

UNITED STATES OF AMERICA 107 FERC ¶ 61,001  
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator  
Corporation

Docket No. ER02-651-002

ORDER ACCEPTING IN PART  
AND REJECTING IN PART COMPLIANCE FILING

(Issued April 1, 2004)

1. In this order, we accept in part and reject in part a compliance filing that the California Independent System Operator Corporation (California ISO) submitted to revise its procedures for the distribution of default interest (interest on past due payments) as the Commission directed in a February 26, 2002 Order.<sup>1</sup> This order benefits customers by clarifying how interest on late payments will be calculated and distributed to the California ISO's market participants.

**Background**

2. In December 2001, the California ISO proposed to revise section 6.5.2 of the ISO tariff to provide that interest on default payments (past due payments) will be applied first to pay unpaid creditor balances and then to offset the Grid Management Charge. This revision, together with several others, constituted Amendment No. 41 to the California ISO's Open Access Transmission Tariff (OATT). The Commission rejected without prejudice the proposed changes regarding interest on past due payments, finding that the California ISO had not provided a sufficient description of how it would allocate the payments to market participants.

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<sup>1</sup> California Independent System Operator Corporation, 98 FERC ¶ 61,187 (2002) (February 26 Order), order on reh'g 99 FERC ¶ 61,253 (2002) (June 3 Order).

3. On rehearing of the February 26 Order, the Commission adopted an intervenor's proposal for distribution of default interest to third-party suppliers.<sup>2</sup> The Commission directed the California ISO to file revised tariff provisions that provide for the distribution of interest earned on late payments to third-party suppliers on a pro rata basis in relation to amounts past due, consistent with section 6.10 of the California ISO Tariff Settlement and Billing Protocol. To the extent that the California ISO had implemented a change in its procedures other than those discussed in the June 3 Order, the Commission directed it to include in its compliance filing a crediting mechanism to adjust payments to comply with the June 3 Order.

### **The California ISO's Filing**

4. The California ISO submitted a compliance filing on July 3, 2002. It states that it currently charges Scheduling Coordinators interest on past due payments owed to the ISO Market, but that its tariff does not provide for payment of interest to creditors (participants owed money by the ISO market) with overdue accounts. The California ISO proposes processes for the collection and distribution of default interest and states that it will disburse default interest to Scheduling Coordinators with overdue accounts only to the extent that it collects such default interest. The California ISO proposes separate processes to address the collection and disbursement of default interest for three time periods: (1) from November 1, 2001 through February 7, 2002; (2) from February 8, 2002 to the effective date of this order; and (3) the period beginning on the effective date of this order.

5. For prospective distributions of default interest in all three time periods, the California ISO proposes to create new Charge Types for late payment interest that is charged to Scheduling Coordinators and for late payment interest collected that is to be paid to Scheduling Coordinators. It states that interest will be calculated for each unpaid, overdue balance on Grid Management Charges and Market Invoices for each Scheduling Coordinator for each Trade Month in which such a default occurred. Default interest collected that is to be paid to Scheduling Coordinators will be reflected in a new Interest Invoice for the Trade Month.<sup>3</sup> Default interest that is to be charged to Scheduling Coordinators will be detailed on the first Preliminary Statement of the Trade Month.<sup>4</sup>

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<sup>2</sup> California Independent System Operator Corporation, 99 FERC ¶ 61,253 (2002).

<sup>3</sup> The amount of interest distributed to each Scheduling Coordinator will be based upon the outstanding unpaid balances as of the relevant payment date for the Final Invoice for the unpaid account.

<sup>4</sup> Interest collected from Scheduling Coordinators will be applied to that Scheduling Coordinator's unpaid Grid Management Charges and then to FERC Annual Charges.

The California ISO will distribute interest to Scheduling Coordinators upon the earliest of three events: (1) the Trade Month Interest Account contains more than \$5,000; (2) all overdue and unpaid accounts for the Trade Month have been paid in full; or (3) no distributions from the relevant account have been paid in six months.

6. The California ISO proposes to calculate the amount of default interest that it received from the California Department of Water Resources (DWR) and the California Energy Resources Scheduler (CERS) and distributed to Scheduling Coordinators from November 1, 2001 through February 7, 2002. It will then adjust for this initial distribution and redistribute the default interest as default interest payments to Scheduling Coordinators with unpaid market invoices for the period of Trade Month January 2001 through Trade Month August 2001. The adjustment for late payment interest previously distributed shall be made in accordance with section 11.20.2 of the California ISO Tariff. The net payment position with respect to each Scheduling Coordinator will be based upon the Preliminary Statement and the section 11.20.2 restatement.

7. Since February 8, 2002, the California ISO has put collected default interest into its Market Reserve Account. It states that when the Commission adopts the instant compliance filing, all such interest will be distributed to Scheduling Coordinators in the first Trade Month immediately following the Trade Month in which the California ISO adjust accounts for prior distributions of default interest as payments on past due market accounts. Prospectively, the California ISO will calculate the amount of interest to be distributed to Scheduling Coordinators using the method described above.<sup>5</sup>

8. Additionally, the California ISO proposes to treat all default interest payments received after the relevant payment date as paid on the subsequent payment date set forth on the ISO Payment Calendar. The California ISO states that it continues to receive a significant amount of late payments from the market participants.

### **Notice, Protests and Interventions**

9. Notice of the California ISO's filing was published in the Federal Register, 67 Fed. Reg. 47,535 (2002), with comments and protests due July 24, 2002. Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc., Williams Energy Marketing & Trading Company, and Dynegy Power Marketing, Inc. (collectively, Generators) filed a protest one day out of time. Southern California Edison Company (SoCal Edison) filed comments one day out of time and a request to modify the California ISO's compliance filing. The California ISO filed an answer on August 8, 2002.

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<sup>5</sup> See supra, P 5.

## **Discussion**

### **A. Procedural Matters**

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the California ISO's answer because it has provided information that assisted us in our decision-making process.

### **B. Allocation of Late Payment Interest**

11. The Generators note that the California ISO proposes to apply CERS interest on a trade month basis, as opposed to applying interest to parties who sold energy and ancillary services to DWR or CERS. They argue that, as a result, interest paid by DWR and CERS would be allocated on a pro rata basis, based on: (1) total defaults of Pacific Gas and Electric Company (PG&E) and SoCal Edison from January 1-16, 2001; and (2) total defaults of PG&E, SoCal Edison, DWR and CERS for the period of January 17-31, 2001.<sup>6</sup> The Generators argue that this proposal misappropriates interest paid by DWR and CERS to parties who are owed interest for sales they made from January 1-16, 2001, but who may or may not be owed interest for sales made during the latter half of the month.

12. The Generators go on to argue that the California ISO's proposal to allocate interest on a trade month basis contravenes Commission precedent. They note the California ISO's argument that its proposed distribution of interest on a trade month basis is consistent with the California ISO's tariff; however, they say, the California ISO sought and received authority to depart from its normal practices with regard to amounts received from DWR and CERS.<sup>7</sup> The Generators argue that the California ISO should be required to follow its own Compliance Report. They urge the Commission to direct the California ISO to apply interest paid by DWR and CERS during January 2001 only in proportion to amounts owed to suppliers for sales between January 17-31, 2001, when DWR and CERS purchased power on behalf of the investor-owned utilities.

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<sup>6</sup> On January 17, 2001, the Governor of California issued an emergency proclamation giving the California Department of Water Resources (DWR) authority to enter into arrangements to purchase power in order to mitigate the effects of electrical shortages in the state. See Proclamation, Cal. Gov. (Jan. 17, 2001). DWR began purchasing under this authority the next day. On January 19, 2001, the Governor signed a bill appropriating \$400 million (DWR Appropriation) from the General Fund for DWR's purchases for sale to SoCal Edison and PG&E. S.B. 7, 2001-2002 Legis., 1st Ex. Sess. (Cal.) (to be codified at CAL. WATER CODE ' 200).

<sup>7</sup> See California Independent System Operator Corporation, et al., 98 FERC ¶ 61,335 at 62,434 (2002) (March 27 Order) (granting authority), reh'g denied 101 FERC ¶ 61,241 (2002), reh'g denied, 103 FERC ¶ 61,322 (2003) (December 22 Order).

13. The California ISO answers that it has already provided a response concerning this issue in Docket Nos. ER01-3013 and ER01-889, and explains that it would be inappropriate to require the allocation of interest on any basis other than a trade month basis. It argues that it follows its tariff in disbursement to satisfy its creditors by allocating sums received, pro rata if required, to the oldest unpaid debts. Further, the California ISO states that the Commission's March 27 Order accepted in part and rejected in part the California ISO's proposed invoicing and distribution process for CERS, and did not order the California ISO to do other than disburse funds received on a trade month basis. Thus, the California ISO argues that the Generators' protest of the same disbursement process in the instant docket is a collateral attack on the same issue that was already approved in a separate docket, and that the Commission should dismiss the Generators' protest as moot.

14. The Commission has addressed these arguments in its prior orders on creditworthiness. Over a period of two years, the Commission has found that the California ISO "is obligated under its Tariff to invoice, collect payments from and distribute payments to DWR, as the Scheduling Coordinator for all scheduled and unscheduled transactions made on behalf of DWR, including transactions where DWR serves as the creditworthy counterparty for the applicable portion of PG&E's and SoCal Edison's load."<sup>8</sup> The Commission has permitted the California ISO to deviate from the Settlement Procedures within its tariff, which, the ISO argues, requires it to pay debts on a monthly basis,<sup>9</sup> "for th[e] one-time settlement of the DWR amounts owed for the period January 17 through July 31, 2001, in order for it to facilitate the billing and settlement process."<sup>10</sup> The Commission has further directed the California ISO "to reallocate its pro rata disbursements for the entire month of January 2001, and disburse funds from DWR allocated for January 2001 to those that supplied power for the period January 17-31, 2001."<sup>11</sup> Most recently, on rehearing of the November 25 Order, the Commission confirmed that the California ISO "should not have allocated funds it received from DWR to pay debts for which DWR had not assumed any financial responsibility."<sup>12</sup>

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<sup>8</sup> California Independent System Operator Corporation, 97 FERC ¶ 61,151 at 61,659 (2001) (citations omitted).

<sup>9</sup> See Answer of the California Independent System Operator Corporation to Comments, Protest, and Request to Modify Compliance Filing at 5 ("[T]he ISO follows its Tariff in disbursement to satisfy ISO Creditors, by allocating sums received, pro rata if required, to the oldest unpaid debts. Nowhere has the ISO ever contemplated a split within a Trade Month for disbursement of funds to the ISO Creditors.").

<sup>10</sup> March 27 Order at 62,432, 62,434.

<sup>11</sup> November 25 Order at P 17.

<sup>12</sup> December 22 Order at P 10.

15. We will accept the proposed tariff provisions for the distribution of late payment interest, as generally in compliance with what has previously been ordered. However, we will grant waiver of the tariff for the explicit purpose of distributing default interest for the month of January 2001. We agree with the generators that in the same manner that the month has been bifurcated for the principal payments to third party suppliers, the interest received from CERS/DWR attributable to these third party suppliers should follow suit. Neither the Generators' protest, nor the California ISO's response, raises any new arguments with respect to the method that the California ISO should use to disburse funds. Consistent with our prior holdings, we will require the California ISO to disburse funds from DWR and CERS allocated for January 2001 to parties that supplied energy or ancillary services to DWR or CERS from January 17-31, 2001.

### C. Default Interest Rate

16. SoCal Edison argues that the California ISO's compliance filing purports to use the Default Interest Rate (2 percent above the prime interest rate) instead of the interest rate in the Commission's regulation (the quarterly average of the prime rate for the preceding quarter). As a result, SoCal Edison says, the rate proposed by the California ISO would be greater than the rate the Commission ordered in the Evidentiary Order.<sup>13</sup> SoCal Edison argues that the Commission should not adopt the compliance filing as proposed, but require that the ISO modify its proposed interest rate to comply with the Evidentiary Order.

17. The California ISO replies that it would be incorrect to apply the interest rate to the present proceeding that SoCal Edison asserts is under consideration in the ongoing, separate refund proceeding (pursuant to the Evidentiary Order). The California ISO states that the June 3 Order expressly directs the California ISO to provide a pro rata basis for distribution of interest and is silent on how the California ISO should calculate the interest. The California ISO argues that as it currently charges interest based on the Default Interest Rate, it is appropriate to employ the same authorized method for calculation of interest. Citing the June 3 Order, the California ISO also argues that any determination made in the California refund proceeding concerning the interest rate to apply in the refund proceeding should not be imported into this proceeding.

18. We disagree with SoCal Edison's argument that the California ISO should adopt the Commission's methodology for calculating interest as it pertains to this proceeding, at this time. We are simply approving a mechanism for the disbursement of interest

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<sup>13</sup> San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange, 96 FERC ¶ 61,120 at 61,519 (2001) (Evidentiary Order).

received by the ISO on late payments, and the interest rate, as set forth in the tariff, is not specifically at issue here. Accordingly, we will reject SoCal Edison's argument here and will not require the ISO to modify the interest rate applied to late payments.<sup>14</sup>

19. We also reject the California ISO's proposal to modify section 6.10.5 of the tariff so that late payment interest, received by the California ISO, is recorded on a subsequent payment date rather than when it was received. This would require the participants to pay a penalty that the ISO has not justified. A similar proposal was rejected in the California ISO's Amendment No. 53.<sup>15</sup> We will require the California ISO to make a further compliance filing to delete this language from its tariff.

#### **D. The Crediting Mechanism**

20. The crediting mechanism, as proposed by the California ISO, is accepted as being in satisfactory compliance with what was previously ordered by this Commission.

#### **The Commission orders:**

(A) The California ISO's compliance filing is accepted in part and rejected in part, as discussed within the body of this order.

(B) The California ISO is required to make a further compliance filing, within 30 days of the date of this order, to delete from its tariff the proposal to deem late payments of default interest to be received on the next payment date specified in the ISO Payments Calendar.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>14</sup> The treatment of interest payments due suppliers for purchaser defaults and due purchasers for supplier overcharges for the period October 2000 through June 20, 2001, is at issue in Docket Nos. EL00-95-045 et al. Requiring the Cal ISO to follow the provisions of the tariff in this proceeding, with regards to the interest rate on late payments, is without prejudice to the outcome of that proceeding.

<sup>15</sup> California Independent System Operator Corporation, 105 FERC ¶ 61,284 (2003).