

136 FERC 61,012
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

California Independent System Operator
Corporation

Docket No. ER11-3408-000

ORDER ON COMPLIANCE

(Issued July 5, 2011)

1. On April 20, 2011, California Independent System Operator Corporation (CAISO) submitted a compliance filing containing tariff revisions to comply with Commission orders issued on January 20, 2011¹ and April 8, 2011.² CAISO's proposed revisions in compliance with the January 2011 Compliance Order and Order on Clarification are accepted, effective April 20, 2011, subject to further compliance, discussed below.

I. Background

2. On October 17, 2008, the Commission issued Order No. 719, which required independent system operators and regional transmission operators to evaluate their operations regarding demand response, long-term power contracting, market monitoring, and responsiveness to stakeholders and customers.³ CAISO submitted its initial

¹ *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,050 (2011) (January 2011 Compliance Order).

² *Cal. Indep. Sys. Operator Corp.*, 135 FERC ¶ 61,016 (2011) (Order on Clarification).

³ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 FR 64100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008) (Order No. 719 or Final Rule), *order on reh'g*, Order No. 719-A, 74 FR 37776 (Jul. 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order 719-B, 129 FERC ¶ 61,252 (2009).

compliance filing in response to Order No. 719's directives on April 28, 2009. The Commission issued an order on CAISO's initial compliance filing on November 19, 2009, directing CAISO to submit a second compliance filing to address five changes related to market monitoring.⁴ CAISO submitted its second compliance filing on February 18, 2010.

3. In its January 2011 Compliance Order on CAISO's second compliance filing, the Commission found CAISO had not complied with the Commission's policies on enforcement and sanctions. The January 2011 Compliance Order provided CAISO with additional guidance regarding these issues. The Commission directed CAISO to make two minor amendments to Appendix O of its tariff, and to review and resubmit section 37 to ensure that the tariff correctly identified when CAISO, rather than the Commission, can impose sanctions for tariff violations.

4. On February 4, 2011, CAISO submitted a request for an extension of time to submit the compliance filing to April 20, 2011, which the Commission granted on February 16, 2011.⁵ On February 20, 2011, CAISO filed a request for clarification or, in the alternative, rehearing of the January 2011 Compliance Order, and later, an errata correcting tariff section citations in the Request on March 25, 2011.⁶ In response, the Commission issued the Order on Clarification to address CAISO's Request, providing several points of clarification. CAISO submitted the instant filing on April 20, 2011.

5. As relevant here, in its April 20, 2011 compliance filing, CAISO proposes to revise tariff section 37.4.3.1, regarding a Market Participant's expected conduct in the event of a Forced Outage. In this section, CAISO proposes to delete language stating that Operators must "promptly provide" requested additional information, replacing that language with a provision that states that the "Operator must provide information requested by the CAISO within the deadline established in the request for additional information." Otherwise, the operator is subject to sanctions of \$500 per day.

⁴ *Cal. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,157 (2009) (Initial Compliance Order).

⁵ See February 16, 2011 Notice of Extension of Time, *Cal. Indep. Sys. Operator Corp.*, Docket Nos. ER09-1048-002 and ER06-615-059.

⁶ See March 25, 2011 Errata to the February 22, 2011 Motion for Clarification, *Cal. Indep. Sys. Operator Corp.*, Docket Nos. ER09-1048-003 and ER06-615-060.

II. Notice and Responsive Pleadings

6. Notice of the compliance filing was published in the *Federal Register*, 75 Fed. Reg. 9889 (2010), with interventions and comments due on or before May 11, 2011. Timely motions to intervene were filed by the Modesto Irrigation District (Modesto) and the Transmission Agency of Northern California (TANC). A motion to intervene and limited protest was filed by the City of Santa Clara, California, doing business as Silicon Valley Power (SVP). On May 26, 2011, CAISO filed an answer (CAISO Answer) to SVP's protest. SVP submitted an answer to the CAISO Answer on June 9, 2011.

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept CAISO's and SVP's answers because they have provided information that has assisted us in our decision-making process.

B. Parties' Positions

1. SVP's Protest

8. In its protest, SVP argued that the tariff revisions CAISO proposed in sections 37.4.3.1 and 37.4.4 exceed the scope of, and, in part contradict, the Commission's directives in the January 2011 Compliance Order.⁷ In its subsequent answer, SVP withdrew its protest of proposed tariff section 37.4.4.

9. SVP asserts that the Commission did not direct CAISO to revise section 37.4.3.1. SVP explains that while the Commission ordered CAISO to revise certain other tariff provisions to define "timely" as it applies to deadlines, the Order on Clarification did not extend this direction to section 37.4.3.1. By amending this section to require market participants to submit requested information by the deadline established in the request, SVP contends that CAISO has established a new authority to impose deadlines. SVP contends that a compliance filing is not the proper venue for substantive tariff revisions, stating that Commission precedent defines the sole purpose of compliance filings as to make directed revisions. Therefore, SVP requests that the Commission reject CAISO's proposed revisions to this section, as inconsistent with the Commission's directives. SVP

⁷ SVP Protest at 6.

notes that if CAISO chooses to propose this tariff revision, it can do so in a section 205 filing.⁸

2. CAISO's Answer

10. CAISO states that SVP's protest mischaracterizes and inaccurately reflects prior filings and Commission orders, while failing to identify any factual or legal basis for rejecting the compliance filing.⁹ Instead, CAISO contends that the revisions to section 37.4.3.1 are consistent with the Commission's directives and the Order on Clarification.

11. CAISO explains that its proposed amendments to section 37.4.3.1 comply with the Commission's directive by explaining the requirements for market participants to submit timely information. CAISO notes that while the Commission granted its request for clarification, specifically regarding section 37.8, the Commission's decision – that CAISO's authority to issue an information request carries with it an inherent authority to establish a deadline for compliance – applies to section 37.4.3.1 as well.

3. SVP's Answer

12. In light of information provided in CAISO's Answer, SVP states that it will withdraw its concern regarding section 37.4.4; nevertheless, SVP maintains that CAISO's proposed revisions to section 37.4.3.1 are outside the scope of the directed compliance filing.¹⁰ SVP contends that even with an inherent authority to establish deadlines, as contemplated in the CAISO Answer, the Order on Clarification did not allude to any inherent authority.¹¹ SVP argues that the Order on Clarification specifically stated that CAISO must have the tariff authority to establish deadlines in order to redefine "timely" as "compliance with a tariff-imposed deadline or a stated deadline established by CAISO under the tariff."¹² Therefore, SVP contends that CAISO's proposed revisions to section 37.4.3.1 create an explicit tariff provision granting such authority which, SVP asserts, exceeds the permissible scope of a compliance filing. Furthermore, SVP states that if CAISO already has the inherent authority to establish deadlines for market participants to

⁸ SVP Protest at 8.

⁹ CAISO Answer at 2.

¹⁰ SVP Answer at 6.

¹¹ SVP Answer at 5-6.

¹² SVP Answer at 5 (referring to the Order on Clarification, 135 FERC ¶ 61,016 at P 18).

comply with information requests, then revisions to the current tariff provision are unnecessary.¹³

Commission Determination

13. We find that CAISO has generally complied with the Commission's compliance directives. As discussed below, with one exception, we agree with CAISO's proposed revisions in tariff section 37 and sections 1.1 and 9.6 of Appendix O. However, we find that CAISO's proposed revisions in tariff section 37.4.3.1 do not comply with the January 2011 Compliance Order's directives. Therefore, we will accept CAISO's proposed tariff revisions subject to a further compliance filing, as discussed below.

14. As discussed above, CAISO revised section 37.4.3.1 to state that market participants must provide information requested by CAISO within the deadline established in the request for additional information, or be subject to sanctions under proposed section 37.4.3.2. We find that section 37.4.3.1 does not comply with the CAISO's compliance obligations because the January 2011 Compliance Order stated that CAISO may only impose sanctions for violations of wholly objective requirements and standards.¹⁴ As proposed, section 37.4.3.1 would allow CAISO to establish any deadline it chose in each information request, without an objective standard for guidance. Such a result is not permissible since it would leave the establishment of these deadlines to CAISO's discretion rather than to an objective standard imposed in or by the tariff.¹⁵ Therefore, we find that CAISO's proposed revisions to section 37.4.3.1 do not comply with the compliance obligations directed in both the January 2011 Compliance Order and Order on Clarification.

15. In order to impose sanctions for a violation of section 37.4.3.1, CAISO must revise this section to establish, within the tariff, an objective deadline for market participants to respond to requests for additional information. For example, CAISO may revise section 37.4.3.1 to impose a deadline of a specified minimum number of days from receiving the information request. Accordingly, we direct CAISO to submit a compliance filing to revise section 37.4.3.1 within 30 days of the date of this order.

¹³ *Id.*

¹⁴ January 2011 Compliance Order, 134 FERC ¶ 61,050 at 14 ("If the clarified requirement retains any element that is not strictly objective, then CAISO may not sanction a market participant for a violation....").

¹⁵ *Id.*

The Commission orders:

(A) CAISO's compliance filing is accepted subject to condition, effective April 20, 2011, as discussed in the body of this order.

(B) CAISO is hereby directed to submit a compliance filing in this docket within 30 days of the date of this order, as discussed in the body of the order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.