

Dynergy's Comments on
CAISO's Establishment of a Reserve Account For Late Payment Penalties

Submitted By	Company	Date
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1. Dynergy does not object to the establishment of an account to hold penalties collected from market participants.
2. It is not necessary to hold back any funds collected during the year as a reserve against uncovered defaults or for any other reason. All funds collected should be used to offset the following year's grid management charge. (See paragraph 4 below.)
3. The proposal to charge creditors only for uncovered defaults by CAISO debtors under proposed tariff amendment 11.29.9.6.4.1 (c) (shown below) is an unjust and unreasonable tariff provision and is similar to the default allocation provision that FERC found to be unjust and unreasonable in 128 FERC ¶ 61,271 (September 23, 2009). Furthermore, even if this tariff provision were found to be reasonable, there is no provision to return any subsequently collected amounts from the defaulting debtors to the non-defaulting creditors.

It is possible that in drafting the tariff amendment below, the CAISO intended to provide that any charges for uncovered defaults to be paid out of the Penalty Reserve Account would be paid in accordance with the CAISO tariff and not be paid by creditors only. In other words, the new proposed language should not establish a separate default allocation, but should simply point to the default allocation provisions already in the CAISO tariff. Even if that were the situation, Dynergy would still take the position that there should be no offsets through the Penalty Reserve Account and that the tariff should be revised as proposed in paragraph 4.

11.29.9.6.4.1 Replenishment Following Payment Default (Proposed)

If the CAISO has debited the CAISO Penalty Reserve Account, then:

(a) If, after the CAISO has debited the CAISO Penalty Reserve Account on a Payment Date, the CAISO Bank receives a remittance from a CAISO Debtor which has not been (but should have been, if it had been received on a timely basis) credited to the CAISO Clearing Account by 10:00 am on the Payment Date and which required the debiting of the CAISO Penalty Reserve Account, such remittance shall be credited to the CAISO Penalty Reserve Account.

(b) The proceeds of any enforcement of Financial Security and/or amounts recovered under proceedings shall be credited to the CAISO Penalty Reserve Account.

(c) If, after taking reasonable action, the CAISO determines that the default amount

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(or any part) and/or Interest cannot be recovered, such amounts shall be deemed to be owing by those Market Participants who were CAISO Creditors on the relevant Payment Date pro rata to the net payments they received on that Payment Date and shall be accounted for by way of a charge in the next Settlement Statements of those CAISO Creditors. Such charge shall be credited to the CAISO Penalty Reserve Account.

4. The proposed tariff language should simply read:

11.29.9.6.2.2 Treatment of Certain Penalty Amounts Collected by the CAISO

The CAISO will use all penalty amounts it collects for late payments of amounts set forth in Invoices pursuant to Section 11.29.14(c) and for late postings of Financial Security pursuant to Section 12.5.2(c) as an offset the following year's Grid Management Charge revenue requirement pursuant to Schedule 1 of Appendix F.

Dynegy is unable to provide comments regarding the other amendments at this time. It is our position, as a general matter, that penalty provisions and late payments that affect credit and the ability to transact with the CAISO should be covered in a separate review under credit policies which FERC is currently undertaking.