

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

California Independent System Operator Corporation)	Docket Nos.
)	ER11-3408-000
)	ER09-1048-002
)	ER06-615-059

ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO THE MOTION TO INTERVENE AND LIMITED PROTEST OF THE CITY OF SANTA CLARA, CALIFORNIA

I. Introduction

The California Independent System Operator Corporation (ISO) files this Answer to the Motion to Intervene and Limited Protest of the City of Santa Clara, California (Santa Clara Protest), which was filed in the above-referenced docket on May 11, 2011.¹ Santa Clara is the only party that raises objections to the ISO's compliance filing.² The Santa Clara Protest objects to two tariff changes included in the ISO's April 2011 Compliance Filing.³ In Santa Clara's view, the two amendments exceed the scope of the ISO's compliance obligations in the above-referenced dockets and partially contradict prior Commission directives. The April 2011 Compliance Filing was

¹ The ISO submits this answer pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213 (2010). The ISO requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to make an answer to the Santa Clara Protest. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case. See, e.g., *Entergy Services, Inc.*, 116 FERC ¶ 61,286, at P 6 (2006); *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,124, at P 11 (2006); *High Island Offshore System, L.L.C.*, 113 FERC ¶ 61,202, at P 8 (2005).

² The Modesto Irrigation District and the Transmission Agency of Northern California filed interventions without comment or protest.

³ *Cal. Indep. Sys. Operator Corp.*, Amendments to the FERC Electric Tariff of the California Independent System Operators Corp. in Compliance with the Commission's January 20, 2011 *Order on Compliance*, FERC Docket Nos. ER09-1048-002 & ER06-615-059 (Apr. 20, 2011) (April 2011 Compliance Filing).

submitted in response to the Commission's *January 2011 Compliance Order*,⁴ which required the ISO to review and resubmit section 37 of the ISO's tariff (the Rules of Conduct for market participants) to ensure that section 37 meets the Commission's requirements for when an ISO or RTO, rather than the Commission, can levy penalties for tariff violations (*i.e.*, "traffic ticket penalties"). While the protest contains a lot of rhetoric, it does not identify a single, specific factual or legal basis for rejecting the April 2011 Compliance Filing. Instead, the Santa Clara Protest mischaracterizes and does not accurately reflect prior issuances and filings in the above-referenced dockets. Accordingly, Santa Clara's objections lack merit, and the Commission should deny the protest.

II. The Amendments to Section 37.4.3.1 are Appropriate Because the Authority to Create a Deadline for Compliance with an Information Request is Inherent in the Power to Issue the Request

Santa Clara objects to the ISO's proposed revisions to section 37.4.3.1 of its tariff. This section requires market participants to submit to the ISO a detailed explanation of a forced outage within two days of notifying the ISO of the outage and also permits the ISO to request additional information regarding the outage if it is needed to review the submitted explanation. As amended, section 37.4.3.1 would also require the market participant to submit this additional information "within the deadline established in the request for additional information." This specific change was made in compliance with the directive in the Commission's *January 2011 Compliance Order* to provide more clarification on requirements for market participants to submit timely information.⁵

⁴ *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,050 (2011) (*January 2011 Compliance Order*).
⁵ *Id.* at PP 52-54.

According to the Santa Clara Protest, this revised tariff language exceeds the scope of the ISO's compliance obligation. In Santa Clara's view, the proposed amendment creates a new tariff requirement to comply with the request for additional information by the deadline established in the ISO's request, whereas, Santa Clara claims that the Commission's prior orders made clear that the ISO could only impose penalties for untimely submissions for required information where the deadline is either established in the tariff or where the ISO has tariff authority to establish such a deadline.

The ISO's February 2011 Motion for Clarification⁶ and the Commission's related *Order on Clarification*⁷ directly address the issue Santa Clara raises. The Motion for Clarification requested that the Commission clarify that the ISO "may impose penalties for untimely submitting information in cases where a specific deadline is not established in the tariff, but where the ISO has tariff authority to establish a deadline."⁸ The ISO cited section 37.8 as an example of a provision that would be covered by this requested clarification. The ISO explained that section 37.8 establishes ISO authority to investigate suspected traffic ticket violations and request that market participants provide information related to any such investigation.⁹ The ISO further explained that "[i]nherent in, and critical to, the ISO's conduct of such an investigation is the ISO's express tariff authority to establish a deadline by which Market Participants must reply to such investigative requests."¹⁰ The *Order on Clarification* granted this requested clarification.¹¹

⁶ *Cal. Indep. Sys. Operator Corp.*, Motion for Clarification or, in the Alternative, Rehearing, FERC Docket Nos. ER09-1048-002 & ER06-615-059 (Feb. 22, 2011) (Motion for Clarification).

⁷ *Cal. Indep. Sys. Operator Corp.*, 135 FERC ¶ 61,016 (2011) (*Order on Clarification*).

⁸ Motion for Clarification, at 16.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Order on Clarification*, at P 18.

The change to section 37.4.3.1 that is the subject of Santa Clara's protest falls squarely within the principle that the Commission agreed to in its *Order on Clarification*, which is that authority to issue an information request carries with it inherent authority to establish a deadline for compliance with the request. The right of the ISO to seek additional information regarding a forced outage has long been established in the tariff. Thus, the only non-cosmetic change to this section is the ISO's clarification that the additional information be submitted "within the deadline established in the request for additional information." This change does not exceed the scope of the ISO's compliance obligations because it is merely a pedestrian application of the principle the Commission accepted in the *Order on Clarification* regarding inherent authority to establish deadlines where there is express authority to request the submission of information. For this reason, the ISO's proposed revisions to section 37.4.3.1 are fully consistent with its compliance obligations and the Commission's *Order on Clarification*.

III. The Amendments to Section 37.4.4 are Appropriate Because the Deleted Language References other Provisions that Have Been Eliminated from the Tariff

Section 37.4.4 provides for enhanced penalties where a Scheduling Coordinator violates the ISO's availability reporting requirements during a declared system emergency. The April 2011 Compliance Filing does not propose to eliminate the penalty enhancement. The filing does, however, propose to eliminate a portion of section 37.4.4, which states:

A Market Participant that is subject to an enhanced penalty amount under this Section 37.4.4 may appeal that penalty amount to FERC if the Market Participant believes a mitigating circumstance not covered in Section 37.9.2 exists. The duty of the Market Participant to pay the enhanced penalty amount will be tolled until FERC renders its decision on the appeal.

Santa Clara objects to the removal of this passage, stating that the ISO is confused about the scope of its compliance obligations and that it represents a violation of the *Order on Clarification*. Santa Clara also argues that the removal of this language erodes market participants' right to appeal penalty determinations to the Commission.

Santa Clara's claims lack merit. The factual predicate of the last two sentences of section 37.4.4 is that in certain circumstances, defined in section 37.9.2, a market participant may appeal a penalty amount. However, the Commission's *January 2011 Compliance Order* expressly required the ISO to remove section 37.9.2 from its tariff.¹² With section 37.9.2 removed from the tariff, the triggering event for an appeal contemplated under section 37.4.4 (*i.e.*, that there is a mitigating circumstance not listed in section 37.9.2) can no longer occur since section 37.9.2 would no longer exist. Essentially, the two sentences at issue are an exception to a rule that no longer exists. The ISO accordingly proposed to remove the two sentences in question because they are now obsolete.

This deletion was in no way meant to limit a market participant's general right to appeal traffic ticket penalties to the Commission. That right of appeal is specifically established in section 37.8.10, which states that "[a] Market Participant that receives a Sanction may obtain immediate review of the CAISO's determination by directly appealing to FERC" and that the "penalty will be tolled until FERC renders its decision on the appeal." This section was not amended

¹² *January 2011 Compliance Order*, at P 61 ("CAISO must eliminate sections 37.9.2.1 through 37.9.2.5").

as part of the April 2011 Compliance Filing.¹³ Accordingly, even if the Commission had not ordered that section 37.9.2 be removed, the two sentences in question would still duplicate the rights delineated in section 37.8.10. The amendments to section 37.4.4 to which Santa Clara objects are thus conforming amendments that in no way impact the rights of market participants.

IV. Conclusion

The ISO's April 2011 Compliance Filing represents a conscientious effort to bring the ISO into complete compliance with Order 719 and the related *Orders on Compliance* the Commission has issued. Santa Clara's nuisance protest raises meritless objections that do nothing to suggest the ISO is not fully compliant with the Commission's directives.

Respectfully submitted,
By: /s/ David S. Zlotlow
Nancy J. Saracino
General Counsel
Anthony J. Ivancovich
Assistant General Counsel
David S. Zlotlow
Counsel
The California Independent
System Operator Corporation
250 Outcropping Way
Folsom, CA 95630
Tel: (916) 608-7007
Fax: (916) 608-7222
dzlotlow@caiso.com

Attorneys for the California Independent
System Operator Corporation

Dated: May 26, 2011

¹³ The ISO also notes that the *January 2011 Compliance Order* unequivocally states that market participants have such a right of appeal and that to exercise that right, the market participant "should file a complaint under section 206 of the Federal Power Act." *January 2011 Compliance Order*, at P 37, n.32.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents upon each party listed on the official service list for the above-referenced proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, CA on this 26th day of May, 2011.

Is/ Anna Pascuzzo

Anna Pascuzzo