

142 FERC ¶ 61,111  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

California Independent System  
Operator Corporation

Docket Nos. ER12-1856-001

ER12-1856-002

ORDER ACCEPTING COMPLIANCE FILING, DENYING LATE INTERVENTIONS,  
AND DISMISSING REHEARING REQUESTS

(Issued February 13, 2013)

1. On October 1, 2012, California Independent System Operator Corporation (CAISO) filed revisions to its open access transmission tariff (tariff) in compliance with the requirements of a Commission order issued on August 31, 2012.<sup>1</sup> In this order, we find that CAISO's proposed tariff revisions comply with the August 31 Order and accept them, to be effective September 1, 2012, consistent with the effective date established in the August 31 Order. We also address motions for reconsideration or clarification of the August 31 Order filed out-of-time, deny late intervention requests, and reject answers, as discussed below.

**I. Background**

2. In Order No. 741,<sup>2</sup> the Commission adopted reforms to strengthen the credit policies used in organized wholesale electric power markets.<sup>3</sup> The Commission, among other things, directed each regional transmission organization (RTO) and independent system operator (ISO) to adopt steps to address the risk that it may not be allowed to use

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<sup>1</sup> *Calif. Indep. Sys. Operator Corp.*, 140 FERC ¶ 61,169 (2012) (August 31 Order).

<sup>2</sup> *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, FERC Stats. & Regs. ¶ 31,317 (2010), *order on reh'g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320, *order denying reh'g*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

<sup>3</sup> The background of this proceeding has previously been discussed in the August 31 Order. Thus, only the relevant background details are described briefly here.

netting and set-offs if a market participant enters bankruptcy.<sup>4</sup> The Commission required each RTO and ISO to submit tariff revisions reflecting one of the following options: (1) establish a central counterparty; (2) require market participants to provide a security interest in their transactions in order to establish collateral requirements based on net exposure; (3) propose another alternative, which provides the same degree of protection as the two above-mentioned options; or (4) establish credit requirements for market participants based on their gross obligations.<sup>5</sup>

3. On May 25, 2012, CAISO filed tariff revisions in Docket No. ER12-1856-000 (May 25 Filing) to establish itself as the central counterparty for all market transactions that it financially settles under its tariff. Five parties submitted timely comments before the June 15, 2012 comment deadline.<sup>6</sup> Relevant to this order, three parties expressed concern that CAISO, as the central counterparty, may need to purchase greenhouse gas emission permits and would then pass this cost on to market participants.<sup>7</sup> Parties noted that CAISO's May 25 Filing proposed tariff language addressing electronic tags, or E-Tags,<sup>8</sup> that may resolve the issue, but noted that much depends on how state agencies interpret the CAISO tariff language.<sup>9</sup> In response, CAISO stated that it would work with the California Air Resources Board (CARB) to ensure that, as the central counterparty, it would not become liable for procuring emissions allowances to comply with California's greenhouse gas regulations.<sup>10</sup> In addition, CAISO also stated that it would revise tariff section 11.29(a) to clarify that its status as the central counterparty is not intended to affect the tax-exempt status of transmission facilities.<sup>11</sup>

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<sup>4</sup> Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 117.

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

<sup>6</sup> Notice of CAISO's May 25 Filing was published in the *Federal Register*, 77 Fed. Reg. 33,209 (2012).

<sup>7</sup> The protesters were: Northern California Power Agency; the City of Santa Clara, California, and the M-S-R Public Power Agency; and the California Municipal Utilities Association.

<sup>8</sup> E-tags are used to schedule the transmission of electric power interchange transactions in wholesale markets. *See, e.g., Availability of E-Tag Information to Commission Staff*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,675 (2011).

<sup>9</sup> August 31 Order, 140 FERC ¶ 61,169 at P 12.

<sup>10</sup> *Id.* P 14.

<sup>11</sup> *Id.* P 20.

4. In the August 31 Order, the Commission conditionally accepted CAISO's proposed tariff revisions and directed CAISO to submit a compliance filing within 30 days of the date of the order to revise its tariff to include the clarification regarding the tax-exempt status of transmission facilities.<sup>12</sup> In relevant part, the Commission also dismissed protesters' concerns regarding the possibility that CAISO may be required to purchase emissions permits as speculative, explaining that no party had shown that the state rules would necessarily interpret CAISO's role as the central counterparty as a "first deliverer" of energy and, further, noted that CAISO had committed to work with CARB to address this issue.<sup>13</sup>

5. On October 1, 2012, CAISO submitted a compliance filing in Docket No. ER12-1856-001 to revise tariff section 11.29(a) to clarify that its status as the central counterparty is not intended to affect the tax-exempt status of transmission facilities.

## **II. Notice of Filing and Responsive Pleadings**

6. Out-of-time motions to intervene in the root docket, Docket No. ER12-1856-000, were filed by the Environmental Defense Fund (EDF), Independent Energy Producers Association (IEP), PacifiCorp, Powerex Corp. (Powerex), Southern California Edison Company (SoCal Edison), TransAlta Energy Marketing (U.S.) Inc. (TransAlta), Western Power Trading Forum (WPTF), and Sacramento Municipal Utility District (SMUD). Answers were filed by WPTF, IEP, EDF, and CAISO. On December 3, 2012, in Docket Nos. ER12-1856-000 and ER13-219-000, PacifiCorp submitted a motion for technical conference.

7. Notice of CAISO's compliance filing was published in the *Federal Register*, 77 Fed. Reg. 62,504 (2012), with interventions and protests due on or before October 22, 2012. Timely motions to intervene in Docket No. ER12-1856-001 were filed by PacifiCorp, Portland General Electric (Portland General), Arizona Public Service Company, and Iberdrola Renewables, LLC. Out-of-time motions to intervene in Docket No. ER12-1856-001 were filed by Powerex, SoCal Edison, TransAlta, IEP, and WPTF.

## **III. Discussion**

### **A. Interventions, Motions for Reconsideration, Answers, and Motion for Technical Conference in Docket Nos. ER12-1856-000 and ER12-1856-002**

8. PacifiCorp asserts it has good cause to intervene out-of-time in the root docket proceeding because CARB did not finalize its greenhouse gas regulations until after the

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<sup>12</sup> *Id.* PP 27, 35.

<sup>13</sup> *Id.* P 28.

Commission issued the August 31 Order.<sup>14</sup> Specifically, PacifiCorp states that its concerns, which may have been deemed speculative if addressed in the August 31 Order, are no longer speculative. EDF, IEP, WPTF, and SMUD state that they have good cause to intervene out-of-time in light of PacifiCorp's substantive arguments.<sup>15</sup> PacifiCorp, IEP, and SMUD state that they will take the record as it exists and will not disrupt or delay the proceeding.<sup>16</sup>

9. PacifiCorp included in its request for late intervention a request for reconsideration or clarification of the August 31 Order. PacifiCorp explains that it had previously submitted comments to CARB regarding its concerns, including concerns over CAISO's role as a central counterparty, but that, during a stakeholder meeting held on September 20, 2012, CARB clarified that it would not amend its cap-and-trade regulations to address PacifiCorp's concerns.<sup>17</sup> PacifiCorp asserts that its request for reconsideration is appropriate because CARB's final regulatory amendments, i.e. CARB's decision not to amend its regulations, constitute the "new information or evidence of changed circumstance" that Commission precedent requires for reconsideration.<sup>18</sup> Portland General supports PacifiCorp's request for reconsideration and PacifiCorp's arguments.<sup>19</sup> PacifiCorp argues that, in the August 31 Order, the Commission rejected "certain arguments" as speculative, noting that CARB was still developing its greenhouse gas regulations.<sup>20</sup> PacifiCorp asserts that, if it had raised its concerns in response to CAISO's May 25 Filing, its concerns would have been rejected as speculative. PacifiCorp argues that its concerns are now no longer speculative as CARB's rules are now final.

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<sup>14</sup> PacifiCorp October 22, 2012 Motion (PacifiCorp Motion) at 6.

<sup>15</sup> IEP November 6, 2012 Motion (IEP Motion) at 3; EDF November 6, 2012 Motion (EDF Motion) at 3; WPTF October 24, 2012 Motion (WPTF Motion) at 10.

<sup>16</sup> PacifiCorp Motion at 6; IEP Motion at 3; SMUD December 12, 2012 Motion at 3.

<sup>17</sup> PacifiCorp Motion at 7, n.16 (citing PacifiCorp comments at 3 *available at* [http://www.arb.ca.gov/lists/5-4-electricity-ws/11-arb\\_may\\_4\\_workshop\\_comments\\_pacificorp\\_051112.pdf](http://www.arb.ca.gov/lists/5-4-electricity-ws/11-arb_may_4_workshop_comments_pacificorp_051112.pdf)).

<sup>18</sup> PacifiCorp Motion at 6 (citing *Enterprise Texas Pipeline L.P.*, 117 FERC ¶ 61,025, at P 7 (2006); Order No. 2001-B, 100 FERC ¶ 61,342, at 62,556 (2002)).

<sup>19</sup> Portland General October 22, 2012 Motion (Portland General Motion) at 3.

<sup>20</sup> PacifiCorp Motion at 2, 6 (citing August 31 Order, 140 FERC ¶ 61,169 at P 28).

10. In light of CARB's September 20, 2012 decision, PacifiCorp asks the Commission to reconsider its acceptance of section 4.5.3.2.2 of CAISO's tariff, which states that CAISO is not the purchasing and selling entity (PSE) to be listed on E-Tags. PacifiCorp argues that this tariff provision contradicts the premise of CAISO's role as the central counterparty. In addition, PacifiCorp asserts that CAISO's failure to explain who market participants should list as the PSE on E-Tags forces sellers to choose between naming CAISO as the PSE on E-Tags, which complies with the applicable North American Energy Standards Board (NAESB) requirements but violates CAISO's tariff and will be rejected, or submitting an E-Tag that violates NAESB requirements but complies with CAISO's tariff by not identifying CAISO as the PSE.<sup>21</sup> Therefore, PacifiCorp requests that the Commission direct CAISO to explain who the correct PSE is for sales into the CAISO markets. Alternatively, PacifiCorp states that the Commission could clarify that its acceptance of this CAISO tariff provision is subject to further proceedings, and send CAISO and interested parties to settlement discussions with a Commission Administrative Law Judge.

11. PacifiCorp also disputes section 11.29(b) of CAISO's tariff, which states that all purchases or sales of any product or service financially settled by CAISO are deemed to occur within the State of California. PacifiCorp argues that this tariff provision may allow CARB to assert its jurisdiction over transactions that occur outside of California, such as transactions occurring at the California-Oregon border or east of the California-Arizona border. Thus, PacifiCorp requests that the Commission reconsider its acceptance of this provision, claiming that CAISO has not explained how it is just and reasonable. In the alternative, PacifiCorp requests that the Commission require CAISO to clarify its basis for this language, or that the Commission set this matter for settlement discussions.<sup>22</sup>

12. In their answers, WPTF and IEP ask that the Commission act on PacifiCorp's request expeditiously to provide certainty to the markets, in light of the importance of E-Tags to CARB's implementation of its greenhouse gas regulations.<sup>23</sup> CAISO and EDF state that CARB's greenhouse gas regulations were final and in effect before CAISO made its May 25 Filing.<sup>24</sup>

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<sup>21</sup> PacifiCorp Motion at 1-2, 8-9, 11-13. PacifiCorp states that in early 2011, at CAISO's request, PacifiCorp began showing itself as the receiving PSE on E-Tags for sales made to CAISO. *Id.* at 9.

<sup>22</sup> *Id.* at 13-14.

<sup>23</sup> WPTF Motion at 9; IEP Motion at 4.

<sup>24</sup> EDF Motion at 7; CAISO November 6, 2012 Answer at 2; CAISO November 16, 2012 Answer 2-4.

13. In its December 3, 2012 motion for a technical conference, PacifiCorp states that the Commission, CAISO, and market participants would benefit from an open discussion on the impact of CARB's cap-and-trade program and CAISO's tariff amendments on the markets in the West.<sup>25</sup> PacifiCorp also asserts that CAISO still has not clarified the issues it raised concerning E-Tag or the new language in section 11.29 of the CAISO tariff, arguing that these provisions raise compliance problems for market participants.<sup>26</sup>

### **Commission Determination**

14. We deny the late intervention requests in Docket No. ER12-1856-000. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention.<sup>27</sup> PacifiCorp, Portland General,<sup>28</sup> Powerex, WPTF, TransAlta, SoCal Edison, IEP, EDF, and SMUD have not met this burden of justifying their late intervention, as discussed below.<sup>29</sup>

15. PacifiCorp supports its request for intervention by arguing that its concerns regarding CARB's regulations did not ripen until after the root docket's intervention date when CARB announced that it would not amend its rules to address issues PacifiCorp raised during a stakeholder meeting, on September 20, 2012. However, PacifiCorp had an interest in this proceeding as early as May 11, 2012, when PacifiCorp filed comments with CARB, explaining its concern that CAISO's proposal to become the central counterparty for CAISO market transactions may impact electricity importers' compliance with CARB's regulations. Moreover, other parties to this docket raised

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<sup>25</sup> PacifiCorp December 3, 2012 Motion at 2-3.

<sup>26</sup> *Id.* at 4-5.

<sup>27</sup> *See, e.g., Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003) ("The Commission has found that parties seeking to intervene after issuance of a Commission determination in a case bear a heavy burden.").

<sup>28</sup> We note that Portland General's motion was filed in the ER12-1856-002 rehearing subdocket. We include Portland General in our determination here because the substance of its intervention refers to the ER12-1856-000 subdocket.

<sup>29</sup> *Florida Power & Light Co.*, 99 FERC ¶ 61,318, at P 9 (2002) (explaining that any potential party must take appropriate steps to protect its interests and that adopting a "wait and see" attitude and moving to intervene once the result of a Commission deliberation is known falls far short of the demonstration of good cause that would support a late intervention request).

similar concerns, timely.<sup>30</sup> Thus, we disagree with PacifiCorp that its interests in this proceeding did not ripen until the September 20, 2012 stakeholder meeting, and so we reject PacifiCorp and Portland General's motions to intervene in ER12-1856-000.<sup>31</sup>

16. We also find PacifiCorp and Portland General's requests for reconsideration or clarification are more accurately characterized as late requests for rehearing of the August 31 Order. As noted above, we find that their arguments do not establish good cause to grant intervention in this proceeding. Thus, PacifiCorp and Portland General lack standing to seek rehearing because they are not parties to the proceeding, as discussed above.<sup>32</sup> Also, an entity may not seek rehearing of an order issued prior to its becoming a party.<sup>33</sup> Further, requests for rehearing must be filed within 30 days of the issuance of the order that is being challenged, and these requests were not.<sup>34</sup> For these reasons, PacifiCorp and Portland General's requests for rehearing are dismissed.<sup>35</sup>

17. We will also deny PacifiCorp's December 3, 2012 motion for technical conference in this docket. PacifiCorp has not justified its late-filed request, and PacifiCorp's motion exceeds the scope of this proceeding. This proceeding concerns the narrow issue of establishing CAISO as the central counterparty for market transactions that it financially

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<sup>30</sup> August 31 Order, 140 FERC ¶ 61,169 at P 28.

<sup>31</sup> We also deny the motions to intervene by WPTF, IEP, EDF, SMUD, Powerex, TransAlta, and SoCal Edison made in response to PacifiCorp and Portland General's untimely motions to intervene.

<sup>32</sup> 18 C.F.R. § 385.713(b) (2012) ("A request for rehearing by a party must be filed not later than 30 days after issuance of any final decision or other final order in a proceeding."); *Southern Company Services, Inc.*, 92 FERC ¶ 61,167, at 61,566 (2000).

<sup>33</sup> *See* 18 C.F.R. § 385.214(d)(3)(ii) (2012) (a party must accept the record as it finds it at the time of its intervention).

<sup>34</sup> 16 U.S.C. § 825l (2006); *e.g.*, *City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985) (recognizing that the time period within which a party may file an application for rehearing of a Commission order is statutorily established at 30 days by section 313(a) of the FPA and that the Commission has no discretion to extend that deadline).

<sup>35</sup> Because we dismiss PacifiCorp and Portland General's requests for reconsideration or clarification, we reject the answers by WPTF, IEP, EDF, and CAISO as moot.

settles under its tariff, while PacifiCorp requests a broad investigation into the effect of California's cap-and-trade program on energy markets in the West.<sup>36</sup>

**B. Compliance Filing in Docket No. ER12-1856-001**

**1. Procedural Matters**

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene in Docket No. ER12-1856-001 serve to make the entities that filed them parties to this proceeding. Such intervention, we emphasize, is limited to the compliance subdocket and future subdockets, and does not provide party status with respect to the root docket; further, these parties do not have the right to seek rehearing of the August 31 Order, because it was issued prior to the Commission granting the motions to intervene.<sup>37</sup>

19. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant the untimely motions to intervene in Docket No. ER12-1856-001 filed by Powerex, WPTF, TransAlta, SoCal Edison, and IEP, given their interest in the compliance proceeding, the early stage of the compliance proceeding, and the absence of undue prejudice or delay.

**2. Substantive Matters**

20. In its compliance filing, as directed by the Commission, CAISO revised section 11.29(a)(iii) of its tariff to state that its status as the central counterparty is not intended to affect the tax-exempt status of transmission facilities or entitlements subject to CAISO's control. We accept CAISO's tariff revisions, as they comply with the directives of the August 31 Order, effective September 1, 2012, consistent with the effective date established in the August 31 Order.<sup>38</sup> No one commented on the merits of the compliance filing.

The Commission orders:

(A) CAISO's October 1, 2012 compliance filing is hereby accepted for filing, effective September 1, 2012, as discussed in the body of this order.

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<sup>36</sup> See *Cal. Indep. Sys. Operator Corp.*, 141 FERC ¶ 61,237, at P 28 (2012) (denying PacifiCorp's motion for technical conference in Docket No. ER13-219-000).

<sup>37</sup> See 18 C.F.R. § 385.214(d)(3)(ii) (2012).

<sup>38</sup> August 31 Order, 140 FERC ¶ 61,169 at P 35.

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(B) The late intervention requests in Docket No. ER12-1856-000 are hereby denied, as discussed in the body of this order.

(C) PacifiCorp and Portland General's requests for reconsideration or, in the alternative, clarification of the August 31 Order are dismissed, as discussed in the body of this order.

(D) PacifiCorp's motion for technical conference is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

Document Content(s)

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