190 FERC ¶ 61,052
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Mark C. Christie, Chairman;
Willie L. Phillips, David Rosner,
Lindsay S. See, and Judy W. Chang.

California Independent System Operator Corporation — Docket No. ER25-87-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued January 28, 2025)

1. On October 11, 2024, pursuant to section 205 of the Federal Power Act (FPA)[1] and part 35 of the Commission's regulations,[2] California Independent System Operator Corporation (CAISO) submitted proposed revisions to its Open Access Transmission Tariff (Tariff) to update provisions regarding billing, payment, and credit. CAISO states that the Tariff revisions are intended to improve the resilience of the CAISO market during periods of financial stress as well as improve and clarify existing Tariff provisions. 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.

I. <u>Background</u>

2. CAISO states that it issues settlement statements that reflect charges and credits for each trading day, which are later recalculated and reissued at Tariff-prescribed intervals as new data becomes available. CAISO explains that on a weekly basis, it

[1] 16 U.S.C. § 824d.

[2] 18 C.F.R. pt. 35 (2024).

issues to business associates[3] market invoices and payment advices,[4] which reflect the net results of a week's worth of settlement statements. CAISO states that those with amounts due to CAISO are debtors and those with amounts due from CAISO are creditors.[5]

3. CAISO explains that it maintains multiple bank accounts to facilitate its billing and settlement procedures with creditors and debtors. CAISO states that it uses the CAISO Clearing Account to transfer payments in accordance with the Tariff, the CAISO Reserve Account to fund payments if the CAISO Clearing Account is insufficient to pay CAISO creditors, and the CAISO Penalty Reserve Account[6] to fund payments if the CAISO Clearing and Reserve Accounts are insufficient to pay CAISO creditors. CAISO states that the payments it makes to its creditors each week from the CAISO Clearing Account are reliant on CAISO debtors paying their market invoices on time and in full.[7]

4. If a CAISO debtor is unable to deposit a payment to the CAISO Clearing Account on time (i.e., the due date for each invoice), the debtor is required to inform CAISO and the debtor will be assessed interest on the overdue amount. If a default (i.e., non-payment) by a CAISO debtor causes a shortfall in the CAISO Clearing Account and both the CAISO Reserve Account and the CAISO Penalty Reserve Account have insufficient funds to cover the default—and CAISO cannot cover the funds by enforcing any financial security provided by a defaulting CAISO debtor—the Tariff sets forth procedures to make *pro rata* reductions to the payments owed to CAISO creditors (i.e., a shortfall allocation). CAISO will make payments on the *pro rata* reductions and thereby

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[3] A business associate is "any entity with whom the CAISO interacts related to the CAISO Markets." CAISO, CAISO eTariff, app. A (Definitions) (0.0.0) (defining Business Associate).

[4] The Tariff defines an invoice as "A document published as a result of an invoicing run pursuant to the CAISO Payments Calendar in which a Business Associate's current net financial obligation is a positive Settlement amount." CAISO, CAISO eTariff, app. A Definitions (0.0.0) (defining Invoice). The Tariff defines a payment advice as "A document published as a result of an invoicing run pursuant to the CAISO Payments Calendar in which a Business Associate's current net financial obligation is a negative Settlement Amount." CAISO, CAISO eTariff, app. A (Definitions) (0.0.0) (defining Payment Advice).

[5] CAISO Transmittal Letter at 2 (Transmittal).

[6] The CAISO Penalty Reserve Account contains funds that CAISO collects for late payments of amounts and for late postings of financial security. *Id.* at 3.

[7] *Id.* at 2-3.

resolve the shortfall allocation after it recovers the defaulted amount from the debtor by using the debtor's collateral or otherwise collecting the debt.[8]

II. Instant Filing

5. CAISO explains that in light of several recent events, it undertook efforts to evaluate its Tariff provisions on billing, payment, and credit in order to enhance them. CAISO notes that default events in 2021 from a winter storm in Texas and high energy prices in the United Kingdom caused it to consider whether the market could endure high energy prices for a sustained period of time or financial distress among a large number of market participants. CAISO states that, when developing the instant Tariff revisions, it also considered lessons learned from the bankruptcy of an entity that served load in the CAISO balancing authority area in 2021 and the default of an entity on its payment obligations in 2022.[9] CAISO asserts that the Tariff, and its policies surrounding billing, payments, and creditworthiness, are currently sound but that the Tariff revisions are intended to improve the resilience of the CAISO market during periods of financial stress. CAISO's specific proposals are discussed in detail below. CAISO states that the proposed Tariff revisions described in each subsection of its transmittal are severable from those in every other subsection. 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 five days prior to the actual effective date.[10]

A. Revisions to Enhance Ability to Prevent Market Defaults

1. Implementing a Uniform Minimum Capitalization Requirement

6. CAISO states that in order to participate in the CAISO market, prospective and existing market participants with a direct financial relationship to CAISO must meet minimum participation requirements. Currently, the Tariff requires participants who choose to post financial security and have participated in the market for less than six months to maintain at least $500,000 in capitalization. Market participants who have participated longer than six months and have an estimated aggregate liability for the prior

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[8] *Id.* at 3.

[9] Neither of these events resulted in CAISO needing to allocate shortfalls to the market. CAISO states that the last time it needed to allocate default losses to market participants was during the energy crisis of 2000-2001. Since the energy crisis, over 20 CAISO market participants have filed for bankruptcy or defaulted on their financial obligations. *Id.* at 4.

[10] *Id.* at 3-4, 26.

six months of $100,000 or less need only maintain $100,000 in capitalization, while all others are required to continue maintaining $500,000.[11]

7. CAISO explains that it identified a potential risk in allowing market participants to only maintain $100,000 in capitalization when a small market participant defaulted on its payment obligations in 2022. The defaulting entity chose to leave the market without filing for bankruptcy. While CAISO retained the defaulting entity's collateral and its $100,000 capitalization, these amounts were not enough to cover the balance due on its invoice, which resulted in CAISO covering the shortfall with funds from the CAISO Penalty Reserve Account until CAISO eventually recovered the amounts due from the defaulting entity. CAISO states that it is concerned that a market participant could potentially transact at low levels to reduce its capitalization requirement and then subsequently engage in larger transactions, therefore exposing CAISO to the downside risk because of the reduced capitalization the Tariff permits.[12]

8. In order to close this potential loophole, CAISO proposes to require all market participants that post financial security to provide at least $500,000 in capitalization and remove the exception that allows posting of only $100,000.[13] CAISO asserts that this will not create a burden for market participants that currently post $100,000 because to enter the market and during their initial phase of participation they were required to post and maintain at least $500,000. CAISO asserts that this requirement will be easier to administer and is aligned with the capitalization requirements of other independent system operators (ISO) and regional transmission organizations (RTO).[14]

B. <u>Designating a Single Agreement to Govern Settlement, Billing, and Payment</u>

9. CAISO proposes Tariff provisions to designate one controlling agreement in instances where a market participant has multiple agreements that could govern its

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[11] *Id.* at 5-6; CAISO, CAISO eTariff, § 12.1 (Credit and Minimum Participation Requirements) (7.0.0), § 12.1(b)(iii)(2).

[12] Transmittal at 6-7.

[13] *Id.* at 7; CAISO, CAISO eTariff, § 12.1 (Credit and Minimum Participation Requirements) (8.0.0), § 12.1(b)(iii).

[14] Transmittal at 7 (citing Midcontinent Independent System Operator, Inc., FERC Electric Tariff, attach. L (56.0.0), § III(C)(1)(iii); New York Independent System Operator, Inc., NYISO Tariffs, NYISO MST, attach. K, § 26.1 Minimum Participation Criteria (5.0.0), § 26.1.1(e)(2); PJM Interconnection, L.L.C., Intra-PJM Tariffs, attach. Q (62.0.0), § D(1)(b)(ii)).

financial relationship with CAISO. CAISO explains that many market participants have more than one agreement with CAISO and, in the event a market participant were to file for bankruptcy, there could be legal uncertainty regarding which agreement governs and, therefore, CAISO's ability to recoup payments in the event of default. To remove this uncertainty in the instance of a market participant having multiple agreements regarding billing and settlement, CAISO proposes to designate which agreement will govern all settlements, as well as billing and payment arising from settlements, among a hierarchy proposed in the Tariff revisions.[15] CAISO states that if a business associate is party to more than one billing and payment agreement of the same type (e.g., party to two or more scheduling coordinator agreements), then the first-executed agreement of that type will be designated as the governing agreement.[16]

C. Revisions to Enhance Ability to Respond to Defaults

1. Clarifying the Rules on Replenishing the CAISO Reserve Account and CAISO Penalty Reserve Account

10. CAISO proposes Tariff revisions to clarify the functions of the CAISO Reserve Account and the CAISO Penalty Reserve Account. CAISO states that its historical practice is to wait to replenish the CAISO Reserve Account by allocating a shortfall to the market until it becomes clear that a defaulted amount will not be recovered. CAISO explains that by engaging in this practice, administrative costs for CAISO and market participants are reduced by not prematurely allocating shortfalls that CAISO expects to ultimately recover. To align its practice with the Tariff, CAISO proposes to revise the Tariff language to make clear that it does not need to replenish the CAISO Reserve Account immediately.[17] CAISO states that, in contrast, the CAISO Penalty Reserve Account is comprised of permanent funds and is not intended to be replenished if it has sufficient funds to make up a shortfall. CAISO therefore proposes to remove the existing

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[15] CAISO proposes billing and settlement agreements will have the following hierarchy, with the highest agreement controlling settlements, and billing and payment arising from settlements: (i) Transmission control agreement (highest in the hierarchy); (ii) Scheduling coordinator agreement; (iii) EIM scheduling coordinator agreement; (iv) CRR entity agreement; and (v) Black start agreement (lowest in the hierarchy).

[16] Transmittal at 9-11.

[17] CAISO, CAISO eTariff, § 11.29.9 (Payment Procedures) (9.0.0), §§ 11.29.6.2, 11.29.9.6.2.1(c).

Tariff provisions that suggest losses covered by CAISO Penalty Reserve Account must be replenished and charged to the market.[18]

2. Using the CAISO Reserve Account and the CAISO Penalty Reserve Account to Prevent a Payment Shortfall

11. CAISO explains that the Tariff requires it to use both the CAISO Reserve Account and the CAISO Penalty Reserve Account when funds in the CAISO Clearing Account are insufficient to cover payment to creditors as a supplemental source of funds to avoid payment defaults. CAISO asserts that if a default were large enough that the funds in the CAISO Reserve Account and the CAISO Penalty Reserve Account could not fully cover the default, both accounts would be completely depleted and then the remaining shortfall would be allocated to the market. CAISO notes that it could be disadvantageous to the market if it is not able to mitigate payment shortfalls caused by a series of defaults, and that it would have to bear the administrative costs of allocating shortfalls. CAISO asserts that in certain circumstances, the market would be better off overall if CAISO only used the CAISO Reserve Account and the CAISO Penalty Reserve Account when those accounts have sufficient funds to cover a default in full.[19]

12. CAISO proposes to provide itself with flexibility to prevent a payment shortfall if funds are insufficient in both reserve accounts to mitigate administrative costs impacts on market participants. First, CAISO proposes to debit the reserve accounts to clear the CAISO Clearing Account only if sufficient funds are available from both accounts to clear the market and so long as the CAISO Reserve Account is not left with a balance below $1,000. Second, CAISO proposes that if the funds in both reserve accounts are insufficient to clear the market, CAISO would have discretion to use the funds to mitigate some of the default based upon a reasonable determination of whether the use or expected use of the funds would provide the greatest expected benefit to the market participants overall.[20]

3. Refining the Allocation of Default Losses

13. CAISO proposes a number of Tariff revisions to refine the allocation of default losses. First, CAISO proposes to prevent the allocation of default losses to new market participants by clarifying that the allocation only applies to the "relevant calendar

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[18] Transmittal at 13; CAISO, CAISO eTariff, § 11.29.9 (Payment Procedures) (8.0.0), § 11.29.9.6.4.1(c).

[19] Transmittal at 13-14.

[20] *Id.* at 14; CAISO, CAISO eTariff, § 11.29.13 (Non-Payment by a Scheduling Coordinator or CRR Holder) (6.0.0), § 11.29.13.4.

quarter.'"[21] By making these revisions, CAISO explains that new market participants will no longer be allocated portions of a default that occurred before they were market participants, which is a more desirable and fairer outcome.[22]

14. Second, CAISO proposes to use more recent data to calculate loss allocation percentages. CAISO states that currently, default loss allocations are calculated as a percentage based on market and payment data from a look-back period. CAISO explains that it revised its settlement timelines in 2021 and has now gained the experience with the new timeline to determine that the data produced from the T+9 settlement statement (i.e., nine business days after the trading day) is reasonably accurate enough to use and more reflective of recent levels of market activity.[23]

15. Third, CAISO proposes to clarify how it will distribute funds collected from a defaulting entity among market participants and CAISO accounts after CAISO allocates the default to the market.[24] CAISO explains that the proposed Tariff provisions governing the order and priority in which market participants and accounts will be paid consolidate and clarify the current Tariff process in order to avert potential disputes over priority of payment.[25]

4. Extending and Clarifying Separate Invoicing

16. CAISO explains that typically it allocates any default losses across the entire market; however, the Tariff includes provisions which require or allow CAISO in special

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[21] Transmittal at 16; CAISO, CAISO eTariff, § 11.29.17 (Alternative Payment Procedures) (7.0.0), § 11.29.17.2.1.

[22] Transmittal at 15-16.

[23] *Id.* at 16; CAISO, CAISO eTariff, § 11.29.17 (Alternative Payment Procedures) (7.0.0), §§ 11.29.17.2.1(c), 11.29.17.2.6(a)(iv).

[24] CAISO, CAISO eTariff, § 11.29.17 (Alternative Payment Procedures) (7.0.0), § 11.29.17.3. Related to these Tariff revisions, CAISO also proposes to: revise Tariff section 11.29.13.1 to state that interest revenue will be distributed to account according to the revised default allocation provisions described above; revise Tariff section 11.29.13.9 to state that its provisions on interest accruing while enforcing financial security include the CAISO Penalty Reserve Account; revise Tariff sections 11.29.9.6.2.1(b), 11.29.9.6.4.1(b), and 11.29.13.8 to include cross-references to the revised default allocation provisions described above; and delete superseded provisions from existing Tariff sections 11.29.13.7 and 11.29.13.10.

[25] Transmittal at 17-18.

circumstances to issue separate invoices for certain charges to specific market participants. CAISO proposes to extend this practice to two new circumstances. First, CAISO proposes to add penalties assessed for paying invoices or posting financial security late to the types of settlement charges eligible for separate invoicing. Second, CAISO proposes to add amounts due under black start agreements to the types of charges eligible for separate invoicing.[26]

5. Decline to Allocate Old and Small Default Losses

17. CAISO states that the Tariff requires it to pursue reasonable collection efforts when an entity defaults on a market invoice. CAISO states that if it is unable to collect the payment in full, it allocates the remaining shortfall to the market. CAISO avers that both of these outcomes are undesirable in some instances (e.g., pursuing small amounts) because the time and effort to collect or the administrative burden and expense of allocating a shortfall exceed any amount that could be recovered. To alleviate this scenario, CAISO proposes to add language to the CAISO Reserve Account Tariff provisions stating that if CAISO determines a default amount cannot be recovered for invoice(s) after the T+24 recalculation settlement statements, CAISO has the option of not allocating up to $2,000 of the default amount and instead covering the default with funds from the CAISO Reserve Account.[27]

D. Flexibility to Use Developing Payment Options

18. CAISO explains that the Tariff currently requires all market invoices to be paid by FedWire Funds Service or the Automated Clearing House.[28] CAISO states that market participants have inquired about the use of new payment systems, such as FedNow. CAISO states that new payment systems could provide economic benefits and flexibility through instantaneous settlement and better cash flow management. While it is still evaluating new payment services, CAISO proposes to revise the Tariff to permit CAISO to accept new payment systems should it elect to do so in the future. In order to avoid any legal uncertainty on what financial payment services are permitted, CAISO proposes

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[26] *Id.* at 19-20; CAISO, CAISO eTariff, § 11.29.10 (Billing and Payment) (12.0.0), § 11.29.10.3.

[27] Transmittal at 20-21; CAISO, CAISO eTariff, § 11.29.9 (Payment Procedures) (9.0.0), § 11.29.9.6.2.1(c).

[28] Transmittal at 21; CAISO, CAISO eTariff, § 11.1.3 (Financial Transaction Conventions and Currency) (1.0.0), § 11.1.3(e); *id.* § 11.29.3 (Payments) (2.0.0), 11.29.3(c); *id.* § 11.29.9 (Payment Procedures) (8.0.0).

that the Tariff state that market participants may make payments by electronic means authorized in the business practice manual.[29]

Clarifications and Corrections

19. CAISO proposes several clarifications and corrections to update the Tariff based on its current practices and policies and to implement miscellaneous minor changes.[30]

III. Notice and Responsive Pleadings

20. Notice of the filing was published in the *Federal Register*, 89 Fed. Reg. 83875 (Oct. 18, 2024), with interventions and protests due on or before November 1, 2024. Calpine Corporation, Northern California Power Agency, California Department of Water Resources State Water Project, and City of Santa Clara, California filed timely motions to intervene.

IV. Determination

A. Procedural Matters

21. 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.

B. Substantive Matters

22. 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 Tariff revisions will provide clarity and administrative efficiency to the billing and payments provisions in the Tariff, as well as bolster the financial integrity of the market. We find that the uniform minimum capitalization requirement strikes an appropriate balance between reducing the market's exposure to the risk of undercapitalization and

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[29] Transmittal at 22; CAISO, CAISO eTariff, § 11.29.9 (Payment Procedures) (8.0.0), § 11.29.9.1(c); *id.* § 11.29.11 (Instructions for Payment) (6.0.0), § 11.29.11.2(c); *id.* § 11.29.9 (7.0.0), § 11.29.9.3; *id.* § 11.1.3 (Financial Transaction Conventions and Currency) (1.0.0), § 11.1.3(e).

[30] Transmittal at 22-26. The Tariff clarifications and corrections are predominantly in section 11 (CAISO Settlements and Billing), with the exception of a few changes to section 26 (Transmission Rates and Charges).

avoiding significant burden on existing and potential market participants. Further, we agree with CAISO that increasing the capitalization requirements will not impose a significant burden because market participants will only need to maintain the capitalization requirements from the initial phase of participation and is consistent with the capitalization requirements of other RTOs/ISOs.[31] We also find that designating a single agreement between CAISO and a market participant to govern settlement, billing, and payment will increase certainty in the event of default.

23. We find that the revisions to enhance CAISO's ability to respond to defaults both clarify CAISO's policies and avoid charging losses to market participants. We find that providing CAISO with discretion is a reasonable approach to mitigating the impacts of a default when the funds in both reserve accounts are insufficient to clear the market. Similarly, we agree with CAISO that the flexibility to allow market participants to use certain new payment systems to pay market invoices may improve cash flow management. Finally, we accept CAISO's additional miscellaneous minor Tariff revisions because they clarify and/or correct existing practices and policies.

24. We 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.

<u>The Commission orders</u>:

(A) CAISO's proposed Tariff revisions are hereby accepted, effective as of the actual implementation date, as discussed in the body of this order.

(B) CAISO is hereby directed to notify the Commission of the actual effective date of the revisions no less than seven days prior to the actual effective date, in an eTariff submittal using Type of Filing code 150 – Report.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.

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[31] *See supra* P 8, n.13.