Tariff provisions that establish this purported 24-hour settlement requirement and, therefore, has not demonstrated how: (1) CAISO's settlement requirements prevent individual Distributed Energy Resources from participating in the CAISO wholesale market and one or more retail programs; or (2) CAISO's compliance proposal fails to accommodate the physical and operational characteristics of Distributed Energy Resource Aggregations. Also, we agree with CAISO's response on these issues.<sup>34</sup> For these reasons, we have no basis to find that CAISO's proposal fails to accommodate the physical and operational characteristics of Distributed Energy Resource Aggregations.

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<sup>32</sup> *Id.* at 5.

<sup>33</sup> Compliance Order, 179 FERC ¶ 61,197 at P 112 (“We find that the directive of Order No. 2222 to allow distributed energy resources that participate in one or more retail programs to also participate in RTO/ISO wholesale markets does not mean that RTOs’/ISOs’ settlement rules are unjust and unreasonable or should be revised to allow for such participation.”).

<sup>34</sup> *See* CAISO Answer at 10. CAISO argues that AEE does not explain why CAISO settlement rules force Distributed Energy Resources to commit solely to wholesale markets nor explains how CAISO settlement rules impede retail participation.

The Commission orders:

(A) California Utilities' request for clarification is hereby granted, as discussed in the body of this order.

(B) In response to the requests for rehearing and clarification, the Compliance Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission.

( S E A L )

Debbie-Anne A. Reese,  
Deputy Secretary.