UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	**)**	**Docket No. ER11-3149-___**

MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, REQUEST FOR REHEARING OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

Pursuant to Section 313(a) of the Federal Power Act[1] and Rules 212 and 713 of the Commission's Rules of Practice and Procedure,[2] the California Independent System Operator Corporation (ISO)[3] respectfully submits this motion for clarification or, in the alternative, request for rehearing of the Commission's May 4, 2011, order in this proceeding.[4]

I. Executive Summary

The ISO greatly appreciates the Commission's timely order on the ISO's March 21, 2011, tariff filing to clarify and modify bid cost recovery settlement rules under the ISO tariff. The Commission's May 4 order assists the ISO in addressing a bidding practice recently identified by the ISO which resulted in a substantial increase in bid cost recovery payments. One statement in the May 4 order, however, not only appears to go beyond the scope of the tariff revisions proposed by the ISO, but also could be misconstrued to be contrary to long-standing precedent concerning the authority of independent system operators

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1 16 U.S.C. § 825*l*(a).

2 18 C.F.R. §§ 385.212, 385.713.

3 The ISO is sometimes referred to as the CAISO.

4 *California Independent System Operator Corp.*, 135 FERC ¶ 61,110 (2011).

and regional transmission organizations to correct prices and charges when computational errors cause such prices or charges to be inconsistent with the rate or tariff on file with the Commission. The ISO now seeks clarification that the Commission did not intend for the May 4 order to contravene precedent concerning the authority of independent system operators and regional transmission organizations under the filed rate doctrine.

Specifically, paragraph 27 of the May 4 order could be read to suggest that the ISO must always file with the Commission prior to any action to resettle past charges that are not consistent with the filed tariff:

> Under FPA section 205, all public utilities are required to file rates, charges and give timely prior notice before any proposed rates and charges can become effective. To the extent that CAISO did not follow its tariff and CAISO determines that any surcharges or resettlements are necessary, CAISO must file with the Commission prior to any action to request authority and explain its proposal with amounts and details. [Footnote omitted.]

It has long been established that public utilities – in particular ISOs and RTOs – must ensure that they apply their filed rates as accepted by the Commission. In fulfilling its obligation to apply its filed rates contained in the ISO tariff, the ISO employs a series of complex and highly automated market and settlement systems that may contain unintentional gaps in design or automation that, from time to time, may result in outcomes that deviate from its filed rate. This case is an example of the ISO's attempt, not only to carry through its obligation to apply the filed rate as accepted by the Commission, but under the authority granted in the filed rate, to correct such an error. In numerous cases over the years, the Commission has recognized that public utilities have the

obligation to apply their filed rates and the authority to correct charges that do not reflect the filed rate, and that such authority does not require Commission approval. While the ISO does not believe that the Commission intended the May 4 order to contravene the authority provided to ISOs and RTOs under the filed rate doctrine, the ISO urges the Commission to grant the requested clarification and eliminate any potential uncertainty.

Although there are many cases where the Commission has granted authorization for ISOs and RTOs to implement settlement corrections, such authorization is only required where the utility seeks to pursue settlement corrections that are in some way inconsistent with the terms of an ISO or RTO tariff. In other words, Commission authorization is only needed where an ISO or RTO seeks in some way to depart from the filed rate. For example, the Commission has granted tariff waivers as appropriate in order to allow the correction of certain charges to be consistent with the terms of the filed rate.

As explained below, the one case cited in paragraph 27 of the May 4 order involves a similar circumstance. The cited order related to an ISO request to change the ISO tariff to address certain resettlement issues arising from the 2000-2001 Western energy crisis. That order does not support the proposition that any surcharges or resettlements to comply with the filed rate require prior Commission authorization.

The Commission has already approved the process by which the ISO can and does correct settlement errors where charges are not calculated in accordance with the filed rate. The ISO tariff itself has express provisions

requiring the ISO to calculate charges in accordance with the ISO tariff and establishes a schedule for ISO issuance of corrected settlement statements up until 36 months after the applicable trade date. None of these provisions require additional Commission approvals to correct settlement errors to ensure that charges and payments are consistent with the filed rate. The Commission should confirm that the May 4 order was not intended to limit or alter the ISO's authority to resettle erroneous charges under Section 11 of the ISO tariff.

The ISO recognizes that paragraph 27 of the May 4 order addressed a technical bulletin related to bid cost recovery payments issued by the ISO on April 5, 2011. Paragraph 27 may have been intended to be limited to the specific circumstances described in that technical bulletin, including the ISO's intention to correct bid cost recovery payments to be consistent with the filed ISO tariff for some periods but not for other periods. The ISO has determined that a request for waiver of its tariff is appropriate for the Commission to authorize the ISO to refrain from correcting the calculation of bid cost recovery payments during the period from April 2009 to August 2010. The ISO is submitting this waiver request concurrently with the instant filing.[5] The ISO wishes to emphasize that, even if the Commission determines that a waiver request is not justified for bid cost recovery resettlements in these circumstances, the Commission should not contravene long-standing precedent that ISOs and RTOs have the general authority to correct charges and prices that are not calculated in accordance with the filed rate.

[5] As explained in the ISO's waiver request, this waiver request is timely because the first regularly scheduled resettlement window for the pre-August 2010 trade dates after the bid cost recovery calculation error was identified is not scheduled to occur until later in 2011.

In the unlikely event that the May 4 order was intended to contravene this precedent, the Commission should reverse this finding on rehearing. The Commission has offered no justification for contravening this precedent. Indeed, such authority is necessary in order for utilities like the ISO to satisfy their statutory obligation to comply with the filed rate.

II. Background

The March 21 filing included tariff amendments and clarifications to address the incentive to engage in a bidding practice used by some market participants to maximize their bid cost recovery payments, thus resulting in overpayment of bid cost recovery amounts to those market participants.[6] Shortly thereafter, on April 5, 2011, the ISO issued a technical bulletin entitled "Bid Cost Recovery and Accounting for Delivered Minimum Load Energy Market Revenues." The April 5 technical bulletin included an announcement that the ISO intended to recalculate portions of market participants' previously settled bid cost recovery payments to fully account for past bid cost recovery payments that were calculated in a manner consistent with the filed rate set forth in the ISO tariff.

Bid cost recovery overpayments became much more pronounced over time due to the market participant bidding practice described in the March 21 filing. The April 5 technical bulletin stated that, to avoid unnecessary burden of resettlement to market participants for the period prior to August 1, 2010, the ISO

[6] *See* March 21 filing at 1-18 (providing background information on bid cost recovery under the ISO tariff and explaining how the tariff amendments and clarifications would address the incentive to engage in the bidding practice).

would only resettle amounts from August 2010 through March 2011, when the bulk of the overpayments occurred.[7]

In the May 4 order, the Commission accepted the March 21 filing in its entirety effective March 26, 2011.[8] The May 4 order also explained that the Commission made no finding with regard to the resettlements discussed in the April 5 technical bulletin.[9] The May 4 order then went on to state that to the extent the ISO "did not follow its tariff and CAISO determines that any surcharges or resettlements are necessary, CAISO must file with the Commission prior to any action to request authority and explain its proposal with amounts and details."[10] The Commission cited its initial order on Amendment No. 51 to the ISO tariff in support of this statement suggesting that the ISO must file with the Commission prior to any action to resettle past charges that are inconsistent with the filed tariff.[11]

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[7] As noted above, the ISO is submitting a tariff waiver filing to request Commission authorization to implement the April 5 technical bulletin insofar as it will result in the ISO not correcting bid cost recovery payments prior to August 2010 to be consistent with the filed rate.

[8] May 4 order at P 1.

[9] *Id.* at P 27.

[10] *Id.*

[11] *Id.* at P 27 n.44 (citing *California Independent System Operator Corp.*, 103 FERC ¶ 61,331 (2003) along with the parenthetical statement that "CAISO has filed with the Commission in the past regarding settlement adjustments").

III. Specification of Errors for Rehearing Request

In accordance with Rule 713(c)(1) of the Commission's Rules of Practice and Procedure,[12] the ISO respectfully submits that the May 4 order erred in the following respects:

To the extent that the May 4 order intended to require the ISO always to obtain prior Commission authorization to correct computational errors that result in charges contrary to the filed rate, it erred for the following reasons:

(a) such a requirement is contrary to the filed rate doctrine;

(b) such a requirement is an impermissible and unexplained departure from precedent;

(c) such a requirement is not supported by the Commission orders issued in the proceeding on Amendment No. 51 to the ISO tariff; and

(d) such a requirement is contrary to the filed rate applicable to ISO settlements and billing set forth in Section 11 of the ISO tariff.

IV. Statement of Issues for Rehearing Request

In accordance with Rule 713(c)(2) of the Commission's Rules of Practice and Procedure,[13] the ISO states that this request for rehearing raises the following issues:

1. To the extent that the May 4 order intended to require the ISO always to obtain prior Commission authorization to correct computational errors that result in charges contrary to the filed rate, whether that requirement is contrary to the filed rate doctrine. *See Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577-79 (1981); *California ex rel. Lockyer v. FERC*, 383 F.3d 1006, 1012 (9th Cir. 2004); *ISO New England*, 90 FERC ¶ 61,141, at 61,425 (2000); *NRG Power Marketing Inc. v. New York Independent System Operator, Inc.*, 91 FERC ¶ 61,346, at 62,166 (2000); *ALLETE, Inc. v. Midwest Independent Transmission System Operator, Inc.*, 119 FERC ¶ 61,142 at P 36 (2007); *New York Independent System Operator, Inc.*, 112 FERC ¶ 61,347, at P 7 (2005);

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[12] 18 C.F.R. § 385.713(c)(1).

[13] 18 C.F.R. § 385.713(c)(2).

Black Oak Energy, LLC v. New York Independent System Operator, Inc., 122 FERC ¶ 61, 261, at P 34 (2008).

2. To the extent that the May 4 order intended to require the ISO always to obtain prior Commission authorization to correct computational errors that result in charges contrary to the filed rate, whether that requirement is an impermissible and unexplained departure from precedent. *See Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577-79 (1981); *California ex rel. Lockyer v. FERC*, 383 F.3d 1006, 1012 (9th Cir. 2004); *ISO New England*, 90 FERC ¶ 61,141, at 61,425 (2000); *NRG Power Marketing Inc. v. New York Independent System Operator, Inc.*, 91 FERC ¶ 61,346, at 62,166 (2000); *ALLETE, Inc. v. Midwest Independent Transmission System Operator, Inc.*, 119 FERC ¶ 61,142 at P 36 (2007); *New York Independent System Operator, Inc.*, 112 FERC ¶ 61,347, at P 7 (2005); *Black Oak Energy, LLC v. New York Independent System Operator, Inc.*, 122 FERC ¶ 61, 261, at P 34 (2008).

3. To the extent that the May 4 order intended to require the ISO always to obtain prior Commission authorization to correct computational errors that result in charges contrary to the filed rate, whether that requirement is supported by the Commission orders issued in the proceeding on Amendment No. 51 to the ISO tariff. *California Independent System Operator Corp.*, 103 FERC ¶ 61,331, at PP 14-15 (2003); *California Independent System Operator Corp.*, 105 FERC ¶ 61,203, at P 22 (2003).

4. To the extent that the May 4 order intended to require the ISO always to obtain prior Commission authorization to correct computational errors that result in charges contrary to the filed rate, whether that requirement is contrary to the filed rate applicable to ISO settlements and billing set forth in Section 11 of the ISO tariff.

V. Motion for Clarification or, in the Alternative, Request for Rehearing

A. The Filed Rate Doctrine Provides ISOs and RTOs With Authority to Correct Computational Errors That Result in Charges Contrary to the Filed Rate

It is well established that a regulated public utility may not charge rates for its services other than those properly filed with the appropriate federal regulatory authority.[14] This "filed rate doctrine" has its origins in the Interstate Commerce Act and has been extended by federal courts across a wide range of utilities,

[14] *See Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577-79 (1981).

including natural gas pipelines and electric public utilities regulated under the Federal Power Act.[15]

The Commission has long recognized that public utilities, and ISOs and RTOs in particular, have the authority under the filed rate doctrine to correct technical or implementation errors in calculating rates and charges under a filed tariff. For example, in *ISO New England, Inc.*, 90 FERC ¶ 61,141 (2000), the Commission found that a proposed interim market rule was not necessary for ISO New England to correct the application of filed market rules:

> To the extent the proposed interim rule requires the ISO to correct technical implementation errors, we conclude that the proposed interim rule is unnecessary because, as discussed below, the filed rate doctrine already provides the ISO with the authority to correct errors in charging the filed rate.[16]

In that case, the Commission stated, "We remind the parties that, consistent with the filed rate doctrine, the ISO already has the authority, and is required, to correct all prices that do not reflect operation of the NEPOOL market rules (which are the filed rate)."[17]

The Commission has repeatedly affirmed this authority as it applies to all ISOs and RTOs. In another case, the Commission reminded the New York Independent System Operator, Inc. (NYISO) of its authority under the filed rate doctrine:

> Under these circumstances involving the erroneous calculation of a formula rate, the NYISO did not have to rely on any temporary

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15 *Id. See also Consolidated Edison Co. of N.Y. v. FERC,* 958 F.2d 429, 434 n.7 (D.C. Cir. 1992) ("Noting the identical language and purposes of the Federal Power Act and Natural Gas Act notice provisions, the Supreme Court has cited them interchangeably.")

16 90 FERC ¶ 61,141, at 61,425.

17 *Id.*

> authority or interim procedures to correct incorrect energy clearing prices. In *ISO New England, Inc.*, the Commission held that consistent with the filed rate doctrine, the ISO has the authority, and is required, to correct all prices that do not reflect operation of the ISO market rules (which are the filed rate). This ensures that both buyers and sellers are protected if the ISO makes computational errors and thus fails to fully follow the market rules. The NYISO has that same authority and is required to promptly correct its errors.[18]

Again citing the *ISO New England* decision, the Commission stated in a 2007 order involving a complaint against the Midwest Independent Transmission System Operator, Inc. that "consistent with the filed rate doctrine, an ISO has the authority, and is required, to correct all prices that do not reflect operation of the ISO's market rules (which are the filed rate)."[19]

The Commission has further held that, even where an ISO or RTO has tariff provisions that authorize correction of prices and charges in specific circumstances, the ISO or RTO also has general authority under the filed rate doctrine to correct prices and charges in other cases where such correction authority is not specified in the ISO's or RTO's tariff to ensure that the prices and charges are consistent with its filed rate and tariff:

> We find that NYISO was not restricted to correct prices under the limited authority of the [temporary emergency procedures] of its tariff and had general authority under the filed rate doctrine, as applied in *NRG*, to correct the erroneous prices that its load forecasting software produced on October 30, 2005.[20]

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[18] *NRG Power Marketing Inc. v. New York Independent System Operator, Inc.*, 91 FERC ¶ 61,346, at 62,166 (2000) (footnote omitted).

[19] *ALLETE, Inc. v. Midwest Independent Transmission System Operator, Inc.*, 119 FERC ¶ 61,142, at P 36 (2007).

[20] *Black Oak Energy, LLC v. New York Independent System Operator, Inc.*, 122 FERC ¶ 61,261, at P 34 (2008); *see also New York Independent System Operator, Inc.*, 97 FERC ¶ 61,095, at 61,497 (2001) ("[W]e believe it is not necessary to extend NYISO's [temporary emergency procedure] authority in order to facilitate correction of prices calculated on the basis of computational errors. Under the filed rate doctrine, NYISO already has the authority, and is

This extensive line of precedent was not discussed in the May 4 order. Although there is some ambiguity in paragraph 27 of that order, the Commission could not have intended to deviate from its line of cases reinforcing a regulated utility's obligation to implement its filed rate, and to the extent not inconsistent with other provisions of its filed rate, to correct any deviations from such filed rate.[21] In the unlikely event that the Commission did intend to require the ISO always to obtain prior Commission authorization to correct computational errors that result in charges contrary to the filed rate, the Commission should grant rehearing as such a requirement would be an impermissible and unexplained departure from precedent and would hinder ISOs and RTOs from following their filed rate, as required by applicable law. Commission precedent does not require the delay and needless uncertainty that would exist if an ISO or RTO were required to confirm that it should apply the filed rate previously approved by the Commission.

B. Commission Approval Is Required Where an ISO or RTO Proposes to Take Actions to Correct Settlement or Price Errors in a Manner Inconsistent With Its Tariff

It is true that there are many cases where the Commission has granted authorization for an ISO or RTO to correct prices or recalculate charges under a filed rate. Such authorization is only required where an ISO or RTO seeks to

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required, to take corrective actions in a timely manner in order to ensure prices consistent with its Commission-approved tariff.").

[21] The Commission has held that, where an ISO/RTO tariff includes a relevant provision governing the finality of settlement invoices, such a finality provision is part of the filed rate and must be considered in the application of the filed rate. *See New York Independent System Operator, Inc.*, 133 FERC ¶ 61,028, at PP 21-22 (2010). As explained below, the ISO tariff provides for the recalculation of settlement statements up to 36 months after the relevant trade date or later if authorized by the ISO governing board or the Commission.

pursue settlement corrections that are in some way inconsistent with the terms of the filed rate.

Commission authorization may be needed in the form of a tariff waiver. As the courts have noted, "under the filed rate doctrine, once rates have been accepted for filing under FPA § 205, utilities must adhere to those rates *absent a waiver*."[22] For example, *New York Independent System Operator, Inc.*,[23] a letter order issued by direction of the Commission, approved the NYISO's request for a waiver of provisions of the NYISO tariff to allow recalculation of undergeneration charges using a method other than the one prescribed in the then-applicable tariff. In that case, the NYISO discovered an error in the calculation of undergeneration charges going back a number of years. During the period in question, the NYISO tariff required the use of actual meter data to calculate the undergeneration charge, but only estimated meter data was available for certain periods. This case highlights the inherent authority of ISOs and RTOs to correct prices and charges to be consistent with the filed rate. The letter order noted that the NYISO had already (*i.e.*, without prior Commission authorization) made settlement corrections for this charge for other time periods based on the filed rate.[24] Prior Commission authorization was not needed for the other time periods because the NYISO had actual meter data for those periods and did not need to seek a tariff waiver to use estimated meter data for recalculations as was the case for the time period covered by the NYISO's waiver request.

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[22] *California ex rel. Lockyer v. FERC*, 383 F.3d 1006, 1012 (9th Cir. 2004) (emphasis added) (citing *Arkansas Louisiana Gas Co.*, 453 U.S. at 577).

[23] 112 FERC ¶ 61,347 (2005).

[24] *Id.* at P 7.

In another case, the NYISO asked for a different type of waiver seeking relief to avoid having to apply a potential interpretation of certain tariff provisions and instead proceed with the recomputation of certain payments to render settlements consistent with the filed rate.[25] In that case, the NYISO reported to the Commission that it had discovered that it had made errors in computing bid production cost guarantee payments going back to June 1, 2002, because, in implementing new software, certain aspects of its application did not conform to the applicable tariff requirements. The NYISO requested a waiver of any tariff requirements which could be construed to require retroactive recomputation of location-based marginal prices because recomputation of the precise impact of the mitigation errors would be difficult, if not impossible, to quantify due to the uncertainties inherent in recomputing market clearing prices retroactively. The NYISO explained that, in contrast, the correction of the guarantee payments to render them consistent with the filed rate through the adjustment of outstanding bills was much more feasible and that such billing adjustments did not constitute proposed changes to its tariff. The Commission granted the NYISO's request for a tariff waiver to allow the NYISO to correct errors it made in its computation of bid production cost guarantees when implementing certain market mitigation measures but not to have to recompute the mitigated prices. The Commission noted that in correcting the bid production cost guarantee payments, the "NYISO

[25] *New York Independent System Operator, Inc.*, 115 FERC ¶ 61,026 (2006).

is attempting to ensure that final bills, as far as possible, conform to its filed rate schedules."[26]

C. The Amendment No. 51 Order Does Not Support the Proposition that a Public Utility Must File for Commission Approval to Correct Settlements that Are Inconsistent with the Approved Tariff

The May 4 order cites to the initial order on Amendment No. 51 to the ISO tariff to support the suggestion that the ISO must file with the Commission prior to any action to resettle past charges that are not consistent with the filed tariff.[27] However, the Amendment No. 51 order does not stand for the proposition that Commission approval is needed for the ISO to pursue all resettlements and surcharges to make charges consistent with the filed rate. To the contrary, this order, along with subsequent orders in the Amendment No. 51 proceeding, support the principle that public utilities are permitted to engage in settlement reruns without prior Commission endorsement when such reruns merely apply the terms of the applicable tariff.

Amendment No. 51 involved a proposal by the ISO to modify several of the then-effective settlement provisions of the ISO tariff so that the ISO could "wall off" a series of preparatory settlement reruns that the ISO planned to use in the rerun ordered by the Commission in the proceeding relating to refunds for sales made during the Western energy crisis of 2000-2001 (the California refund proceeding).[28] The ISO did not request Commission authorization to conduct the

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[26] *Id.* at PP 45, 47.

[27] May 4 order at P 27 (citing *California Independent System Operator Corp.*, 103 FERC ¶ 61,331 (2003)).

[28] *San Diego Gas & Electric Co.*, 102 FERC ¶ 61,317, *clarified*, 103 FERC ¶ 61,078 (2003).

preparatory reruns in Amendment No. 51, but stated that these preparatory adjustments were a "necessary prerequisite" to calculating refunds under the 2003 refund order.

In its initial order on Amendment No. 51, the Commission found that the ISO had not fully explained the proposed tariff changes and related preparatory rerun adjustments or clarified why they were necessary.[29] The Commission accepted and suspended the proposed tariff revisions, and directed the ISO, in a compliance filing, to explain and justify several aspects of its proposed tariff revisions along with the preparatory rerun adjustments. Nowhere in its Amendment No. 51 order, however, did the Commission state or suggest that it was directing the ISO to provide more information on the preparatory rerun adjustments because of a general requirement that Commission approval is necessary before a public utility may conduct settlement reruns to correctly apply the filed rate. Rather, the more logical explanation is that the Commission required the ISO to provide more information on the preparatory reruns to support the requested tariff amendments.

This conclusion is further reinforced by the Commission's November 2003 order on compliance.[30] In that order, the Commission endorsed all but one of the ISO's proposed preparatory adjustments, characterizing them as "administrative in nature."[31] In addressing the individual adjustments, the Commission devoted

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[29] 103 FERC ¶ 61,331, at PP 14-15.

[30] *California Independent System Operator Corp*., 105 ¶ 61,203 (2003).

[31] *Id*. at P 22. The only adjustment that the Commission rejected related to an issue which the Commission found was already being addressed in the Commission's Enron "show cause" proceeding in Docket Nos. EL03-180, *et al*.

little or no discussion to the rationale behind most of the adjustments, other than to note that the ISO had shown that these adjustments were intended to correct errors or otherwise conform settlements so as to appropriately reflect the operative tariff rate, rule, or procedure. Once the ISO explained, and the Commission agreed, that the proposed adjustments merely implemented the applicable tariff rate, rule, or procedure (*i.e.*, the filed rate) the Commission did not require further explanation or analyze them more stringently.[32]

Moreover, the Amendment No. 51 proceeding was closely linked to several proceedings involving the Western energy crisis, most notably the California refund proceeding, in which the Commission exercised close oversight over an exceptionally complex and contentious series of interrelated settlement corrections the Commission itself had ordered. It is understandable that the Commission wished to understand the ISO's planned preparatory rerun adjustments and how they would be integrated with the reruns that would result from the Commission's directives in the California refund proceeding. It is notable that the only preparatory rerun adjustment that the Commission rejected was one in which the Commission found that the ISO's proposed adjustment directly related to an issue still under consideration in the Commission's investigation of the behavior of numerous suppliers during the California energy crisis. For all these reasons, the Amendment No. 51 orders do not support a general principle that public utilities must first seek Commission approval before

[32] For instance, in one case, the Commission found that a proposed adjustment "merely reflects the tariff procedure that would have been followed if not for the incorrect computer code." *Id*. at P 29.

engaging in reruns to correct settlements so that they appropriately reflect the terms of the applicable tariff.

D. The ISO Tariff Provides for the Correction of Erroneous Charges without Additional Commission Approval

In addition to its general authority under the filed rate doctrine to ensure that charges are consistent with its tariff, the ISO also has authority under the express terms of its tariff to correct settlement errors. Section 11 of the ISO tariff, which is the Commission-approved filed rate applicable to ISO settlements and billing, includes a number of provisions that permit the ISO to correct erroneous settlement statements without prior Commission approval. Section 11.1.2 of the tariff states that bid cost recovery charges and payments (as well as all of the other ISO market charges and payments listed therein) will be settled in accordance with the tariff. Sections 11.29.7.1 and 11.29.7.3 of the tariff authorize the ISO to issue recalculation settlement statements during specified periods of up to 36 months after a trade date. Those Commission-approved tariff provisions make no mention of Commission authorization being required in order to correct erroneous settlement statements.

The ISO tariff also contains language expressly affirming that Commission authorization is not required for the ISO to issue recalculation settlement statements. Section 11.29.7.3 permits additional recalculation settlement statements outside of the specified time periods if "directed by the CAISO Governing Board or pursuant to a FERC order" (emphasis added). The use of the word "or" in Section 11.29.7.3 confirms that it is sufficient for the ISO to obtain governing board approval – even in the absence of a Commission order –

in order to issue recalculation settlement statements outside of the specified periods.[33] Because Commission approval is not needed for the issuance of a recalculation settlement statement it cannot be the case that a Commission order is required for the ISO to issue recalculation settlement statements *within* one of the specified periods.

The ISO's correction of erroneous settlement statements containing bid cost recovery overpayments for the time period from August 2010 through February 2011 – without a Commission order – is authorized under these provisions of the ISO tariff. These resettlements do not involve price corrections or settlement errors identified in a settlement statement contested by another market participant, which are covered by other provisions of the ISO tariff. As explained in the April 5 technical bulletin, and as further discussed in the ISO's waiver request, these resettlements are necessary to correct the error in the calculation of bid cost recovery payments which failed to fully account for market revenues. Further, the ISO's correction of the erroneous settlement statements does not even require ISO governing board approval, because the corrected settlement statements will be issued during one of the specified periods for recalculated settlement statements set forth in the ISO tariff.

[33] Similarly, the Commission-approved definition of the term "Recalculation Settlement Statement" in Appendix A to the tariff affirms that the ISO is authorized to correct settlement statements outside of the specified periods subject only to ISO governing board approval, not a Commission order. That term is defined as the "recalculation of a Settlement Statement in accordance with the provisions of the CAISO Tariff, which includes the Recalculation Settlement Statement T+38B, the Recalculation Settlement Statement T+76B, the Recalculation Settlement Statement T+18M, the Recalculation Settlement Statement T+35M, the Recalculation Settlement Statement T+36M or any other Recalculation Settlement Statement authorized by the CAISO Governing Board." (Emphasis added.)

The ISO also wishes to emphasize that it has provided full transparency to market participants every time it has corrected settlements implementation errors to ensure compliance with the filed rate under its tariff. The ISO has issued a market notice or technical bulletin prior to making such corrections, thus allowing market participants to assess the merits of the ISO's proposed settlements corrections. Market participants also have full rights to challenge corrected settlement statements after they are issued. Pursuant to Section 11.29.8.4 of the ISO tariff, market participants have the ability to dispute all incremental changes on any recalculation settlement statement issued from seven business days after the applicable trade date (T+7B) through the recalculation settlement statement issued up to thirty-five months after the applicable trade date (T+35M). Moreover, pursuant to Section 13 of the ISO tariff, market participants can raise objections to any ISO corrections through the ISO's alternative dispute resolution procedures and ultimately with the Commission. Therefore, market participants have a full opportunity to examine and dispute settlement statement corrections, both before and after the ISO makes them.

Thus, in addition to its general authority to correct erroneous prices and charges under the filed rate doctrine, the ISO tariff also sets forth a filed rate that expressly provides the ISO with the authority to engage in resettlement activities without Commission approval, including the issuance of surcharges as appropriate. The Commission should clarify that paragraph 27 of the May 4 order should not be misconstrued to limit or alter the ISO's authority to resettle erroneous charges under Section 11 of the ISO tariff. In the alternative, the ISO

seeks rehearing on this issue, as the Commission has provided no basis for requiring the elimination or modification of these provisions of the ISO tariff.

VI. Conclusion

For the reasons discussed herein, the ISO requests that the Commission grant clarification or, in the alternative, rehearing of the May 4 order, and confirm that the Commission did not intend to contravene long-standing precedent that ISOs and RTOs have the authority to correct settlement errors when charges are not calculated in accordance with the filed rate. The Commission should also confirm that the May 4 order was not intended to limit or alter the ISO's authority to resettle erroneous charges under Section 11 of the ISO tariff.

Respectfully submitted,

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Dated: June 3, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service list in the 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 Washington, D.C., this 3rd day of June, 2011.

/s/ Bradley R. Miliauskas
Bradley R. Miliauskas