

March 25, 2011

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**RE: California Independent System Operator Corporation
Docket Nos. ER09-1048-003 & ER06-615-060**

**Errata to the February 22, 2011 Motion For Clarification Or, in the
Alternative, Rehearing of the California Independent System
Operator Corporation**

Dear Secretary Bose:

On February 22, 2011, the California Independent System Operator Corporation submitted a Motion For Clarification Or, in the Alternative, Rehearing in the above-referenced dockets. The ISO has since identified several incorrect citations to the ISO's FERC Electric Tariff in one paragraph of its motion. Specifically, item no. 1 of the ISO's "Statement Of Issues And Specification Of Error Or Clarification" cites to sections 37.2.3.1 & 37.2.3.2 of the tariff, whereas the correct citation is to sections 37.3.1.1 & 37.3.1.2 of the tariff. Attached is an amended version of the ISO's motion with the correct tariff citations noted in blackline format.

As the ISO's February 22 motion was filed timely and this errata does not substantively change the ISO's motion, the ISO respectfully requests that the Commission consider this errata as filed timely under section 713 of the Commission's rules and regulations.¹

The ISO has served copies of this errata on each party listed on the official service list for the above-referenced dockets, in accordance with the requirements of section 2010 of the Commission's rules and regulations.²

¹ 18 C.F.R. § 385.713 (2010).

² 18 C.F.R. § 385.2010 (2010).

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March 25, 2011
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The ISO apologizes for any inconvenience caused by this matter. If you wish to discuss this matter further, please contact me at (916) 608-7007 or dzlotlow@caiso.com.

Sincerely,

By: /s/ David S. Zlotlow

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

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

**MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE,
REHEARING OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

I. INTRODUCTION

Pursuant to Section 313 of the Federal Power Act¹ and Rules 212 and 713 of the rules and regulations of the Federal Energy Regulatory Commission,² the California Independent System Operator Corporation (the ISO)³ requests clarification or in the alternative rehearing of the Commission's *Order on Compliance Filing* issued on January 20, 2011.⁴ The January 2011 Order appears to direct the ISO, *inter alia*, to: (1) inappropriately treat basic matters of tariff administration as penalties subject to the Commission's rules on "traffic ticket violations"; (2) not request prior Commission approval before enforcing certain penalties, without clarifying how this direction impacts similar provisions; (3) no longer impose penalties for certain violations even where, consistent with Commission policy, the violation can be defined against an objective standard; and (4) modify its tariff in a way that could violate FERC Order No. 719. On

¹ 16 U.S.C. § 825l.

² 18 C.F.R. §§ 385.212 and 385.713 (2010).

³ The ISO is also sometimes referred to as the CAISO. Capitalized terms not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, Appendix A to the CAISO Tariff.

⁴ *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,050 (2011) (January 2011 Order).

these issues, the ISO respectfully requests clarification because the ISO does not believe that the Commission intended for its January 2011 Order to have these impacts. Absent the Commission's grant of the requested points of clarification, discussed below, the ISO respectfully requests rehearing of the January 2011 Order.⁵

II. BACKGROUND

The Commission's Order No. 719⁶ required independent system operators (ISOs) and regional transmission organizations (RTOs) to reform their operations and amend their tariffs or otherwise demonstrate their compliance with the Order in several areas, including: (1) demand response; (2) long-term power contracting; (3) market monitoring; and (4) responsiveness to customers and stakeholders. On April 28, 2009, the ISO submitted its initial compliance filing required under Order 719.⁷

On November 19, 2009, the Commission issued an *Order on Compliance Filing*, in which it largely accepted the ISO's initial compliance filing but ordered the ISO to submit an additional compliance filing addressing several market monitoring matters.⁸ One such matter involved revision of Section 37 of the ISO's FERC Electric Tariff, which comprises the ISO's Rules of Conduct for Market Participants. The Rules of Conduct contain some rules whose violation is

⁵ The January 2011 Order calls for a compliance filing within 30 days. On February 4, 2011, the ISO filed a Motion for Extension of Time in the instant docket. The ISO requested a 90-day compliance timeframe, consistent with the timeframe offered to PJM Interconnection, LLC. This request was granted on February 16, 2011. Consistent with 18 C.F.R. § 385.713(e), the ISO will make its compliance filing within the required timeframe.

⁶ *Wholesale Competition in Regions with Organized Electric Markets*, 125 FERC ¶ 61,071 (2008) (Order 719).

⁷ *Cal. Indep. Sys. Operator Corp.*, Compliance Filing, FERC Docket No. ER09-1048-000 (Apr. 28, 2009) (April 2009 Filing).

⁸ *Cal. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,157 (2009) (November 2010 Order).

enforced by the Commission through a referral by the ISO's Department of Market Monitoring (DMM) and some rules whose violation is enforced by the ISO through the imposition of tariff-defined Sanctions. Per Commission order, ISOs and RTOs can only impose tariff-defined penalties for violations involving objectively identifiable conduct.⁹ The November 2010 Order required the ISO to revise the then-existing language of both Section 37.5.1 (prohibition on submitting false information to the ISO) and Section 37.6.1.1 (obligation to submit required information "in a complete, accurate, and timely manner") because the Commission found that the rules involved subjective determinations.¹⁰ The Commission further ordered the ISO review the rest of the Rules of Conduct to ensure that any violation enforced by the ISO (*i.e.*, a traffic ticket violation) involved only objectively identifiable conduct, with all other violations enforced by the Commission through a DMM referral.¹¹

On February 18, 2010, the ISO made a compliance filing in response to the November 2010 Order.¹² Although noting that the ISO could find nothing in Order 719 requiring ISOs and RTOs to review tariff provisions governing traffic ticket violations,¹³ the ISO's February 2010 Filing nevertheless identified five provisions that the ISO believed "could be viewed as involving behavior that is

⁹ *Market Monitoring Units in Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,267, P 5 (2005). The Commission refers to such violations as "traffic ticket violations."

¹⁰ November 2010 Order, at PP 99 & 100.

¹¹ *Id.* at P 100 (the ISO must amend the Rules of Conduct "to conform to the requirements for behavior subject to internal sanction").

¹² *Cal. Indep. Sys. Operator Corp.*, Amendments to the FERC Electric Tariff of the California Independent System Operator Corp. in Compliance with the Commission's November 19, 2009 *Order on Compliance*, FERC Docket Nos. ER09-1048-002 & ER06-615-05 (Feb. 18, 2010) (February 2010 Filing).

¹³ February 2010 Filing, at 9.

not objectively identifiable”¹⁴ For Section 37.2.1 (obligation to comply with ISO operating orders), Section 37.2.4 (obligation to maintain Resource Adequacy units on-line and available), and Section 37.6.1 (obligation to submit required information “in a complete, accurate, and timely manner”), the ISO proposed to amend the substance of the rule so that enforcement would require only objective determinations. For Section 37.2.3 (obligation to use maintenance procedures that avoid contributing to major Outages) and Section 37.5.1 (prohibition on submitting false information to the ISO), the ISO proposed to amend the Rules of Conduct so that violations of these two rules would be enforced by the Commission through a DMM referral. For Section 37.2.3 and Section 37.5.1, the ISO did not alter the accompanying penalty provisions (Section 37.2.3.2 and Section 37.5.1.2, respectively). In keeping the penalty provisions in the tariff, the ISO intended for the Commission to make the factual determination as to whether a violation occurred and, if a violation occurred, then grant the ISO permission to assess the Sanction already specified in the tariff through its regular settlement process.

The ISO acknowledged that Section 37.3.1.1 (obligation to submit bids that reflect resources that are “reasonably expected” to be available) could be viewed as involving subjective determinations.¹⁵ The ISO explained, however, that this rule did not implicate FERC’s standards on traffic ticket violations because violation of the rule is not subject to a penalty. Instead, Section 37.3.1.1 is enforced through a settlement rule that merely denies payment for services

¹⁴ *Id.*

¹⁵ *Id.* at 13.

that are not provided by the supplier. Accordingly, the ISO argued that no revision to Section 37.3.1.1 was warranted.

The Commission issued the January 2011 Order in response to the ISO's February 18, 2010 filing. The January 2011 Order calls for the ISO to perform further review and revision of the Rules of Conduct because the ISO's tariff still had traffic ticket violations that involve subjective determinations. The Commission found that Section 37.3.1.2, which involves rescinding payment for ancillary services or RUC Capacity that is unavailable, is impermissible because it constitutes an ISO-imposed penalty for conduct the Commission found to be subjectively defined.¹⁶ The Commission gave the ISO the choice of either removing discretion from Section 37.3.1.1 or removing the penalty from Section 37.3.1.2. Additionally, the Commission ruled that proposed Section 37.6.1, which imposes a penalty for failing to submit required information to the ISO "in a complete and timely manner," and Section 37.6.2, which imposes a penalty for failing to respond to an ISO investigation in a timely manner, are impermissible because the word "timely" offers the ISO discretion in imposing Sanctions.¹⁷ Moreover, based on the principle that "there is no joint ISO/Commission approval process for ISO sanctions,"¹⁸ the Commission stated that the ISO cannot wait for Commission approval before it can impose enhanced penalties under its Tariff pursuant to Section 37.2.5 and Section 37.4.4. These sections provide for certain enhanced penalties where violations occur during ISO-declared System Emergencies. Finally, the Commission ordered the ISO to remove Section

¹⁶ *Id.* at P 50.

¹⁷ *Id.* at PP 52-54.

¹⁸ *Id.* at P 47.

37.5.1 (prohibition on submission of false information) and Section 37.7 (prohibition of market manipulation) from the Tariff because these provisions largely repeat existing prohibitions in FERC regulations.¹⁹ The Commission then ordered the ISO to amend Appendix P, Section 11.1.3,²⁰ to list all traffic ticket violations in this tariff section. It appears that the Commission is of the belief that this particular portion of Appendix P is the obligatory “separate section that identifies all provisions of the tariff that contain obligations, the violation of which would result in an ISO or RTO sanction.”²¹

III. STATEMENT OF ISSUES AND SPECIFICATION OF ERROR OR CLARIFICATION

The ISO identifies the following statement of issues and specifications of error or clarification concerning the January 2011 Order.

1. The January 2011 Order finds that Section ~~37.2.3.1~~ 37.3.1.1 contains discretionary elements. Accordingly, the Commission concluded that Section ~~37.2.3.2~~ 37.3.1.2 (which imposes consequences for violating Section ~~37.2.3.1~~ 37.3.1.1) was impermissible.²² Section ~~37.2.3.2~~ 37.3.1.2 involves the ISO reversing payments for services that are not rendered. The ISO does not believe that not paying a market participant for a service it did not provide was intended to be included in the Commission’s traffic ticket violation paradigm because it is not a penalty; it is merely not paying a party for a service that was not provided. In a recent order regarding the New York ISO, the Commission ordered the New York ISO to remove a provision from its traffic ticket violation

¹⁹ *Id.* at PP 62-65.

²⁰ *Id.* at PP 66.

²¹ *Id.* at P 35 & n.28.

²² *Id.* at P 50.

listing because it involved a basic issue of tariff administration such as this, rather than a penalty that should be covered by FERC's traffic ticket violation rules.²³

Accordingly, the ISO respectfully requests clarification that the Commission merely ordered Section ~~37.2.3.2~~ 37.3.1.2 to be removed from the traffic ticket provisions because it involves a basic issue of tariff administration, not because it involves imposing a Sanction based on subjective criteria. To the extent this finding is not consistent with the January 2011 Order, the ISO respectfully submits that the January 2011 Order is in error and should be modified on rehearing.

2. Based on the principle that there is no joint approval process between an ISO/RTO and the Commission, the January 2011 Order finds that the ISO cannot wait for Commission approval before imposing enhanced penalties pursuant to Section 37.2.5 and Section 37.4.4. The ISO seeks clarification regarding the scope of this finding because it is unclear what constitutes a joint approval process. Section 37.8.10 provides Market Participants the right to appeal the ISO's finding that a Rules of Conduct violation occurred. That section also provides that the "[t]he penalty will be tolled until FERC renders its decision on the appeal." If the ISO were required to assess the penalty immediately, then there potentially could be significant administrative difficulties in the event that the Commission grants the Market Participant's appeal. Accordingly, the ISO respectfully requests clarification that the ISO may toll a penalty pending Commission review of a Market Participant's appeal of an ISO finding that a Rules of Conduct violation occurred. To the extent this finding

²³ *N.Y. Indep. Sys. Operator, Inc.*, 131 FERC ¶ 61,225, P 18 (2010).

is not consistent with the January 2011 Order, the ISO respectfully submits that the January 2011 Order is in error and should be modified on rehearing.

3. The January 2011 Order finds that Section 37.6.1 and 37.6.2 are both impermissible because requiring information to be submitted in a “timely” fashion offers the ISO discretion in imposing Sanctions.²⁴ The ISO is unclear how to interpret this finding in light of the Commission’s comment that, where Rules of Conduct violations are defined with reference to specific tariff provisions outside of Section 37, those other provisions must also comport with the Commission’s objectivity requirement. In creating Sanctions for failing to submit information in a timely manner, the ISO merely intended the reference to “timely” in Section 37.6.1 and 37.6.2 to refer to instances where a Market Participant must comply with a specific deadline that either is established in the tariff or where the ISO has tariff authority to establish an *ad hoc* deadline. The ISO believes that it would have adverse impacts for the ISO’s operation if it were not allowed to impose Sanctions in these instances where it is in fact possible to determine, on an objective basis, whether or not a market participant submitted information, after an established deadline. Accordingly, the ISO respectfully requests clarification that the ISO may define “timely” in Section 37.6.1 and Section 37.6.2 as meaning complying with a tariff-defined deadline or complying with a deadline the ISO has tariff authority to establish. To the extent this finding is not consistent with the January 2011 Order, the ISO respectfully submits that the January 2011 Order is in error and should be modified on rehearing.

²⁴ *Id.* at PP 52-54.

4. The January 2011 Order finds that, based on the changes the ISO must make to its Tariff on compliance, the ISO will also have to make corresponding changes Appendix P, Section 11.1.3, because, according to the Commission, that portion of Appendix P constitutes the appropriate separate section of the tariff for identifying traffic ticket violations. However, if the ISO were to specify all traffic ticket violations in Appendix P, Section 11.1.3, then the ISO arguably would be in violation of Order 719 because Appendix P is reserved for tariff provisions relating to DMM, which is forbidden by Order 719 from being involved with traffic ticket violations. Section 37, rather than Appendix P, constitutes the appropriate section for the requisite listing of traffic ticket violations. Accordingly, the ISO respectfully requests clarification that any reference in the January 2011 Order to Appendix P, Section 11.1.3 as the separate section of the tariff identifying traffic ticket violations is an inadvertent miscitation to the ISO's tariff, and that the Commission instead intended that section 37 is the appropriate section of the tariff identifying traffic ticket violations. To the extent this finding is not consistent with the January 2011 Order, the ISO respectfully submits that the January 2011 Order is in error and should be modified on rehearing.

IV. REQUEST FOR CLARIFICATION OR IN THE ALTERNATIVE REHEARING

A. The Distinction the Commission Previously Has Drawn Between Penalties and Tariff Administration Applies to Rescission of Payment for Undelivered Ancillary Services and RUC Capacity

The Commission's finding that the rescission of payment for undelivered Ancillary Services or RUC Capacity constitutes a Sanction potentially has broad ramifications for the ISO and its markets and their ability to function efficiently and effectively. The ISO's tariff is replete with examples of provisions authorizing the ISO to take action against a Market Participant where the Market Participant fails to meet basic requirements and obligations under the tariff, including not providing the service it is supposed to provide. If such nonperformance of market obligations can only be addressed pursuant to an approved traffic ticket provision regime, then many other ISO tariff provisions (not addressed in the January 2011 Order) may also be ensnared in the Commission's traffic ticket violation paradigm.

Section 12.5 of the Tariff provides one example. This section grants the ISO authority to take "enforcement actions" where Market Participants fail to meet the ISO's credit requirements. Such enforcement actions include actions to ensure that a Market Participant is adequately collateralized such as reselling a Market Participant's Congestion Revenue Rights²⁵ and increasing a Market Participant's collateral requirement where late payment of security occurs.²⁶ Clearly, these are not penalties or Sanctions imposed on a Market Participant.

²⁵ Section 12.5.1(e).

²⁶ Section 12.5.2(b).

They are tariff provisions the ISO must administer and enforce, and actions the ISO must take, in order to ensure the sanctity and proper functioning of its markets.

Section 31.5.2.2.2 provides a further example. This section provides that where a Metered Sub System's estimated demand diverges too much from its metered demand, it accrues "penalty points" based on the divergence. If it accrues too many penalty points, it must opt-in to RUC for the remainder of the CRR Annual Cycle and for the following CRR Annual Cycle. Even though the triggering mechanism is the accrual of what the ISO has termed for convenience "penalty points," the ISO does not believe that requiring the MSS to participate in RUC is a penalty of the sort that is meant to be covered through the traffic ticket violation model. It is merely a means to ensure that the ISO's markets function efficiently and effectively.

In an earlier order regarding the New York ISO's Order 719 compliance, the Commission considered a rule in which a generation developer could lose its position in the interconnection queue if it failed to meet a deadline.²⁷ The Commission ordered the New York ISO to remove this provision from its traffic ticket list. It did so not only because removal from the queue was discretionary, but also because the Commission found that doing so was a routine matter of tariff administration that did not involve a penalty subject to the Commission's rules on traffic ticket violations.

Following the precedent established in the New York ISO case, the ISO seeks clarification that the rationale for the Commission's suggestion that Section

²⁷ 131 FERC ¶ 61,225, at P 18 (2010).

37.3.1.2 be removed from the traffic ticket list is that withholding payment from a party that fails to deliver the service it was supposed to deliver is merely a matter of tariff administration. It is basic law that a party that does not provide a service should not get paid as if it provided the service. Such non-payment is not a penalty; it is simply not paying a party for a service that the party did not provide. For example, if a Market Participant were dispatched to provide 100 MW of Energy, and did not even turn its unit on or make alternative arrangements, no one could reasonably argue that the ISO should pay the Market Participant for the 100 MW that were not provided. The same logic applies here. If the Market Participant did not provide the Ancillary Service, it should not get paid. The Market Participant is not being penalized in this instance.

The ISO seeks further clarification that the parallel tariff provisions providing for rescission of payments for undelivered Ancillary Services or RUC Capacity in Sections 8.10.8, 11.2.2.2, 11.10.9, and 31.5.7 are not subject to the Commission's rules on traffic ticket violations. The Commission previously has referred to these provisions as "market design elements,"²⁸ rather than as penalties. Consistent with these prior findings, the Commission should not be treating such provisions as penalties.

More generally, the ISO seeks clarification that consequences that are referred to as penalties or sanctions outside of section 37, but which really constitute tariff administration are not penalties for the purposes of the traffic ticket guidelines. In an order relating to PJM Interconnection, LLC that was issued the same day as the January 2011 Order, the Commission stated that

²⁸ *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61285, P 260 (2008).

certain provisions that “may be styled as ‘penalties’ or ‘sanctions’ in the PJM OATT, . . . are in fact administrative charges” and thus should not be treated as traffic ticket violations.²⁹ The ISO seeks clarification that provisions such as Section 12.5 and Section 31.5.2.2.2 will receive comparable treatment to the provisions discussed in PJM’s recent order. If the Commission is unwilling to offer these points of clarification, then in the alternative, the ISO respectfully requests rehearing on these issues.

B. The Commission’s Statements Ruling Out Joint Administration of Traffic Ticket Violations Create Ambiguities Requiring Clarification

In the January 2011 Order the Commission, seemingly for the first time, states a principle that “there is no joint ISO/Commission approval process for ISO sanctions”³⁰ Based on this principle, the Commission finds that Section 37.2.5 and Section 37.4.4 are impermissible.³¹ These sections permit the ISO to treble certain penalties if the violation occurs during a System Emergency. If the total penalty amount exceeds \$10,000, then the ISO must secure Commission approval before imposing the enhanced penalty. The Commission found that this requirement of prior Commission approval of the enhanced penalties is inconsistent with the Commission’s approach to traffic ticket violations and that the ISO instead should levy any enhanced penalties and leave it to the Market Participant to appeal the finding to the Commission, if it so chooses.

The ISO seeks clarification regarding how to implement the Commission’s findings that the ISO does not need prior Commission approval to levy enhanced

²⁹ *PJM Interconnection, LLC*, 134 FERC ¶ 61,040, P 18 (2011).

³⁰ January 2011 Order, at P 47.

³¹ *Id.*

penalties. Specifically, Section 37.8.10 allows Market Participants to appeal the ISO's finding of a violation to FERC. The tariff further states that "[t]he penalty will be tolled until FERC renders its decision on the appeal." As is the case with Section 37.2.5 and Section 37.4.4, under Section 37.8.10 the ISO cannot levy a penalty until the Commission makes its own determination. There would, however, potentially be serious administrative difficulties if the Commission found that the tolling of penalties under Section 37.8.10 were not allowed. Specifically, if the ISO levies the Sanction immediately but the Commission were later to reverse the finding that a violation occurred, the ISO could have difficulty refunding the funds the Market Participant paid as a Sanction.

Under Section 37.9.4, the ISO pools all penalties collected under the Rules of Conduct in a given year and distributes the funds pro-rata to "those Market Participants that were not assessed a financial penalty pursuant to this section 37 during the calendar year."³² If the Commission reversed the ISO's finding after the penalty funds are distributed for the year in which the Market Participant paid its penalty, then it is unclear with what funds the ISO would process the refund. An after-the-fact resettlement of the penalty funds distribution could involve significant administrative difficulties. The ISO would have to recalculate what the distribution would have been to each party had the appealing Market Participant not been issued a penalty. The ISO would then have to take funds back from the other Scheduling Coordinators to the extent they were paid too much. Reclaiming the funds could prove extremely difficult.

³² The Commission recently approved the ISO's distribution of the 2009 penalty funds. *Cal. Indep. Sys. Operator Corp.*, Disposition of Proceeds of Penalty Assessments, FERC Docket No. ER11-2086-000 (Feb. 17, 2011) (letter order).

For example, some Market Participants might have left the ISO's market while the appeal was pending. It would be difficult for the ISO to reclaim the overpaid penalty distribution from such Market Participants. The ISO does not believe that whatever problems there may be with tolling the penalty pending appeal would justify creating these new difficulties and additional processes.

Accordingly, the ISO requests that the Commission clarify that the ISO may toll penalties for traffic ticket violations pending Commission review of the Market Participant's appeal of the ISO's finding that a violation occurred. If the Commission is unwilling to offer this clarification, then in the alternative, the ISO respectfully requests rehearing on these issues.

C. The Commission Should Clarify That Its Requirement That Traffic Ticket Violations Involve Objectively Identifiable Conduct Only Requires that the Violation Be Defined Based On An Objective Standard

In the January 2011 Order, the Commission advises the ISO that where Rules of Conduct violations are defined with reference to tariff provisions outside of Section 37, those other provisions must also comport with the Commission's objectivity requirement.³³ The ISO seeks clarification regarding how the ISO should apply this guidance to its compliance obligation to modify Section 37.6.1 and Section 37.6.2, both of which require the timely submission of information to the ISO. In requiring the timely submission of information, the ISO merely intended that Market Participants must comply with the applicable deadlines specified elsewhere in the tariff for submitting various types of information or deadlines established by the ISO pursuant to express tariff authority that

³³ January 2011 Order, at P 36 n.30.

authorizes the ISO to establish the deadlines for the submission of information. In light of the Commission's statements, the ISO requests clarification that it 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.³⁴ Specifically, the ISO requests clarification that the deadline itself need not be defined in the Tariff. Section 37.6.2 combined with Section 37.8 provides an example of such *ad hoc* deadlines. For example, Section 37.8 makes clear that the ISO has authority to conduct an investigation of suspected traffic ticket violations and seek information from Market Participants as part of that investigation. Inherent 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.

The ISO is especially concerned about the impact the January 2011 Order potentially could have on its ability to investigate potential Rules of Conduct violations. In the absence of the requested clarification, the ISO would either have to define a default deadline in Section 37.8 for responding to investigative requests or give up the authority to penalize Market Participants for failing to cooperate with an ISO investigation by submitting requested information within the deadlines established by the ISO pursuant to its tariff authority. Neither option is workable. Accordingly, the ISO is concerned that it would have no basis for incenting a Market Participant to cooperate with a valid ISO investigation. Thus, the ISO believes that the status quo arrangement is the most sensible

³⁴ In its compliance filing, the ISO would list the specific tariff provisions that either impose a deadline or grant the ISO tariff authority to establish a deadline.

approach and is consistent with the Commission's rules on traffic ticket violations. Furthermore, Section 37.6.4 constitutes a check on the ISO's use of its investigative authority. If a Market Participant believes that a request is unreasonable it has a right to interlocutory appeal of the obligation to submit the requested information.³⁵

Establishing a default deadline would be wholly impractical. Not all information requests are the same, with some requiring significant time and some being relatively basic. It would be virtually impossible for the ISO to determine what the appropriate one-size-fits-all default deadline should be. Additionally, since the default deadline would be defined in the tariff, the ISO would have no ability to offer extensions of time based on the particular facts and circumstances without being granted a tariff waiver from the Commission. Determining what information is required to conduct a specific investigation is simply something that cannot be defined ahead of time in the tariff. Further, it would be impractical for the tariff to define when an investigative request must be issued since that decision must be based on the ISO's assessment of the available evidence. Thus, if the Commission's mandate to only issue penalties for violation of standards that have no subjective element whatsoever were taken to its extreme, then the ISO is unclear how any ISO/RTO ever could issue penalties for a Market Participant's failure to submit information necessary for the ISO/RTO to

³⁵ The ISO assumes that this right to interlocutory appeal does not constitute a proscribed "joint ISO/Commission approval process for ISO sanctions." To the extent the January 2011 Order would characterize it as such, the ISO seeks rehearing on whether this right of appeal is permissible.

investigate a traffic ticket violation. That would thwart the ISO's efforts to conduct investigations in a timely and effective manner.

The ISO's other compliance option would be to eliminate the penalty provision from 37.6.2 and make failures to comply with an ISO investigation a matter of DMM referral. Such an approach is equally impractical. Consider a situation in which the ISO is investigating a suspected traffic ticket violation but the Market Participant refuses to furnish information necessary to determine whether or not a violation occurred. If that were the case, the ISO could refer the party for failing to comply with an ISO information request. However, there would be no means to punish the initial Rules of Conduct violation. The Commission seemingly has made it clear that it will not enforce traffic ticket violations. Based on the January 2011 Order, it is now clear that the ISO could not even refer the suspected violation to the Commission, because the Commission has ordered the ISO to remove from section 37.8.2 the ability to refer a traffic ticket violation where an objective determination as to whether or not a violation occurred is impossible.³⁶ The result would be that the Market Participant could escape punishment for a Rules of Conduct violation simply by refusing to participate in the ISO's investigation, and then only face a FERC investigation for failing to cooperate with an ISO investigation. Without any penalty established in advance, and given the uncertain nature of the Commission referral process, the ISO and its Market Participants have little way of knowing whether the Commission's investigative process and any resulting penalties would establish

³⁶ January 2011 Order, at PP 56 & 57.

the appropriate incentives for Market Participants to cooperate with an ISO investigation.

Accordingly, the ISO requests that the Commission clarify that the ISO may define “timely” in Section 37.6.1 and Section 37.6.2 as meaning complying with a tariff-defined deadline or complying with a deadline the ISO has tariff authority to establish. Further, the ISO requests that the Commission clarify that so long as a traffic ticket violation may be defined with reference to an objective standard, the violation may be enforced by the ISO as a traffic ticket violation so long as the ISO has tariff authority to establish that objective standard. If the Commission is unwilling to offer these points of clarification, then in the alternative, the ISO respectfully requests rehearing on these issues.

D. Appendix P of the ISO Tariff Does Not Contain a Centralized Listing of Traffic Ticket Violations

The ISO disagrees with the Commission’s characterization of Appendix P, Section 11.1.3 as constituting the requisite separate section of the tariff for identifying traffic ticket violations. The ISO submits that Section 37 of the ISO tariff, not Appendix P, is the appropriate separate section of the tariff to identify traffic ticket violations. If the ISO were to claim that Appendix P, Section 11.1.3 fulfilled this mandate, then it arguably would be in violation of Order 719. In that regard, Order 719 requires “RTOs and ISOs to include in their tariffs, and centralize in one section, all of their MMU provisions.”³⁷ Order 719 additionally mandates that market monitors cannot be involved in tariff administration,

³⁷ Order 719, at P 392.

including administration of traffic ticket violations.³⁸ It is contradictory and illogical to list the traffic ticket violations in the portion of the tariff that is explicitly reserved for DMM, which, under the terms of Order 719, cannot be involved in any way with administering traffic ticket violations. The ISO accordingly seeks clarification that any reference in the January 2011 Order to Appendix P, Section 11.1.3 as the separate section of the tariff identifying traffic ticket violations is an inadvertent miscitation to the ISO's tariff, and that the Commission instead recognizes that section 37 comprises the mandated section of the tariff identifying traffic ticket violations. If the Commission is unwilling to offer these points of clarification, then in the alternative, the ISO respectfully requests rehearing on these issues.

V. Conclusion

For the foregoing reasons, the ISO respectfully requests that the Commission provide the above-requested points of clarification of its January 2011 Order. If the Commission is unwilling to offer these points of clarification, then the ISO respectfully requests rehearing of the January 2011 Order.

³⁸ *Id.* at 377.

Respectfully submitted,

By: /s/ David S. Zlotlow
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Attorneys for the California Independent
System Operator Corporation

Dated: February 22, 2011

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 25th day of March, 2011.

Is/ Anna Pascuzzo

Anna Pascuzzo