

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

California Independent System
Operator Corporation

Docket No. ER02-651-003

ORDER GRANTING IN PART AND DENYING IN PART
REQUEST FOR CLARIFICATION

(Issued February 15, 2005)

1. This order grants the California Independent System Operator Corporation's (California ISO) request for clarification, or in the alternative rehearing, of the Commission's April 2004 Order in this proceeding.¹ The April 2004 Order accepted in part and rejected in part the California ISO's proposal to revise its procedures for distribution of default interest. Today's order will benefit consumers by eliminating a duplicative interest calculation process, thereby expediting the processing of refunds in Docket No. EL00-95, *et al.* (Refund Proceeding).

Background

2. In December 2001, the California ISO proposed to revise section 6.5.2 of its Open Access Transmission Tariff (tariff) to provide that interest on late payments (default interest) that the California ISO had received would be applied first to pay unpaid creditor balances and then to offset the Grid Management Charge. This revision, together with others, constituted Amendment No. 41 to the California ISO's tariff. The

¹ *California Independent System Operator Corporation*, 107 FERC ¶ 61,001 (2004) (April 2004 Order).

Commission rejected without prejudice the proposed changes regarding default interest, finding that the California ISO had not provided a sufficient description of how it would allocate the payments to market participants.²

3. In its June 2002 Order, the Commission adopted an intervenor's proposal for distribution of default interest to third-party suppliers. The Commission also directed the California ISO to file revised tariff provisions that provide for the distribution of default interest to third-party suppliers on a *pro rata* basis in relation to amounts past due, consistent with section 6.10 of the California ISO's Scheduling and Billing Protocol.

4. On July 3, 2002, the California ISO submitted a compliance filing in response to the June 2002 Order. The California ISO proposed processes to address default interest for three distinct time periods. During the first period – November 1, 2001 through February 7, 2002 – the California ISO distributed default interest to market participants as payment on unpaid market invoices. It stated in its compliance filing that it would make adjustments for this period and redistribute this interest as default interest payments. For period two – February 8, 2002 until April 1, 2004 (the effective date of the order on the compliance filing) – the California ISO placed default interest amounts into its market reserve fund. It stated that it would disburse this interest to market participants as default interest pursuant to the June 2002 Order. For period three, the prospective period, the California ISO proposed to create new Charge Types for default interest that would be charged to and collected from Scheduling Coordinators. It stated that default interest would be calculated for each unpaid, overdue balance on Grid Management Charges and market invoices for each Scheduling Coordinator for each trade month in which such a default occurred, and would be distributed pursuant to the June 2002 Order. The California ISO further stated that when the Commission accepted the compliance filing, all such interest from the market reserve accounts would be distributed to Scheduling Coordinators in the first trade month immediately following the trade month in which the California ISO adjusted the accounts for prior distributions of default interest as payments on past due market accounts. In addition, the California ISO proposed to modify section 6.10.5 of its tariff so that default interest, when received by the California ISO after a specified date, would be recorded on a subsequent payment date rather than when it was received.

5. The Commission acted on the compliance filing in the April 2004 Order. Specifically, the Commission: (1) accepted the proposed tariff provisions for the distribution of default interest as generally in compliance with the June 2002 Order;

² *California Independent System Operator Corporation*, 98 FERC ¶ 61,187 (2002), *order on reh'g*, 99 FERC ¶ 61,253 (2002) (June 2002 Order).

(2) accepted the California ISO's proposed crediting mechanism; (3) required the California ISO to reallocate interest received from the California Energy Resource Scheduler (CERS) for the month of January 2001 and disburse those reallocated amounts to the parties that supplied energy and ancillary services to CERS from January 17-31, 2001; (4) rejected the California ISO's proposal to modify section 6.10.5 of the tariff; and (5) required the California ISO to make a compliance filing to delete from its tariff the proposed modification to section 6.10.5.

Request For Clarification or Rehearing

6. On May 3, 2004, the California ISO submitted a request for clarification, or in the alternative rehearing, of the April 2004 Order. Specifically, the California ISO asks the Commission to clarify that the California ISO will not be required to reallocate and disburse interest amounts that have been collected, and in some cases already disbursed, for the period covered by the Commission's orders in the Refund Proceeding, *i.e.*, October 2, 2000 through June 20, 2001 (Refund Period). Additionally, the California ISO seeks clarification that it may disburse *pro rata* the interest amounts that it currently holds in its market reserve account relating to the Refund Period to California ISO creditors in order to satisfy unpaid payment obligations, beginning with the oldest trade month for which there are amounts due.

7. The California ISO contends that most of the interest that the Commission has required it to reallocate in the Amendment No. 41 proceedings relates to the Refund Period, for which the Commission has, subsequent to the issuance of the June 2002 Order, approved a different methodology for the calculation of interest. The California ISO is specifically concerned about the approximately \$44 million in interest that it disbursed to market participants between November 1, 2001 and February 7, 2002. It also has in its market reserve account approximately \$6.5 million in interest, \$5.2 million of which relates to the Refund Period.

8. The California ISO states that it is completing a "preparatory rerun" to serve as the baseline for the refund rerun. It argues that it must reverse and recalculate all interest amounts for the Refund Period pursuant to the methodology the Commission adopted in its Refund Proceeding orders. Accordingly, the California ISO argues that there is no need to require it to recalculate and reallocate interest for the Refund Period under the methodology adopted in the April 2004 Order. It requests clarification that it is not required to reallocate and redisburse interest relating to the Refund Period pursuant to the April 2004 Order.

9. Second, the California ISO seeks clarification that it may pay out the \$5.2 million in its market reserve account relating to the Refund Period, *pro rata* to its creditors, to satisfy outstanding payment obligations beginning with the oldest outstanding Trade

Month. It contends that the payment of \$5.2 million in interest to satisfy overdue payment obligations will not adversely affect those suppliers who will be paid later during the Refund Proceeding.

10. The California ISO notes that it is already devoting significant time and resources to bring the Refund Proceeding to a close as quickly as possible. It contends that having to disburse interest for the Refund Period as required by the April 2004 Order would: (1) draw resources away from the rerun process; (2) lead to additional settlement and financial disputes; and (3) sow considerable confusion among the market participants.

Discussion

11. We agree with the California ISO that there should not be two proceedings for resolving the same issue concerning default interest for past periods. The pragmatic solution is for the California ISO to deal with the issue in the Refund Proceeding. The Refund Proceeding has become the most appropriate forum for re-establishing all market participant preparatory balances, the principal amounts owed and all related interest amounts. The California ISO and all market participants have allocated great amounts of time and resources to these proceedings. It appears to the Commission that attempting to establish another allocation proceeding here would be unproductive and costly to all the parties. Moreover, the \$5.2 million is based on principal amounts that are subject to revision as a result of the mitigated market-clearing price calculations. Thus, to require disbursement of \$5.2 million now would require other adjustments later.

12. Accordingly, we will grant the California ISO's request for clarification that it should not have to reallocate in this proceeding interest amounts that have been collected for the Refund Period, and we will deny its request to disburse \$5.2 million from its market reserve account.

The Commission orders:

The Commission hereby grants in part and denies in part the California ISO's request for clarification, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.