

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Alliance for Retail Energy Markets)	
Shell Energy North America (US), L.P.)	
)	
v.)	Docket No. EL14-67-000
)	
California Independent System)	
Operator Corporation)	

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO COMPLAINT**

The California Independent System Operator Corporation (“CAISO”) submits this answer to the complaint filed by the Alliance for Retail Energy Markets and Shell Energy North America (US), L.P. (together, “Complainants”) on June 16, 2014.¹ Complainants assert that the CAISO resettlements in compliance with Commission orders in the Amendment No. 60 proceeding constitute impermissible retroactive rate increases and surcharges.

Complainants also ask the Commission to stay the CAISO’s issuance of invoices on the resettlement pending a Commission ruling regarding the accuracy of the resettlement amounts.

The complaint is both procedurally and substantively defective. The Commission should dismiss the complaint as premature because Complainants’ members have submitted settlement disputes to the CAISO regarding the same resettlements, which raise the same issues as the complaint, pursuant to the

¹ The CAISO submits this answer pursuant to Rules 206(f) and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.206(f), 385.213, and the Notice of Complaint issued in this proceeding on June 17, 2014.

CAISO's standard settlement dispute resolution process. Even if the Commission for some reason declines to dismiss the complaint as premature, it should deny the complaint as a collateral attack on final Commission orders establishing refund effective dates for CAISO resettlements. Regardless, Complainants' arguments lack merit. The CAISO's resettlements are consistent with the Commission's directives, the filed rate doctrine, and the rule against retroactive ratemaking.

Finally, Complainants' request that the Commission stay the CAISO invoicing is moot. The CAISO already issued invoices on June 19, 2014, and market clearing occurred on June 26, 2014. Nor can Complainants claim they would suffer the irreparable harm necessary to support a stay. The CAISO tariff requires that invoices be paid, even if disputed. If the CAISO or the Commission were to grant a dispute, the amounts paid would be refunded with interest.

I. Background

The complaint concerns the CAISO's resettlements in compliance with Commission orders in Docket Nos. ER04-835 and EL04-103 (the "Amendment No. 60 proceeding"). Those orders addressed the allocation of costs associated with the CAISO's commitment of resources pursuant to the must-offer requirement in effect during the refund period. In Docket No. ER04-835, the CAISO proposed to amend its tariff to implement, among other things, a cost allocation methodology for resource commitments depending on whether the commitment was for a local, zonal, or system purpose. Docket No. EL04-103 involved a complaint filed by Pacific Gas and Electric Company ("PG&E")

regarding the CAISO's pre-Amendment 60 allocation of commitment costs. The Commission accepted Amendment No. 60, subject to refund, effective October 1, 2004. The Commission also set PG&E's complaint for hearing with a refund effective date of July 17, 2004.²

In Opinion No. 492, issued in December 2006, the Commission approved the CAISO's Amendment No. 60 methodology, with modifications, effective on the July 17, 2004 refund effective date it established in the PG&E complaint proceeding.³ The modifications included exempting wheel-through transactions from system must-offer charges, applying the Amendment No. 60 methodology to start-up costs and emissions costs, and reclassifying must-offer resource commitments to address the Miguel constraint as zonal, rather than local.

There was one exception to the effective date approved in Opinion No. 492. Under the Amendment No. 60 allocation methodology, the CAISO allocates the must-offer costs for local needs according to the "incremental-cost-of-local" methodology.⁴ That calculation involves the use of security constrained unit commitment procedures, which the CAISO did not implement until October 1, 2004. Therefore, the Commission approved use of the incremental-cost-of-local methodology effective October 1, 2004.⁵ The Commission also directed the

² See *Cal. Indep. Sys. Operator Corp.*, 113 FERC ¶ 63,017, at PP 1-6 (2005).

³ *Cal. Indep. Sys. Operator Corp.*, 117 FERC ¶ 61,348 (2006) ("Opinion No. 492").

⁴ For resource commitments that meet both system and local needs, the CAISO allocated only the incremental-cost-of-local to load within the local area. The CAISO allocated the balance of costs on a system-wide basis.

⁵ Opinion No. 492 at P 123.

CAISO to publish sufficient information on its website for scheduling coordinators to validate the CAISO's incremental-cost-of-local calculations.⁶

In its November 2007 order on rehearing of Opinion No. 492, the Commission concluded that resource commitments to address the South-of-Lugo constraint should also be reclassified as zonal, rather than local. In addition, the Commission approved the CAISO's "proxy" methodology for calculating the incremental-cost-of-local for the period in which the security constrained unit commitment procedures were unavailable, *i.e.*, from July 17, 2004 through September 30, 2004.⁷

The CAISO made two compliance filings, one in February 2007 after issuance of Opinion No. 492, and the other in December 2007 after issuance of the rehearing order. The tariff sheets in both compliance filings listed the refund effective date approved by the Commission (July 17, 2004) as the effective date. Southern California Edison Company ("SCE") protested the CAISO's statement in the February 2007 compliance filing, asserting that the information provided on the CAISO website was insufficient to validate the incremental-cost-of-local. In the December 2007 compliance filing, the CAISO indicated that it would work with SCE to address its concerns.

The Commission accepted the CAISO's compliance filings in a September 2011 order.⁸ The Commission also directed the CAISO to submit an

⁶ *Id.* at P 49.

⁷ *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,193, at PP 25-26, 82 (2007), *reh'g denied*, 136 FERC ¶ 61,197 (2011).

⁸ *Cal. Indep. Sys. Operator Corp.*, 136 FERC ¶ 61,198 (2011).

informational filing explaining how the CAISO addressed SCE's concerns.⁹ On May 15, 2012, the CAISO submitted its informational filing explaining that it had posted data that would allow market participants to validate the incremental-cost-of-local.¹⁰

On November 5, 2013, the United States Court of Appeals for the District of Columbia Circuit issued an unpublished opinion that denied a petition for review of the December 2007 and September 2011 orders.¹¹

On December 20, 2013, and May 12, 2014, the CAISO submitted additional informational filings regarding the CAISO's resettlements (*i.e.*, refunds and recoupment of the refund amounts as a result of the resettlement) in compliance with the Commission's prior orders. In response to the December 20 informational filing, Complainants moved to intervene in this proceeding on January 10, 2014. Complainants also protested the December 20 and May 12 informational filings, and the CAISO filed answers to the protests.

The CAISO provided each affected scheduling coordinator with a disk containing files of its resettlement and provided a 30-day period to dispute the resettlement.¹² Complainants have disputed the resettlement of amounts

⁹ *Id.* at P 21.

¹⁰ The Commission had granted the CAISO an extension of time to submit the informational filing on May 15, 2012.

¹¹ *City of Anaheim v. FERC*, 540 Fed.Appx.13 (Nov. 5, 2013).

¹² See attachment A to this answer (CAISO market notice issued on May 16, 2014).

pursuant to the dispute resolution process set forth in the CAISO tariff.¹³ The CAISO is currently evaluating the Amendment No. 60 disputes.

The CAISO tariff requires each market participant to timely pay invoices for the amounts they are disputing.¹⁴ If the CAISO accepts the dispute, the CAISO must resettle the transaction in a future invoice and pay interest, at the Commission-established rate, on any changes to the market participant's settlement statements resulting from the refund.¹⁵

II. Answer

A. The Commission Should Dismiss the Complaint As Premature.

Consistent with Commission precedent, the Commission should dismiss the complaint as premature because Complainants' members have disputes pending with the CAISO regarding the Amendment No. 60 resettlement which raise the same issues as raised in the complaint.¹⁶ In such cases, the Commission has dismissed complaints as premature.

Illustrative is the J.P. Morgan Ventures Energy Corp. ("J.P. Morgan") matter. In 2012, J.P. Morgan filed a complaint alleging that the CAISO had violated its tariff by underpaying J.P. Morgan for energy generated pursuant to certain exceptional dispatch instructions issued by the CAISO. Prior to the complaint, J.P. Morgan filed a dispute with the CAISO regarding the same

¹³ Members of Complainants filed their disputes pursuant to section 11.29.8.4 of the CAISO tariff.

¹⁴ CAISO tariff section 11.29.8.6.

¹⁵ CAISO tariff section 11.29.10.2.

¹⁶ Complaint at 6. Complainants also state that their members plan to file more such disputes in the future. *Id.*

matter, and that dispute was still pending. The Commission dismissed the complaint without prejudice as premature because J.P. Morgan's dispute was still pending in the CAISO's dispute resolution process.¹⁷ The Commission found that it is "well established that the Commission strongly encourages parties to attempt to resolve their disputes before bringing them to the Commission" and that there was "no reason to subvert" the established CAISO dispute resolution process.¹⁸ The Commission noted that the CAISO was obligated to provide interest on any changes to J.P. Morgan's settlement amounts should J.P. Morgan receive an adjustment pursuant to the dispute resolution process, which would prevent any harm that J.P. Morgan might incur due to delayed payment.¹⁹

Similarly, the Commission should find that Complainant's claims are premature. As in the J.P. Morgan proceeding, Complainants' complaint addresses the same dispute pending in the CAISO dispute resolution process. To avoid subverting that process, the parties should attempt to resolve the dispute in that process before the Commission entertains any complaint. Further, as in *J.P. Morgan*, Complainants will not be financially harmed during the dispute resolution process, because if the CAISO is obligated to pay interest at the Commission rate if it adjusts the resettlement amounts.

¹⁷ *J.P. Morgan Ventures Energy Corp. v. Cal. Indep. Sys. Operator Corp.*, 141 FERC ¶ 61,191, at P 14 (2012), *reh'g denied*, 142 FERC ¶ 61,150 (2013).

¹⁸ *Id.*

¹⁹ *Id.*

B. The Complaint Should be Denied on the Merits.

Even if the complaint could proceed procedurally, it lacks merit.

Complainants argue that the CAISO is seeking to collect refunds that the Commission did not order and is impermissibly surcharging market participants in violation of the filed rate doctrine.²⁰ To the contrary, the CAISO's resettlement precisely reflects the Commission orders, and the CAISO is applying the filed rate. The complaint thus constitutes an impermissible collateral attack on the Commission's orders and is substantively meritless.

1. The Complaint Is a Collateral Attack on the Commission's Amendment No. 60 Orders.

Opinion No. 492 required the CAISO to revise its allocation methodology for minimum load compensation costs, startup costs, and emission's costs *as of the refund effective date established by the Commission.*²¹ Accordingly, the CAISO must treat must-offer commitments to address the Miguel constraint as zonal rather than local.²² Thus, to comply with Opinion No. 492, the CAISO must resettle commitments for Miguel that the CAISO made prior to Opinion No. 492 and originally settled as local commitments, as zonal commitments going back to July 17, 2004. Similarly, the CAISO must resettle commitments for South of Lugo that the CAISO made prior to the November 2007 order on rehearing and

²⁰ Complaint at 3-6.

²¹ Opinion No. 492 at P 123.

²² *Id.* at P 31.

originally settled as local commitments, as zonal commitments going back to July 17, 2004.²³

The Commission's Amendment No. 60 orders required more than just the Miguel and South of Lugo resettlements, but these examples demonstrate that, in order to comply with the Commission's express directives, the CAISO must resettle the market back to the refund effective date. With respect to Miguel and South of Lugo, this requires reversing out (through charging and crediting) the original local cost settlement and allocation and resettling the market (through charging and crediting) based on the zonal cost settlement and allocation. There are no other means for the CAISO to comply with the Commission's order.

The CAISO fully explained its resettlement methodology and submitted the appropriate tariff changes in its compliance filings. The Commission approved the compliance filings, and the orders are final.²⁴ Complainants failed to seek rehearing of these orders, and the deadline has long since passed. Complainants could have participated in the Amendment No. 60 proceeding, but did not. Instead, Complainants waited until January 10, 2014 to move to intervene in the proceeding, and until June 16 to file their complaint. The complaint presents no new circumstances that would justify revisiting the

²³ 121 FERC ¶ 61,193, at PP 25-26.

²⁴ 121 FERC ¶ 61,193.

Commission's orders.²⁵ The Commission should deny the complaint as a collateral attack on those orders and an untimely request for rehearing.²⁶

2. The Resettlement Is Consistent with the Filed Rate Doctrine.

Complainants' arguments that the resettlement is a retroactive rate change are legally flawed. The CAISO is not seeking to recover costs for a prior period in which it did not have the necessary rate on file. Rather, the Commission established both of the refund effective dates after the filing of PG&E's complaint and Amendment No. 60. Thus, all market participants were on notice that the Commission could direct the CAISO to change its allocation methodology following hearing, rehearing and, potentially, judicial review. Consistent with section 205 of the Federal Power Act, the Commission allowed the CAISO to implement its Amendment No. 60 cost allocation methodology prospectively *subject to refund*. When tariff changes are made pursuant to section 205, "[t]he filed rate doctrine simply does not extend to cases in which the buyers are on adequate notice that resolution of some specific issue may cause a later adjustment to the rate being collected at the time of service."²⁷ The court

²⁵ Even if Complainants could demonstrate changed circumstances, the Commission could grant only prospective relief. 16 U.S.C. § 824e (2012).

²⁶ See, e.g., *People of the State of Cal. v. Powerex Corp.*, 139 FERC ¶ 61,210, at P 22 (2012) ("[W]e will not entertain this improper collateral attack on our *Lockyer* orders in this case"); *Cal. Indep. Sys. Operator Corp.*, 137 FERC ¶ 61,097, at P 13 (2011) ("[T]o the extent Modesto is collaterally attacking these previous determinations via its protest to PG&E's compliance filing, we reject Modesto's arguments"); *E.ON Climate & Renewables North America, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61076, at P 20 (2011) ("Option 1 represents an independent entity variation that has been accepted by the Commission and, as a result, the complaint represents a collateral attack on prior Commission orders accepting Option 1.").

²⁷ *Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1075 (D.C. Cir. 1992).

continued, noting “it is not that notice relieves the Commission of the bar on retroactive ratemaking, but that it changes what would be purely retroactive ratemaking into a functionally prospective process by placing the relevant audience on notice at the outset that the rates being promulgated are provisional only and subject to later revision.”²⁸

The Commission’s orders, and the CAISO’s resettlement in accordance with those orders, are consistent with the filed rate doctrine, the rule against retroactive ratemaking, and applicable precedent. For example, in *New England Power Co.*, 69 FERC ¶ 61,376 at 62,424 (1994), the Commission noted that it “has the authority to allow surcharge provisions in certain circumstances, when the customer knows, prior to taking service, that the rate it pays is subject to future adjustment.”²⁹ For the purposes of determining whether a rate change is impermissibly retroactive, notice need not have been explicit.³⁰

Similar reasoning applies to the period between the PG&E complaint and the effective date of Amendment No. 60. Section 206 of the Federal Power Act explicitly provides for a refund effective date. The Commission ordered refunds effective on July 17, 2004, consistent with the requirements of section 206. Because the CAISO is revenue neutral, it cannot effectuate the Commission’s order without resettling the market. Complainants had notice of that possibility when the Commission established the refund effective dates in the two

²⁸ *Id.* (quoting *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791 (D.C. Cir. 1990)).

²⁹ See also *Transcontinental Gas Pipe Line Corp.*, 55 FERC ¶ 61,446 (1991).

³⁰ See *Pub. Util. Comm’n of Cal. v. FERC*, 988 F.2d 154, 164-65 (D.C. Cir. 1993)

proceedings, but did not challenge the Commission's orders. Thus, there is no issue of retroactive ratemaking.

C. A Stay of Invoicing is Moot and Unwarranted.

Complainants state that they expect the CAISO to issue invoices on or around June 19, 2014 and argue that the Commission should direct the CAISO to stay the issuance of such invoices pending a commission decision on the complaint.³¹

The Commission has not issued a stay, and only issued a Notice of Filing requiring that parties to respond to the complaint by July 7, 2014. As such, the CAISO issued the invoices on June 19, with a required payment date of June 26.³² Thus, the request for a stay is moot.

Further, Complainants have made no showing that would justify a stay of their obligation to pay the invoices. The CAISO tariff requires all scheduling coordinators to pay the amounts invoiced even if those amounts are disputed. If the dispute is granted the tariff requires the CAISO to provide refunds with interest at the Commission interest rate. Therefore, regardless of the outcome of the dispute resolution process, Complainants will not suffer irreparable harm.

Accordingly, Complainants fail to satisfy a basic requirement for a stay.

³¹ Complaint at 7. Complainants also request that the Commission ensure that correct amounts are being invoiced. *Id.* There is no need for the Commission to take such action. The existing settlement dispute resolution process can address disputes regarding the accuracy of the resettlement charges¹. The CAISO is willing to provide scheduling coordinators that may no longer have their original settlement statements with additional detail data to assist them in validating the Amendment No. 60 resettlement.

³² See attachment B to this answer (CAISO market notice issued on June 19, 2014). Complainants paid their invoices under protest on June 26, 2014.

III. Service and Communications

All service of pleadings and documents and all communications regarding this proceeding should be addressed to the following:

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IV. Conclusion

For the foregoing reasons, the Commission should dismiss, or in the alternative should deny, the complaint submitted by the Coalition in this proceeding. The Commission should also deny the Coalition's request that the CAISO stay the issuance of invoices.

Respectfully submitted,

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Dated: July 7, 2014

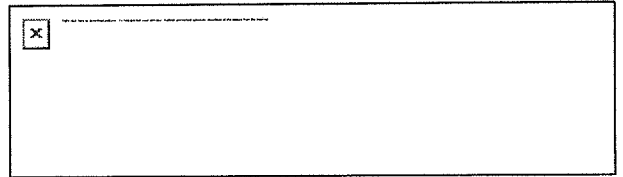
Attachment A

From: CAISO Communications <marketnotices@caisocommunications.com>
Sent: Friday, May 16, 2014 3:02 PM

Subject: Amendment 60 and Other Legacy Reruns: Revised CDs Shipped

Market Notice

May 16, 2014



Categories
Settlements and Market Clearing

Requested Client Action
Action Date

Amendment 60 and Other Legacy Reruns: Revised CDs Shipped

Summary

The ISO has shipped CDs containing revised adjustments for Amendment 60 and other legacy reruns.

Main Text

The ISO has shipped updated CDs on May 16, 2014 reflecting its revised calculations of the adjustments for Amendment 60 and other legacy reruns. In a [May 12, 2014 market notice](#), the ISO announced the distribution of updated CDs to reflect the recalculation of adjustments associated with the reclassification of ISO commitments for Miguel and South of Lugo from local to zonal commitments.

Please submit comments or inquires about the adjustments on this CD through the settlement dispute function of CIDI by June 16, 2014.

If no subsequent issues are found during the dispute review process, the ISO will post the final adjustments on settlements statements and invoice the charges and credits on June 19. Interest on the adjustments, as applicable, will be invoiced at a later date.

For additional information about these reruns, see http://www.caiso.com/Documents/Amendment60-OtherLegacyReruns_ReferenceMaterial-SchedulingCoordinators.pdf.

For More Information Contact

Your ISO Client Representative

For the benefit of our customers, we:

Attract, develop and retain a highly skilled workforce â€¢ Operate the grid reliably and efficiently â€¢ Provide fair and open transmission access

Promote environmental stewardship â€¢ Facilitate effective markets and promote infrastructure development â€¢ Provide timely and accurate information

250 Outcropping Way, Folsom, CA 95630

Attachment B

From: California ISO Communications <Marketnotices@caisocommunications.com>
Sent: Thursday, June 19, 2014 12:59 PM
Subject: Invoices for Amendment 60 and Other Legacy Reruns Published June 19, 2014

Market Notice



June 19, 2014

Categories
Settlements and Market Clearing

Requested Client Action
Action Date

Invoices for Amendment 60 and Other Legacy Reruns Published June 19, 2014

Summary

The California ISO published historic statements and invoices for Amendment 60 and other legacy reruns on June 19, 2014. Payments are due no later than 10:00 a.m. Pacific Time on June 26, 2014.

Main Text

The California ISO published historical statements and invoices for Amendment 60 and other legacy reruns to the Market Results Interface-Settlements (MRI-S) and the Secure File Transfer Protocol (SFTP) server on June 19, 2014. Statement and invoice files can be retrieved in MRI-S by setting the trade date to 03/01/2009 and the post date to 06/19/2014.

Statement	Bill Period
March 1, 2009 Historic Initial	03/01/2009

The rerun adjustments have been subject to comment and review as communicated by the ISO in a market notice on May 16, 2014. Interest on the adjustments, as applicable, will be assessed within 30 days of invoice clearing.

Payments for the invoices are due no later than 10:00 a.m. Pacific Time on June 26, 2014. The ISO will transmit market payments based upon collections from SCs as soon thereafter as feasible.

Reminder: The ISO now allows the use of the Automated Clearing House (ACH) payment system, in addition to the Fed Wire system, for all market transactions. Payments made through the ACH system cost significantly less than Fed Wires. To learn more about this option, please follow this link - http://www.caiso.com/Documents/ISO_PaymentSelectionInstructions-EFT-Form.doc.

For More Information Contact
Your ISO Client Representative

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for 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, DC this 7th day of July, 2014.

/s/ Bradley R. Miliauskas
Bradley R. Miliauskas