

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

**California Independent System) Docket No. ER04-835-010
Operator Corporation)**

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO
PROTESTS**

The California Independent System Operator Corporation (CAISO)¹ submits this motion for leave to answer and answer to the protests submitted by the Alliance for Retail Energy Markets and Shell Energy North America (US), L.P. (collectively, the Coalition) and by Eastside Power Authority (Eastside) in this proceeding on April 21, 2020.² The Coalition and Eastside provide no reason for the Commission to reject the CAISO's March 31, 2020 second supplemental compliance filing (March 31 Compliance Filing).³ The March 31 Compliance Filing, together with two other compliance filings the CAISO has submitted in this proceeding, satisfies the sole compliance directive in the Commission's August

¹ Capitalized terms not otherwise defined herein have the meanings set forth in Appendix A to the CAISO tariff.

² Eastside also filed a motion to intervene in this proceeding out-of-time. The CAISO takes no position on Eastside's motion to intervene.

³ Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the CAISO respectfully moves for waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to answer the Coalition's and Eastside's protests. Good cause for this waiver exists here because the answer will answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in the proceeding. See, e.g., *Equitrans, L.P.*, 134 FERC ¶ 61,250 at P 6 (2011); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,023 at P 16 (2010); *Xcel Energy Servs., Inc.*, 124 FERC ¶ 61,011 at P 20 (2008).

28, 2019 order, which required the CAISO to submit a compliance filing “reflecting the invoices it plans to distribute for interest amounts.”⁴ The Coalition and Eastside fail to show that that the process the CAISO used to calculate those interest amounts, and the results of that process, were anything less than sound and accurate. The Coalition and Eastside also raise arguments that the August 28 Order itself was in error, which the Commission should reject as untimely requests for rehearing of that Order. On April 3, 2020, the Commission issued an order directing the CAISO to refrain from resettling its market until the Commission has accepted its complete compliance filing.⁵ The CAISO has done so. Nevertheless, when the Commission ultimately rules on this matter, it should find that the CAISO’s compliance filings comply with the August 28 Order.

I. Background

As the Commission explained in the August 28 Order, this proceeding has an extensive history.⁶ The August 28 Order addressed requests for rehearing and clarification of an October 2016 order in which the Commission rejected two informational refund reports submitted by the CAISO in December 2013 and May 2014, and dismissed as moot arguments as to whether interest should be applied to the refunds resulting from resettlements of the CAISO market.⁷

In the August 28 Order, the Commission granted in part and dismissed in part the requests for rehearing and denied the requests for clarification.

⁴ *Cal. Indep. Sys. Operator Corp.*, 168 FERC ¶ 61,127, at P 29 (2019) (August 28 Order).

⁵ *Cal. Indep. Sys. Operator Corp.*, 171 FERC ¶ 61,011, at P 15 (2020) (April 3 Order).

⁶ August 28 Order at PP 3-5.

⁷ See *id.* at PP 5-10. The October 2016 order was *California Independent System Operator Corporation*, 157 FERC ¶ 61,033 (2016). See August 28 Order at P 1.

Specifically, upon further consideration of relevant case law and recent Commission precedent, the Commission reversed its prior rejection of the 2013 and 2014 refund reports, found it was appropriate for the CAISO to administer the market resettlements in 2014, and found that interest should apply to the resulting refunds at the quarterly rate dictated by section 35.19a of the Commission's regulations.⁸ The only compliance directive in the August 28 Order was for the CAISO to submit a compliance filing "reflecting the invoices it plans to distribute for interest amounts".⁹

On October 28, 2019, the CAISO submitted a compliance filing that explained it was still in the process of calculating interest and planned to issue settlement statements and invoices by March 31, 2020 (October 28 Compliance Filing). The October 28 Compliance Filing also explained that the CAISO would submit a supplemental filing in the first quarter of 2020 reflecting interest calculations through March 31, 2020.

On March 2, 2020, the CAISO submitted a supplemental compliance filing (March 2 Compliance Filing) that explained the CAISO had calculated the interest on the minimum load cost adjustments at issue in this proceeding through March 31, 2020, and planned to publish settlement statements and invoices on March 31, 2020 and perform market clearing on April 6, 2020. The interest on the minimum load cost adjustments, which totals \$88.3 million,

⁸ *Id.* at PP 12-29. As the August 28 Order noted, the CAISO had already implemented the refunds. *Id.* at P 22. That happened in 2014.

⁹ *Id.* at P 29. The Coalition and two other parties filed requests for rehearing of the August 28 Order, which are pending before the Commission. Eastside was not a party to the proceeding and did not seek rehearing.

constitutes the majority of the interest on the reallocated must-offer cost amounts at issue here. The CAISO explained that these amounts include interest on the unpaid interest for the minimum load adjustments made in 2014 and additional interest on the unpaid interest from June 2014 through March 31, 2020.¹⁰ The CAISO also stated that it had provided each market participant with specific details regarding its interest charges and allocation for those amounts, and would reach out to affected scheduling coordinators to provide each of them with their scheduling coordinator-specific data and schedule a conference call to respond to any questions.¹¹

Regarding interest on reallocated start-up costs, which constitute the remainder of the reallocated must-offer cost amounts, the CAISO explained that it needed additional time due to the process-related challenges involved in dealing with CAISO data and systems going back over 15 years. Therefore, the CAISO planned to submit a further supplemental compliance filing by March 31, 2020 to update the Commission and parties on the status of the CAISO's efforts to document the interest on the start-up costs and to propose a timeline for issuing settlement statements and invoices for them.¹²

In the March 31 Compliance Filing, the CAISO explained that it had completed its calculations of the interest on reallocated start-up costs and would provide scheduling coordinators with their specific information. The interest on

¹⁰ March 2 Compliance Filing at 2, 4-5. As required by the August 28 Order, the CAISO calculated the interest using the applicable quarterly interest rates determined pursuant to section 35.19a of the Commission's regulations. *Id.* at 4.

¹¹ *Id.* at 7.

¹² *Id.* at 2, 5-6. See also March 31 Compliance Filing at 2-3.

reallocated start-up costs totaled \$6 million. As was the case with the calculation of interest on reallocated minimum load costs described in the March 2 Compliance Filing, the CAISO calculated the interest on reallocated start-up costs through March 31, 2020 using the data from 2014 (*i.e.*, the data the CAISO used to implement the refunds in this proceeding). The CAISO stated it would provide each scheduling coordinator with its specific start-up cost data for review and assist any scheduling coordinator that could not find or access the data from 2014. The CAISO stated that it planned to issue settlement statements and invoices for the interest amounts on April 9, 2020, and to clear the market on April 15, 2020.¹³

Parties submitted several filings in response to the March 2 Compliance Filing, including a motion filed by the Coalition requesting immediate Commission action. In the April 3 Order, the Commission “grant[ed] the Coalition’s motion in part and direct[ed] CAISO to refrain from resettling its markets or issuing final invoices to affected market participants until the Commission has accepted its complete compliance filing.”¹⁴ The CAISO therefore suspended its processing of settlement statements and invoices and cancelled any invoices it had already issued to market participants for interest (subject to reissuance if so required pursuant to future Commission directives), and returned any pre-payments to scheduling coordinators.

¹³ March 31 Compliance Filing at 1, 3-4.

¹⁴ April 3 Order at P 15.

The CAISO has completed its calculations and provided each scheduling coordinator with a spreadsheet showing its individual quarterly interest calculations. The CAISO has also provided copies of the 2014 resettlement data to any scheduling coordinator that no longer had access to that data. Therefore, the scheduling coordinators have all the resettlement data and quarterly interest calculations they need to verify the accuracy of the CAISO's calculations.

II. Answer

A. The Commission Should Find That the CAISO Has Satisfied the Compliance Directive in the August 28 Order

The Coalition argues that the March 31 Compliance Filing is “deficient” because it purportedly does not satisfy the compliance directive in the August 28 Order. Instead, the Coalition asserts, the March 31 Compliance Filing should have included interest charge calculation data for all market participants to allow the Commission to “validate the charges CAISO intends to impose.”¹⁵ In making these arguments, the Coalition misconstrues both the purpose of a compliance filing as explained by the Commission and the scope of the particular compliance directive in the August 28 Order.

“The Commission has long established that compliance filings must be limited to the specific directives ordered by the Commission. The purpose of a compliance filing is to make the directed changes and the Commission’s focus in

¹⁵ Coalition at 2-4. The Coalition’s protest makes the same arguments about the October 28 and March 2 Compliance Filings, even though the due dates for comments on those earlier compliance filings have long since passed. See, e.g., Coalition at 2 (requesting that “the Commission reject each of CAISO’s compliance filings as deficient”). The discussion the CAISO provides in this answer regarding the March 31 Compliance Filing also applies to the October 28 and March 2 Compliance Filings.

reviewing them is whether they comply with the Commission's previously stated directives."¹⁶ Thus, when the Commission requires a utility to make a compliance filing, the utility is obligated to submit a filing that complies with what the Commission has directed it to do.

In the August 28 Order, the Commission issued a single compliance directive to the CAISO: "We direct CAISO to submit a compliance filing . . . reflecting the invoices it plans to distribute for interest amounts."¹⁷ In compliance with this directive, the March 31 Compliance Filing described the CAISO's manual process for calculating the amounts shown in the invoices it planned to distribute for interest amounts on reallocated start-up costs through March 31, 2020, listed the CAISO's planned schedule for issuing those invoices, and stated that the amounts shown in the invoices would total \$6 million.¹⁸ The March 31 Compliance Filing, in combination with the October 28 and March 2 Compliance Filings, satisfies the compliance directive in the August 28 Order – *i.e.*, those three filings constitute the CAISO's "complete compliance filing".¹⁹

The level of detail contained in the March 31 Compliance Filing is also comparable to that provided in the CAISO's 2013 and 2014 refund reports.

Although the refund reports were not submitted to comply with a specific

¹⁶ *Xcel Energy Services Inc.*, 125 FERC ¶ 61,284, at P 5 (2008) (*Xcel Energy*) (citing *Pac. Gas & Elec. Co.*, 109 FERC ¶ 61,336, at P 5 (2004); *Midwest Indep. Transmission Sys. Operator, Inc.*, 99 FERC ¶ 61,302, at 62,264 (2002); *ISO New Eng. Inc.*, 91 FERC ¶ 61,016, at 61,060 (2000); *Sierra Pac. Power Co.*, 80 FERC ¶ 61,376, at 62,271 (1997); *Delmarva Power & Light Co.*, 63 FERC ¶ 61,321, at 63,169 (1993)).

¹⁷ August 28 Order at P 29.

¹⁸ March 31 Compliance Filing at 2-4.

¹⁹ See April 3 Order at P 15.

Commission directive, all of those CAISO filings are alike in providing aggregated refund information for all CAISO market participants, rather than market participant-specific information. After parties had an opportunity to review and comment on the refund reports, the Commission accepted them in the August 28 Order.²⁰ Likewise, the Commission should find that the level of detail provided in the March 31 Compliance Filing satisfies the compliance directive in the August 28 Order.

The Coalition contends that the CAISO should have submitted a purported “compliance” filing going far beyond what the August 28 Order actually directed. The mass of market participant-specific data the Coalition believes the Commission instructed the CAISO to provide would in effect turn this proceeding into a paper hearing and full-scale audit of the CAISO’s interest calculations for each and every market participant. If the Commission wanted the CAISO to provide such voluminous information for that purpose in a compliance filing, it could easily have made that expansive scope clear in the August 28 Order. But the Commission said no such thing. The information the CAISO did provide on compliance allows the Commission to reasonably verify that the CAISO is complying with the Commission’s directives. In contrast, the mass of data the Coalition believes the CAISO should have provided is not necessary for the Commission to perform that verification. Also, the CAISO has an established settlement dispute process in its tariff if an individual market participant disputes

²⁰ August 28 Order at P 12.

the specific charges on its invoice as being inaccurate, incorrect, or inconsistent with the tariff.²¹

In sum, the CAISO has done what the Commission directed it to do, as required by the specific directive in the August 28 Order. Nothing in that order or Commission precedent suggests the CAISO was required to provide detailed participant-specific transaction data of the sort the Coalition apparently believes is necessary. Therefore, the Commission should accept the March 31 Compliance Filing (along with the October 28 and March 2 Compliance Filings), and reject the Coalition's request for a CAISO filing that contains data going far beyond the scope of this compliance proceeding.

B. The CAISO's Process for Calculating the Reallocated Interest Amounts Is Accurate and Market Participants Have All the Information They Need to Verify Those Amounts

The Coalition and Eastside argue that the process the CAISO used to calculate interest on the reallocated start-up costs is flawed and that the settlement statements and invoices resulting from that process will be unreliable.²² These arguments are beyond the scope of the instant proceeding, which solely concerns whether the CAISO submitted a compliance filing reflecting the invoices it plans to distribute for interest amounts.²³ Further, as explained below, the Coalition and Eastside are mistaken about both the process

²¹ CAISO tariff, section 11.29.8.4 *et seq.* The Commission has also noted the availability of settlement dispute processes in other proceedings on compliance filings submitted by an Independent System Operator or Regional Transmission Organization reflecting a Commission-authorized resettlement. *See, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 163 FERC ¶ 61,179, at P 19 (2018) (noting that "Upper Peninsula may dispute the calculations with MISO directly . . . if it believes that MISO incorrectly calculated its refunds").

²² Coalition at 4-6; Eastside at 4-7.

²³ August 28 Order at P 29.

the CAISO used for preparing the settlement statements and invoices themselves and the product of that process.

The Coalition and Eastside misunderstand the challenges posed by the process for calculating interest on the reallocated start-up costs. The CAISO needed additional time to calculate those interest amounts because it had to manually extract the start-up cost data, which was stored in a dedicated database because the software system that was used to create the original settlement statements is no longer available to run any automated reports or calculations. This task was further complicated because the start-up cost data needed to be reconstructed from archived data, which required significant man-hours to complete the job, whereas the minimum load cost data was comparatively much more accessible.²⁴ Simply put, the settlement data is accurate, but the CAISO had to employ manual processes to assemble that data.

Once the CAISO overcame these process-related challenges, it had all the necessary information to perform the interest calculations. Further, the CAISO has provided each scheduling coordinator with a spreadsheet showing the scheduling coordinator's quarterly interest calculations. With the 2014 resettlement data the CAISO provided to scheduling coordinators and the spreadsheets in hand, all scheduling coordinators can easily validate the CAISO's interest calculations.

²⁴ March 31 Compliance Filing at 2-3. The CAISO needed to rely on estimated cost data to comply with a prior Commission directive that start-up costs be allocated in the same manner as minimum load costs. *Id.* at 3 n.6.

The CAISO also disagrees with Eastside's argument that the process described above violates the CAISO tariff.²⁵ Nothing in the tariff prohibits the CAISO from using manual processes to perform settlement calculations or interest calculations. The CAISO used the only possible means available to calculate interest on the reallocated start-up costs, which the CAISO had to do before it could prepare the compliance filing required by the August 28 Order.²⁶

As discussed above, the CAISO has enabled all scheduling coordinators to verify that the settlement statements and invoices for reallocated interest are accurate. Indeed, as the Coalition acknowledges, Pacific Gas and Electric Company (a market participant that would receive payments in a resettlement) has submitted a filing in this proceeding to explain that it believes the CAISO has calculated resettlement invoices in the proceeding accurately and fairly.²⁷ The CAISO has provided all the data the Coalition, Eastside, or any other market participant needs to verify the accuracy of the CAISO's interest calculations. Now that the CAISO has suspended the resettlement and invoicing process in accordance with the April 3 Order, each market participant will also have significantly more time to verify the accuracy of its own reallocated interest

²⁵ Eastside at 5.

²⁶ See CAISO tariff, section 11.29.7.3.2 (stating that the CAISO will not issue recalculation settlement statements other than those described in the tariff "unless directed by the CAISO Governing Board or pursuant to a FERC order").

²⁷ Pacific Gas and Electric Corporation's motion for leave to answer and answer regarding comments on the March 2 Compliance Filing, Docket No. ER04-835-010, at 1-2 (Mar. 20, 2020) (cited in Coalition's protest at 4 n.13).

amount. As a result, there is no merit to the Coalition's and Eastside's arguments that they have been given too little time for verification.²⁸

C. The Commission Should Reject the Protests to the Extent They Constitute Untimely Requests for Rehearing of Prior Commission Orders in This Proceeding

The Coalition and Eastside expressly raise arguments on matters that are at issue in the pending requests for rehearing of the August 28 Order. The Coalition asserts that the Commission erred in accepting the CAISO's 2013 and 2014 refund reports in the August 28 Order, and "[a]s stated in its request for rehearing, the Coalition respectfully requests that, if refunds (and interest) are to be charged in this proceeding, the accuracy of the 2014 market resettlement must be substantively evaluated and validly accepted as accurate by the Commission." The Coalition even attaches its pending request for rehearing to its protest.²⁹ Eastside, which only now seeks to intervene in this proceeding, did not file for rehearing of the August 28 Order. Nevertheless, Eastside argues that the August 28 Order "unsatisfactorily reviewed and at times overlooked important points raised by parties" with regard to the assessment of interest charges, and "requests that the Commission grant rehearing of the August 28, 2019 Order, and immediately end the assessment and accumulation of interest charges."³⁰

The Commission should reject these arguments in the Coalition's and Eastside's protests as untimely requests for rehearing. Court and Commission

²⁸ See Coalition at 4-5; Eastside at 12.

²⁹ Coalition at 6-9 and attachment A thereto.

³⁰ Eastside at 7-11.

precedent clearly state that the Commission is barred by section 313(a) of the Federal Power Act³¹ from considering any request for rehearing that is submitted more than 30 days after the issuance of the order the request for rehearing concerns.³² The Commission has also stated that it will reject protests regarding a compliance filing that constitute untimely requests for rehearing of, and thus collateral attacks on, the underlying order.³³ The fact that the Coalition or Eastside may not like the Commission's compliance directive in this proceeding, and may wish it were broader, does not constitute good reason for the Commission to expand it, or simply set aside its original directive. It is especially inappropriate to raise the matter through a protest of the CAISO's compliance filing, rather than through rehearing.

For these reasons, the Commission should not consider the arguments made in the protests of the Coalition and Eastside that the Commission erred in the August 28 Order. They are entirely impermissible in this proceeding on the CAISO's compliance filing.

³¹ 16 U.S.C. § 825l(a).

³² See, e.g., *Wabash Valley Power Ass'n, Inc. v. FERC*, 268 F.3d 1105, 1114 (D.C. Cir. 2001); *Londonderry Neighborhood Coalition v. FERC*, 273 F.3d 416, 424 (1st Cir. 2001); *Cal. Indep. Sys. Operator Corp.*, 168 FERC ¶ 61,105, at P 10 (2019).

³³ *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,240, at P 13 (2007) ("Moreover, these protests should have been raised on rehearing and/or clarification of the January 22 Order, and therefore we reject their requests to alter the CAISO's compliance filing as untimely and a collateral attack on the Commission's January 22 Order"); *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 argument"); *Sw. Power Pool, Inc.*, 116 FERC ¶ 61,053, at P 102 (2006) ("We find that the comments of the New Mexico Attorney General and Southwest Industrials . . . are untimely requests for rehearing of the SPP Market Order and outside the scope of the instant [compliance] filing").

III. Conclusion

For the foregoing reasons, the Commission should deny the Coalition's and Eastside's protests and accept the March 31 Compliance Filing as submitted.

Respectfully submitted,

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Dated: May 6, 2020

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 above-referenced proceeding, pursuant to 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 6th day of May, 2020.

/s/ Daniel Klein

Daniel Klein

Davis Wright Tremaine LLP