

171 FERC ¶ 61,011
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

California Independent System Operator Corporation Docket No. ER04-835-010

ORDER ON COMPLIANCE PROCESS AND MARKET RESETTLEMENT

(Issued April 3, 2020)

1. On October 28, 2019, as supplemented on March 2, 2020 and March 31, 2020, the California Independent System Operator Corporation (CAISO) submitted a compliance filing in response to the Commission’s August 28, 2019 order on rehearing in this proceeding.¹ In this order, we direct CAISO to refrain from resettling its market until the Commission has accepted its compliance filing.

I. Background

A. Procedural History and Parties

2. The origins of this case date back more than a decade. As most relevant here, the Commission issued several orders on a CAISO proposal addressing, among other things, the allocation of must-offer generation costs.² On December 20, 2013, CAISO submitted what it termed an “informational” refund report which explained that, consistent with those orders, it would be conducting resettlements for the relevant time period, i.e., July 1, 2004 through March 31, 2009. On October 20, 2016, the Commission rejected CAISO’s informational refund report and dismissed as moot a related complaint filed by

¹ *Cal. Indep. Sys. Operator Corp.*, 168 FERC ¶ 61,127 (2019) (Order on Rehearing).

² *Cal. Indep. Sys. Operator Corp.*, 108 FERC ¶ 61,022 (2004); *Cal. Indep. Sys. Operator Corp.*, Opinion No. 492, 117 FERC ¶ 61,348 (2006), *order on reh’g*, 121 FERC ¶ 61,193 (2007), *order on reh’g*, 136 FERC ¶ 61,197 (2011), *aff’d*, *City of Anaheim v. FERC*, 540 F.App’x 13 (D.C. Cir. 2013).

Shell Energy North America (US) L.P. and the Alliance for Retail Energy Markets (collectively, the Coalition).³

3. Subsequently, in the Order on Rehearing, the Commission granted CAISO's and Southern California Edison Company's requests for rehearing of the October 2016 order, accepted CAISO's informational refund report, and denied the Coalition's complaint.⁴ The Commission further determined that interest should be applied to the resettlements consistent with section 35.19a of the Commission's regulations.⁵ The Commission explained that, because interest reflects the time value of money, courts have stated that the Commission's equitable authority to waive interest is narrow and should be exercised only in exceptional circumstances.⁶ The Commission thus found that under these circumstances requiring interest was appropriate and directed CAISO to submit a compliance filing reflecting the invoices it plans to distribute for interest amounts.⁷ Requests for rehearing of the Order on Rehearing are pending.

B. CAISO Compliance Filing and Subsequent Events

4. On October 28, 2019, CAISO submitted its first compliance filing stating that it was in the process of calculating interest and planned to issue settlement statements and invoices by March 31, 2020. CAISO committed in the compliance filing to submitting a supplemental filing in the first quarter of 2020 reflecting the interest calculations. The Coalition protested the compliance filing and filed a motion for stay. In response, on December 3, 2019, CAISO filed an answer to the Coalition's protest stating that it would submit a supplemental compliance filing by March 1, 2020, and an answer to the Coalition's motion for stay arguing that the Coalition failed to satisfy the Commission's standard for a stay. On February 12, 2020, the Commission denied the Coalition's

³ *Cal. Indep. Sys. Operator Corp.*, 157 FERC ¶ 61,033 (2016).

⁴ Order on Rehearing, 168 FERC ¶ 61,127 at P 12.

⁵ *Id.* PP 12, 26-29. *See* 18 C.F.R. § 35.19a (2019).

⁶ Order on Rehearing, 168 FERC ¶ 61,127 at P 28 (citing *Anadarko Petroleum Corp. v. FERC*, 196 F.3d 1264, 1267 (D.C. Cir. 1999); *Se. Mich. Gas Co. v. FERC*, 133 F.3d 34, 43-44 (D.C. Cir. 1998); *Black Oak Energy, L.L.C. v. PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,013, at PP 38-40 (2016)).

⁷ *Id.* P 29.

motion for stay, but declined to address CAISO's compliance filing because CAISO had committed to supplement that filing by March 1, 2020.⁸

5. On March 2, 2020, CAISO submitted its supplemental compliance filing. In its supplemental compliance filing, CAISO states that it has calculated the interest on the minimum load cost adjustments through March 31, 2020 to be \$88.3 million, which CAISO states constitutes the majority of the interest on the reallocated must-offer cost amounts at issue in this proceeding.⁹ However, CAISO states that it requires additional time to calculate interest on reallocated start-up cost, and plans to submit another supplemental compliance filing on March 31, 2020 to update the Commission and the parties on the status of CAISO's efforts to document the interest on the start-up costs and to propose a timeline for issuing settlement statements and invoices.¹⁰ CAISO explains that additional time is needed to calculate interest with respect to the start-up costs because CAISO must manually reconstruct settlement statements used in the interest calculations as the software system previously used is no longer available. Further complicating matters, CAISO states that the start-up cost data needs to be reconstructed from archived data that is not easily accessible.¹¹

6. CAISO further states in the supplemental compliance filing that it plans to publish settlement statements and invoices on March 31, 2020 and perform market clearing on April 6, 2020.¹²

7. On March 31, 2020, CAISO submitted its second supplemental compliance filing in this proceeding. CAISO states that it has calculated the interest to be charged and allocated for start-up cost adjustments through March 31, 2020 to be \$6 million.¹³ CAISO states that it will issue settlement statements and invoices for the start-up interest on April 9, 2020 and perform market clearing on April 15, 2020.¹⁴ The comment period remains open on this filing.

⁸ *Cal. Indep. Sys. Operator Corp.*, 170 FERC ¶ 61,094, at PP 1, 11-15 (2020).

⁹ CAISO March 2 Supplemental Compliance Filing at 2, 5.

¹⁰ *Id.*

¹¹ *Id.* at 5.

¹² *Id.* at 2, 7.

¹³ CAISO March 31 Supplemental Compliance Filing at 3-4.

¹⁴ *Id.* at 4.

II. Notice and Responsive Pleadings

8. Notice of CAISO's compliance filing was published in the *Federal Register*, 84 Fed. Reg. 59,803 (2019), with comments due on or before November 18, 2019. Notice of CAISO's supplemental compliance filing was published in the *Federal Register*, 85 Fed. Reg. 13,887 (2020), with comments due on or before March 23, 2020. CAISO's second supplemental compliance filing was noticed on April 1, 2020 with comments due on or before April 21, 2020.¹⁵

9. On November 18, 2019, the Coalition filed a protest of CAISO's compliance filing, arguing that the Commission should reject it for failing to comply with the Commission's directive.¹⁶ On December 3, 2019, CAISO filed a motion for leave to answer and answer to the Coalition's protest arguing that the Commission should not reject its compliance filing because it will supplement its compliance filing.¹⁷

10. In response to CAISO's supplemental compliance filing, on March 16, 2020, the Coalition filed a protest, arguing that the Commission should reject CAISO's compliance filing as deficient, non-compliant, and contrary to the principles of due process.¹⁸ The Coalition argues that CAISO has again failed to provide the Commission and affected parties with the information needed to determine whether the charges that CAISO plans to impose on parties are properly calculated in compliance with Commission orders and are just and reasonable. The Coalition asserts that CAISO's filing provides virtually no information as to how CAISO arrived at \$88.3 million in interest for the minimum load cost adjustments, nor has CAISO explained how it will be allocated.¹⁹ The Coalition also submitted a motion for immediate Commission action.

11. On March 20, 2020, CAISO and Pacific Gas and Electric Company (PG&E) filed separate answers in response to the Coalition's protest and motion. CAISO argues that, because the aggregated interest amounts described in the supplemental compliance filing will serve as the basis for its invoices for interest on the minimum load cost adjustments,

¹⁵ *Cal. Indep. Sys. Operator Corp.*, Docket No. ER04-835-010, Combined Notice of Filings 1 (issued Apr. 1, 2020). At the time of this order, this notice has been submitted to the *Federal Register*, but has not yet been published.

¹⁶ Coalition November 18 Protest at 3-4.

¹⁷ CAISO December 3 Answer at 3-5.

¹⁸ Coalition March 16 Protest at 3.

¹⁹ *Id.* at 4.

CAISO believes that it has satisfied the directive in the Order on Rehearing.²⁰ CAISO also notes that to the extent that any invoices contain errors, market participants can dispute the settlement statements under the existing process set forth in the CAISO tariff and there is no need for an “extra-tariff process.”²¹ Lastly, CAISO asks that the Commission deny the Coalition’s motion. PG&E supports CAISO’s plan to issue invoices for the must-offer generation costs that were allocated in 2004 and requests that the Commission deny the Coalition’s motion.²²

12. Powerex Corp. (Powerex) filed comments on March 23, 2020, arguing that conducting another market resettlement at this stage of the proceedings would be highly inequitable and serve to only further erode confidence in the markets.²³ Powerex states that the Commission generally does not order markets to be resettled and doing so here would create significant uncertainty, particularly in light of the difficulty CAISO is having calculating the amounts at issue given its unfamiliarity with the data.²⁴ Powerex concludes by stating the most effective way for the Commission to conclude this process is to grant rehearing of the Order on Rehearing.

13. On March 26, 2020, the Coalition filed an answer to CAISO’s answer, arguing that the complexity of this proceeding necessitates a Commission-run compliance process.²⁵ On March 31, 2020, CAISO filed an answer to Powerex’s comments and the Coalition’s answer.

III. Discussion

A. Procedural Matters

14. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed in response to

²⁰ CAISO March 20 Answer at 6.

²¹ *Id.* at 7.

²² PG&E March 20 Answer at 2.

²³ Powerex March 23 Comments at 6.

²⁴ *Id.* at 8-9.

²⁵ Coalition March 26 Answer at 3-5.

CAISO's first supplemental compliance filing because they have provided information that assisted us in our decision-making process.²⁶

B. Substantive Matters

15. In light of CAISO's recently filed second supplemental compliance filing, we will again reserve judgment on the merits of CAISO's compliance filing until all the required information is submitted in this docket. Nevertheless, we think it is appropriate now to address CAISO's compliance process to provide certainty to those entities that may be affected by the market resettlement that CAISO intends to conduct. We grant the Coalition's motion in part and direct CAISO to refrain from resettling its markets or issuing final invoices to affected market participants until the Commission has accepted its complete compliance filing. Although we recognize that CAISO's tariff contains provisions for disputing settlement statements,²⁷ we find that given the uncertainty that may result from distributing potentially inaccurate resettlement statements and the impacts that those potentially inaccurate statements may have on the statements of other market participants, CAISO should wait until the Commission has accepted its complete compliance package before resettling its market.²⁸

The Commission orders:

(A) CAISO is hereby directed to refrain from resettling its market until the Commission has accepted its compliance filing, as discussed in the body of this order.

²⁶ The Commission previously accepted CAISO's answer to the Coalition's protest of CAISO's first compliance filing and the Coalition's answer to CAISO's answer. *Cal. Indep. Sys. Operator Corp.*, 170 FERC ¶ 61,094 at P 10.

²⁷ CAISO March 20 Answer at 7 (citing CAISO Tariff, CAISO as Counterparty; Billing and Payment, Confirmation and Validation, Disputes or Exceptions (6.0.0) § 11.29.8.4).

²⁸ See *Pub. Serv. Comm'n of Wis. v. Midcontinent Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,205, at PP 1, 81 (2016) (directing the Midcontinent Independent System Operator, Inc. to suspend refunds of certain costs until the Commission issues an order in a related docket that would finalize the amount of the costs to be allocated among benefiting load serving entities).

(B) The Coalition's motion is hereby granted in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.