UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	Docket Nos.	ER04-835-010
Pacific Gas and Electric Company v. California Independent System Operator Corporation		EL04-103-005 (Consolidated)
The Alliance for Retail Energy Markets Shell Energy North America (US), L.P. v. California Independent System Operator Corporation		EL14-67-001

COMMENTS OF POWEREX CORP.

Pursuant to the Federal Energy Regulatory Commission's ("Commission" or "FERC") March 3, 2020 Combined Notice of Filings #1, Powerex Corp. ("Powerex") hereby submits these comments concerning the California Independent System Operator Corp.'s ("CAISO") Supplemental Informational Compliance Filing ("Compliance Filing").[1]

I. BACKGROUND

Amendment 60 to the CAISO tariff, which proposed revisions to CAISO's methodology for allocating must-offer minimum load and start-up compensation costs, was presented to the Commission for review and approval more than fifteen years ago. In a 2004 order, the Commission accepted Amendment 60, subject to

[1] *Cal. Indep. Sys. Operator Corp.,* Supplemental Informational Compliance Filing, Docket No. ER04-835-010 (filed Mar. 3, 2020).

refund, and set for hearing a related Pacific Gas & Electric complaint regarding the allocation of must-offer costs, with a refund effective date of July 17, 2004.[2] For the next two years, while Amendment 60 proceedings continued before the Commission and in keeping with the Commission's 2004 order, CAISO applied its proposed Amendment 60 tariff provisions and cost allocation methodology to market participants.

In a series of orders issued over the course of 2006 and 2007, the Commission approved a portion of the Amendment 60 cost allocation methodology, but also ordered a set of discrete and fundamental modifications.[3] In September 2011, over four years after the submission of CAISO compliance filings and a multitude of rehearing requests, the Commission issued orders accepting CAISO's compliance filings and denying all requests for rehearing.[4] In November 2013, the U.S. Court of Appeals for the District of Columbia Circuit denied petitions for appeal of the Commission's orders.[5]

1. CAISO Refund Report and Resettlement

In December 2013, CAISO filed a refund report informing the Commission that it planned to retroactively apply the modified cost allocation methodology set out in the Commission's 2006 and 2007 orders and affirmed by the D.C. Circuit,

[2] *Cal. Indep. Sys. Operator Corp.,* 108 FERC ¶ 61,017 (2004).

[3] *Cal. Indep. Sys. Operator Corp.,* 117 FERC ¶ 61,348 (2006), *order on reh'g,* 121 FERC ¶ 61,193 (2007).

[4] *Cal. Indep. Sys. Operator Corp*., 136 FERC ¶ 61,198 (2011); *Cal. Indep. Sys. Operator Corp.*, 136 FERC ¶ 61,197 (2011).

[5] *City of Anaheim v. Fed. Energy Reg. Comm'n,* 540 F. App'x 13 (D.C. Cir. 2013).

and proposing (and later correcting) its calculated reallocation of approximately $198 million in costs among market participants.[6] In response, Powerex and other parties filed pleadings asking the Commission to direct CAISO to delay any actual resettlement of its markets noting that:

- It was not clear that the Commission had directed CAISO to make refunds;
- The Federal Power Act ("FPA") does not permit an Independent System Operator or Regional Transmission Organization (together, "RTO") to make refunds where doing so would require it to collect surcharges from certain market participants for past services; and
- Market participants did not have the information necessary to evaluate the basis of the charges that CAISO was proposing to assess.

Although a number of parties urged the Commission to act promptly to address these issues and provide certainty to the parties, the Commission took no further action in response. As a result, CAISO moved forward with its resettlement process while party protests and motions remained pending.

2. October 2016 Order

In an October 2016 Order, over two years after CAISO filed the refund report, the Commission rejected the CAISO's refund report, on grounds that the Commission had never directed CAISO to make refunds.[7] The Commission further explained that a decision not to order refunds was consistent with the

[6] *Cal. Indep. Sys. Operator Corp.*, Informational Refund Report of the California Independent System Operator Corp. at 1-3, Docket No. ER04-835-000 (filed on Dec. 20, 2013). CAISO filed a revised version of its refund report in that docket some five months later, in May 2014, to correct a $23 million error it discovered it had made in calculating resettlements.

[7] *Cal. Indep. Sys. Operator Corp.*, 157 FERC ¶ 61,033 (2016) ("October 2016 Order").

Commission's practice of not requiring refunds in cost allocation cases. The Commission reasoned that it would be "inequitable to impose additional charges on customers, who were not responsible for the cost allocation the Commission initially accepted, but later modified on rehearing."[8]

3. August 2019 Order

On August 28, 2019—more than fifteen years after CAISO's original filing to modify its tariff and almost six years after CAISO filed its initial refund report, and some three years after the Commission had rejected CAISO's proposed retroactive reallocation and refund actions as inequitable—the Commission reversed course, and issued an order granting rehearing of its October 2016 Order and accepting the CAISO's refund reports.[9] In the August 2019 Order, the Commission confirmed that it had not directed CAISO to make refunds, but found that CAISO had "reasonably determined" that its prior allocation of costs under its initially-proposed Amendment 60 tariff revisions was unfair.[10] The Commission did not simply accept the 2014 refund report and let stand the resettlements that had already been completed, however. Instead, the Commission directed CAISO to embark upon yet another resettlement process, requiring CAISO to now calculate and collect interest from market participants on the surcharges that were collected.[11]

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[8] *Id.* at P 31.

[9] *Cal. Indep. Sys. Operator Corp.,* 168 FERC ¶ 61,127 (2019) ("August 2019 Order").

[10] *Id.* at P 12.

[11] *Id.* at PP 26-29.

4. Compliance Filing

On March 2, 2020, the CAISO submitted the Compliance Filing.[12] In the Compliance Filing, CAISO explains that it is having difficulty calculating interest on the previous market resettlements that were completed a number of years ago. Specifically, CAISO states that it has been having difficulty calculating the amounts due because "CAISO has not worked with the start-up cost data in more than five years . . . [the] data is between 10 and 15 years old, and subject matter experts primarily responsible for the data have retired or are no longer working in settlements."[13] CAISO states that it has been able to calculate approximately $88 million in interest payments, but that it is having difficulty calculating interest on a subset of costs related to unit start-ups that were reallocated during the previous resettlement process. In particular, CAISO states that it has been forced to "manually reconstruct settlement statements used in interest calculations, because the software system that was used to create the original statements is no longer available."[14]

Given these difficulties, CAISO states that it is planning on submitting another compliance filing on March 31, 2020 to provide a further update on the

[12] On February 12, 2020, the Commission issued an order denying a motion by Shell Energy North America (US) L.P. and the Alliance for Retail Energy Markets to stay any interest charges that would be assessed under the August 2019 Order. *Cal. Indep. Sys. Operator Corp.,* 170 FERC ¶ 61,094 (2020). However, the Commission stated that it would review CAISO's subsequent compliance filing, and any responsive pleadings, after those filings were submitted. *Id.* at P 11.

[13] Compliance Filing at 5.

[14] *Id*.

amount of interest that it plans to assess related to start-up costs, and that it plans thereafter to conduct yet another resettlement process on April 6, 2020.[15]

II.
COMMENTS

This case presents a textbook example of the harm that can result from retroactive market actions involving complex resettlements. Powerex is submitting these comments because it is deeply concerned about the impact of the Commission requiring CAISO to engage in yet another resettlement process in a proceeding that was initiated nearly twenty years ago. To be clear, Powerex does not fault CAISO for attempting to move forward with implementation of the Commission's directive to proceed with the assessment of interest; as a FERC-jurisdictional public utility, CAISO has no choice but to comply with the Commission's directives. The fact remains, however, that conducting yet another market resettlement at this stage would be highly inequitable and serve only to further erode confidence in the markets.

The Commission has historically declined to order refunds in market design cases in recognition of the significant harm—both to individual market participants and to the markets as a whole—that can result from market resettlements.[16] For instance, in a recent order finding that the Commission had erred in approving proposed revisions to the rules governing ISO New England Inc.'s ("ISO-NE")

[15] *Id.* at 7.

[16] *See, e.g., Occidental Chemical Corp. v. PJM Interconnection, L.L.C.,* 110 FERC ¶ 61,378 at P 10 (2005) (recognizing that the Commission's "long-standing policy is that when a Commission action under Section 206 of the FPA requires only a cost allocation change, or a rate design change, the Commission's order will take effect prospectively").

forward capacity market, the Commission declined to require ISO-NE to re-run auctions for the previous two years that had been conducted based on the previously accepted rules. In so doing, the Commission explained that:

> The Commission generally does not order a remedy that requires rerunning a market because market participants participate in the market with the expectation that the rules in place and the outcomes will not change after the results are set. . . . Thus, as a general matter, rerunning the markets undermines the markets themselves by creating uncertainty for market participants, and we generally eschew directing them to be rerun.[17]

While the Commission noted that the impact of requiring resettlement on market expectations may have been limited because the tariff provisions had only been in effect for auctions conducted over the previous two years, the Commission found that directing ISO-NE to rerun the market would "still create harm in the form of market uncertainty[.]"[18]

The considerations that led the Commission to decline to require resettlement in the case of ISO-NE apply with even greater force here. In this case, proceeding with the proposed resettlement process would require market participants that have already been assessed hundreds of millions of dollars in surcharges as a result of the first resettlement—which itself was only undertaken due to a lack of clarity in early Commission orders in this docket—to pay tens, perhaps hundreds, of millions of dollars in additional surcharges for transactions that were executed 13 to 15 years ago. Market participants entered into the original transactions relying on the existing market rules, and had no reason to

[17] *ISO New England Inc.,* 170 FERC ¶ 61,187 at P 21 (2020) (internal citations omitted).

[18] *Id.*

expect that they would continue to be assessed charges in connection with these transactions over a decade later.

In order to have competitive, well-functioning markets, market participants must have the certainty and confidence that they will learn of the financial consequences of their transactions in a timely manner. Repeated market resettlements occurring years after the transactions have occurred undermine this confidence and dramatically increase the risks associated with participation in wholesale markets. As the Commission has observed:

> Since RTO billings disputed successfully by one participant, generally must be paid by others, there would be too much uncertainty on billing and settlement issues if a party was allowed to dispute an invoice for months or years after the transmission provider had been paid and it had in turn paid the market participants."[19]

It is for this very reason that the Commission enforces requirements that have been adopted by RTOs—including the CAISO—that limit the period for billing adjustments to a reasonable amount of time (*e.g.*, three years).[20]

Subjecting market participants to yet another resettlement—on top of the initial resettlement which itself arguably should not have occurred—would be particularly damaging in this case, because neither CAISO nor market participants have the information necessary to evaluate the accuracy of the calculations at issue. As noted above, CAISO acknowledges that it is having significant difficulties

[19] *Sw. Power Pool, Inc.,* 114 FERC ¶ 61,289 (2006).

[20] *See, e.g., New York State Elec. & Gas Corp.,* 133 FERC ¶ 61,094 at P 63 (2010) (explaining that limitations on the time for billing adjustments reflect "Commission policy that, once invoices are finalized, they should generally remain unchanged, even if later found to contain errors, so that the market participant can rely on the charges contained in the invoices").

calculating the amounts at issue given its unfamiliarity with the data, the age of the information, and the fact that the employees that were originally responsible for settlement of these transactions have either changed positions or retired. Market participants are likely to face similar challenges, depriving them of the opportunity to independently evaluate the accuracy of the information and invoices provided by the CAISO. Thus, even if CAISO is able to stitch together sufficient information to come up with its own estimate of the amount of interest at issue, market participants will likely be in no position to independently verify or dispute the accuracy of these settlements. Requiring market resettlements over a decade after the transactions were originally executed, and when there is significant uncertainty regarding the ability of the CAISO and market participants to verify the accuracy of market resettlements, is the antithesis of the type of finality and certainty required for markets to function properly.

The manner in which this proceeding has unfolded is unfortunate, and Powerex recognizes that CAISO is doing the best that it can given the Commission's actions—together with the protracted delays in taking those actions—and the limitations that CAISO is facing. At this point, it is up to the Commission to take action to avoid causing further harm to market participants and to market confidence.

As a practical matter, the most effective way to reasonably bring this process to a conclusion is for the Commission to grant rehearing of the August 2019 order immediately and to direct CAISO to cease moving forward with any further resettlements in this proceeding. Failing to act prior to the CAISO moving

forward with resettlements will only serve to create additional market uncertainty and invite further litigation and market turmoil.

III.
CONCLUSION

Wherefore, for the foregoing reasons, Powerex requests the Commission issue an order consistent with the comments above.

Respectfully submitted,

/s/ Deanna E. King

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On Behalf of Powerex Corp.

March 23, 2020

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing on all persons designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 23rd day of March, 2020.

/s/ Stephen J. Hug
Stephen J. Hug

Document Content(s)