

UNITED STATES OF AMERICA 109 FERC ¶ 61,087  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, and Joseph T. Kelliher.

California Independent System Operator  
Corporation

Docket Nos. ER03-1102-003  
ER03-1102-004  
EL05-14-000

ORDER ACCEPTING COMPLIANCE FILING, SUBJECT TO MODIFICATION,  
INSTITUTING SECTION 206 PROCEEDING,  
AND ESTABLISHING TECHNICAL CONFERENCE

(Issued October 28, 2004)

1. On February 20, 2004, the Commission accepted the California Independent System Operator Corporation's (CAISO or ISO) proposed Amendment No. 55 to its Open Access Transmission Tariff (ISO Tariff),<sup>1</sup> which granted the CAISO limited authority to charge pre-defined penalties for certain objectively determined behaviors,<sup>2</sup> directed certain modifications to conform Amendment No. 55 to the Commission's behavioral rules order in Docket Nos. EL01-118-000 and EL01-118-001,<sup>3</sup> and otherwise provided direction to the CAISO on how the Commission intends market monitoring to

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<sup>1</sup> *California Independent System Operator Corporation*, 106 FERC ¶ 61,179 (2003) (February 20 Order).

<sup>2</sup> The Commission conditioned this authority on its acceptance of a CAISO filing that demonstrates that the CAISO has established an independent Governing Board in compliance with the Commission's orders in *Mirant Delta, LLC, et al. v. California Independent System Operator Corporation*, 100 FERC ¶ 61,059 (2002), *reh'g granted in part and denied in part*, 100 FERC ¶ 61,271, *reh'g denied*, 101 FERC ¶ 61,078 (2002); *see California Independent System Operator Corporation v. FERC*, 372 F.3d 395 (D.C. Cir. 2004). Until such time, enforcement of all market rules under the ISO Tariff will be performed by the Commission.

<sup>3</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003) (MBR Tariff Order).

operate in the CAISO markets. On May 20, 2004, as amended on May 21, 2004, the CAISO filed to comply with the Commission's February 20 Order, substantially modifying the original Amendment No. 55 proposal. In this order, the Commission accepts for filing the CAISO's compliance filing, subject to the modifications discussed below, institutes a proceeding under section 206 of the Federal Power Act (FPA),<sup>4</sup> and establishes a technical conference to address the proposed "self-certification" process contained in EP 3.2 (Certification). This order benefits customers in the CAISO markets by providing a reasonable approach to investigating and sanctioning anticompetitive behavior.

## **I. Background**

2. On July 22, 2003, the CAISO filed its proposed Oversight and Investigations Program (O&I Program) as Amendment No. 55 to the ISO Tariff.<sup>5</sup> The CAISO proposed to implement the O&I Program in three parts: (1) adding an Enforcement Protocol as a stand-alone Attachment to the ISO Tariff, (2) incorporating additional conduct rules in the main body of the ISO Tariff to address specific bidding and scheduling behavior, and (3) revising the ISO Market Monitoring and Information Protocol (MMIP) under the ISO Tariff to complement the Enforcement Protocol and to correct various outdated provisions of the MMIP.

3. The proposed Enforcement Protocol was composed of seven parts: (1) Objectives, Definitions, and Scope (EP 1); (2) Rules of Conduct (EP 2); (3) Process for Investigation and Enforcement (EP 3); (4) Process for Prohibiting Detrimental Practices and Market Manipulation (EP 4); (5) Administration of Penalties (EP 5); (6) No Limitations on Other Rights of ISO (EP 6); and (7) Amendments (EP 7). The CAISO proposed to monitor, investigate and enforce nine Rules of Conduct.<sup>6</sup> For each of its nine Rules of Conduct,

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<sup>4</sup> 16 U.S.C. § 824e (2000).

<sup>5</sup> The CAISO stated that its O&I Program consisted of five elements, only four of which the ISO requested the Commission to approve.

<sup>6</sup> The nine Rules of Conduct set forth in EP 2.2 through EP 2.10 were as follows: (1) comply with operating orders; (2) submit feasible energy and Ancillary Service bids and schedules; (3) no physical withholding; (4) no economic withholding; (5) comply with availability reporting requirements; (6) provide factually accurate information; (7) provide information required by the ISO Tariff; (8) no detrimental practices; and (9) no market manipulation.

the CAISO provided a General Rule, ascribed a maximum fixed Standard Penalty amount per event for rule violations and listed any Special Penalties, Exceptions or Limitations to the rule. In addition to the maximum fixed Standard Penalty, for five of the nine Rules of Conduct, the ISO proposed to impose a variable penalty for violations.

4. On September 22, 2003, the Commission issued an order accepting and suspending Amendment No. 55 for five months, to be effective February 21, 2004, subject to refund and further Commission order.<sup>7</sup> In the February 20 Order, the Commission directed the ISO to submit a compliance filing modifying proposed Amendment No. 55. On May 6, 2004, the Commission issued an order granting, in part, and rejecting, in part, the requests for rehearing of the February 20 Order and responded to the requests for clarification.<sup>8</sup>

5. On May 20, 2004, the CAISO filed its compliance filing in this proceeding. On May 21, 2004, the CAISO filed an errata, stating that it inadvertently did not include revised ISO Tariff Sheet No. 861 in Attachment A of its proposed compliance filing.

## **II. Overview of the CAISO's Amendment No. 55 Compliance Filing**

6. The CAISO's original Amendment No. 55 proposal was filed prior to the issuance of the MBR Tariff Order. Therefore, the Amendment No. 55 compliance filing represents the CAISO's first attempt to align the oversight and enforcement provisions of the ISO Tariff with that order. In the compliance filing, the revised Enforcement Protocol is composed of ten parts: (1) Objectives, Definitions, and Scope (EP 1); (2) Comply with Operating Orders (EP 2); (3) Submit Feasible Energy and Ancillary Service Bids and Schedules (EP 3); (4) Comply with Availability Reporting Requirements (EP 4); (5) Provide Factually Accurate Information (EP 5); (6) Provide

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<sup>7</sup>*California Independent System Operator Corporation*, 104 FERC ¶ 61,308 (2003).

<sup>8</sup>*California Independent System Operator Corporation*, 107 FERC ¶ 61,118 (2004) (May 6 Order).

Information Required by the ISO Tariff (EP 6); (7) No Market Manipulation (EP 7); (8) Process for Investigation and Enforcement (EP 8); (9) Administration of Sanctions (EP 9); and (10) Miscellaneous (EP 10).<sup>9</sup>

7. For the Rules of Conduct provided in EP 2 through 7, except for EP 3, the CAISO proposes the “Expected Conduct” to be followed by all market participants, “Sanctions” to be assessed to violators, and any “Enhancements” that may apply.<sup>10</sup> Under EP 3 (Submit Feasible Energy and Ancillary Service Bids and Schedules), the CAISO proposes a “self-certification” process, whereby Scheduling Coordinators must certify monthly whether Ancillary Service schedules could have been delivered, within a 10 percent tolerance band, in accordance with their bids. In addition, the CAISO has made changes to the MMIP section of the ISO Tariff and various other tariff sheets in the main body of the ISO Tariff, as directed in the February 20 Order.<sup>11</sup> Both sets of changes were originally proposed to prohibit specific gaming strategies identified in the Enron Memos<sup>12</sup> and addressed in the Show Cause Order.<sup>13</sup>

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<sup>9</sup> While the protocols have increased in number from the original proposal (*i.e.*, from seven parts to ten parts), no new market rules are being proposed. The ISO has merely taken certain subparts approved in the former EP 2 (Rules of Conduct) to the original proposal and made them stand-alone protocols in the compliance filing.

<sup>10</sup> EP 2.5 (Enhancements and Exceptions) states that “. . .penalty amounts shall be tripled for any violation of EP 2.1 through 2.4 if an ISO System Emergency exists at the time an operating order becomes effective or at any time during the Market Participants’ non-performance . . .”

<sup>11</sup> The CAISO also made adjustments to its method for calculating the Inaccurate Meter Data Penalty, when the market is not re-run, to reflect, in large part, the February 20 Order. *See* Table A2 of the Amendment No. 55 compliance filing.

<sup>12</sup> *See, e.g.*, February 20 Order at P 11.

<sup>13</sup> *American Electric Power Corporation, et al.*, 103 FERC ¶ 61,345 (2003) (Show Cause Order), *reh’g denied*, 106 FERC ¶ 61,020 (2004).

### **III. Notice of Filing and Responsive Pleadings**

8. Notice of the CAISO's May 20, 2004 compliance filing was published in the *Federal Register*, 69 Fed. Reg. 31,604 (2004), with comments, protests, or interventions due on or before June 10, 2004. Notice of the CAISO's May 24, 2004 errata filing was published in the *Federal Register*, 69 Fed. Reg. 31,606 (2004), with comments, protests, or interventions due on or before June 11, 2004.

9. Timely protests were filed by Automated Power Exchange, Inc. (APX); Powerex Corp. (Powerex); Duke Energy North America LLC and Duke Energy Trading and Marketing L.L.C. (Duke Energy); the Independent Energy Producers Association (IEP); Dynegy Power Marketing, Inc., El Segundo Power, LLC, Long Beach Generation LLC, Cabrillo Power I LLC, Cabrillo Power II LLC and Williams Power Company, Inc. (Dynegy/Williams), which adopted IEP's protest by reference. On June 28, 2004, the CAISO filed an answer.

### **IV. Discussion**

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

10. Pursuant to rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the CAISO's answer because it has provided information that assisted us in our decision-making process.

#### **B. EP 1: Objectives, Definitions, and Scope**

##### **1. Compliance Proposal**

12. In the February 20 Order, the Commission approved EP 1.6, the scope of the Enforcement Protocol, which included all market participants and the ISO.<sup>14</sup> In revised EP 1.6 of the compliance filing, the CAISO enumerates precisely which market

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<sup>14</sup> February 20 Order at P 44-45.

participants are governed by the Enforcement Protocol: (a) Scheduling Coordinators; (b) Utility Distribution Companies; (c) Metered Subsystems; (d) Participating Transmission Owners; (e) Participating Generators; (f) Control Area Operators, to the extent the agreement between the Control Area Operator and the ISO so provides; (g) Operators; (h) Other Market Participants; (i) the ISO; and (j) the Commission.

## **2. Intervenor's Comments and CAISO Answer**

13. Powerex requests that the Commission direct the CAISO to explain why the Enforcement Protocol should apply to other Control Area Operators (EP 1.6(f)). Powerex argues that, notwithstanding that this proposal was not part of the original Amendment No. 55 filing; the CAISO has not explained the modification to EP 1.6(f).<sup>15</sup>

14. In its answer, the CAISO states that it was appropriate to propose to add more specific provisions to EP 1.6 in order to provide greater particularity to all of the entities that are subject to the Enforcement Protocol. The CAISO also states that it is also appropriate to apply the Enforcement Protocol to Control Area Operators because, to the extent they participate in the ISO's market or have jurisdictional dealings with the ISO, Control Area Operators should be required to comply with the Rules of Conduct just like all other market participants.

## **3. Commission Determination**

15. We accept the CAISO's proposed EP 1, as modified herein, and find that this rule sufficiently complies with the directives in the February 20 Order. Rather than generically stating that the Enforcement Protocol will apply to "All Market Participants," the CAISO explicitly describes "Market Participants" (or the entities that operate in CAISO Markets). We find that the CAISO's descriptive list of "Market Participants," which includes "other Control Area Operators, to the extent that the agreement with the Control Area Operator and the ISO so provides," is acceptable and consistent with the scope approved in the February 20 Order. Thus, we find Powerex's requested explanation regarding why "other Control Area Operators" have been included in section 1.6 to be unnecessary.

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<sup>15</sup> Powerex protest at 8.

**C. EP 2: Comply with Operating Orders**

**1. Compliance Proposal**

16. Revised EP 2 of the CAISO's compliance filing is broken down into five subparts: (1) Compliance with Orders Generally (EP 2.1); (2) Failure to Curtail Load (EP 2.2); (3) Operations & Maintenance Practices (EP 2.3); (4) Must-Offer Denials/Revocations (EP 2.4); and (5) Enhancements and Exceptions (EP 2.5). EP 2.1 through 2.4 specify the Expected Conduct to be followed by market participants and denotes the Sanctions<sup>16</sup> that will be applied to violators.<sup>17</sup>

**2. Penalty Charges under EP 2**

17. The Commission's February 20 Order directed the CAISO to "refile the penalty provisions under EP 2.2...to reflect a penalty range not to exceed \$10,000 *per day* for violations of EP 2.2."<sup>18</sup> In the May 6 Order, the Commission stated that it "based its determinations in the February 20 Order on the particulars of the CAISO and its current markets," and that it would "withhold judgment on the issue [*i.e.*, per day, per event] until the Commission has had the opportunity to evaluate the CAISO's compliance filing."<sup>19</sup>

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<sup>16</sup> EP 1.4(f) of the ISO Tariff defines "Sanction" as:

a consequence specified in this EP for the violation of a Rule of Conduct, which may include a) a warning letter notifying the Market Participant of the violation and future consequences specified under this EP if the behavior is not corrected, or b) financial penalties. Neither referral to FERC nor rescission of payment for service not provided shall constitute a Sanction.

<sup>17</sup> The Expected Conduct sections proposed in EP 2.1 through 2.4 are found in EP 2.1(a), 2.2(a), 2.3(a), and 2.4(a). The "Sanctions" sections proposed in EP 2.1 through 2.4 are found in EP 2.1(b), 2.2(b), 2.3(b), and 2.4(b).

<sup>18</sup> February 20 Order at P 58 (emphasis added).

<sup>19</sup> May 6 Order at P 31.

18. In its instant compliance filing, the CAISO replaces the use of the term “event” in revised EP 2.1 and elsewhere in the Enforcement Protocol with the term “violation.” Specifically, the CAISO proposes that the sanction for EP 2.1 will be “the greater of the quantity of Energy non-performance multiplied by the applicable Hourly Ex-Post Price,” when the quantity of energy can be objectively determined. When the quantity of energy cannot be objectively determined, the CAISO proposes to assess a \$5,000 sanction for the first “violation” in a rolling 12 month period, and a \$10,000 sanction for the second and subsequent violations in a rolling 12 month period.<sup>20</sup> The CAISO explains that, if sanctions were to be applied under EP 2.2 and 2.3 on a per-day basis, a market participant, once it had incurred a sanction on a given day, would in effect have a free ticket, good for the rest of the day to repeat violations.<sup>21</sup> The CAISO also reiterates an earlier argument that the Commission has approved penalties for the Midwest ISO that are up to \$10,000 per day per violation.

**a. Intervenors’ Comments and CAISO Answer**

19. Duke Energy notes that EP 2.1(b) states that “[a] Market Participant may incur Sanctions for more than one violation per day.” It argues that the CAISO has failed to comply with the Commission’s directive to establish a penalty range for EP 2.2 not to exceed \$10,000 “per day.”<sup>22</sup> Duke Energy finds these penalties to be excessive when compared to the \$1,000 per event (\$5000 per event during system emergencies) used in ISO New England. Moreover, Duke Energy reiterates that the Commission’s May 6 Order denied the CAISO’s request that it was entitled to the same penalty authorization approved for the Midwest ISO market.<sup>23</sup> It requests the Commission to reject the proposed penalty structure, direct the CAISO to re-file an appropriate range of fixed penalties, and direct it to substitute the words “per day” for the words “per violation” in the second sentence of EP 2.1(b).

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<sup>20</sup> Only the above graduated sanctions will apply for violations of EP 2.1 through EP 2.4.

<sup>21</sup> CAISO compliance filing transmittal letter at 7 n.10.

<sup>22</sup> Duke Energy protest at 1-2 (*citing* February 20 Order at P 59).

<sup>23</sup> *Id.* at 2 (*citing* May 6 Order at P 31).

20. Similarly, IEP argues that the CAISO's proposal to assess penalties "per violation," rather than "per day" is unsupported. It notes that the CAISO relegated its justification for this proposal to a footnote, and fails to justify its proposal based on the particulars of the CAISO market. IEP notes that the term "violation" is no better than the term "event," which the Commission found to be ambiguous and directed the CAISO to redefine,<sup>24</sup> and that such unbridled discretion to determine what constitutes a single, sanctionable "violation" cannot be allowed.

21. In its answer, the CAISO states that the Commission did not flatly reject the ISO's proposal to employ the same maximum penalty as the Midwest ISO, it only declined to adopt the ISO's proposal at that time and stated that it would withhold judgment on the issue until it had evaluated the compliance filing. The CAISO also states that revised EP 2 sufficiently explains what constitutes a violation. For example, the CAISO points out that, under EP 2.1, a violation occurs every time a market participant fails to comply with an operating order issued by the ISO.<sup>25</sup>

**b. Commission Determination**

22. In the February 20 Order, the Commission accepted the Rule of Conduct proposed by the ISO in former EP 2.2(a), which required market participants to comply with operating orders.<sup>26</sup> In the compliance filing, and under each newly proposed subpart of EP 2 (Comply with Operating Orders), the CAISO specifies the types of operating orders captured under this Rule of Conduct and provides this rule with greater specificity. Therefore, we accept the Expected Conduct found under EP 2 and each subpart of this rule.

23. However, with respect to the newly proposed penalty charges under EP 2, intervenors object to the penalty charges that will be assessed "per violation" rather than "per day," as required by the February 20 Order.<sup>27</sup> In the Amendment No. 55 proposal, the Commission found that the level of proposed penalties was not commensurate with the conduct to be deterred and, therefore, not just and reasonable. The Commission

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<sup>24</sup> IEP protest at 10 (*citing* February 20 Order at P 29, 91; May 6 Order at P 60).

<sup>25</sup> CAISO answer at 7.

<sup>26</sup> February 20 Order at P 56.

<sup>27</sup> *Id.* at P 58.

indicated that “the ISO Tariff should provide for a system of specified increasing penalties,”<sup>28</sup> and that penalties under former EP 2.2 (Comply with Operating Orders) should not exceed \$10,000 per day for violations of EP 2.2. As our example in the February 20 Order indicated, a single sanctionable “event” under the original proposal could result in a maximum penalty of \$210,000.<sup>29</sup> The most troubling part of the CAISO’s original proposal was that a market participant could incur the maximum penalty for several sanctionable events per day. In addition, the February 20 Order also required the CAISO to define “event.” In the compliance filing, the CAISO replaces the term “event” with “violation,” however; the potential financial impact on market participants under this Rule of Conduct remains the same. In the CAISO’s compliance proposal, market participants may incur penalty charges under multiple subparts of EP 2, which then could be trebled, and drastically exceed \$10,000 per day. We agree with intervenors that the CAISO has failed to comply with the Commission’s directive to establish a penalty range for EP 2.2 not to exceed \$10,000 “per day.” Therefore, we direct the CAISO to state that violations under EP 2 (Comply with Operating Orders), *i.e.*, cumulative violations under the market rule itself or the subparts of EP 2, must not exceed \$10,000 per day.

24. Moreover, the CAISO clarifies that, for enforcement purposes, an “operating order” shall be an order from the ISO directing a market participant to undertake a single, clearly specified action that is feasible and intended to resolve a specific operating condition.<sup>30</sup> Thus, a “violation” would constitute non-compliance with an operating order, as defined above. We find that the CAISO has adequately described the term “violation.” However, to further clarify this provision for market participants, we direct the CAISO to revise EP 2 to state that an operating order will apply to a single set of instructions from the ISO to address a specific problem. Hence, failure to obey an operating order containing multiple instructions to address a specific operating condition would result in a single violation. Accordingly, we accept the Expected Conduct and Sanctions in EP 2.1 through 2.4, as modified.

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<sup>28</sup> *Id.* at P 30.

<sup>29</sup> *Id.* at P 16 n.19.

<sup>30</sup> *See* EP 2.1(a), First Revised Sheet No. 863 (Superseding Original Sheet No. 863) FERC Electric Tariff, First Replacement Volume No. II.

### 3. Penalty Enhancements under EP 2.5 (and EP 4.4)

25. In the February 20 Order, the Commission stated that:

consistent with the MBR Tariff Order which requires, among other things, that the behavior for which an MMU may assess penalties be objectively identifiable and that this behavior correspond to “clear” Commission-approved sanctions, we direct the CAISO to limit the factors the DMA will consider in determining the severity of penalties for “objectively identifiable” violations ... [and] direct the CAISO to specifically state the penalty amount to be imposed for each infraction and the specific amount to be assessed for each “enhancement” under EP 5.3 and demonstrate how use of such an “enhancement” is consistent with penalty provisions we have approved for other ISOs.<sup>31</sup>

26. Revised EP 2.5 of the CAISO’s compliance filing states that “[e]xcept as otherwise specifically provided, penalty amounts shall be tripled for any violation of EP 2.1 through EP 2.4 if an ISO System Emergency exists at the time an operating order becomes effective or at any time during the Market Participant’s non-performance.”<sup>32</sup> This section further states that market participants will not also be subject to an Uninstructed Deviation Penalty under section 11.2.4.1.2 of the ISO Tariff, unless the ISO has issued a separate and distinct non-automated Dispatch Instruction to the market participant.

#### a. Intervenors’ Comments and CAISO Answer

27. IEP opposes the “enhancements” proposed by the CAISO, arguing that the only factor given weight is whether the alleged violation occurred during a system emergency, while no consideration is given to whether the violation is a one-time mistake or lasted two minutes. IEP asserts that the CAISO does not have a stellar operational record during system emergencies and, thus, market participants should not be held to a standard the CAISO itself cannot achieve.

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<sup>31</sup> February 20 Order at P 31.

<sup>32</sup> Similarly, with respect to EP 4 (Complying with Availability Reporting Requirements), EP 4.4 states that, “[e]xcept as otherwise provided, penalty amounts shall be tripled for any violation of EP 4.1 through 4.3 that occurs during an ISO system emergency.”

28. IEP asserts that tripling the penalty amount during a system emergency may be counter-productive and may exacerbate the system emergency. Specifically, IEP contends that market participants, especially load-serving entities, receive numerous operating orders from the ISO during a system emergency and, therefore, the likelihood that some of these orders will be inadvertently missed or that a generator may fail to timely report an outage is much greater. According to IEP, during a system emergency, the first priority of plant operators should be to identify the problem and bring the unit back into service, and not to make sure the outage is timely reported to the ISO to avoid sanctions.

29. IEP suggests that the Commission provide a mechanism for monitoring and reporting CAISO operations' compliance with the ISO Tariff, and hold the CAISO accountable for inequitable operating orders or orders issued in error. IEP claims that CAISO dispatchers possess significant discretion when making operating decisions. When abuse of this discretion is revealed, IEP states that its members have had numerous conference calls with the CAISO senior management who repeatedly apologize for incorrect dispatches and orders given by their staff.<sup>33</sup>

30. IEP argues that the proposed graduated sanctions should be determined over a calendar year, rather than the proposed rolling 12-month period. In addition, IEP states that the first five violations in any calendar year should be subject to penalties at the lower end of the adopted penalty range in recognition of real world operations.

31. Duke Energy argues that the CAISO has failed to demonstrate that proposed EP 2.5 and EP 4.4 are consistent with the penalty provisions that the Commission has approved for other ISOs, or are otherwise just and reasonable, as directed in the February 20 Order.<sup>34</sup> It asserts that both of these provisions will result in treble penalties for every sanctionable event that happens during a system emergency and that the Commission should reject the trebling proposed in EP 2.5 and 4.4

32. In response to protests, the CAISO states that revised EP 2.5 and 4.4 provide that the penalty amount will be exactly tripled in System Emergency conditions and that this enhancement is equal to the maximum enhancement of a penalty in ISO New England. The CAISO states that it proposed to exactly triple the penalty amount, rather than provide for an amount up to triple the penalty amount because the Commission directed

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<sup>33</sup> IEP protest at 12.

<sup>34</sup> *Id.*

the ISO to “specifically state” the “specific amount to be assessed for each ‘enhancement’” under the EP.<sup>35</sup> Thus, the CAISO states that its penalty enhancement proposal is more specific than ISO New England’s and is consistent with the general intent of the February 20 Order that there not be any discretion regarding the imposition and level of penalties.

33. Further, the CAISO states that a rolling 12-month period is superior to a calendar year basis for designing a graduated penalty. It states that basing penalties on the frequency of violations on a calendar year basis would arbitrarily give each market participant a clean slate each January 1, which could lead to discriminatory results based on the time of year that a market participant incurred violations. The CAISO also believes that the frequencies of violations on which graduated penalties are proposed in its compliance filing are reasonable and should be accepted.<sup>36</sup>

**b. Commission Determination**

34. We accept the CAISO’s proposed penalty enhancements laid out in EP 2.5 and 4.4, as modified. In the May 6 Order, the Commission stated that it would withhold judgment on determining the appropriate level of penalties and enhancements under the Enforcement Protocol until it had the opportunity to evaluate the CAISO’s compliance filing, to the extent that the ISO supports its proposal on compliance based upon the CAISO markets and operations.<sup>37</sup> Intervenors argue that, among other things, the CAISO is cherry-picking only those penalty provisions from other ISOs that yield the greatest penalty proceeds, has not adequately supported the proposed enhancements, and does not consider the frequency or impact of the violation that occurs during a system emergency. IEP argues further that tripling the penalty amount during a system emergency may exacerbate the system emergency because, for example, a generator will likely opt to report an outage and avoid a sanction rather than focus its full attention on bringing the unit back into service. We disagree with intervenors’ arguments.

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<sup>35</sup> CAISO answer at 11 (*citing* February 20 Order at P 31.)

<sup>36</sup> *Id.* at 34-35.

<sup>37</sup> May 6 Order at P 31.

35. In *ISO New England*,<sup>38</sup> the Commission allowed the ISO to increase sanctions up to a triple amount if the sanctionable behavior occurred during a system emergency, was part of a pattern, or was a failure to comply with market mitigation remedy. In this order, the Commission stated that the ISO had identified with sufficient specificity both the sanctions and the penalties that may be imposed, and the circumstances under which it may impose them, and had included them under its Commission-filed tariff. Furthermore, the Commission has ultimate review authority over any sanctions and penalties that are actually imposed. We will allow the same treatment here, as we believe that more stringent penalties during a system emergency are warranted, with the caveat that market participants be afforded appeal rights with the Commission.

36. Under EP 9.2 (Excuse) the ISO shall excuse a violation of a Rule of Conduct due to: (a) an Uncontrollable Force; (b) Safety, Licensing or Other Requirements; (c) Emergencies; or (d) Conflicting Directives. In addition to these exceptions, we direct the CAISO to modify EP 2.5 (Enhancement and Exceptions) to state that a market participant may appeal a trebled sanction under this protocol with the Commission to demonstrate a mitigating circumstance not covered in EP 9.2, and that the sanction will be tolled until the Commission renders its decision. With respect to IEP's request that graduated sanctions be determined over a calendar year rather than a rolling twelve (12) month period, we accept the CAISO's response to this suggestion. Accordingly, we accept EP 2.5 as modified.

#### **4. Other Provisions Under EP 2**

##### **a. Intervenors' Comments and CAISO Answer**

37. IEP asserts that revised EP 2.1 (Compliance with Orders Generally) does not clearly provide that revised EP 2 applies only to non-automated dispatch instructions, as required in the February 20 Order.<sup>39</sup> IEP requests that the Commission direct the CAISO to revise proposed EP 2 to specifically exclude its application to automated dispatch

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<sup>38</sup> New England Power Pool, 85 FERC ¶ 61,379 (1998) (*ISO New England*).

<sup>39</sup> IEP protest at 6-7 (*citing* February 20 Order at P 57; May 6 Order at 27). The May 6 Order stated that “the General Rule and penalties under EP 2.2 pertain to ‘non-automated’ dispatch instructions. The CAISO did not propose, and the February 20 Order did not authorize, a penalty structure for automated dispatch instructions.” May 6 Order at P 27.

instructions.

38. IEP argues that there are inconsistencies with certain provisions of the ISO proposals that must be clarified prior to implementation of the Enforcement Protocol. For instance, IEP asserts that the CAISO institutionalizes “standing Operation Orders” in EP 2.2 through EP 2.4 and that the ambiguous language in EPs 2.3 and 2.4, taken separately or together, places a market participant in jeopardy.<sup>40</sup> Specifically, IEP states that EP 2.3 (Operations and Maintenance Practices) references ISO Tariff section 2.3.2.9.3 as defining criteria to judge the appropriateness of maintenance practices. However, according to IEP, section 2.3.2.9.3 contains no such criteria other than empowering the CAISO to find “that the operation and maintenance practices of [any market participant] prolonged the response time or contributed to the outage . . .”<sup>41</sup> IEP argues that this allows the CAISO too much discretion given the outstanding independence issues and that IEP’s requested stakeholder process could address and clarify these inconsistencies.

39. IEP also argues that EP 2.4, which requires a market participant to start a generating unit within 30 minutes of a must-offer waiver revocation (unit commitment order), must clearly define the criterion to “start” a generator. IEP asks if the criterion is satisfied when: a start-up sequence is initiated which, depending on the length of time the unit is off-line, varies in complexity and time to complete; the unit is synchronized to the grid; or the unit is operating at minimum load?<sup>42</sup> IEP further argues that violation of this protocol would create a double jeopardy situation, resulting in possible violation of EP 2.3 or EP 2.4. IEP requests the Commission to eliminate this standing order or, at a minimum, to develop comprehensive language that better defines expected behavior consistent with actual operational experience.

40. IEP opposes the CAISO’s decision not to include a symmetrical sanction for the underscheduling of load by eliminating the sanction for overscheduling, formerly contained in EP 2.7(c)(i). IEP proffers that generators are still subject to a tolerance band upon implementation of the CAISO’s Market Design 2002 (MD02) Phase 1B and severe penalties (100 percent of the value of the energy) for deviations between final ISO instructions and actual generation in excess of the tolerance band. IEP notes that this

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<sup>40</sup> IEP protest at 5.

<sup>41</sup> *Id.* at 5 (*citing* EP 2.3.2.9.3).

<sup>42</sup> *Id.* at 13.

excess generation is akin to overscheduling and that the CAISO is incorrect in stating that by dropping EP 2.7(c)(i), it eliminates the asymmetric penalty. Accordingly, IEP requests the Commission to order the CAISO to include the symmetrical penalty as previously ordered.

41. In its answer, the CAISO states that revised EP 2 only applies to non-automated dispatch instructions and proposes a revision to the last sentence of revised EP 2.5 to exclude the words "...that result in circumstances in which Uninstructed Deviation Penalty under section 11.2.4.1.2 of the ISO Tariff may be assessed..." Thus, the EP 2.5 would be revised to read "Notwithstanding the foregoing, violations of EP 2.1 through EP 2.4 are subject to penalty under this rule only to the extent that the ISO has issued a separate and distinct non-automated Dispatch Instruction to the Market Participant."<sup>43</sup>

42. With respect to revised EP 2.3 and 2.4, the CAISO states that those provisions are clear and do not present any double jeopardy situation. The CAISO argues that it is unclear what double jeopardy situation IEP believes is created by the interaction of revised EP 2.3 and 2.4 because the violations addressed in those sections are different. With respect to the criterion used for starting a generator, the ISO states that the ISO Tariff and Operating Procedures clearly explain when a generator is required to start. It states that a must-offer generator is obligated to start a thermal Generating Unit when the ISO revokes a must-offer waiver under section 5.11.6 of the ISO Tariff.<sup>44</sup> However, the CAISO states that it is willing to modify the beginning of revised EP 2.4(a) to state that "[a] Market Participant shall start a Generating Unit and have the Generating Unit operating at minimum load within 30 minutes of the time..."<sup>45</sup>

43. The CAISO also argues that the removal of the penalty for overscheduling load is appropriate. It states that in the May 6 Order the Commission stated that "prior to imposing penalties for overscheduling load pursuant to EP 2.7, we direct the ISO to propose a similar, symmetrical penalty to underscheduling load."<sup>46</sup> Thus, the CAISO

states that the May 6 Order was clear that the Commission did not require it to propose an

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<sup>43</sup> CAISO answer at 4.

<sup>44</sup> *Id.* at 9.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 19 (*citing* May 6 Order at P 38).

underscheduled load penalty, but simply conditioned the ISO's implementation of an overscheduled load penalty on such a proposal.

**b. Commission Determination**

44. First, with respect to revised EP 2 and non-automated dispatch instructions, we accept the CAISO's offer to revise EP 2.5 and direct it to filed revised language reflecting the language noted above. With respect to revised EP 2.3 and 2.4, we find that those provisions are sufficiently clear and do not present any double jeopardy situation. However, we accept the CAISO proposal to revise EP 2.4(a) regarding the criterion used for starting a generator.

45. Finally, with regard to our requirement for a symmetrical sanction for underscheduling load, we believe that this issue will be better addressed in the context of the ongoing MD02 proceeding in Docket No. ER02-1656. If, at some point, the CAISO proposes a penalty for overscheduling load, a symmetrical penalty for underscheduling load should also be proposed.

**D. EP 3: Submit Feasible Energy and Ancillary Service Bids and Schedules**

**1. Compliance Proposal**

46. The CAISO proposes to add a self-certification requirement under EP 3.2(a). Pursuant to that requirement, the ISO will provide each Scheduling Coordinator that schedules Ancillary Services from Generating Units, Curtailable Demand, System Units, and System Resources a monthly listing of schedules including the hour, location, and service type of all Ancillary Services that were not dispatched by the ISO. Each Scheduling Coordinator must identify and advise the ISO in a certification form of any Ancillary Services schedules in the monthly listing for which 10 percent or more of the scheduled service could not have been delivered, in accordance with the terms of the bid, for any reason. Any certification form that identifies Ancillary Service schedules that could not be performed within the 10 percent tolerance band must be returned within 30 days of the Scheduling Coordinator's receipt of the associated monthly listing. If all such schedules could have been performed within the 10 percent tolerance band, no certification form from the Scheduling Coordinator will be required, and the undispached Ancillary Service schedules will be deemed certified with no exceptions. If information indicating that one or more Ancillary Service schedules could not have been performed within the 10 percent tolerance band becomes available to the Scheduling Coordinator subsequent to the 30-day deadline, then a revised certification form must be promptly submitted.

47. For violations of EP 3.2, the CAISO proposes to rescind payment for any portion of an Ancillary Service that was unavailable, based on the information that is known to the Market Participant or should have been known to the Market Participant at the time of bidding or scheduling. In EP 3.3, the CAISO proposes to make an exception for violations under this protocol that trigger the Uninstructed Deviation Penalty under section 11.2.4.1.2 of the ISO Tariff or for which payments have been eliminated under section 2.5.26 of the ISO Tariff. In addition, the CAISO states that the submission of a schedule that causes, or that the ISO expects to cause intra-zonal congestion shall not, by itself, constitute a violation of EP 3 unless the market participant fails to comply with an obligation under the ISO Tariff to modify schedules as determined by the ISO to mitigate such congestion or such schedules violate another element of this protocol.

## **2. Intervenor's Comments and CAISO Answer**

48. IEP asserts that the CAISO's proposed "self-certification" process is unnecessary and should be rejected. First, IEP opposes this proposal on the grounds that it is outside the scope of this compliance filing, as neither the February 20 or May 6 Orders authorized the CAISO to implement such as procedure. In addition, it states that the proposal goes far beyond the Commission's suggestion in the February 20 Order that the ISO require imports to identify the physical resource behind their bids. Moreover, IEP argues that the expansion of the proposal to resources "within" the CAISO control area was neither contemplated nor authorized by the Commission orders in this proceeding. IEP argues that it is only with regard to imports that the CAISO cannot independently monitor and verify that resources are available to actually supply as-bid Ancillary Services; therefore, applying the self-certification proposal to internal resources is an unjustifiable burden, as internal resources already identify the specific resource providing the services. Lastly, IEP claims that the CAISO's current practice of real-time testing of the availability of internal resources is superior to this proposal.

49. Similarly, Powerex argues that the Commission should reject the proposed "self-certification" process and, instead, incorporate a tagging process to ensure that Ancillary Service bids are backed by a physical resource. Powerex finds the *ex post* certification and audit requirements to be onerous and time-consuming for Scheduling Coordinators, the CAISO and potentially the Commission, and unnecessary. Powerex states that this process puts an undue burden on Scheduling Coordinators where the Scheduling Coordinator was not responsible for the inability to deliver. Powerex believes that the CAISO's proposal should have been considered with stakeholder involvement, so that alternative proposals could have been advanced. Specifically, Powerex contends that a

“tagging” and “checkout” process would help the CAISO discover problems in real time, rather than discovering problems after-the-fact.<sup>47</sup> In addition, it explains that tagging is currently done for energy and could be implemented for Day Ahead and Hour Ahead Ancillary Service commitments with relative ease, and could even be adopted throughout the Western Electricity Coordinating Council. Powerex argues that this standardization could assist in eliminating seams issues.

50. In its answer, the CAISO states that the Commission should accept its proposed self-certification process because the Commission made clear that the ISO must specify the violations covered under the Enforcement Protocol and that it will not allow the ISO to have an open-ended discretion with regard to violations.<sup>48</sup> It states that, rather than simply impose penalties, it proposed a self-certification process as a reasonable alternative, giving suppliers the opportunity and obligation to report any deficiency based on reasonably available information.

### **3. Commission Determination**

51. We believe that IEP and Powerex’s protests, as they relate to the CAISO’s proposed “self-certification” process in EP 3.2, raise matters that are best addressed in the technical conference we order below.

52. The Commission believes that the Commission and the parties would benefit from a technical conference wherein the “self-certification” process and any alternate proposals regarding how best to achieve the ISO’s objective may be discussed and clarified. The Commission will defer action on EP 3.2 until after the technical conference is held. The Commission directs staff to convene the technical conference and report back to the Commission within 120 days of the date of this order.

## **E. EP 4: Comply with Availability Reporting Requirements**

### **1. Compliance Proposal**

53. The CAISO proposes four subparts to EP 4 (Comply with Availability Reporting Requirements). Under EP 4.1 (Reporting Availability), market participants are expected to “report to the ISO Control Center any outage of a generating unit subject to Section 5

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<sup>47</sup> Powerex protest at 7.

<sup>48</sup> CAISO answer at 13.

of the ISO Tariff<sup>49</sup> within thirty (30) minutes after the outage occurs, in accordance with section 2.3.3.9.2 of the ISO Tariff,” which mirrors this provision. The first violation<sup>50</sup> of EP 4.1 in a rolling 12 month period will result in a warning letter; the second and third violations in the same time period will be \$1,000 and \$2,000, respectively; and the fourth and subsequent violations in a rolling 12 month period will be \$5,000. In addition, the CAISO states that a market participant shall not be subject to more than one sanction per generating unit per calendar day under this subpart.

54. EP 4.2 (Scheduling and Final Approval of Outages) prohibits a market participant from undertaking “an Outage except as approved by the ISO Outage Coordination Office in accordance with sections 2.3.3.2, OCP 4.2, and OCP 5.1 of the ISO Tariff.”<sup>51</sup> In addition, final approval of a scheduled outage must be attained by a market participant from the ISO Control Center in accordance with the relevant provisions of the ISO Tariff.<sup>52</sup> Sanctions under this subpart will be as follows: (1) \$5,000 for the first violation within a rolling 12 month period, and (2) \$10,000 for each subsequent violation. The CAISO states that “violation” under this subpart shall mean each outage undertaken for which all required approvals were not obtained.

55. EP 4.3 (Explanation of Forced Outages) requires a market participant to provide an explanation of any forced outage within two working days of the commencement of a forced outage. The explanation must contain a description of the equipment failure or other cause and a description of all remedial actions taken by the operator, as required in section 2.3.3.9.5 of the ISO Tariff. Market participants who fail to comply with this rule

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<sup>49</sup> Section 5 (Relationship between the ISO and Generators) of the ISO Tariff describes the general operating responsibilities required of Participating Generators interconnected to the ISO grid.

<sup>50</sup> EP 4.1(b) defines “violation” under this subpart as “each failure to report an Outage as required.”

<sup>51</sup> *See* EP 4.2(a).

<sup>52</sup> *See* sections 2.3.3.8, OCP 4.3.6, OCP 4.3.8, OCP 5.7, OCP 5.8, and OCP 6 of the ISO Tariff.

will be assessed \$500 per day for each day the explanation is late. EP 4.3(b) states further that “[t]he sanction for failing to provide a timely response to information requested shall be as specified in proposed EP 6.1 (Required Information Generally).”

56. Lastly, EP 4.4 (Enhancements and Exceptions) provides that penalty amounts shall be tripled for any violation of EP 4.1 through EP 4.3 that occurs during an ISO System Emergency. The CAISO states that, if an Uninstructed Deviation Penalty is assessed under section 11.2.4.1.2 of the ISO Tariff for a violation under this rule, then such violation will not be subject to an additional sanction under EP 4.

## **2. Intervenors’ Comments and CAISO Answer**

57. IEP requests that the CAISO clarify what is meant by the term “outage,” as it is used in EP 4 and asks the Commission to request that the CAISO further clarify this point. Specifically, IEP is unclear as to whether the term “outage” refers to a derate or a complete unit outage.

58. In its answer, the CAISO states that it proposed, and the Commission accepted, a definition of the term Outage in Amendment No. 54.<sup>53</sup> That definition states that an outage is a “[d]isconnection, separation or reduction in capacity planned or forced, of one or more elements of an electric system.”<sup>54</sup> The CAISO states that this definition addresses IEP’s concern, and proposes to accelerate the effective date of the revised definition to coincide with the effective date of the Enforcement Protocol as proposed in its compliance filing (*i.e.*, on the date the Commission approves the revised Enforcement Protocol).

## **3. Commission Determination**

59. We accept EP 4 in its entirety and find that it complies with the directives in the February 20 Order. The Expected Conduct and Sanctions under each subpart of this Rule of Conduct are clearly delineated and based on operational requirements found in the existing ISO Tariff. With respect to IEP’s clarification request, we note that in EP 4.1, the CAISO requires “any outage” of a generating unit to be timely reported. We interpret

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<sup>53</sup> *California Independent System Operator Corporation*, 105 FERC ¶ 61,091 (2003)

<sup>54</sup> CAISO answer at 18 (*citing* Amendment No. 54 to the ISO Tariff, Attachment B).

“any” to include both partial and complete generator outages, which is consistent with outage reporting requirements for other approved independent system operators. Further, the CAISO, in its answer, points to a definition of the term “outage” that the Commission previously approved in Amendment No. 54. We accept this definition as further clarifying the term. Accordingly, no further clarification is warranted here.

**F. EP 5: Provide Factually Accurate Information**

**1. Compliance Proposal**

60. The CAISO proposes the following subparts under EP 5 (Accurate Information):<sup>55</sup> (1) Accurate Information Generally (EP 5.1); (2) Inaccurate Meter Data (EP 5.2); and (3) Factually Accurate Self-Certifications (EP 5.3). EP 5.1 requires that certain defined communications by a market participant (or its agent) to the ISO must be submitted by a “responsible company official<sup>56</sup> who is knowledgeable of the facts submitted.” This information must be true, complete, and consistent with the operational plans of the company to the best knowledge of the person submitting the information. A violation of EP 5.1 shall be subject to a sanction of up to \$10,000 for each false submittal, if no sanction for the violation is otherwise specified in the Enforcement Protocol.

61. The Expected Conduct under EP 5.2 requires market participants to provide complete and accurate meter data for each trade hour, as required under section 10 of the ISO Tariff, and correct any errors in such data prior to the issuance of final settlement statements. Any error that is detected after issuance of final settlement statements constitutes a violation of this rule. The penalty charges for violations of EP 5.2 are outlined in Appendix A (Method for Calculating Inaccurate Meter Data Penalty) to the Enforcement Protocol, which specifies the level of the penalty charge to be applied based on who discovers the error, whether the Scheduling Coordinator owes the market and

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<sup>55</sup> Revised EP 5 was formerly EP 2.7 in the CAISO’s original Amendment No. 55 filing.

<sup>56</sup> In the February 20 Order, the Commission found that the term “responsible company official’ is sufficiently broad to allow each market participant to select the appropriate management employee to assure the accuracy of submissions.” February 20 Order at P 91.

whether the ISO reruns settlement of the market.<sup>57</sup> The CAISO states that if the market is rerun, then settlement to all Scheduling Coordinators is recalculated, and the impact of such reruns on charges assessed will be considered. The CAISO states further that a penalty charge will not be imposed unless such sanction is more than \$1,000 for at least one trading day during the period for which there was incomplete or inaccurate meter data. Appendix A also details how penalty proceeds will be allocated if the market is not re-run for cases of inaccurate meter data, which is considered a market adjustment.<sup>58</sup> These proceeds, based on the approximated value of the inaccurate meter data in question and the estimated financial impact on the market, will be returned to affected market participants based on their average of the pro rata share of Unaccounted For Energy charged in the UDC territory during the period of the inaccurate meter event. Simply stated, the parties affected by this conduct will be the first to receive these proceeds under EP 5.2. The remainder of any excess proceeds from violations of this rule will be distributed in accordance with EP 9.4 (Disposition of Proceeds) of the Enforcement Protocol.

## **2. Intervenor's Comments and CAISO Answer**

62. IEP requests clarification regarding the definition of the term “responsible company official,” which is used in revised EP 5. It requests that the Commission order the CAISO to incorporate what a “responsible company official” is into the ISO Tariff. IEP also argues that this definition should be consistent with EP 6.1, which requires data and information to be submitted timely. IEP notes that revised EP 5 states that information submitted must be “. . . consistent with the operational plans of the company.” IEP requests the Commission to require the CAISO to clarify who at the CAISO is in a position: (1) to know the operational plans of the company; (2) determine consistency with the operational plans of the company; and (3) determine if

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<sup>57</sup> If the Scheduling Coordinator discovers the error, a charge equal to 30 percent of the estimated value of the Energy error will apply. If the ISO discovers the error, a charge equal to 70 percent of the estimated value of the Energy error will apply.

<sup>58</sup> No market adjustment will be performed for cases where the market is not re-run and the Scheduling Coordinator does not owe the market.

circumstances have overtaken the operational plans of the company.<sup>59</sup> Absent this clarification and approval by the Commission, IEP requests that the Commission strike this ambiguous requirement.

63. In its answer, the CAISO states that the terms used in revised EP 5 do not require further clarification. It states that, as the Commission stated in the February 20 Order, the phrase “responsible company official” is “taken verbatim from the Commission’s set of minimum behavioral rules recommended in the SMD NOPR.”<sup>60</sup> The ISO also states that the Commission found that the term was “sufficiently broad to allow each market participant to select the appropriate management employee to assure the accuracy of submissions.”<sup>61</sup> With respect to IEP’s request for clarification of the phrase “consistent with the operational plans of the company,” the CAISO states that the phrase was in the original Amendment No. 55 filing and approved by the Commission without modification of further explanation.<sup>62</sup>

### **3. Commission Determination**

64. We accept EP 5 subject to the modification discussed below.<sup>63</sup> With regard to IEP’s objection to the first part of the last sentence of the Expected Conduct under EP 5.1(a): “All such information submitted must be true, complete, and consistent with the operational plans of the company,” we note that this objection was raised and addressed in the February 20 Order. The CAISO clarified in its answer in the original proceeding that this provision reasonably implied that any information submitted to the ISO should

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<sup>59</sup> IEP protest at 17.

<sup>60</sup> CAISO answer at 18 (*citing* February 20 Order at P 90).

<sup>61</sup> February 20 Order at P 91.

<sup>62</sup> *Id.*

<sup>63</sup> EP 5.3 denotes the Expected Conduct and penalty charges for providing factually accurate Self-Certifications in accordance with EP 3.2. As discussed above, EP 3.2 will be the subject of a future technical conference. Therefore, we will defer judgment of EP 5.3 at this time.

be completed under proper management supervision to ensure the accuracy of the information. In the February 20 Order, the Commission accepted the CAISO's clarification and this language.<sup>64</sup>

65. However, with respect to the second half of the last sentence of revised EP 5.1(a), which states that such information must be "to the best of the knowledge of the person submitting the information," upon further reflection, we note that this standard is inconsistent with the more objective standard announced in the MBR Tariff Order and Market Behavioral Rule 3.<sup>65</sup> Market Behavior Rule 3 provides that:

Seller will provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, or Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercised *due diligence* to prevent such occurrences.<sup>66</sup>

The MBR Tariff Order also held that the behavioral rules adopted by the Commission for market-based rates sellers "apply to all markets."<sup>67</sup> Thus, the Commission is instituting a proceeding under section 206 of the FPA, in Docket No. EL05-14-000, to establish a just and reasonable rule, consistent with Market Behavioral Rule 3, under revised EP 5.1(a).<sup>68</sup>

66. In cases where, as here, the Commission institutes a section 206 proceeding on its own motion, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the initiation of the Commission's proceeding in the *Federal Register*, and no later than five months

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<sup>64</sup> February 20 Order at P 91.

<sup>65</sup> MBR Tariff Order at P 106 and Appendix A.

<sup>66</sup> *Id.* (emphasis added). In the MBR Tariff Order, the Commission stated that "we intend the 'due diligence' exception to apply to the entity, not the individual, submitting data." *Id.* at P 110.

<sup>67</sup> *Id.* at P 185.

<sup>68</sup> *Id.*

subsequent to the expiration of the 60 day period. In order to give maximum protection to customers, and consistent with our precedent,<sup>69</sup> we will establish a refund effective date at the earliest date allowed. This date will be 60 days from the date on which notice of the initiation of the proceeding in Docket No. EL05-14-000 is published in the *Federal Register*.

67. Section 206 also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon the initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it failed to do so and shall state its best estimate of when it reasonably expects to make such a decision. Given the times for filing identified in this order, and the time allowed for comments, the Commission estimates that it will be able to reach a final decision by March 31, 2005.

68. In response to IEP's protest regarding the definition of what a "responsible company official" is, we reiterate that, in the February 20 Order, the Commission held that the term was "sufficiently broad to allow each market participant to select the appropriate management employee to assure the accuracy of submissions."<sup>70</sup> In addition, we note that neither the Commission, nor the ISO for that matter, intends to directly involve itself in the business operations of market participants. Accordingly, we deny IEP's requested action here and reiterate our holding that the Expected Conduct proposed under EP 5.1(a) is reasonable.

69. The CAISO states that the sanction for a violation of EP 5.1(a) shall be up to \$10,000 for each submittal of false information. However, this proposal is inconsistent with the directives in the February 20 Order, which required the ISO "to specify the exact penalty amount to be imposed for each infraction."<sup>71</sup> Accordingly, we direct the CAISO to modify EP 5.1(b) to include graduated penalties for objectively identifiable violations of EP 5.1(a) not to exceed \$10,000.

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<sup>69</sup> *See, e.g.*, Canal Electric Company, 46 FERC ¶ 61,153 (1989), *reh'g denied*, 47 FERC ¶ 61,275 (1989).

<sup>70</sup> February 20 Order at P 91.

<sup>71</sup> *Id.* at P 29.

**G. EP 6: Provide Information Required by the ISO Tariff****1. Compliance Proposal**

70. The CAISO proposes six subparts under EP 6 (formerly EP 2.8): (1) Required Information Generally (EP 6.1); (2) Late Schedules (EP 6.2); (3) Investigation Information (EP 6.3); (4) Audit Materials (EP 6.4); (5) Self-Certification Forms (EP 6.5); and (6) Review by FERC (EP 6.6). The Expected Conduct under EP 6.1 states that all information that is required to be submitted to the ISO under the ISO Tariff, ISO protocols, or jurisdictional contracts must be submitted in a complete and accurate manner, and in accordance with the timelines specified in the ISO Tariff for submitting schedules and other information. A violation of this rule is subject to a \$500 sanction each day required information is late. The Sanction for submitting late schedules (*i.e.*, Preferred Day-Ahead Schedules, Revised Day-Ahead Schedules and Hour-Ahead Schedules) under EP 6.2 (Late Schedules) is \$100 per late schedule after the first 20 late schedules in a calendar month.

71. For violations of the Expected Conduct under EP 6.3 (Investigation Information) and EP 6.4 (Audit Materials), the CAISO proposes graduated sanctions of \$1,000, \$2,000, and \$5,000 for the first, second and third and subsequent violations, respectively. For the purpose of these subparts only, the CAISO defines “violation” as each failure to provide all requested information from the date the information was due until all required information is received by the ISO. A deficiency in response (*i.e.*, failure to address one question or item) shall be treated as one violation.<sup>72</sup>

**2. Intervenors’ Comments and CAISO Answer**

72. IEP suggests that the Commission revisit the penalties proposed under EP 6.2 (Submission of Late Penalties), upon implementation of MD02. IEP argues that, in light of the balanced schedule requirement, it will be virtually impossible to comply with this

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<sup>72</sup> EP 6.5 governs the timely submission of “self-certification” forms. Therefore, for the reasons discussed above, we defer action on this subpart at this time. EP 6.6 merely states that, in the event that a market participant seeks review by the Commission, the time for submitting information required under EP 6.1, 6.3 or 6.4 shall be tolled until the Commission resolves the issue.

protocol, considering the hundreds of thousands of megawatts transacted within the CAISO market. IEP believes that the CAISO should continue to monitor and report chronic offenders, with the intent to adversely influence the market, to the Commission.

73. With respect to EP 6.3, IEP argues that the CAISO not only proposes to levy penalties for tardy responses to information request, but also for deficient responses, and penalties for deficient responses was not proposed in the original Amendment No. 55 filing. Accordingly, IEP finds this expanded scope to be outside of the authorizations contained in the February 20 and May 6 Orders. In addition, IEP notes that the CAISO has afforded itself absolute discretion in determining whether a response is deficient. Alternatively, IEP suggests that the Commission require the CAISO to refer any less than adequate response to the Commission Enforcement Staff for independent review, who can request, if necessary, that a market participant supplement a response.

74. In its answer, the CAISO states that, with respect to EP 6.2 (formerly EP 2.8(a)), IEP is attempting to reargue a requirement for the Original Amendment No. 55 filing that the Commission has already approved.<sup>73</sup> With respect to EP 6.3 and 6.4, the CAISO states that the Amendment No. 55 filing and the instant compliance filing contain corresponding penalty provisions regarding the failure to provide timely information in response to a written request by the ISO for information reasonably necessary to conduct an investigation. The ISO states that the penalty provisions in these sections are substantially similar, with the differences reflecting the ISO's attempt to comply with the Commission's directive that there be no discretion in determining the amount of any penalty to be imposed.<sup>74</sup> The CAISO states that the Commission approved the corresponding penalty provisions in EP 2.8(c) and thus there is no basis to reject the penalties proposed in revise EP 6.3(b).<sup>75</sup> The CAISO also explains that this section does not add a new violation for deficient responses, it merely clarifies what constitutes a tardy response and that the ISO is not proposing separate penalties for tardy and deficient responses.

75. Finally, the CAISO states that, consistent with the February 20 Order and revised EP 1.10, the Commission, not the ISO, will be responsible for enforcing the Enforcement Protocol and assessing penalties. It explains that the ISO will refer to the Commission

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<sup>73</sup> CAISO answer at 21 (*citing* February 20 Order at P 96).

<sup>74</sup> *Id.* at 23 (*citing* February 20 Order at P 29-30).

<sup>75</sup> *Id.* (*citing* February 20 Order at P 96).

any instance in which a market participant fails to respond to an ISO information request in connection with an investigation in a timely, complete, and accurate manner. Thus, the CAISO states that the Commission will make the ultimate determination whether there is a violation under the Enforcement Protocol.

### **3. Commission Determination**

76. We accept EP 6 (Provide Information Required by the ISO Tariff) with modifications. In the February 20 Order, the Commission approved former EP 2.8 (Provide Information Required by the ISO Tariff) and the associated penalties under former EP 2.8(b) and (c).<sup>76</sup> In the compliance filing, the CAISO expands further the provisions of this Rule of Conduct to include, among other things, late schedules, and increased the level of sanctions for violations. IEP argues that, because of the balanced schedule requirement, it will be virtually impossible to avoid the CAISO's newly proposed sanctions under EP 6.2 (Late Schedules), especially when you factor in the volume of trades that occur in CAISO Markets each day. IEP also argues that the CAISO's proposal to sanction deficient responses to information requests under EP 6.3(b) and 6.4(b) was not approved, or even contemplated, in the February 20 Order. We agree with IEP that these modifications fall outside the scope of the Commission's directives in the February 20 Order. While we will not allow them here, the ISO may propose such modifications in a future filing under section 205 of the FPA.<sup>77</sup> Thus, we direct the CAISO to remove EP 6.2 in its entirety, and the last sentence of EP 6.3(b) and 6.4(b), which states that the deficiency of information will be treated as a violation.

## **H. EP 7: No Market Manipulation**

### **1. Compliance Proposal**

77. In the February 20 Order, the Commission accepted (with certain modifications) the concept underlying the general prohibitions stated under former ER 2.9(a) in Amendment No. 55, which would prohibit detrimental practices, and former EP 2.10(a),

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<sup>76</sup> The penalties under former EP 2.8(b) and (c) were as follows: a maximum Standard Penalty of \$500 for each day that required information is late and graduated Special Penalties up to \$5,000 per day for multiple sanctions in a rolling three-year period.

<sup>77</sup> 16 U.S.C. § 824d (2000).

which would prohibit market manipulation.<sup>78</sup> However, the Commission required the ISO to replace the proposed language in EP 2.9(a) and EP 2.10(a) with Market Rule 2 of the MBR Tariff Order.

78. In the CAISO's compliance filing, under the subparts to revised EP 7 (No Market Manipulation), the CAISO inserted language from Market Rule 2 of the MBR Tariff Order. The CAISO states that, because Market Rule 2 of the MBR Tariff Order only pertains to market manipulation (not detrimental practices), the ISO proposes to delete in its entirety the provision in the Enforcement Protocol concerning detrimental practices.

79. In revised EP 7, the ISO also proposes to make several modifications to the provisions set forth in Market Rule 2. First, revised EP 7.4 (Artificial Congestion), provides that a Market Participant will not knowingly undertake a transaction to nullify the congestion relief the ISO expects when a Dispatch instruction is issued (unless the Market Participant exercised due diligence to prevent such an occurrence). Revised EP 7.5 (Collusion) provides an example of what constitutes collusion. The CAISO states that violations or potential violations of this Rule of Conduct will be referred to the Commission for the appropriate sanction.

## **2. Intervenors' Comments and CAISO Answer**

80. Powerex asserts that the Commission should require the ISO to modify revised EP 7.4(a) (Expected Conduct for Artificial Congestion), to delete the phrase "or knowingly undertakes a transaction to nullify the congestion relief the ISO expects when a Dispatch instruction is issued." It states that a Scheduling Coordinator cannot know what the ISO expects unless the ISO directly informs the Scheduling Coordinator prior to the transaction and that the phrase expands the purpose and intent of Market Behavior Rule 2 as originally contemplated by the Commission.<sup>79</sup>

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<sup>78</sup> February 20 Order at P 100.

<sup>79</sup> Powerex protest at 8-10.

81. Powerex asserts that Expected Conduct under EP 7.5(a), which pertains to collusion, attempts to include an example of what constitutes collusion as a clarifying matter.<sup>80</sup> Powerex argues that the example provided by the CAISO is unclear and does not make sense, because Scheduling Coordinators have no way of knowing when the CAISO is using Supplemental Energy bids to mitigate congestion. Moreover, Powerex explains that there can be no collusion when an Scheduling Coordinator procures and uses Existing Transmission Contract (ETC) rights that come with scheduling rights up to real time because neither the Scheduling Coordinator nor the ETC transmission provider can know what the CAISO is intending when dispatching a particular Supplemental Energy bid, especially when these bids have to be submitted one hour prior to the hour of dispatch. Scheduling Coordinators merely submit bids; the CAISO has the power to accept or reject bids. Accordingly, Powerex requests the Commission to direct the CAISO to remove the example or provide a clearer example.

82. In its answer, the CAISO states that it does not object to Powerex's request to delete the phrase "or knowingly undertakes a transaction to nullify the congestion relief the ISO expects when a Dispatch instruction is issued" from EP 7.4(a). The CAISO also states that it does not object to Powerex's request to delete the example the CAISO used for what constitutes collusion in revised EP 7.5(a) ("*e.g.*, to knowingly use ETC transmission service after the close of the Hour Ahead Market").

### **3. Commission Determination**

83. We accept EP 7 (No Market Manipulation) with modification. Former EP 2.10, as proposed in the original Amendment No. 55 filing, prohibited certain market manipulation and ascribed a stringent maximum Standard Penalty. In the February 20 Order, the Commission directed the CAISO to replace the proposed language under this particular Rule of Conduct with Market Rule 2 of the MBR Tariff Order. The Commission recognized that, "in this way, market participants will be subject to consistent rules both in the ISO Tariff and their market-based rate authorizations which

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<sup>80</sup> EP 7.5(a) states that, "Market participants shall not engage in collusion with another party for the purpose of manipulating market prices, market conditions, or market rules for electric energy or electricity products (*e.g.*, to knowingly use ETC transmission service after the close of the Hour Ahead market to reverse the effect of a Supplemental energy from a System Resource that the ISO exercised to mitigate congestion)."

will be enforced by a single entity.”<sup>81</sup> In the compliance filing, the CAISO has properly included the required language under EP 7. However, as noted above, the CAISO added additional language to EP 7.4 and EP 7.5 that Powerex contests and the CAISO agrees in its answer should be deleted. Thus, we direct the CAISO to remove the phrase in EP 7.4 and example in EP 7.5 that it agreed to delete from those sections, as described in the paragraph above.

**I. EP 8: Process for Investigation and Enforcement**

**1. Compliance Proposal**

84. In the February 20 Order, the Commission directed the CAISO to modify its proposal to indicate that the Enforcement Protocol will be enforced by the Commission until such time as the CAISO submits, and the Commission approves, a filing demonstrating the establishment of an independent ISO Governing Board.<sup>82</sup>

85. Revised EP 8 (Process for Investigation and Enforcement) states that the Rules of Conduct shall be enforced by the Commission, in accordance with the Commission’s standard rules and procedures.

**2. Commission Determination**

86. We accept EP 8, as it complies with the February 20 Order.

**J. EP 9: Administration of Sanctions**

**1. Compliance Proposal**

87. EP 9 (Administration of Sanctions) contains four subparts. EP 9.1 (Assessment; Waivers and Adjustments) states that “FERC shall have the authority to waive, reduce or increase a Sanction specified in this [Enforcement Protocol] when it determines that such adjustment is just and reasonable. 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

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<sup>81</sup> February 20 Order at P 100.

<sup>82</sup> *Id.* at P 46.

mitigating circumstances exist.” The remaining subparts discuss Excuse (EP 9.2); Settlement (EP 9.3); and Disposition of Proceeds (EP 9.4), when there is a violation of a Rule of Conduct.

88. Specifically, revised EP 9.3(b) states that, except as provided in revised EP 9.3 (c), the Scheduling Coordinator will be obligated to pay all penalty amounts reflected on the Preliminary and Final Settlement Statements to the ISO pursuant to the ISO Settlement process, as set forth in section 11 of the ISO Tariff. Pursuant to revised EP 9.3(c), where parties other than the Scheduling Coordinator are responsible for the conduct giving rise to a penalty reflected on a Preliminary or Final Settlement Statement, and the Scheduling Coordinator bears no responsibility for the conduct, such other parties ultimately will be liable for the penalty. This subpart also states that “The Scheduling Coordinator shall be obligated to pay the full amount of the Invoice, inclusive of the penalty unless FERC specifically authorizes the Scheduling Coordinator to net its payment by the amount of the penalty in question.”

89. Under revised EP 9.4, the ISO will collect penalties assessed pursuant to the Enforcement Protocol and deposit those amounts in an interest bearing trust account. After the end of each calendar year, the ISO will distribute the penalty amounts together with interest earned through payments to Scheduling Coordinators as provided in the section.

## **2. Intervenor’s Comments and CAISO Answer**

90. APX argues that EP 9.3 violates prior Commission orders holding market participants, not their Scheduling Coordinators, responsible for the payment of penalties. APX points to the May 6 Order, where the Commission held that “we grant rehearing to the extent of stating that we will not hold a Scheduling Coordinator responsible for a tariff violation or manipulative conduct attributable solely to one of its market participants.”<sup>83</sup> APX also points out that the Commission also held that “if the ISO determines that the market participant is solely responsible for the payment of a penalty, then even if the market participant uses its Scheduling Coordinator to pay the penalty, the market participant, not the Scheduling Coordinator, is ultimately responsible for the market participant’s payment of the penalty.”<sup>84</sup>

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<sup>83</sup> APX protest at 1 (*citing* May 6 Order at P 21).

<sup>84</sup> *Id.* (*citing* May 6 Order at P 51).

91. APX asserts that EP 9.3(c) is inconsistent with the May 6 Order because the provision requires the Scheduling Coordinator to pay the penalty even when a party other than the Scheduling Coordinator is solely responsible for the improper conduct. APX also argues that EP 9.3(c) could be read to allow the CAISO to refuse to accept schedules from an otherwise innocent Scheduling Coordinator if the Scheduling Coordinator did not pay a penalty because the market participant behind the Scheduling Coordinator that violated the EP failed to pay, which is unacceptable. APX states that, for these reasons, the Commission should direct the CAISO to revise EP 9.3(b) to require the CAISO to also impose a penalty on the market participant behind the Scheduling Coordinator and should direct the CAISO to revise EP 9.3(c) to remove the phrase “inclusive of the penalty.”<sup>85</sup> In addition, APX requests that the Commission direct the CAISO to revise the Enforcement Protocol to make clear the “where a party other than the Scheduling Coordinator is responsible for the conduct giving rise to a penalty...and where the Scheduling Coordinator bears no responsibility for the conduct,” the CAISO shall take the action directly against the responsible market participant if that market participant fails to pay the penalty.<sup>86</sup>

92. Further, APX asserts that it is unclear whether the CAISO has included a provision in the revised EP that if a Scheduling Coordinator acts for multiple market participants and certain market participants have violated the ISO Tariff, that Scheduling Coordinator shall still receive a share of the penalty payments at the end of the year, as directed in the May 6 Order.<sup>87</sup> Finally, APX states that, in the February 20 Order, the Commission directed the CAISO to inform not only the Scheduling Coordinator but also the market participant behind the Scheduling Coordinator of any violation.<sup>88</sup> APX asserts that the CAISO did not follow that requirement in its compliance filing, where, in EP 9.3(a), the CAISO indicates that it will only inform the Scheduling Coordinator.

93. According to Powerex, EP 9.3 (Settlement) would effectively hold Scheduling Coordinators responsible for paying a penalty incurred on any “Other Responsible Party.” Powerex requests that the Commission direct the CAISO to place some limit on holding the Scheduling Coordinator responsible for payments of penalties imposed on any other

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<sup>85</sup> APX protest at 4.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 5-6 (*citing* May 6 Order at P 57).

<sup>88</sup> *Id.* (*citing* February 20 Order at P 109).

party and limit that responsibility to only the party for whom the Scheduling Coordinator is directly scheduling. Powerex also notes that the term, "Other Responsible Party," is not defined.

94. IEP also requests clarification of EP 9.3(c). IEP states that this provision seems to require Scheduling Coordinators to disclose the clients on whose behalf they conduct business. IEP argues that this is confidential, market sensitive information and the CAISO has not demonstrated a need for this data. Moreover, the Scheduling Coordinator Agreement is a relationship between the Scheduling Coordinator and the ISO, and does not include customers of the Scheduling Coordinator.

95. IEP also takes issue with EP 9.4, which would allow a minor penalty, with little if any financial consequence to the market, to preclude a market participant from receiving penalty proceeds. IEP requests the Commission to require the CAISO to revise the language in EP 9.4 (Disposition of Proceeds) to reflect a more fair and accountable system.

96. In its answer, the CAISO states that in neither the February nor the May Order did the Commission require the ISO to completely change the normal operation of its Settlement process. With respect to revised EP 9.3(b) and 9.3(c), the CAISO states that APX fails to distinguish between ultimate liability for a penalty, which resides with the party or parties that engaged in the culpable conduct, and responsible for paying a penalty pursuant to the ISO's Settlement process, which reside with the Scheduling Coordinator alone. The CAISO explains that, under the Settlement process, all amounts owed and owing (including penalty amounts) are shown on Preliminary and Final Settlement Statements, and the responsibility for payment of those Settlement Statements lies with the Scheduling Coordinators on behalf of the market participants they represent.<sup>89</sup>

97. The CAISO also explains that revised EP 9.3(b) and 9.3(c) reflect the distinction between payment responsibility under the Settlement process and ultimate liability for a penalty. It states that, to the extent a market participant is responsible for the conduct that gives rise to a penalty, the market participant, not the Scheduling Coordinator, is ultimately liable. The CAISO also states that it would be willing to modify revised EP 9.3(c) to state that, "if the ISO finds that a Market Participant separate from the Scheduling Coordinator is solely responsible for a violation, the Scheduling Coordinator that is unable to obtain payment may net its payment by the amount of the penalty in

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<sup>89</sup> CAISO answer at 28.

question.”<sup>90</sup> Any shortfall in payment of an invoice up to the amount of such a penalty, the CAISO asserts, will cause the ISO to “short” the penalty trust fund described in EP 9.4, not the market.

98. With respect to revised EP 9.3(a), the CAISO states that it inadvertently failed to provide for notification of the market participant(s) in revised EP 9.3(a) and states that it agrees with APX that both the Scheduling Coordinator and all market participants it represents that are liable for a violation should be informed of a violation. The CAISO suggests modifying the second sentence of the section so that, after the words “the ISO will provide a description of the penalty to the responsible Scheduling Coordinator,” it reads:

and all Market Participants the Scheduling Coordinator represents that are liable for the penalty, when the ISO has sufficient objective information to identify and verify responsibility of such Market Participants.<sup>91</sup>

The CAISO further states that it can provide a description of the penalty to a responsible market participant, only in circumstances where the ISO is able to determine which market participant is in fact responsible.<sup>92</sup>

99. With respect to EP 9.4, the CAISO states that it has already addressed the parties’ concerns regarding the disposition of proceeds. It states that revised EP 9.4 is clear that market participants eligible to receive penalty proceeds are those “that were not assessed a financial penalty pursuant to this EP during the calendar year.” The CAISO also explains that it filed a request for clarification of the February 20 Order as to whether a minor first offense for which no financial penalty was levied served to disqualify the offending party from being allocated penalty proceeds, but that the May 6 Order did not appear to squarely address the issue. It states that revised EP 9.4 provides that the opportunity to participate in redistribution of penalty proceeds is revoked only if there is a financial penalty; therefore a violation that results only in a Sanction letter does not cause such revocation.<sup>93</sup>

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<sup>90</sup> *Id.* at 30.

<sup>91</sup> *Id.* at 27.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 34.

### 3. Commission Determination

100. We accept EP 9 (Administration of Sanctions), as modified herein. Powerex and APX argue that the Commission should direct the CAISO to place some limit on holding the Scheduling Coordinator responsible for payments of penalties imposed on any other party and limit that responsibility to only the party for whom the Scheduling Coordinator is directly scheduling.<sup>94</sup> The CAISO states that EP 9 reflects the settlement process described in section 11 (ISO Settlements and Billing) of the ISO Tariff and the directives provided by the Commission in its May 6 Rehearing Order. EP 9.3(b) requires a Scheduling Coordinator to use responsible efforts to obtain payment of penalties from its client and remit such payment to the ISO during the normal course of the settlement process. When a Scheduling Coordinator is unable to obtain payment from its client for a Rule of Conduct violation, then the Scheduling Coordinator may notify the ISO, who will immediately notify this Commission. The Commission may, in turn, authorize the Scheduling Coordinator to net its settlement payment by the amount of the penalty in question. Otherwise, the Scheduling Coordinator itself must remit full payment.

101. While Scheduling Coordinators bear some risk as intermediaries for their clients, we believe that the CAISO has proposed a reasonable settlement process to ensure that a Scheduling Coordinator will not be financially harmed by a client's adverse behavior or behaviors. However, we also accept the CAISO's proposal to modify EP 9.3(c) to state that, "if the ISO finds that a Market Participant separate from the Scheduling Coordinator is solely responsible for a violation, the Scheduling Coordinator that is unable to obtain payment may net its payment by the amount of the penalty in question," and direct it to revise the ISO Tariff to reflect such language. Further, considering our experience in other ISO Markets, we anticipate that Sanctions under this Enforcement Protocol will be infrequent at best; thereby, allowing the Commission to act swiftly to resolve disputes in this regard.

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<sup>94</sup> We are unable to address the concern that "the Commission should direct the CAISO to . . . limit that responsibility to only the party for whom the Scheduling Coordinator is directly scheduling," as we are unclear as to how the Scheduling Coordinator could be implicated with regard to a party that has no scheduling agreement with the Scheduling Coordinator. Only transactions scheduled by the Scheduling Coordinator will appear on the Scheduling Coordinator's settlement statement.

102. With respect to IEP's claim that "other responsible party" is not defined and its assertion that EP 9.3(c) appears to require Scheduling Coordinators to disclose confidential and sensitive market information by revealing the name of their clients. We disagree with both of these allegations. EP 9.3(c) clearly indicates that the "other responsible party" refers to *the party ultimately liable for the penalty*, where a party other than the Scheduling Coordinator is responsible for the conduct giving rise to a penalty reflected on a settlement statement. With respect to the latter, EP 9.3 outlines the manner in which penalties will be assessed – to the Scheduling Coordinator during the normal course of the settlement process. The Scheduling Coordinator is responsible for communicating with its client and, if necessary, remitting payment for violations on its client's behalf. The process proposed in EP 9.3, including the dispute procedures, does not involve the market participant directly. Thus, we deny IEP the requested action.

103. Finally, we accept the CAISO's proposal to revise EP 9.3(a) to provide that both the Scheduling Coordinator and all market participants it represents that are liable for a violation should be informed of a violation, as described above, and direct the CAISO to revise the ISO Tariff to reflect such language.

**K. EP 10 (Miscellaneous)**

**1. Compliance Proposal**

104. EP 10 (Miscellaneous) sets forth the time limitation for investigating an alleged violation of a Rule of Conduct, in accordance with the direction provided in the February 20 Order, declares that the Enforcement Protocol will not limit the ability of the ISO to collect market information, and specifies how new provisions and amendments to the Enforcement Protocol will be established.

**2. Commission's Determination**

105. We accept EP 10 (Miscellaneous) and find that it complies with the February 20 Order.

**L. Conformed Tariff****1. Compliance Proposal**

106. In the February 20 Order, the Commission stated that market participants should not be bound by tariff requirements that are currently not found in the existing ISO Tariff as posted on the ISO's website. Therefore, the ISO was directed to "post an updated, conformed tariff on its website within 30 days following the acceptance of its subsequent compliance filing in this proceeding."<sup>95</sup> The Commission stated further that penalties may not be imposed pursuant to Amendment No. 55 until this requirement was met.

**2. Intervenors' Comments and CAISO Answer**

107. Powerex requests that the Commission again require the CAISO to place a copy of a conformed tariff on its website. The tariff currently on the CAISO website is dated October 8, 2003. Powerex believes that the CAISO should have a timely conformed tariff link on its website at all times.

108. In its answer, the CAISO states that the date by which the Commission required it to post an updated, conformed ISO Tariff on its website has not yet arrived. It asserts that, because the Commission has not yet accepted the instant compliance filing, the 30-day period following acceptance of the compliance filing has not yet started to run.<sup>96</sup> The ISO notes that on June 24, 2004, it posted on its website the conformed ISO Tariff as of June 1, 2004 and commits to further update the Tariff on a regular basis as needed.

**3. Commission Determination**

109. We agree with Powerex that it is important that a current copy of the ISO Tariff be available on the ISO's website at all times. Therefore, we reiterate that the ISO Tariff be updated thirty days from the date of this order, and, thereafter, as soon as practicable but not to exceed sixty days from the date that revisions to the ISO Tariff are accepted by the Commission. As a practical matter, this extended period of time should mitigate the administrative burden associated with the voluminous paper traffic managed by the CAISO.

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<sup>95</sup> February 20 Order at P 167.

<sup>96</sup> CAISO answer at 36.

110. In addition, under Order No. 614,<sup>97</sup> if a public utility revises or modifies its tariff, it must file with the Commission a complete revised tariff with a new designation. Thus, we also direct the CAISO to electronically file a revised tariff with the Commission, within thirty days of the date of this order, reflecting the modifications discussed above.

### **M. Scheduling on Zero-Rated Paths**

111. In the February 20 Order, the Commission accepted the ISO's prohibition against intentionally scheduling over zero-rated paths, as proposed in ISO Tariff section 2.2.9, effective on the date of implementation of the changes the ISO commits to make to its scheduling system.<sup>98</sup>

#### **1. Intervenors' Comments and CAISO Answer**

112. Powerex asserts that the Commission should reject the CAISO's proposed effective date of ISO Tariff section 2.2.9 (Prohibition on Scheduling on Zero-Rated Paths), to the extent that the proposal is inconsistent with the Commission's prior orders. In the compliance filing, the CAISO proposes to make this provision effective "as of the date the Commission approves such provisions."<sup>99</sup> However, in the February 20 Order, the Commission accepted section 2.2.9 and made it effective upon implementation of the necessary software changes the CAISO committed to make, which would allow the CAISO to reject schedules on zero-rated paths.<sup>100</sup>

113. In its answer, the CAISO states that the clean ISO Tariff sheet containing section 2.2.9 (in Attachment A to its compliance filing) contains the correct effective date at the bottom right hand corner and states "Effective: Upon Notice."<sup>101</sup> CAISO states that the

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<sup>97</sup> See Designation of Electric Rate Schedule Sheets, Order No. 614, 65 Fed. Reg. 18,221 (Mar. 31, 2000), FERC Stats. & Regs., Regs. Preambles ¶ 31,096 (2000).

<sup>98</sup> February 20 Order at P 121.

<sup>99</sup> CAISO compliance filing transmittal letter at 34.

<sup>100</sup> February 20 Order at P 121.

<sup>101</sup> CAISO Tariff, Third Revised Sheet No. 20.

reason for Powerex's confusion seems to be that, in the compliance filing, the ISO stated that the section would become effective "upon notice by the ISO as described below in section IV."<sup>102</sup> The CAISO states that the words "as described below in section IV" were mistakenly included and should be disregarded and that it regrets any confusion it may have caused.

## 2. Commission Determination

114. In its answer, the CAISO has clarified the confusion with respect to the effective date of ISO Tariff section 2.2.9. However, we will direct the CAISO to specifically state that the effective date for this section is on the date of implementation of the changes the ISO commits to make to its scheduling system.

## N. Effective Dates

115. In its compliance filing, the CAISO proposes that the "new provisions contained in the present filing be made effective as of the date the Commission approves such provisions."<sup>103</sup>

## 1. Intervenors' Comments and CAISO Answer

116. Powerex asserts that the Commission should clarify the effective date of each of the provisions of Amendment No. 55 when it issues an order on the CAISO's compliance filing.

117. In its answer, the CAISO states that the effective date that it proposes in its compliance filing should be the appropriate one in light of the Commission's sole authority to administer and charge penalties under the Enforcement Protocol. It also states that it would not object to any further clarification by the Commission concerning the effective date.

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<sup>102</sup> CAISO answer at 35 (*citing* compliance filing transmittal letter at 28).

<sup>103</sup> CAISO compliance filing transmittal letter at 34.

## 2. Commission Determination

118. We accept the compliance filing, as modified and discussed herein, to become effective on the date of this order.

### The Commission orders:

(A) The CAISO's compliance filing is hereby accepted, subject to modification, as discussed in the body of this order.

(B) The CAISO is directed to make a compliance filing, within 30 days of the date of this order, incorporating the revisions discussed above.

(C) The Commission's staff is hereby directed to convene a technical conference to address matters regarding the CAISO's proposed revisions to EP 3. Staff must report back to the Commission on the technical conference within 120 days of the date of issuance of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), the Commission hereby institutes a proceeding in Docket No. EL05-14-000 concerning the justness and reasonableness of EP 5.1(a), as discussed in the body of this order.

(E) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding under section 206 of the FPA in Docket No. EL05-14-000.

(F) The refund effective date in Docket No. EL05-14-000, established pursuant to section 206(b) of the FPA, will be 60 days following publication in the *Federal Register* of the notice discussed in Ordering Paragraph (E) above.

By the Commission. Commissioner Kelly not participating.

( S E A L )

Linda Mitry,  
Acting Secretary.