UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	))	Docket ER07-___-000

PETITION OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR TO WAIVE SANCTIONS FOR VIOLATION OF SECTION 31.1.4.1 OF ITS TARIFF THROUGH OCTOBER 18, 2006

Pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.207, the California Independent System Operator Corporation ("CAISO") petitions the Commission to waive sanctions under section 37.6 of the ISO Tariff[1] for violations of section 31.1.4.1 through October 18, 2006.

I. INTRODUCTION

This petition asks the Commission to exercise its authority under section 37.9.1 of the ISO Tariff to waive penalties that otherwise would be assessed against Scheduling Coordinators for failing to comply with the requirement that they submit daily Demand forecasts during the first months after the CAISO announced that it would begin enforcing penalties – specifically, from May 16, 2006, through October 18, 2006. This was a transition period when most Scheduling Coordinators were still learning how to perfect their compliance with the rule and overcome technical obstacles. Under these circumstances, and because it is clear that Scheduling Coordinators were generally making their best efforts to comply during this period, a one-time waiver is appropriate.

[1] Unless otherwise defined, capitalized terms are used in accordance with the definitions in Appendix A of the Tariff of the CAISO on file with the Commission.

II. FACTUAL AND LEGAL BACKGROUND

A. Amendment 72 to the California ISO Tariff

To prevent Scheduling Coordinators from under-scheduling Load in the Day-Ahead Market, the CAISO filed Amendment 72 in the fall of 2005 to require that Day-Ahead Schedules must include at least 95 percent of the Scheduling Coordinator's forecasted Demand. To facilitate administration of this rule, the amendment also required every Scheduling Coordinator to submit a Demand forecast by 10:00 a.m. daily for the following day. *See* CAISO Tariff § 31.1.4.1. This advance forecast is not used in calculating the CAISO's own Demand forecast, under most circumstances.

On November 21, 2005, the Commission accepted Amendment 72 subject to modification, with an effective date of September 23, 2005.[2]

B. The Enforcement Protocol

The Enforcement Protocol of the ISO tariff includes thirteen rules of behavior for Market Participants (the "Rules of Conduct") including, relevant to the daily Demand forecast, a requirement that "all information that is required to be submitted to the [CAISO] under the ISO Tariff [e.g., daily Demand forecasts, among many other things] . . . must be submitted in a complete, accurate, and timely manner." ISO Tariff § 37.6.1.1 The penalty for violation is $500 for each day the information is late. ISO Tariff § 37.6.1.2.

On July 1, 2005, the Commission authorized the CAISO to enforce the majority of the Rules of Conduct, including section 37.6, and directed the CAISO to make a

[2] *See Cal. Indep. Sys. Operator Corp.*, 113 FERC ¶ 61,187 (2005).

compliance filing implementing the authorization.[3] On December 19, 2005, the Commission accepted a separate tariff amendment through which the CAISO assumed responsibility for administering the Enforcement Protocol of its tariff.[4] The December 19 order allowed the CAISO to assume responsibility for enforcing most of the rules in the Enforcement Protocol, including Section 37.6. The Commission did not, however, provide the CAISO with enforcement discretion. Rather, it required the CAISO to enforce the rules rigidly in the first instance, and later ask the Commission for relief if and when circumstances suggest that discretion would have been appropriate (as it is doing in this petition).

In January 2006, shortly after approval of the compliance filing, the CAISO alerted its Market Participants about their new obligations and the possible penalties, and then began to phase in its own enforcement efforts. Because the Enforcement Protocol implicates numerous requirements, the initial announcements concerned the obligations in general without a focus on Demand forecast requirements.[5]

C. The CAISO Begins Enforcing Amendment 72

By mid-April 2006, the focus of enforcement efforts had shifted to the requirement of daily Demand forecasts. The CAISO announced that it would begin to assess penalties for violations beginning May 16.[6] Following the announcements, compliance improved dramatically, from 60 to 70 per cent to approximately 90 percent by May 16. By June 1, it had improved to more than 95 percent. The CAISO

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3 *Cal. Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,001 at P 9(2005). At the time, the Rules of Conduct did not appear in section 37 of the CAISO Tariff, but were part of a separate Enforcement Protocol. The Enforcement Protocol became Section 37 of the ISO Tariff when the Commission accepted the Simplified and Reorganized Tariff effective March 1, 2006. *Cal. Indep. Sys. Operator Corp.*, 114 FERC ¶ 61,199 (2006). For simplicity, the CAISO here uses solely the section 37 references.

4 Letter Order issued December 19, 2005 in Docket ER03-1102-010.

5 *See, generally,* Exhibit A (ISO general market notices).

6 *See* Exhibit B (notices from April 10 and 25).

Department of Market Monitoring ("DMM"), which is responsible for administering the Enforcement Protocol, attributed the improvement seen in compliance between May 16 and June 1 to increased familiarity with the requirements and the practicalities of compliance. On that basis and because of limited staff resources, DMM delayed the beginning of its enforcement efforts until June 1, 2006.

In addition to the ordinary learning curve associated with a new requirement, two technical problems were thwarting Scheduling Coordinators' compliance efforts. First, the interface used to load forecasts into the CAISO software did not display previous data entries. This meant that Scheduling Coordinators could upload forecasts but not download them, or otherwise confirm that they had entered forecasts properly.

Second, Scheduling Coordinators could not automate their compliance because the CAISO's system lacks the software component to facilitate automated uploading of forecasts – i.e., an application programming interface. A number of Scheduling Coordinators attempted to overcome this problem by creating routines that uploaded Schedules in the form of ASCII files, but this created new difficulties. Unknown to those Scheduling Coordinators, the interface was programmed to accept Schedules for the following day only. Thus when a Scheduling Coordinator attempted to upload several days at one time – for example, before a weekend or holiday – each successive forecast submitted would overwrite the previous one, rather than creating an additional forecast record in the CAISO system for a subsequent day. The result was that a couple of days could be missed inadvertently.

These shortcomings were mitigated when the CAISO created a routine to confirm forecast submissions via e-mail. Though it was created in April, the routine rolled out to

Scheduling Coordinators one-by-one and was not in place for every load-serving Scheduling Coordinator until October, 2006. In the interim, low levels of noncompliance persisted due to these technical obstacles and, mostly attributable to the initial part of this period, to more mundane struggles associated with integrating compliance into daily operations. The widespread nature of this difficulty indicates that mitigating circumstances existed that interfered with full compliance.

It does appear that Scheduling Coordinators were generally putting forth their best efforts, as evidenced by their compliance with a related requirement. Amendment 72 also required weekly reports about forecast, scheduled, and estimated actual Demand over the past week.[7] The same Scheduling Coordinators that struggled with the daily requirements until October achieved a perfect record with the weekly reports.

D. ISO Investigations

Beginning with Trading Day June 1, the DMM began to investigate possible violations of Section 37.6 for failure to submit daily demand forecasts. As required by Section 37.8 of its tariff, DMM formally notified Scheduling Coordinators of its investigation of potential violations and provided them an opportunity to present information relevant to the potential violation. Between June 1 and October 18, 2006, the CAISO ultimately found a total of 107 violations by 16 Scheduling Coordinators. These 16 represented approximately 60 per cent of the 27 Scheduling Coordinators that served load and could potentially violate the requirement.[8] Complete data about these violations is attached as Exhibit C (for which the CAISO is requesting privileged treatment).

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7 *See* CAISO Tariff 31.1.4.2.

8 Note that Amendment No. 72 does not apply to station power. *See Cal. Indep. Sys. Operator Corp.*, 115 FERC ¶ 61,168 at P 29 (2006).

Certain Scheduling Coordinators asked the CAISO to include their responses with this petition on a confidential basis. Their responses are included as Exhibit D (for which the CAISO is requesting privileged treatment).

III. REQUEST TO WAIVE FINANCIAL PENALTIES

A. Governing Tariff Section

Although the CAISO now has responsibility for administering the Enforcement Protocol, all discretion over enforcement remains with the Commission. The CAISO must administer the rules strictly, and then ask the Commission to exercise its discretion after the fact. The process is covered in Section 37.9.1 of the ISO Tariff:

> A Sanction specified in this Section 37 may be modified by FERC when it determines that such adjustment is just and reasonable. The [CAISO] may make a recommendation to FERC to modify a Sanction. An adjustment generally shall be deemed appropriate if the prescribed Sanction appears to be insufficient to deter the prohibited behavior, or if the circumstances suggest that the violation was inadvertent, unintentional, or some other mitigating circumstances exist.

Accordingly, if there were mitigating circumstances that would make it just and reasonable to eliminate the financial penalties associated with these violations, the Commission should grant the waiver.[9]

B. The Commission Should Exercise Its Discretion to Waive Sanctions Until the End of the Transition Period, Because Mitigating Factors Existed

Under this standard, the Commission should excuse all penalties for violations of Section 37.6 prior to October 18, 2006, arising from the failure to submit daily Demand

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9 The CAISO is not seeking to excuse the violations themselves, only to waive the financial penalties. The affected Scheduling Coordinators would not lose their right to share in the annual distribution of fines paid under the Enforcement Protocol. See CAISO Tariff 37.9.4 ("'eligible Market Participants' shall be those Market Participants that were not assessed a financial penalty pursuant to this Section 37 during the calendar year.'")

forecasts. ***First***, all violations that occurred before June 1, 2006, should be excused because the Scheduling Coordinators did not have notice that the CAISO would be enforcing Section 37.6 against failure to submit daily Demand forecasts. Although advance notice generally is not a prerequisite to assessment of sanctions, lack of advance notice should be considered as a mitigating circumstance here because the transition of the enforcement responsibilities to the CAISO subjected Market Participants to possible sanctions based on a wide range of rules, all beginning simultaneously, and without advance warning.

Second, the Commission should also excuse penalties for violations from June 1 through October 18, 2006, because Scheduling Coordinators were apparently generally making their best efforts to comply with the daily Demand forecast requirement, and the missed forecasts resulted from the ordinary learning curve and technical obstacles, which should be considered mitigating circumstances.

As a starting point, the Commission should note the steady improvements in compliance throughout the relevant period, as illustrated by the following graph:[10]

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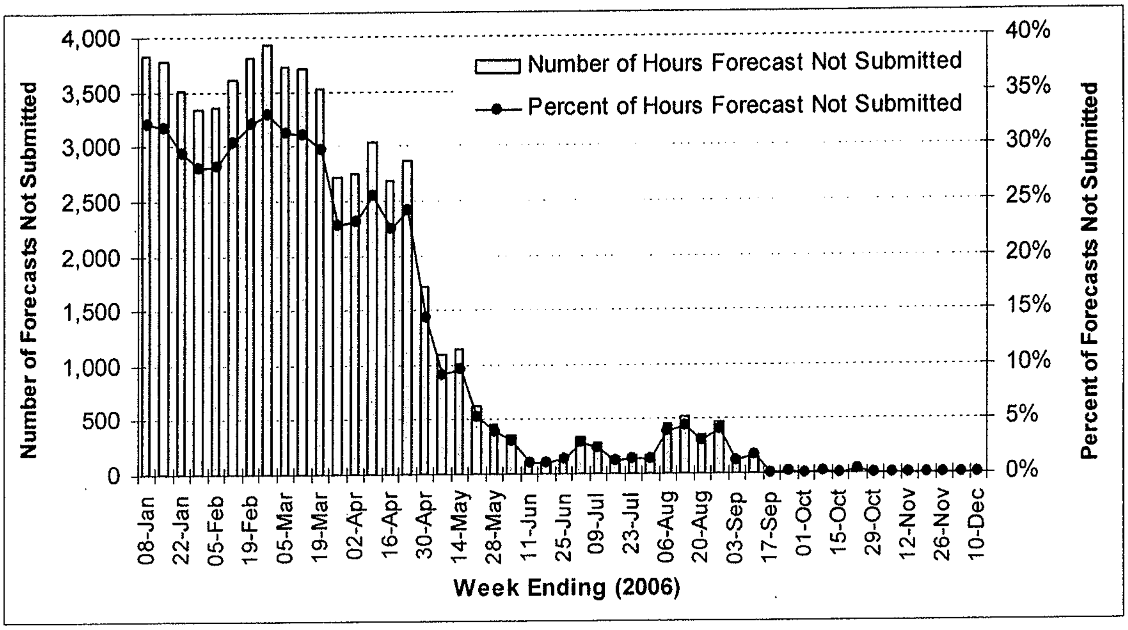
[10] Through May 31, 2006, the graph reflects instances when a Scheduling Coordinator that generally serves load failed to submit a daily demand forecast for the following day by 10:00 am. As explained in section II.C above, however, these instances have not been investigated and may not amount to violations of section 31.1.4.1. Beginning June 1, 2006, the graph tracks actual violations, as determined by the Department of Market Monitoring.



By the time DMM began enforcing the requirement on June 1, 2006, violations had stabilized at a low level. And since October 18, 2006, compliance has been virtually 100 percent.

From June through October, compliance was generally good but some errors occurred. Such errors were bound to occur due to the ordinary learning curve for new requirements and also technological issues, some of which were exacerbated by the extra efforts that some Scheduling Coordinators made to automate compliance.

DMM's review of the explanations provided by Scheduling Coordinators for the violations suggests that some of the errors occurred due to lack of training of Scheduling Coordinators' staff and lack of processes to confirm compliance with the new requirement.[11] Although violations because of training issues or lack of process controls ordinarily should not be considered inadvertent or unintentional, because it is a Market Participant's responsibility to put these things in place, some errors due to these factors can reasonably be anticipated during the start-up of a new requirement or program, or

[11] *See, e.g.*, Exhibit D (for which the CAISO is seeking privileged treatment).

after other major changes. The problem here was not merely that one or two companies lacked adequate controls, as is evidenced by the fact that violations were widespread even after the April market notices, as well as by the perfect record across the entire market for the related requirement of submitting timely summaries each week. Rather, the problem seems to have been inherent in the daily forecast requirement, perfect compliance with which was impeded by the challenges presented by the CAISO's systems and the training issues described above.

Accordingly, the Commission should consider the entire period from the effective date of Amendment 72 through October 18, 2006 as a transitional time. The Commission recognized precisely this sort of learning period in Order 693.[12] Even though it rejected "a formal trial period," the Commission "direct[ed] the ERO and Regional Entities to focus their resources on the most serious violations" and otherwise make "thoughtful use of enforcement discretion."[13] In the case of the daily demand forecasts, there were no "worst violators." As noted above, the 107 violations between June and September are spread rather evenly across 16 of the 27 Scheduling Coordinators that serve load.

Recognizing a formal transition period here would be consistent with previous waivers under the Enforcement Protocol to allow Market Participants to "get organized." For example, in September 2006, the Commission waived all penalties for late reporting of generator outages, in order to allow time for the CAISO and its Market Participants to refine the rules and develop appropriate software.[14]

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12 *Mandatory Reliability Standards for the Bulk-Power System*, Order 693, FERC Stats. and Regs. ¶ 31,242 (2007).

13 *Id.* at PP 221-22.

14 *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,226 (2006).

In addition, it is worth emphasizing that the daily Demand forecasts are not in themselves essential to maintaining reliability or competitive markets, but rather an important administrative tool to ensure compliance with the 95 percent scheduling requirements. The CAISO is not aware of significant non-compliance with these requirements due to these violations. The history described above confirms the value of the Enforcement Protocol by showing how sanctions can focus efforts to comply with market rules. For the reasons stated above, it is appropriate for the Commission to excuse financial penalties for violations during the adjustment period.

IV. REQUEST FOR CONFIDENTIAL TREATMENT

Included in a separate volume, pursuant to Commission Order Nos. 630 and 630-A,[15] is a sealed copy of Exhibits C and D, specifically the data on violations and the responses of Schedule Coordinators that were submitted to the CAISO on a confidential basis. The CAISO is seeking privileged treatment for Exhibit C because such data is confidential under the ISO Tariff. Under Section 37.9.3.1, the CAISO cannot reveal data on individual penalties until a final settlement, which could include resolution of this waiver petition. The CAISO is seeking privileged treatment for Exhibit D because, first, its disclosure would reveal the information on individual penalties such as that included in Exhibit C and, second, the CAISO was authorized to provide the letters to the Commission on the understanding that they would be provided on a confidential basis. The CAISO submits that public disclosure of these materials is therefore contrary to the public interest and they should be granted privileged treatment.

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[15] *Critical Energy Infrastructure Information*, Order No. 630, FERC Stats. and Regs. ¶ 31,140, *order on reh'g*, Order No. 630-A, FERC Stats. and Regs. ¶ 31,147 (2003).

V. CORRESPONDENCE

The ISO requests that all correspondence, pleadings and other communications concerning this filing be served upon the following:

Anthony J. Ivancovich, Assistant General Counsel
*Daniel J. Shonkwiler, Senior Counsel
The California Independent System
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151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 351-4400
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*Individuals designated for service pursuant to Rule 203(b)(3), 18 C.F.R. § 203(b)(3).

VI. SERVICE

The CAISO has served copies of this filing on the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Agreements under the CAISO Tariff. In addition, the CAISO has posted a copy of this filing on the CAISO Website.

VII. CONCLUSION

For the reasons discussed above, the CAISO submits that it would not be just and reasonable to impose financial penalties on its Scheduling Coordinators under section 37.6 of its tariff for violations of section 31.1.4.1, and requests that the Commission waive all such penalties through October 18, 2006.

July 20, 2007

Daniel J. Shonkwiler /DK

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Exhibit A

CAISO MARKET NOTICE

Requested Client Action: Information Only

Categories: ISO News and Information, Legal/ Regulatory, Market Rules and Market Design

Subject/ Title: CAISO Tariff Enforcement Protocol

Summary: The Federal Energy Regulatory Commission (FERC) has recently approved tariff modifications specifying that the CAISO's Market Monitoring Unit will administer the CAISO Tariff Enforcement Protocol and the Rules of Conduct contained therein for matters involving objectively verifiable behavior and for which violations have clear Commission approved sanctions set forth in the ISO Tariff. The prohibition on "market manipulation" in EP 7 and other violations that are not objectively verifiable will continue to be enforced by FERC.

Main Text: The CAISO Tariff Enforcement Protocol (EP) contains Rules of Conduct that specify unacceptable conduct in the CAISO markets and establishes associated sanctions and other potential consequences for violations of those rules. The Rules of Conduct are intended to provide fair notice to Market Participants of expected conduct and provide an environment in which all parties can fairly and equally participate -- thereby fostering confidence in the CAISO markets.

On December 19, 2005, FERC approved a CAISO compliance filing (http://www1.caiso.com/http://www1.caiso.com/docs/2005/08/01/2005080115430922982.pdf) that modified the EP such that it will be administered by the CAISO's Market Monitoring Unit for matters involving objectively verifiable violations and for which violations have clear Commission approved sanctions set forth in the ISO Tariff. (FERC order - 20051219: http://www.caiso.com/177a/177a926f22020.pdf.) FERC will continue to administer all matters involving EP 7 (No Market Manipulation), and all other matters involving the other Rules of Conduct for which the particular circumstances may not involve objectively verifiable violations. As part of the CAISO's recent realignment, the CAISO Department of Market Monitoring ("DMM") has been assigned the primary responsibility within the CAISO for administering the EP.

This market notice is being issued to remind Market Participants that all of the Enforcement Protocol Rules of Conduct are in effect and subject to enforcement. A new EP section with additional information is being developed on the CAISO website at http://www.caiso.com/177a/177a91f721b80.html.

For More Information Contact: Brad Cooper at 916-608-7156 or Bcooper@caiso.com.

California ISO Communications

CRCommunications@caiso.com

The California ISO strives to be the preferred provider of superior electrical transmission services for the benefit of our customers in California and the West.

EA/ComPR/IPS/ds

CAISO MARKET NOTICE

Requested Client Action: Information Only

Categories: ISO News and Information, Legal/ Regulatory, Market Rules and Market Design

Subject/ Title: CAISO Tariff Enforcement Protocol

Main Text: The CAISO has posted the document "Behavior Subject to Sanction Under The ISO's Enforcement Protocol' on the CAISO web site at http://www.caiso.com/177a/177a91f721b80.html. This document summarizes and provides examples of behavior that is subject to sanction under the CAISO's Enforcement Protocol.

For More Information Contact: Brad Cooper at 916-608-7156 or Bcooper@caiso.com.

California ISO Communications

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The California ISO strives to be the preferred provider of superior electrical transmission services for the benefit of our customers in California and the West.

EA/ComPR/IPS/ds

Exhibit B

CALIFORNIA ISO MARKET NOTICE

DATE CORRECTION

Requested Client Action: Information Only

Date of Distribution: April 10, 2006

Categories: Legal and Regulatory, Market Operations, Market Rules and Market Design

Subject: Amendment 72 Requirements and Sanctions for Late Submission

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Summary: This notice summarizes the requirements imposed by Amendment 72, which addresses Day-Ahead Demand Schedules, Demand Forecasts and weekly reports, and reminds Scheduling Coordinators (SCs) that late submission of the required information will be sanctioned $500 per day beginning the May 16, 2006 Trading Day.

Main Text: The California ISO (ISO) Tariff Amendment 72, which was approved by the Federal Energy Regulatory Commission (FERC) on November 21, 2005, requires:

What	When
1. Day-Ahead Schedules must include at least 95% of the SC's forecast Demand for each hour, for each UDC Service Area. See CAISO Tariff 4.5.4.2.1.1.	With Day-Ahead Schedules.
2. SCs must submit a Demand Forecast (through their SI Workspace) for each hour of the following Trading Day, for each UDC Service Area. See CAISO Tariff 31.1.4.1 (first).	10:00 a.m. daily.
3. SCs must submit reports (to scloadinfo@caiso.com) that compare the SC's forecasted, scheduled, and estimated actual Demand by UDC Service Area for each hour of the past week. See CAISO Tariff 31.1.4.1 (second).	Sunday HE 24 weekly. That is, seven days after the end of the week.

Additional information about these requirements, including a template for the weekly report, is posted at http://www1.caiso.com/14d8/14d8aabc1af90.html.

Sections 37.6.1.1 and 37.6.1.2 of the ISO Tariff Enforcement Protocol require Market Participants to provide information required by the ISO Tariff within the specified deadlines or pay a sanction of $500 for each day the information is late.

Beginning with the May 16, 2006 Trading Day (for which Demand Forecasts are due May 15, 2006), the ISO Department of Market Monitoring will issue sanctions under the Enforcement Protocol for failure to submit either the daily Demand Forecasts or the weekly reports that compare forecasted, scheduled, and estimated actual Demand.

Although the ISO Tariff does not penalize an SC's failure to schedule 95% of its forecast hourly Demand, the ISO reports on SCs' forecasting performance to the FERC Office of Market Oversight and Investigations. Failure to meet this requirement may be sanctionable by FERC under market rules.

For More Information Contact: For more information, contact your Client Representative or Brad Cooper, DMM, at 916-608-7156 or Bcooper@caiso.com.

The California ISO strives to be a world-class electric transmission organization built around a globally recognized and inspired team providing cost-effective and reliable service, well-balanced energy market mechanisms, and high-quality information for the benefit of our customers.

CALIFORNIA ISO MARKET NOTICE

Requested Client Action: Mark Your Calendar, Information Only

Date of Distribution: April 25, 2006

Categories: Legal and Regulatory, Market Operations, Market Rules and Market Design

Subject: Amendment 72 Requirements and Sanctions for Late Submission

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Summary: This is a reminder that, absent further direction from the Federal Energy Regulatory Commission (FERC), Amendment 72 requirements for demand scheduling, forecasting and reporting apply to all Scheduling Coordinators. They are not limited to Load Serving Entities. The ISO will conduct a conference call to answer questions related to the Amendment 72 requirements for both Load Serving Entities and Generators on Wednesday, May 3, 2006 at 10:00 a.m. PDT.

Main Text: This notice supplements a market notice that was issued April 10, 2006, reminding Scheduling Coordinators about the requirements of Amendment 72 which addresses Day-Ahead Demand Schedules, Demand Forecasts, and weekly reports and that late submission will be subject to sanction beginning with Trade Date May 16, 2006.

By the terms of Amendment 72, the demand scheduling, forecasting and reporting requirements are not limited to Load Serving Entities; they apply to "each Scheduling Coordinator." The requirement for Scheduling Coordinators to submit Demand forecasts and reports extends to all loads, including generator auxiliary load and other small incidental loads. Although FERC extended the time for Generators to comply with Amendment 72 in an order issued December 27, 2005 (Docket No. ER05-1502), that extension expired on February 3, 2006.

The California ISO (ISO) recognizes that there is some disagreement about whether the requirements of Amendment 72 should be limited to Load Serving Entities. That issue is pending before the Commission in motions for clarification and rehearing. Until the Commission grants relief on those motions or imposes a stay, the ISO intends to impose sanctions on any Scheduling Coordinator that fails to submit the required reports and forecasts beginning with the May 16 Trading Day.

Please note that the Amendment 72 requirements do not apply to RMR Contract Energy scheduled to an RMR Contract Energy Load Point pursuant to Tariff Section 31.1.2. Additional information about compliance with Amendment 72 is posted on the ISO Website at http://www1.caiso.com/14d8/14d8aabc1af90.html.

The ISO will conduct a conference call to answer questions regarding Amendment 72 requirements in general on Wednesday, May 3, 2006 at 10:00 a.m. PDT. The conference call number is 1-888-261-7938, conference code 5584466.

For More Information Contact:

Amendment 72 compliance – contact your Client Representative or Brad Cooper, Department of Market Monitoring, at (916) 608-7156 or bcooper@caiso.com.

Amendment 72 interpretation or potential FERC Filings – contact Dan Shonkwiler, Legal Affairs, at (916) 608-7015 or dshonkwiler@caiso.com.

The California ISO strives to be a world-class electric transmission organization built around a globally recognized and inspired team providing cost-effective and reliable service, well-balanced energy market mechanisms, and high-quality information for the benefit of our customers.

Exhibit C

[EXHIBIT CONSISTS OF PRIVILEGED MATERIAL REDACTED PURSUANT TO 18 C.F.R. § 388.112]

Exhibit D

[EXHIBIT CONSISTS OF PRIVILEGED MATERIAL REDACTED PURSUANT TO 18 C.F.R. § 388.112]

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed to receive service in the attached document, 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 Folsom, California this 20th day of July, 2007.

Susan Montana /DK

Susan Montana