

189 FERC ¶ 61,223  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

December 23, 2024

In Reply Refer To:  
California Independent System  
Operator Corporation  
Docket No. ER25-54-000

California Independent System Operator Corporation  
250 Outcropping Way  
Folsom, CA 95630

Attention: David S. Zlotlow

Dear Mr. Zlotlow:

1. On October 8, 2024, the California Independent System Operator Corporation (CAISO) filed, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and Part 35 of the Commission's regulations,<sup>2</sup> proposed revisions to its Open Access Transmission Tariff (Tariff) to update its rules of conduct to: (1) create a new penalty for failure to submit demand response monitoring data; (2) streamline the rules of conduct investigative process; (3) update the penalty tolling process when a market participant appeals a penalty to the Commission; (4) create a materiality threshold in assessing penalties for inaccurate meter data submissions; and (5) eliminate a reporting requirement for cases when federal power marketing administrations (PMA) have rules of conduct violations.<sup>3</sup> In this order, we accept CAISO's proposed Tariff revisions, as requested, and direct CAISO to submit an informational filing notifying the Commission of the actual effective date no less than seven days prior to the date CAISO implements the proposed Tariff revisions, as discussed below.

2. CAISO states that its rules of conduct specify the behavior expected of CAISO market participants and establish, in advance, financial sanctions for violations of these rules. CAISO states that the rules of conduct include 10 categories of market participant

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> 18 C.F.R. pt. 35 (2024).

<sup>3</sup> Transmittal at 1-2.

rules, six of which have defined sanctions that CAISO enforces: (1) reporting of forced generation outages; (2) maintenance outage approval; (3) submission of timely and accurate meter data; (4) submission of information required by the Tariff by the applicable deadline; (5) submission of information requested as part of a CAISO investigation; and (6) compliance with audit and test procedures.<sup>4</sup> CAISO states that the Tariff creates a defined process for it to administer the six rules of conduct it enforces.<sup>5</sup> CAISO explains that, when it determines a penalty applies, the market participant “may obtain immediate review of the CAISO’s determination by directly appealing to FERC,” in which case the “penalty will be tolled until FERC renders its decision on the appeal.”<sup>6</sup>

3. To establish a penalty for late and missing demand response monitoring data, CAISO proposes new Tariff section 37.7.1.1, which CAISO states will match the general format of its existing penalties for late and missing meter data. Specifically, CAISO proposes that a scheduling coordinator that fails to submit a complete set of demand response metering data by 52 business days after the trading day (T+52B) on which the demand response event occurred will have committed a rules of conduct violation. If the scheduling coordinator submits the required data by 214 business days following the trading day (T+214B), then the data will be considered late. If the scheduling coordinator does not submit the data by T+214B, the data will be considered missing. CAISO states that, under proposed new Tariff section 37.7.1.2, it will impose a sanction of \$1,000/day for late demand response monitoring data and \$4,000/day for missing demand response monitoring data. CAISO asserts that these new penalties for late and missing demand response monitoring data will create appropriate incentives for scheduling coordinators to submit timely data to facilitate CAISO’s monitoring of demand response resource performance.<sup>7</sup>

4. As part of its proposal regarding demand response monitoring data penalties, CAISO also proposes to create a standardized monitoring data submission obligation

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<sup>4</sup> *Id.* at 3-4 (citing CAISO, CAISO eTariff, § 37.4 (0.0.0); *id.* § 37.5 (0.0.0); *id.* § 37.6 (0.0.0); *id.* § 37.11 (1.0.0)).

<sup>5</sup> *Id.* at 4-5 (citing CAISO, CAISO eTariff, § 37.8.3 (0.0.0); *id.* § 37.10.1 (1.0.0); *id.* § 37.8.4 (2.0.0); *id.* § 37.8.5 (0.0.0); *id.* § 37.10.1 (0.0.0)).

<sup>6</sup> *Id.* at 5 (citing CAISO, CAISO eTariff, § 37.10.1 (0.0.0)). CAISO notes that the other four rules of conduct, which are administered by the Commission, require market participants to comply with operating instructions, not contribute to a major outage due to inadequate operating and maintenance procedures, operate a resource adequacy resource consistent with its market awards, and submit feasible bids to the market. *Id.* at 4.

<sup>7</sup> *Id.* at 7-8.

by deleting from the existing Tariff sections 11.6.1, 11.6.5.1, and 11.6.7<sup>8</sup> references to the current monitoring data submission requirements and to create a new Tariff section 11.6.8, which would impose a duty on all scheduling coordinators for demand response resources to submit demand response monitoring data by T+52B, regardless of their chosen baseline methodology.<sup>9</sup> CAISO also proposes to create a new defined term – “Demand Response Monitoring Data” – to more clearly specify the monitoring data that scheduling coordinators for demand response resources must submit.<sup>10</sup>

5. With regard to the investigative process for potential violations of the rules of conduct, CAISO states that its current process includes multiple back-and-forth steps between CAISO and the investigated market participant. CAISO states that this process reflected CAISO’s past authority to assess sanctions for violations that required subjective determinations. CAISO contends that, given its proposal to limit its review to narrow questions (e.g., determining whether specific meter data was filed or not by T+52B), there is less need for an extended investigative process. Accordingly, CAISO proposes to update the investigative process to better reflect the more limited investigations necessary for objectively determined violations. CAISO asserts that a more streamlined approach will ease administrative burden on CAISO, reinforce to market participants that CAISO’s scope of review is limited, and enable market participants to file an appeal with the Commission more quickly if they believe extenuating circumstances justify relief from a sanction.<sup>11</sup>

6. To update the penalty tolling and appeal process, CAISO proposes revisions to the existing Tariff provision that states that a scheduling coordinator or market participant “may obtain immediate review of the CAISO’s determination [of a violation] by directly appealing to FERC, in accordance with FERC’s rules and procedures,”<sup>12</sup> but must also dispute the settlement statement containing the sanction, at which point CAISO tolls the penalty pending the Commission’s review. According to CAISO, this existing process has several problems. First, CAISO asserts that the mechanics of its settlements and invoicing process make true penalty tolling infeasible and, therefore, the practical result is that a market participant must pay the penalty and then CAISO will refund the market participant several weeks later to ensure that CAISO is not holding the sanction funds for the majority of the time that the Commission considers the appeal. Second, CAISO contends that it is unnecessary for a market participant to both file an appeal with the

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<sup>8</sup> CAISO, CAISO eTariff, § 11.6.1 (3.0.0).

<sup>9</sup> Transmittal at 8-9.

<sup>10</sup> *Id.* at 9.

<sup>11</sup> *Id.* at 11-12.

<sup>12</sup> *Id.* at 13 (quoting CAISO, CAISO eTariff, § 37.8.10 (6.0.0)).

Commission and dispute the settlement statement to toll the penalty. Third, CAISO notes that the Commission has interpreted the existing Tariff directive to file the appeal “in accordance with FERC’s rules and procedures” as a requirement for a market participant to file a complaint pursuant to FPA section 206<sup>13</sup> in order to obtain relief. CAISO asserts that having the appeal framed as a section 206 complaint against CAISO can create the incorrect appearance of an adversarial process when CAISO often supports or otherwise does not oppose the penalty appeal. Fourth, CAISO states that the “immediate review” language in the penalty appeal Tariff provision has created ambiguity about the deadline to qualify for penalty tolling and has unnecessarily constrained market participant appeals.<sup>14</sup>

7. To rectify these issues, CAISO proposes to remove the requirement that market participants appealing penalties with the Commission also file a settlement dispute with CAISO. CAISO explains that, under the revised Tariff provision, the scheduling coordinator or market participant will qualify for penalty tolling if it files its appeal with the Commission within 30 days of receiving notice from CAISO that a preliminary investigation indicates that a violation may have occurred. CAISO also proposes to amend the penalty appeal process under Tariff section 37.8.10 to identify a tariff waiver as the procedural vehicle for the appeal. CAISO notes that penalty appeals to date have not generally involved allegations that the rules of conduct sanctions are inherently unjust and unreasonable but instead allege extenuating circumstances that warrant relief, which CAISO argues makes a tariff waiver request a more appropriate procedural option than a section 206 complaint.<sup>15</sup>

8. CAISO proposes to clarify that the ability to appeal is separate from qualifying for penalty tolling. Specifically, CAISO proposes to revise Tariff section 37.8.10 to state that the appeal may be filed after the “30-day period but such filing does not relieve the [s]cheduling [c]oordinator from the obligation to pay the [s]anction when it appears on a Settlement Statement, subject to refund based on FERC’s disposition of the appeal.”<sup>16</sup> CAISO asserts that an open-ended appeal window could be problematic, but that entities that file significantly after the date CAISO imposes a penalty will face a higher bar to

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<sup>13</sup> 16 U.S.C. § 824e.

<sup>14</sup> Transmittal at 13-14.

<sup>15</sup> *Id.* at 14-16. CAISO states that it believes the Commission’s earlier rulings on this issue were made in the context of the current Tariff language and do not preclude a prospective Tariff amendment to identify a tariff waiver as a permissible way to appeal a sanction. *Id.* at 16.

<sup>16</sup> CAISO, CAISO eTariff, § 37.8.10 (7.0.0) (proposed Tariff language).

show that they have acted in good faith, as the Commission requires of tariff waiver applicants.<sup>17</sup>

9. With regard to the threshold for penalizing late or inaccurate meter data submissions, CAISO asserts that it need not penalize small errors in order to incentivize timely and accurate meter data reporting. Thus, CAISO proposes to revise Tariff section 37.5.2.1.1 to clarify that a scheduling coordinator has not submitted inaccurate meter data “if the net error across the Trading Day is less than the larger of: (a) three percent of the correct total Meter Data values for the Trading Day for the Scheduling Coordinator Metered Entity; and (b) three MWh.”<sup>18</sup> CAISO states that a meter data inaccuracy within this three percent/three MWh tolerance band would not be a rules of conduct violation. CAISO asserts that this tolerance band is just and reasonable because CAISO is confident that meter data corrections this small are unlikely to disrupt the overall market settlements process and, therefore, there is less need to sanction these meter data inaccuracies.<sup>19</sup>

10. Finally, CAISO proposes to delete Tariff section 22.9(b), which requires CAISO to log potential rules of conduct violations by PMAs and then report to the United States Secretary of Energy each time one of the PMAs would have been sanctioned but for the exemption.<sup>20</sup> CAISO states that it has sent several reports to the Secretary of Energy in compliance with Tariff section 22.9(b) but has received neither a response nor any indication that actions have been taken within the Department of Energy in response to the reports. Further, CAISO notes that the PMAs are part of the Department of Energy and are ultimately answerable to the Secretary of Energy. CAISO states that it believes it is unnecessary to continue providing the reports under section 22.9(b) and proposes to delete this Tariff section. According to CAISO, removing this language would defer to the Department of Energy leadership on how PMAs should internally report on rules of conduct violations.<sup>21</sup>

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<sup>17</sup> Transmittal at 16.

<sup>18</sup> CAISO, CAISO eTariff, § 37.5.2.1.1 (9.0.0) (proposed Tariff language).

<sup>19</sup> Transmittal at 17-18.

<sup>20</sup> *Id.* at 19. CAISO notes that it treats PMAs as exempt from rules of conduct sanctions because imposing sanctions would violate the Supremacy Clause of the Constitution and the Anti-Deficiency Act, and is also barred under Tariff section 22.9, which states that “[n]o person or federal entity shall incur any liability by failing to comply with a CAISO Tariff provision that is inapplicable to it by reason of being inconsistent with any federal statutes, regulations, or orders lawfully promulgated thereunder . . . .” CAISO, CAISO eTariff, § 22.9 (0.0.0).

<sup>21</sup> Transmittal at 19-20.

11. CAISO states that each set of the previously discussed Tariff revisions is discrete, severable, and not interdependent with the other parts of the proposal. Additionally, CAISO notes that two aspects of proposed new Tariff section 37.8.10, regarding the process of filing a penalty appeal with the Commission, are severable from the other proposed meter data penalty provisions. Thus, CAISO requests that the Commission evaluate the justness and reasonableness of the proposed revisions separately.<sup>22</sup>

12. CAISO notes that, in addition to the substantive revisions discussed above, it also proposes several associated clarifying amendments to Tariff section 37. CAISO states that, in cases where the proposed clarifying revisions are necessitated by the substantive revisions, those edits should be treated as interdependent with, and not severable from, the substantive revision to which it relates.<sup>23</sup>

13. CAISO states that it is targeting implementation of the proposed Tariff revisions on January 1, 2025. However, to provide flexibility, CAISO filed the proposed revisions with an effective date of 12/31/9998, and requests that these provisions take effect, subject to CAISO filing a notice with the Commission within five days of the actual effective date.<sup>24</sup>

14. Notice of CAISO's filing was published in the *Federal Register*, 89 Fed. Reg. 83003 (Oct. 15, 2024), with interventions and protests due on or before October 29, 2024. Timely motions to intervene were filed by: the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California; the California Department of Water Resources State Water Project; and Northern California Power Agency. Timely motions to intervene and comments were filed by the Power and Water Resources Pooling Authority (PWRPA) and the CAISO Department of Market Monitoring (DMM). On November 7, 2024, CAISO filed an answer to DMM's comments.

15. PWRPA states that it supports the proposed revisions.<sup>25</sup> DMM states that it supports or does not oppose the revisions. In particular, DMM states that it supports CAISO's proposed revisions to improve incentives for demand response data reporting but recommends that CAISO consider additional penalties in the future if the submission

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<sup>22</sup> *Id.* at 1-2.

<sup>23</sup> *Id.* at 20-22. CAISO included a chart in its transmittal letter indicating which clarifying revisions were associated with substantive revisions.

<sup>24</sup> *Id.* at 2, 22. CAISO also requests that the Commission grant waiver of the notice requirement of section 35.3(a)(1) of the Commission's regulations, 18 C.F.R. § 35.3(a)(1), to permit a potential effective date more than 120 days after the date of this filing. *Id.*

<sup>25</sup> PWRPA Comments at 3-4.

of questionable monitoring data increases under the new penalty structure. DMM also states that it does not oppose the proposed materiality threshold for inaccurate meter data submissions, but it highlights the importance of timely deadlines and firm financial penalties in order to provide strong incentives for compliance. DMM notes that removing the penalty for small inaccuracies could result in increased inaccuracies of the submitted data over time.<sup>26</sup>

16. In its answer, CAISO asserts that nothing in DMM's comments provides a basis for rejecting CAISO's proposal, nor does DMM argue that any aspect of the proposal should be rejected. CAISO also disputes DMM's suggestion that applying a materiality threshold could create greater inaccuracies in the CAISO settlements process. To the contrary, CAISO suggests that the proposed materiality threshold may lead to more accurate market settlements because scheduling coordinators may more readily submit meter data corrections under the revised process.<sup>27</sup>

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2024), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2024), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept CAISO's answer because it has provided information that assisted us in our decision-making process.

19. We accept CAISO's proposed Tariff revisions and find them to be just and reasonable and not unduly discriminatory or preferential. We find that the proposed revisions should ease administrative burden while also adding transparency and clarity for market participants to the investigation and sanction appeal process under CAISO's rules of conduct. We also find that the proposed revisions strike a reasonable balance between creating appropriate incentives for the timely and accurate submission of demand response monitoring data and avoiding overly punitive sanctions. Finally, we accept CAISO's ministerial Tariff revisions noted above as just and reasonable because they clarify and/or correct the rules of conduct for market participants under the existing Tariff.

20. We grant CAISO's request for waiver of the Commission's 120-day notice requirement to permit CAISO's filing to be tendered more than 120 days in advance of

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<sup>26</sup> DMM Comments at 2-4.

<sup>27</sup> CAISO Answer at 2-8.

the requested effective date for good cause shown<sup>28</sup> and accept the proposed Tariff revisions with an effective date of 12/31/9998, as requested. CAISO must make an informational filing notifying the Commission of the actual effective date of the proposed Tariff revisions no less than seven days prior to the date CAISO implements the proposed Tariff revisions. CAISO should use the eTariff Type of Filing Code 150 – Data Response/Supplement the Record.

By direction of the Commission.

Debbie-Anne A. Reese,  
Secretary.

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<sup>28</sup> 18 C.F.R. § 35.3(a)(1).