

135 FERC ¶ 61,016
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 Nos. ER09-1048-003
ER06-615-060

ORDER ON CLARIFICATION AND REHEARING

(Issued April 8, 2011)

1. On February 22, 2011, the California Independent System Operator Corporation (CAISO) submitted a Request for Clarification or, in the Alternative, Rehearing (CAISO Request) of the Commission's January 20, 2011 order in the captioned dockets.¹ We grant in part and deny in part the requested clarifications, and we deny the requests for rehearing, as discussed below.

I. Background

2. Order No. 719² established reforms to improve the market monitoring structure of Independent System Operators (ISO) and Regional Transmission Organizations (RTO). The Commission did not mandate a specific structure for Market Monitoring Units (MMU), but required that each RTO and ISO, through its stakeholder process, decide its own MMU structure.³

¹ *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,050 (2011) (January 20, 2011 Order).

² *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008) (Order No. 719), *order on reh'g*, Order No. 719-A, 74 Fed. Reg. 37,776 (July 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 128 FERC ¶ 61,252 (2009).

³ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 326.

3. On April 28, 2009, CAISO proposed to revise its tariff to comply with the Commission's directives in Order No. 719. CAISO chose to maintain its market monitoring structure, consisting of an internal monitor, the Department of Market Monitoring (DMM), and an external advisor, the Market Surveillance Committee (MSC). CAISO made several modifications to its MMU structure and functions to comply with the Commission's directives.

4. On November 19, 2009, the Commission directed CAISO to, among other things, review its tariff to clarify enforcement provisions and to ensure that only objectively identifiable conduct is subject to sanction by CAISO consistent with Order No. 719 and the Commission's sanction policy.⁴ On February 18, 2010, CAISO submitted its compliance filing.

5. The January 20, 2011 Order accepted CAISO's proposed tariff modifications subject to additional compliance related to provisions involving enforcement and sanctions. The Commission found that CAISO had not modified its tariff to be fully consistent with the Commission's regulations and enforcement principles and sanction policy. The January 20, 2011 Order provided additional guidance to CAISO regarding these issues and directed CAISO to modify section 37, Appendix P, and other portions of its tariff to comply with the Commission's sanction policy.⁵ The Commission directed revisions, including changes to CAISO's authorization to impose sanctions for certain tariff violations, i.e., "traffic ticket" sanctions.⁶ On February 4, 2011, CAISO requested an extension of time to April 20, 2011 in which to submit its compliance filing. On February 16, 2011, the Commission granted CAISO's request. On February 22, 2011, CAISO submitted a request for clarification or, in the alternative, rehearing of the January 20, 2011 Order. On March 25, 2011, CAISO submitted an errata filing correcting certain tariff sections erroneously cited in its February 22, 2011 request.

II. Discussion

6. As discussed below, the Commission grants in part and denies in part CAISO's requests for clarification and denies its requests for rehearing.

⁴ *Cal. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,157, at P 96-101 (2010).

⁵ January 20, 2011 Order at P 36 (directing CAISO to resubmit portions of its tariff, along with other provisions requiring modification).

⁶ *Id.* P 33-37.

A. Sanctions and Tariff Administration

7. In the January 20, 2011 Order, the Commission noted that sections 37.3.1.1, 37.3.1.2, and 37.3.2 of CAISO's tariff appeared to be inconsistent with the Commission's sanction policies.⁷ Tariff section 37.3.1.1 provides that Market Participants must submit certain bids "from resources that are reasonably expected to be available and capable of performing at the levels specified in the Bid . . . [and to remain available] based on all information that is known to the Market Participant or should have been known."⁸ Under section 37.3.1.2, a market participant that fails to perform in accordance with section 37.3.1.1 shall be subject to having the payment rescinded for any portion of unavailable residual unit commitment (RUC) capacity or Ancillary Services. Tariff section 37.3.2 provides certain exception to section 37.3.1.

8. The Commission found that tariff sections 37.3.1.1, 37.3.1.2, and 37.3.2 are, collectively, inconsistent with the Commission's sanction policies.⁹ The Commission found that although section 37.3.1.2 specifies as a violation behavior that requires subjective determination, this tariff provision is permissible, but CAISO may not sanction a market participant for a violation of the provision. Further, section 37.3.2 provides, in part, an exception in some circumstances for bidders that submit a bid that "CAISO *expects to cause* Congestion" (emphasis added). Therefore, the Commission required CAISO to either remove the subjective elements from sections 37.3.1.1 and 37.3.2 or modify its tariff to remove CAISO-imposed sanctions for the violation.¹⁰

9. CAISO requests clarification, or in the alternative rehearing, on this issue, arguing that no sanction is imposed upon Market Participants for violations of these sections.¹¹ CAISO contends that the sections provide only for rescission of payments by CAISO for Ancillary Service or RUC capacity that is not available.¹² CAISO further seeks clarification that parallel tariff sections 8.10.8, 11.2.2.2, 11.10.9, and 31.5.7 are not subject to the Commission's policy regarding traffic ticket violations.¹³ CAISO also

⁷ *Id.* P 50.

⁸ *Id.* P 49.

⁹ *Id.* P 50.

¹⁰ *Id.*

¹¹ *See* CAISO March 25, 2011 Errata correcting cited sections from sections 37.2.3.1 and 37.2.3.2 to 37.3.1.1 and 37.3.1.2, respectively.

¹² CAISO Request at 10.

¹³ *Id.* at 12.

provides examples of tariff sections not addressed in the January 20, 2011 Order such as tariff section 12.5 (involving credit and collateralization of Market Participants) and section 31.5.2.2.2 (involving metered deviations from estimated demand) and requests clarification that these provisions will be treated as tariff administration instead of sanctions. Also, CAISO requests clarification that consequences that are referred to as penalties or sanctions outside of tariff section 37, but which really constitute tariff administration, are not penalties for the purposes of the traffic ticket guidelines.¹⁴

10. The Commission grants CAISO's requested clarifications. It is appropriate when a resource is called on for service and that service is not provided for CAISO, to the extent that the tariff provides, to rescind payment for service not rendered. The Commission has previously found that tariff provisions that constitute mitigation or permit tariff administration of ISO/RTO markets are not impacted by the Commission's sanction policy.¹⁵ The Commission agrees that rescission of payments is not an action intended to punish but rather is an administrative CAISO function intended to correct market outcomes. Thus, tariff sections 37.3.1.1, 37.3.1.2, and 37.3.1.3 (as well as parallel sections 8.10.8, 11.2.2.2, 11.10.9, and 31.5.7) need not be modified to remove all subjective elements if the tariff provisions serve a purely administrative function.¹⁶

11. As for CAISO's additional examples, we note that they are not included in the January 20, 2011 Order. However, we further note that tariff provisions do not implicate our sanction policy if they are corrective in nature and not punishment for objectionable behavior. Merely requiring sufficient collateralization from Market Participants and calculating a Metered Sub-System's demand are not punitive, but are administrative functions intended to ensure efficient operation of the markets overseen by CAISO.

12. We also clarify that actions by CAISO are not necessarily sanctions subject to the Commission's sanction policy merely because they are described as "penalties" or "sanctions" in the tariff, to the extent that the statements about penalties and sanctions in CAISO's tariff apply solely to administrative charges, as discussed above.

¹⁴ *Id.* at 12-13.

¹⁵ *PJM Interconnection, LLC.*, 134 FERC ¶ 61,040, at P 18 (2011).

¹⁶ We note that the January 20, 2011 Order also directed CAISO to amend tariff sections 37.3.1.1, 37.3.1.2, and 37.3.1.3 to remove references to section 37.7 as the Commission required elimination of section 37.7 of the tariff. January 20, 2011 Order at P 49 n.36. Such amendments are still required.

B. Tolling Penalties Pending Commission Review

13. The January 20, 2011 Order required CAISO to modify section 37.2.5 of its tariff, which provides that certain sanctions by CAISO will be tripled if underlying violations occur during a system emergency. Section 37.2.5 adds that if the enhanced sanction exceeds \$10,000 per day, the sanction “shall not be levied against the Market Participant until the CAISO proposes and the Commission approves such an enhancement.” The January 20, 2011 Order stated that there is no joint ISO/Commission approval process for CAISO sanctions. The Commission therefore required modification of the section so that either: (1) CAISO applies an objective sanction and the subject of the sanction could appeal it to the Commission; or (2) CAISO’s MMU refers the violation to the Commission in the first instance.¹⁷

14. Citing tariff section 37.2.5, and noting that it cannot levy a penalty until the Commission makes its own determination, CAISO requests clarification, or in the alternative rehearing, that it may still toll penalties for traffic ticket violations pending Commission review of a Market Participant’s appeal.¹⁸ CAISO also notes that section 37.8.10 of its tariff requires CAISO to toll the collection of any sanction if a Market Participant appeals a CAISO sanction to the Commission.¹⁹

15. We grant the requested clarification. Our sanction policy does not prohibit the tolling of penalties and CAISO may toll the collection of penalties for traffic ticket violations in cases where the penalized entity appeals the sanction to the Commission. Also, we note that the January 20, 2011 Order did not require revision of section 37.8.10.

C. Timely Submission of Information to CAISO

16. The January 20, 2011 Order directed CAISO to modify tariff sections 37.6.1.1, 37.6.1.2, 37.6.2.1, and 37.6.2.2, which address CAISO’s sanctioning authority in cases where an entity fails to timely submit required information to CAISO.²⁰ The order

¹⁷ January 20, 2011 Order at P 47.

¹⁸ CAISO further notes tariff section 37.4.4, which was not included in the January 20, 2011 Order, has similar provisions that triple penalties in the event of a System Emergency. CASIO Request at 13.

¹⁹ *Id.* at 15.

²⁰ January 20, 2011 Order at P 52-54.

required CAISO to define the word “timely” or modify the provision to clarify the behavior that is impermissible.²¹

17. CAISO requests clarification, or in the alternative rehearing, that it may define “timely” as complying with a tariff-defined deadline or complying with a deadline that CAISO has tariff authority to establish.²² CAISO also requests that the Commission clarify that so long as a traffic ticket violation may be defined with reference to an objective standard, the violation may be enforced by CAISO as a traffic ticket violation so long as CAISO has tariff authority to establish that objective standard.

18. The Commission grants this clarification in part and denies rehearing. The January 20, 2011 Order required that an objective definition of “timely” be provided in the tariff. “Timely” may be defined in the tariff as compliance with a tariff-imposed deadline or a stated deadline established by CAISO under the tariff. We note, however, that while CAISO may establish deadlines for entities to provide information, CAISO should exercise no discretion regarding whether to impose a sanction. If an entity is aggrieved by the imposition of such a sanction, it may elect to appeal the sanction to the Commission.²³

19. We will not provide CAISO’s requested clarification regarding CAISO’s ability to enforce any traffic ticket violation provided it can be defined with reference to an objective standard because CAISO’s request exceeds the scope of the January 20, 2011 Order. As explained in the January 20, 2011 Order, traffic ticket provisions must comply with three specified criteria.²⁴

D. List of Traffic Ticket Violations

20. The January 20, 2011 Order required CAISO to revise section 11.1.3 of its tariff, as necessary, to identify all traffic ticket violations in CAISO’s tariff.

²¹ *Id.* P 52.

²² CAISO Request at 19.

²³ January 20, 2011 Order at P 37 n.32 (citing section 206 of the Federal Power Act).

²⁴ *Id.* at P 34; *see also Market Monitoring Units in Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,267, at 5 (2005) (describing the three criteria).

21. CAISO seeks clarification, or in the alternative rehearing, that it may include a list of traffic ticket violations in section 37 of its tariff instead of in section 11.1.3.²⁵ We clarify that CAISO may include this list in tariff section 37. CAISO should include this provision in its upcoming compliance filing.

The Commission orders:

The Commission grants in part and denies in part the requests for clarification and denies the requests for rehearing filed by CAISO as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁵ CAISO Request at 19-20.