

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

California Independent System Operator) Docket No. ER08-1565-000
Corporation)

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO MOTION TO INTERVENE AND CONDITIONAL PROTEST OF
THE M-S-R PUBLIC POWER AGENCY**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2008), the California Independent System Operator Corporation ("CAISO") moves for leave to file an Answer and submits its Answer to the Motion to Intervene and Protest of the M-S-R Public Power Agency ("M-S-R") filed October 14, 2008, in this docket.

I. BACKGROUND

On September 22, 2008, the CAISO filed a Petition in this docket seeking Commission approval of the distribution of the proceeds of penalties collected pursuant to section 37.9 of the CAISO Tariff in accordance with the allocation set forth in Attachment 1 to the Petition. The CAISO also requested confidential treatment of Attachment 1 under 18 C.F.R. § 388.112.

As noted in the CAISO's Petition, Section 37.9.4 requires the CAISO to place all proceeds of penalties collected under section 37.9 into a trust account. Following the end of the year, the CAISO must allocate those proceeds, together with interest, to Scheduling Coordinators for eligible Market Participants. Eligible Market Participants are those that were not assessed a financial penalty under section 37 during the relevant calendar year. Payment must be the product of (a) the amount in the trust account, including interest,

and (b) the ratio of GMC payments by the Schedule Coordinator on behalf of eligible Market Participants to the total of such amounts paid by all Scheduling Coordinators, but the payment cannot be more than the amount of Grid Management Charge (“GMC”) paid by the Scheduling Coordinator on behalf of all eligible Market Participants that it represents. Subsequent to the disposition, the Scheduling Coordinator is responsible for distributing the amounts to the eligible Market Participants in proportion to their share of the GMC paid by the Scheduling Coordinator on their behalf. The CAISO sought approval of the distribution of the proceeds of \$7,496 (\$7,000 in principal and \$496 in interest) from penalties assessed for calendar year 2006 and \$2,977,362 (\$2,951,443 in principal and \$25,919 in interest) from penalties assessed for calendar year 2007.

On October 14, 2008, M-S-R filed its Motion to Intervene and Conditional Protest. M-S-R asserts that it has contacted its Scheduling Coordinator, but not been able to confirm with its Scheduling Coordinator the accuracy of the CAISO’s statements regarding the CAISO’s determination of eligible Market Participants and the CAISO’s calculations for its penalty proceeds distribution proposal. M-S-R states that it has not been able to independently confirm the accuracy of the CAISO’s distribution plan as it relates to M-S-R’s Scheduling Coordinator, which will redistribute M-S-R’s portion of the distribution. Because it believes it cannot “ensure that the proposed distribution to M-S-R (through [its] Scheduling Coordinator) is consistent with M-S-R’s internal figures,” M-S-R conditionally protests the CAISO’s Petition, subject to its confirming the accuracy of the CAISO’s distribution calculations and eligibility determinations.

II. MOTION FOR LEAVE TO ANSWER

Rule 213(a)(2), of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits answers to answers unless otherwise ordered by the Commission. The CAISO respectfully moves the Commission for leave to file this Answer.

The Commission will permit answers otherwise prohibited by Rule 213 if the 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 this case. *See, e.g., Entergy Services, Inc.*, 116 FERC ¶ 61,286, at P 6 (2006); *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,124, at P 11 (2006); *High Island Offshore System, L.L.C.*, 113 FERC ¶ 61,202, at P 8 (2005). The CAISO believes its answer will fulfill these purposes because it provides the Commission with the information that will allow M-S-R or any other Market Participant to determine its appropriate shares of the penalty disposition in the event it wishes to dispute the allocation made by its Scheduling Coordinator.

III. ANSWER

M-S-R correctly notes that the CAISO interacts with Scheduling Coordinators, not Market Participants. As the CAISO noted in the Petition, the CAISO has contacted each Scheduling Coordinator that was assessed a penalty during calendar years 2006 and 2007 to determine each Market Participant served under the Scheduling Coordinator ID and the amount of GMC paid by each such Market Participant. Each Scheduling Coordinator that is excluded from the disposition of penalty proceeds has thus been apprised of that fact. Conversely, if a Scheduling Coordinator was not contacted, it

therefore knows that it has been included in the disposition of penalty proceeds. (Indeed, each Market Participant should already be aware of whether it was assessed a penalty and is thus ineligible.) During that process, no Scheduling Coordinator challenged the determination of eligible Market Participants. Further, no Scheduling Coordinator has filed a protest challenging that determination or indicating a need for more information.

It is the Scheduling Coordinator's responsibility to provide this information to its Market Participants. M-S-R should therefore be addressing this issue with its Scheduling Coordinator rather than by protesting the Petition.

Moreover, with information on the total penalties paid and the total GMC paid by Eligible Market Participants, which the CAISO provides below, each Scheduling Coordinator and each Market Participant will be able to calculate its share of the distribution and file a protest in any appropriate forum if the actual distribution differs from the share to which it is entitled. Each Scheduling Coordinator's share of the distribution can be calculated as follows: Scheduling Coordinator's share of penalty proceeds = Total Penalties and Interest * (GMC paid by Scheduling Coordinator on behalf of Eligible Market Participants / GMC Paid by all Scheduling Coordinators on behalf of Eligible Market Participants). Each Market Participant's share of the distribution can be calculated as follows: Market Participant's share of penalty proceeds = Total Penalties and Interest * (GMC paid by Market Participant / GMC Paid by all Eligible Market Participants).

Each Scheduling Coordinator and Market Participant knows the GMC it paid. In 2006, the Total Penalties and Interest were \$7,496 and the GMC Paid by all Eligible

Market Participants was \$172,219,794. In 2007, the Total Penalties and Interest were \$2,977,362 and the GMC Paid by all Eligible Market Participants = \$172,448,966.

With this information, M-S-R can determine its appropriate share of the proceeds of penalties without a need to review confidential information regarding Scheduling Coordinators. If its distributed share differs from the share it receives, it can take appropriate action. There is no need to make Attachment 1 public.

IV. CONCLUSION

Accordingly, the CAISO requests that the Commission approve the disposition of proceeds described in Attachment 1 and provide confidential treatment of Attachment 1 under 18 C.F.R. § 388.112.

Respectfully submitted,

/s/ Michael E. Ward

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service list in 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, D.C. this 29th day of October, 2008.

/s/ Michael E. Ward

Michael E. Ward