

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

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
and Norman C. Bay.

California Independent System  
Operator Corporation

Docket No. ER14-2963-000

ORDER REJECTING TARIFF REVISION

(Issued November 20, 2014)

1. On September 29, 2014, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> the California Independent System Operator Corporation (CAISO) submitted proposed revisions to its open access transmission tariff (Tariff) to eliminate a provision that requires an annual independent review of CAISO management's compliance with operations policies and procedures (independent operations review).<sup>2</sup> In this order, we reject CAISO's proposed Tariff revision, as discussed below.

**I. Background and Filing**

2. Section 22.1.2.2 of CAISO's Tariff requires CAISO's audit committee to appoint an independent party to conduct an annual review of its management's compliance with operations policies and procedures. The Tariff provision also provides for the inclusion of material issues raised by market participants, and approved by the audit committee, in the annual review. CAISO states that this Tariff requirement resulted from the stakeholder process leading up to the filing of its original proposed Tariff in 1997 and has remained substantially the same since CAISO began operations on March 31, 1998.<sup>3</sup>

3. In the instant filing, CAISO proposes to remove Tariff section 22.1.2.2 in its entirety, eliminating the requirement for the annual independent operations review. CAISO asserts that general advancements in the electric industry and specific

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> CAISO Tariff, § 22.1.2.2.

<sup>3</sup> CAISO September 29, 2014 Filing at 2 (CAISO Filing).

advancements in its operations compliance obviate the need for the annual review. First, CAISO explains that its compliance with the North American Electric Reliability Corporation's (NERC) reliability standards and Western Electricity Coordinating Council's (WECC) regional reliability standards mandates the annual self-certification of numerous requirements related to operations.<sup>4</sup> CAISO notes that both NERC and WECC retain the authority to audit or spot check CAISO's compliance with their standards at any time. Second, CAISO states that its corporate compliance and internal audit departments have developed a comprehensive compliance program that includes an annual risk assessment of all CAISO process areas, including operations. Thus, CAISO argues that the independent operations review is "anachronistic and unnecessary."<sup>5</sup>

4. CAISO adds that, over the past four years, no market participant has responded to its yearly request for input concerning the scope of the independent operations review. In addition, CAISO states that no market participant has provided comments during public meetings when the independent operations review was a topic available for discussion.<sup>6</sup> CAISO notes that, in the stakeholder process, no stakeholder objected to the elimination of the annual review, although one commented. CAISO also notes that, likewise, at the Board of Governors meeting to consider this tariff proposal, no stakeholder objected or commented.

5. CAISO states that it incurs significant vendor expenses in retaining an independent accounting firm to perform the annual review, despite the lack of stakeholder interest in each year's proceedings. CAISO argues that it is difficult to justify these costs when its internal audit and compliance departments essentially perform the same type of operational review as the independent operations review.

6. Finally, CAISO argues that eliminating section 22.1.2.2 of its Tariff will not affect the ability of its market participants to raise issues of concern or for CAISO to perform audits to address concerns when necessary. Specifically, CAISO states that section 22.1.2.4 of its Tariff provides its audit committee with the authority to initiate audits relating to issues and concerns raised by market participants that it deems to be of significant and critical magnitude.<sup>7</sup> CAISO adds that no other regional transmission

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<sup>4</sup> *Id.* at 3.

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

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.* See CAISO Tariff, § 22.1.2.4.

organization (RTO) or independent system operator (ISO) tariff contains similar review requirements.<sup>8</sup>

7. For these reasons, CAISO asserts that the requirement to perform the independent operations review is outdated and unnecessary and, thus, should be eliminated. CAISO requests that the Commission accept its proposal to remove section 22.1.2.2 from its Tariff effective November 29, 2014.

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

8. Notice of CAISO's filing was published in the *Federal Register*, 79 Fed. Reg. 60,461 (2014), with interventions and protests due on or before October 20, 2014. Timely interventions were filed by the City of Santa Clara, California; Modesto Irrigation District; and Pacific Gas and Electric Company. Timely motions to intervene and comments or protests were filed by the California Department of Water Resources State Water Project (SWP), Powerex Corp. (Powerex), and Western Power Trading Forum (WPTF) (collectively, Protestors).<sup>9</sup> On October 28, 2014, CAISO filed an answer to the comments and protests.

9. Protestors assert that the Commission should reject CAISO's proposal to eliminate the independent operations review set forth in section 22.1.2.2 of its Tariff. Protestors argue that the annual review provides market participants with a valuable mechanism to obtain information without expense or undue burden regarding CAISO's operational practices that would otherwise be difficult to obtain. WPTF explains that this information could be particularly useful in the event that a market participant wishes to file a complaint against CAISO under section 206 of the FPA.<sup>10</sup> SWP adds that the independent operations review contemplates other issues, such as economic or market impacts that do not affect reliability, which the NERC reliability standards do not.<sup>11</sup>

10. Protestors also contend that, contrary to CAISO's arguments, the review process described in section 22.1.2.4 of CAISO's Tariff, Interim Audits, does not provide market participants with an adequate replacement for the independent operations review CAISO proposes to eliminate.<sup>12</sup> Protestors explain that section 22.1.2.4 of CAISO's Tariff does

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<sup>8</sup> *Id.* at 6.

<sup>9</sup> Powerex states that it submits comments in support of WPTF's protest.

<sup>10</sup> WPTF October 20, 2014 Comments (WPTF Comments) at 3.

<sup>11</sup> SWP October 20, 2014 Comments (SWP Comments) at 6.

<sup>12</sup> CAISO Tariff, § 22.1.2.4.

not require the audit committee to initiate an audit at the request of a market participant. Instead, CAISO's audit committee retains the sole discretion to choose which issues are significant enough to warrant an audit. In addition, Protestors explain that section 22.1.2.4 of CAISO's Tariff imposes the costs of the audit on the market participant that raises the issue unless the audit committee determines otherwise.<sup>13</sup> Therefore, Protestors argue that the Interim Audits process is a poor substitute for the independent operations review that CAISO seeks to eliminate.

11. Finally, WPTF disputes CAISO's classification of the annual review as outdated, noting that the 2010 and 2011 independent operations reviews identified instances of noncompliance and resulted in improvements to CAISO's operational practices.<sup>14</sup> Moreover, in light of the recent changes to CAISO's market processes, such as the energy imbalance market and 15-minute market, Protestors assert that stakeholder interest in the independent operations review may increase and that it would be unwise to eliminate the annual review requirement at this time.<sup>15</sup>

12. In response, CAISO maintains that eliminating section 22.1.2.2 of its Tariff is just and reasonable. CAISO argues that the independent operations review has little incremental value due to the maturity of its internal compliance and audit programs and increased oversight by the Commission, NERC, and WECC. Specifically, CAISO asserts that its internal audit and compliance departments perform a corporate-wide review function that renders the review under section 22.1.2.2 unnecessary and duplicative. CAISO adds that the independent operations review is limited in scope and cannot reasonably ascertain information concerning its discretionary operations procedures, such as issuing exceptional dispatches.<sup>16</sup> Moreover, CAISO asserts that Protestors have failed to demonstrate that its internal compliance and audit processes are biased or otherwise flawed and, thus, incapable of conducting the independent operations review contemplated by section 22.1.2.2 of its Tariff.<sup>17</sup>

13. CAISO also disputes Protesters' assertion that the Interim Audits described in Tariff section 22.1.2.4 are an inadequate substitute for the independent operations review provision at issue here. CAISO contends that its audit committee maintains the same

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<sup>13</sup> SWP at 6; WPTF Comments at 4.

<sup>14</sup> WPTF Comments at 4.

<sup>15</sup> SWP Comments at 4; WPTF Comments at 5.

<sup>16</sup> CAISO October 28, 2014 Answer (CAISO Answer) at 4.

<sup>17</sup> *Id.* at 7.

level of discretion in choosing the issues to include in the independent operations review under Tariff section 22.1.2.2 that it does for the Interim Audits. Regarding costs, CAISO states that its audit committee has not required the requesting market participant to bear the costs of an Interim Audit in practice, even though its Tariff permits the audit committee to do so.<sup>18</sup> If, however, a market participant believes that the Interim Audits are inadequate, CAISO states that market participants can seek alternative dispute resolution under its Tariff or relief from the Commission.<sup>19</sup>

14. Given its argument that the independent operations review is unnecessary and duplicative of other internal audit and compliance processes, CAISO argues that maintaining section 22.1.2.2 of its Tariff does not provide a value to market participants commensurate with its associated costs. CAISO explains that it incurs significant vendor expenses and devotes a substantial amount of time and resources to retain an independent accounting firm to perform the independent operations review each year.<sup>20</sup> CAISO also reiterates its argument that no other RTO or ISO has a similar Tariff-mandated review process and, instead, they rely on internal compliance and audit programs. Based on these facts, CAISO reaffirms its request for the Commission to accept its proposal to eliminate section 22.1.2.2 of its Tariff as just and reasonable.<sup>21</sup>

### **III. Discussion**

#### **A. Procedural Matters**

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. Rule 213(a) (2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) (2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer filed by CAISO because it has provided information that assisted us in our decision-making process.

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<sup>18</sup> *Id.* at 8.

<sup>19</sup> *Id.* at 9.

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

<sup>21</sup> *Id.* at 10.

## **B. Commission Determination**

17. We reject CAISO's proposal to eliminate the annual independent operations review required by section 22.1.2.2 of its Tariff. We find that the independent operations review provides market participants with a unique opportunity to provide input into the scope of a review of CAISO's operations. As CAISO acknowledges, it implements the annual independent operations review "by first seeking input from market participants" and "[b]ased on that input, the CAISO [a]udit [c]ommittee then determines the focus of the operations review for that year."<sup>22</sup>

18. We find merit in Protestors' argument that other CAISO audit and compliance processes do not provide market participants with an adequate substitute for the annual independent operations review. Notably, the costs of the independent operations review are not borne by the requesting market participant, in contrast to the Interim Audits described in Tariff section 22.1.2.4.<sup>23</sup> In addition, other review processes CAISO describes, such as those conducted by its internal compliance and audit departments, do not provide for market participants to assist in developing the scope of the annual review or raise specific issues of concern, as does the independent operations review.

19. We also find merit in retaining a review of operations conducted by an independent party. Although the scope of the independent operations review is ultimately determined by CAISO, we agree with Protestors that the independence of the reviewer avoids the potential for bias with respect to internal operations review and enhances the credibility of the conclusions in the review. We find that an independent review can increase market participant's confidence in CAISO's compliance with operations policies and procedures. While we recognize that CAISO's corporate compliance and internal audits departments play an important role in ensuring CAISO's adherence to its Tariff, we find that the independent operations review supplements that role and provides benefits unavailable solely from internal procedures.

20. Moreover, given the market design changes that CAISO has implemented or will be implementing in the coming years, such as the 15-minute market and flexible resource adequacy capacity requirements, we find that the independent operations review will be valuable in the near future. These market design changes will entail new operations policies and procedures, and an independent review of these operations policies and procedures will ensure that the market design changes are properly implemented. Finally, we agree with Protestors that the implementation of these market changes may

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<sup>22</sup> CAISO Answer at 4.

<sup>23</sup> CAISO states that the costs of the independent operations review are ultimately borne by its customers through the grid management charge. *Id.* at 10.

increase market participants' involvement in developing the scope of each year's independent operations review.

21. For the reasons discussed above, we reject CAISO's proposal to eliminate the annual independent operations review required by section 22.1.2.2 of its Tariff.<sup>24</sup>

The Commission orders:

CAISO's proposed Tariff revision is hereby rejected, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>24</sup> We note that our rejection here is without prejudice to CAISO submitting a proposal to revise this Tariff provision in the future as circumstances change.