157 FERC ¶ 61,033
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

California Independent System Operator Corporation	Docket Nos.	ER04-835-000
Pacific Gas and Electric Company		EL04-103-000 (consolidated)
v.		
California Independent System Operator Corporation		
The Alliance for Retail Energy Markets	Docket No.	EL14-67-000
Shell Energy North America (US), L.P.		
v.		
California Independent System Operator Corporation		
California Independent System Operator Corporation	Docket Nos.	ER04-835-007 ER04-835-009
Pacific Gas and Electric Company		EL04-103-002 EL04-103-004 (consolidated)
v.		
California Independent System Operator Corporation		

ORDER ON INFORMATIONAL REFUND REPORT, COMPLAINT, AND INFORMATIONAL FILING

(Issued October 20, 2016)

1. On December 20, 2013, as amended on May 12, 2014, CAISO submitted an informational refund report (Refund Report) in Docket Nos. ER04-835-000 and EL04-103-000 regarding market resettlements it intends to administer as a result of the Commission's final orders on Amendment No. 60, CAISO's proposed cost allocation methodology for its must-offer generation requirement. On June 16, 2014, the Alliance for Retail Energy Markets and Shell Energy North America (US), L.P. (together, the Coalition) filed a complaint in Docket No. EL14-67-000 concerning CAISO's intent to administer the resettlements set forth in the Refund Report (Complaint). On May 15, 2012, in response to earlier Commission directives in Docket No. ER04-835-007, *et al.*, CAISO filed an informational filing explaining how it provided stakeholders with sufficient information to calculate the incremental cost of local allocations under the Amendment No. 60 cost allocation methodology (Informational Filing). In this order, we reject the Refund Report, dismiss the Complaint as moot, and accept the Informational Filing.

I. Background

2. On May 11, 2004, CAISO filed Amendment No. 60 to its tariff pursuant to section 205 of the Federal Power Act (FPA)[1] to modify, among other provisions, the allocation of must-offer generation costs and certain payment terms by establishing a "bucket" rate design that more accurately reflected cost causation principles. Under this design, CAISO would allocate minimum load compensation costs to one of three buckets depending on whether CAISO committed must-offer generation primarily to satisfy local, zonal, or system reliability requirements. On July 8, 2004, the Commission accepted much of Amendment No. 60, subject to modification, effective July 11, 2004.[2] However, Amendment No. 60's cost allocation provisions were accepted subject to refund and set for hearing, with an effective date of 10 days after CAISO issued a market notice that certain implementation software was ready for deployment.[3] In a concurrent order, the Commission set for hearing a complaint filed by Pacific Gas and Electric Company (PG&E) pursuant to section 206 of the FPA[4] regarding the allocation of must-offer generation costs under CAISO's then-effective tariff provisions, with a refund

[1] 16 U.S.C. § 824d (2012).

[2] *Cal. Indep. Sys. Operator Corp.*, 108 FERC ¶ 61,022 (2004) (2004 Order).

[3] *Id.* P 122.

[4] 16 U.S.C. § 824e (2012).

effective date of July 17, 2004, 60 days after the filing of the complaint.[5] These proceedings were consolidated.

3. Following an evidentiary hearing, the presiding judge's Initial Decision found Amendment No. 60's cost allocation provisions to be just and reasonable, with certain exceptions.[6] On December 27, 2006, the Commission issued Opinion No. 492 mostly affirming the Initial Decision, and in particular, finding that the South of Lugo Transformer Path (South of Lugo) should be categorized as a local constraint rather than a zonal constraint for purposes of allocating the costs of must-offer generation units that were dispatched to relieve constraints at South of Lugo.[7] Additionally, the Commission directed CAISO to allocate start-up and emission costs associated with must-offer obligations in the same manner as it proposed to allocate minimum load cost compensation for must-offer obligations.[8] Further, the Commission found that wheel-through transactions should be excluded from the allocation of minimum load cost compensation costs.[9] Finally, the Commission affirmed that July 17, 2004 was the appropriate effective date for Amendment No. 60's must-offer cost allocation methodology.[10]

4. Southern California Edison Company (SoCal Edison) sought rehearing of Opinion No. 492, arguing that South of Lugo was more appropriately classified as a zonal constraint rather than a local constraint, just as the Initial Decision found and Opinion No. 492 affirmed for the Miguel Transformer Bank (Miguel).[11] On November 20, 2007, the Commission granted rehearing, finding that South of Lugo provides regional

---

[5] *Pacific Gas & Elec. Co. v. Cal. Indep. Sys. Operator Corp.*, 108 FERC ¶ 61,017, at 61,074 (2004).

[6] *See, e.g., Cal. Indep. Sys. Operator Corp.*, 113 FERC ¶ 63,017, at PP 60-62 (2005) (Initial Decision).

[7] *Cal. Indep. Sys. Operator Corp.*, Opinion No. 492, 117 FERC ¶ 61,348, at P 39 (2006) (Opinion No. 492).

[8] *Id.* P 98.

[9] *Id.* P 90.

[10] *Id.* P 123. The Commission also found that an October 1, 2004 effective date was required for the net incremental cost of local component of CAISO's proposal because the requisite software for such calculations was not available until that time. *Id.* P 122.

[11] *See id.* P 31.

reliability benefits that are more consistent with a zonal constraint.[12] Southern Cities[13] then sought rehearing of the November 2007 Rehearing Order, arguing, among other things, that the Commission did not provide a reasoned explanation for its reversal of the prior determination that South of Lugo should be classified as a local constraint. On September 16, 2011, the Commission denied rehearing.[14] On November 5, 2013, the U.S. Court of Appeals for the D.C. Circuit denied Southern Cities' petition for review of the November 2007 Rehearing Order and the 2011 order denying rehearing of the November 2007 Rehearing Order.[15]

5. On December 20, 2013, in Docket Nos. ER04-835-000 and EL04-104-000, CAISO submitted the Refund Report regarding refunds it intended to issue based upon a reallocation of must-offer generation costs that it states are in accordance with the aforementioned Commission orders concerning Amendment No. 60.[16] CAISO filed a second informational refund report on May 12, 2014 explaining that it erred in making certain calculations relied upon in the Refund Report and that it would adjust the resettlement amount accordingly (Amended Refund Report).[17]

6. On June 16, 2014, in Docket No. EL14-67-000, the Coalition filed the Complaint pursuant to section 306 of the FPA[18] and Rule 206 of the Commission's Rules of Practice and Procedure[19] concerning CAISO's intention to administer the resettlements set forth in the Refund Report filed by CAISO.

---

[12] *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,193, at P 25 (2007) (2007 Rehearing Order).

[13] Southern Cities included the Cities of Anaheim, Azusa, Banning, Colton, and Riverside.

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

[15] *City of Anaheim et al. v. FERC*, 50 Fed. App. 13 (D.C. Cir. Nov. 5, 2013).

[16] Refund Report at 1.

[17] Amended Refund Report at 1-2. CAISO's two informational refund reports will be referred to collectively as the Refund Report.

[18] 16 U.S.C. § 825e (2012).

[19] 18 C.F.R. § 385.206 (2016).

II. CAISO'S Refund Report

7. In the Refund Report, CAISO states that, pursuant to the prior Commission orders in these proceedings, it has calculated four types of refunds, totaling $217 million: (1) Minimum Load Costs; (2) Start-up and Emissions Costs; (3) Wheel-Through Costs; and (4) Miguel and South of Lugo Costs.[20] CAISO states that the Commission did not require a refund report and that no Commission action is required in response to the informational filing in the absence of a protest or request for clarification.[21] CAISO states that it filed the Refund Report to provide transparency to interested parties regarding the payment of interest on the refunds it intends to make.

8. CAISO explains that it had originally allocated minimum load cost compensation costs for must-offer generation from July 17, 2004 to September 30, 2004 according to the earlier effective cost allocation methodology for must-offer generation. However, according to CAISO, the Commission made Amendment No. 60 retroactively effective as of July 17, 2004 when the Commission affirmed this effective date in Opinion No. 492. Therefore, CAISO states that it is reallocating minimum load cost compensation costs from July 17, 2004 to September 30, 2004 according to the final Commission-approved Amendment No. 60 cost allocation methodology. CAISO states that the total reallocated minimum load cost compensation costs for that period is $73.6 million.[22]

9. CAISO states that although its proposed Amendment No. 60 was limited to the allocation of minimum load compensation costs for must-offer generation, the Commission ruled that CAISO should allocate start-up and emissions costs in the same manner.[23] Therefore, CAISO states that it is reallocating $24.8 million in start-up costs for the period of July 1, 2004 through December 31, 2007 and will issue refunds and surcharges accordingly.[24] CAISO also states that no emission costs were charged during the refund period, and thus there are no emissions costs to reallocate.[25]

---

[20] Refund Report at 3-8; Amended Refund Report at 2. We note that while CAISO states that the refunds together amount to $217 million, the amounts for the four categories of refunds total $220 million.

[21] Refund Report at 1.

[22] *Id.* at 6.

[23] *Id.* at 4 (citing Opinion No. 492, 117 FERC ¶ 61,348 at P 98).

[24] *Id.* (citing November 2007 Order, 121 FERC ¶ 61,193 at P 63).

[25] *Id.* at 4-5.

10. Next, CAISO explains that the Commission rejected CAISO's proposed inclusion of wheel-through transactions in the allocation of the system-wide bucket.[26] Therefore, CAISO states that it has reallocated system-wide minimum load cost compensation costs from July 14, 2004 to March 31, 2009 to exclude wheel-throughs.[27] CAISO states that there was only one instance, in April 2006, where wheel-throughs were allocated to the system-wide bucket. Therefore, CAISO states that the associated minimum load costs for April 2006 have been reclassified as a zonal area need and thus reallocated to the zonal bucket.[28]

11. CAISO states that it has reallocated minimum load compensation costs from July 17, 2004 to March 31, 2009 to categorize Miguel and South of Lugo as zonal constraints instead of as local constraints.[29] CAISO states that the refund amount due to scheduling coordinators for system-wide costs is $7.8 million and the refund amount due to scheduling coordinators for local costs is $91.3 million. Consequently, CAISO explains, $99.1 million was reallocated to scheduling coordinators as zonal costs.[30] In the Amended Refund Report, CAISO states that as a result of an error identified in the review process, it determined that it had not reclassified all of the Miguel and South of Lugo commitments from local to zonal for the refund effective period. CAISO explains that there is an additional $22.9 million shift from system and local cost allocation to zonal cost allocation, bringing the new total refund due to scheduling coordinators for zonal costs to $122 million.[31]

12. Additionally, CAISO states that in calculating refund amounts and corresponding surcharges to collect the refunds, it must also include interest when issuing surcharges and refunds pursuant to section 35.19a of the Commission's regulations. CAISO concludes that interest is not applicable from July 17, 2004 through September 30, 2004,

---

[26] *Id.* at 6-7 (citing Opinion No. 492, 117 FERC ¶ 61,348 at P 90).

[27] Subsequent to March 31, 2009, CAISO's Market Redesign and Technology Upgrade (MRTU) went into effect. MRTU superseded the market feature at issue in this proceeding. *See* 2011 Compliance Order, 136 FERC ¶ 61,198 at n.4.

[28] *Id.* at 7.

[29] Though CAISO states that it must reallocate costs for Miguel pursuant to the final Commission orders on Amendment No. 60, we note that neither its proposal nor the Initial Decision or Opinion No. 492 classified Miguel as a local constraint.

[30] Refund Report at 8.

[31] Amended Refund Report at 2.

but is applicable from October 1, 2004, the effective date of proposed Amendment No. 60, through March 30, 2009.[32]

A. Notice of Filing and Responsive Pleadings

13. Notices of CAISO's Refund Report and Amended Refund Report were published in the *Federal Register*, 79 Fed. Reg. 12402 (2013) and 79 Fed. Reg. 29,178-01 (2014), respectively, with interventions and protests due on or before January 10, 2014 and June 2, 2014, respectively. Timely motions to intervene were filed by Direct Energy Business, SoCal Edison, and the City of Pasadena, California. Morgan Stanley Capital Group Inc. (Morgan Stanley) filed a motion to intervene out of time on June 24, 2014.[33]

14. Timely motions to intervene and protests were filed by the Coalition and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, Six Cities).

15. On January 27, 2014, CAISO filed an answer to the Coalition's protest, and SoCal Edison filed comments in response to Six Cities' protest. On January 30, 2014, the Coalition filed a motion for leave to reply to CAISO's answer and a request for an order suspending the issuance of refunds and surcharges pending Commission review. On February 11, 2014, Six Cities filed a motion for leave to respond and a response to SoCal Edison's January 27, 2014 answer. On February 25, 2014 and June 16, 2014, the Coalition filed its second and third requests for the Commission to direct CAISO to cease its process of implementing refunds and surcharges until the Commission acts on the outstanding issues raised in the pleadings. On June 25, 2014, CAISO filed an answer to the Coalition's request for an order to stay the process of implementing refunds and surcharges.[34] On July 18, 2014, the Coalition filed a motion to lodge its motion to reply and reply filed in Docket No. EL14-67-000.

16. In its protest, the Coalition first argues that the Refund Report represents refunds that were not ordered by the Commission. The Coalition notes that the section 205 filing was made effective, subject to refund, on October 1, 2004 and that the Commission established a refund effective date for the section 206 complaint of July 17, 2004. The Coalition states that there was nothing unique about the manner in which the Commission

---

[32] *Id.* at 9-10.

[33] In the same submittal, Morgan Stanley filed comments on the Complaint in Docket No. EL14-67-000. Those comments are described in Part III, below.

[34] On June 26, 2014, CAISO filed an errata to its answer to include an Attachment A that was inadvertently omitted from the June 25 Answer.

made these rates subject to refund. The Coalition explains that, subsequent to those dates, the Commission determined the just and reasonable rates to be made effective, and accepted CAISO's compliance filings establishing those rates on September 16, 2011. The Coalition asserts that when the Commission requires refunds, its normal practice is to expressly order that refunds be made within a specified time and that a refund report be filed, directives that were not issued here. Further, the Coalition argues that the Commission is not obligated to require refunds.[35]

17. Here, the Coalition asserts, CAISO is implementing a combination of refunds and surcharges, or rate increases, although, states the Coalition, surcharges cannot be implemented without running afoul of the filed rate doctrine. The Coalition argues that while the Commission has discretion to order refunds, the Coalition asserts that neither the Commission nor CAISO can implement retroactive surcharges, and, given this restriction, the Commission often exercises its discretion to not order refunds in rate design matters.[36] Thus, the Coalition urges the Commission to reject the Refund Report and to direct CAISO to address this issue in a manner that complies with the FPA.

18. The Coalition also asserts that the Refund Report does not represent a proper resettlement. The Coalition argues that, while CAISO may address administrative errors such as data input errors or software malfunctions,[37] the Refund Report does not represent a correction of these types of errors. Accordingly, the Coalition states that the Commission must approve any refund report before CAISO conducts any resettlements.

19. The Coalition argues that, even if the Commission decides that CAISO correctly characterized the charges as a resettlement, no interest should be included in the refunds. The Coalition maintains that because this sort of Refund Report is not within the scope of the resettlement statements under CAISO's tariff, CAISO cannot on its own decide that interest must be charged. The Coalition also argues that CAISO tariff provisions that potentially apply to the circumstances at issue here do not provide for interest. Furthermore, the Coalition explains that, under section 35.19a of the Commission's

---

[35] Coalition Protest at 7 (citing *Laclede Gas Co. v. FERC*, 997 F.2d 936, 944 (D.C. Cir. 1993); *Towns of Concord, Norwood, and Wellesley, Mass. v. FERC*, 955 F.2d 67, 72 (D.C. Cir. 1992)).

[36] *Id.* (citing *La. Pub. Serv. Comm'n & Council of City of New Orleans v. Entergy Corp.*, 142 FERC ¶ 61,211, at P 54 (2013)).

[37] *Id.* at 8 (citing *Cal. Indep. Sys. Operator Corp.*, 137 FERC ¶ 61,180, at P 24 (2011)).

regulations,[38] the public utility whose proposed rates were suspended must bear the costs of refunds, and it was CAISO that proposed Amendment No. 60.

20. Moreover, the Coalition argues that even if interest is permitted, CAISO's long delay in calculating the proposed resettlements should not drive up interest costs, citing the Commission's broad authority to fashion equitable remedies.[39] For these reasons, the Coalition argues, any interest should accrue only to the date of Opinion No. 492 in the case of Miguel, and only until May 1, 2008 in the case of South of Lugo.[40] Six Cities also protest CAISO's application of interest to the reallocations for the period from October 1, 2004 to March 30, 2009. Six Cities argues that, contrary to CAISO's claims, Commission and judicial precedent indicate that the decision to apply interest to refunds and surcharges is discretionary.[41]

21. Finally, the Coalition argues that CAISO's allocations are not transparent. Thus, the Coalition states, the Commission should order CAISO to provide affected parties with meaningful and clear information to allow them to audit and confirm the overall allocation and the amount allocated to each party.[42]

22. In its comments in response to Six Cities' protest, SoCal Edison states that failure to apply interest to the resettlements is contrary to Commission policy and would be unjust and unreasonable for the ratepayers due refunds. Therefore, SoCal Edison argues that equity dictates that interest be charged to the parties that were under-billed and that lost interest be paid to the parties who were overbilled.[43]

23. In its answer to the Coalition's protest, CAISO first states that the Coalition misconstrued CAISO's obligations in this proceeding. CAISO explains that in accordance with Opinion No. 492, it began treating Miguel as a zonal constraint rather than as a local constraint prospectively after December 2006 and, additionally, it was

---

[38] Coalition Protest at 11 (citing 18 C.F.R. § 39.19(a) (2015).

[39] *Id.* at 12 (citing *Constellation Energy Commodities Group v. FERC*, 457 F.3d 12, 22-23 (D.C. Cir. 2006)).

[40] The Coalition states that May 1, 2008 is the date of implementation of the modified operating procedures described in CAISO's Amendment No. 60 Implementation Plan. *Id.* at 14.

[41] Six Cities Protest at 4-5.

[42] Coalition Protest at 15.

[43] SoCal Edison Comments at 5

required under Opinion No. 492 to resettle commitments for Miguel as zonal going back to July 17, 2004, i.e., the refund effective date. Similarly, CAISO states that in response to the November 2007 Rehearing Order, it began treating South of Lugo commitments as zonal constraints, but that to comply with the order, it was required to resettle commitments for South of Lugo as zonal commitments also going back to July 17, 2004. Next, CAISO argues that the fact the Commission did not order it to file the Refund Report is irrelevant, stating that CAISO filed the Refund Report to provide transparency to affected market participants given the passage of time and to communicate the dispute over whether interest should be applied. Finally, CAISO argues that the Coalition's claim that it was improperly initiating a resettlement without prior Commission authorization is incorrect. Instead, CAISO explains, it is applying the filed rate.[44]

24. In response to CAISO's answer, the Coalition contends that, contrary to CAISO's arguments, the Commission did not and could not order retroactive surcharges without violating the FPA and the filed rate doctrine.[45] The Coalition states that while there is an arguable basis for refunds, there is no basis in law or in the underlying orders for surcharges. Thus, the Coalition asserts, while CAISO uses such terms as "charging and crediting," it is actually refunding and surcharging, and it has provided no legal basis to support its actions. Moreover, the Coalition notes that section 35.19a only supports the charging of interest to refunds, not surcharges.

B. Discussion

1. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2016), the Commission will grant Morgan Stanley's late-filed motion to intervene given its interest in the proceeding and the absence of undue prejudice or delay.

---

[44] CAISO also argues that the Coalition's reference to *Cal. Indep. Sys. Operator Corp.*, 137 FERC ¶ 61,180 (2011) is inapposite because the issue in that case involved CAISO's plan to recalculate previously settled bid cost recovery payments to account for energy market revenues that had not been originally accounted for in the absence of a Commission directive. Here, CAISO argues, the resettlement will satisfy Commission directives. CAISO Answer at 7.

[45] Coalition Answer at 2 (citing *City of Anaheim, California v. FERC*, 558 F.3d 521, 524 (D.C. Cir. 2009) (stating that section 206(b) of the FPA only authorizes retroactive refunds, not retroactive rate increases)).

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept CAISO's, SoCal Edison's, and the Coalition's answers because they have provided information that assisted us in our decision-making process.

2. Substantive Matters

27. We reject the Refund Report. CAISO's filing of the Refund Report is not tied to any Commission compliance directive in this proceeding.[46] While the Commission initially accepted CAISO's filing subject to refund, at no point did the Commission direct CAISO to make refunds or file a refund report. In Opinion No. 492, the Commission did not order CAISO to pay refunds or to file a refund report for the period in which Amendment No. 60 had already taken effect.[47] Moreover, when the Commission ordered further modification of the methodology in the 2007 Rehearing Order, it did not order CAISO to file a refund report.[48] In the 2011 Compliance Order accepting the final tariff language for Amendment No. 60, the Commission acknowledged that prospective application of the final methodology was no longer available, as CAISO now points out.[49] In that order, the Commission stated, "[a]lthough we are accepting the compliance filing effective as of July 17, 2004… we recognize that the tariff revisions that we are accepting herein were only in effect for a discrete period of time," as the must-offer regime had been superseded.[50] And once more, no refunds were ordered and no refund report was required. Furthermore, in no prior order did the Commission conclude that CAISO failed to follow any Commission directive when it took no action to effectuate refunds. Even if it were arguably unclear whether refunds should have been ordered for past periods, we note that neither CAISO nor any other party sought rehearing or clarification of the orders in this proceeding on this issue.

28. Even if CAISO's filing were not procedurally deficient, we note that a decision not to order refunds in this proceeding is consistent with the Commission's general policy of not requiring refunds in cost allocation cases. The Commission's authority to order

---

[46] Indeed, CAISO states as much in the Refund Report. *See* P 7, *supra*.

[47] Opinion No. 492, 117 FERC ¶ 61,348 at P 123.

[48] 2007 Rehearing Order, 121 FERC ¶ 61,193 at P 26.

[49] *Cal. Indep. Sys. Operator Corp*., 136 FERC ¶ 61,198 (2011) (2011 Compliance Order).

[50] 2011 Compliance Order, 136 FERC ¶ 61,198 at PP 20, 26.

refunds pursuant to the FPA is discretionary.[51] As the Commission recently stated, its "approach to refunds has . . . been shaped by the way certain equitable considerations are typically associated with certain specific fact patterns."[52]

29. In cases where the Commission has found that the charging of an unjust and unreasonable rate has resulted in an over-collection of Commission-approved revenue for the utility charging that rate, the Commission has exercised its discretion to grant refunds.[53] However, as the Entergy Remand Order explained:

> The Commission takes a different approach when addressing refund requests in cases where a cost allocation or rate design has been found to be unjust and unreasonable. Specifically, "in a case where the company collected the proper level of revenues, but it is later determined that those revenues should have been allocated differently, the Commission has traditionally declined to order refunds."[54]

---

[51] *See, e.g.*, *Towns of Concord, Norwood, and Wellesley, Mass. v. FERC*, 955 F.2d 67, 76 (D.C. Cir. 1992) ("[a]gency discretion is often at its zenith when the challenged action relates to fashioning remedies… .here Congress simply directed the Commission to order what it considered necessary or appropriate in each case to carry out the statute's commands") (internal citations and quotations omitted).

[52] *Louisiana Pub. Serv. Comm'n and the Council and City of New Orleans v. Entergy Corp.*, 155 FERC ¶ 61,120, at P 20 (2016) (Entergy Remand Order).

[53] *E.g.*, *Consol. Edison Co. of N.Y., Inc.*, 347 F.3d 964, 972 (D.C. Cir. 2003) (stating that the Commission has a "general policy of granting full refunds" for overcharges).

[54] Entergy Remand Order, 155 FERC ¶ 61,120 at P 25 (quoting *Black Oak Energy, L.L.C. v. PJM Interconnection, L.L.C.*, 136 FERC ¶ 61,040, at P 26 (2011)). *See also Portland Gen. Elec. Co.*, 106 FERC ¶ 61,193, at P 5 (2004) (accepting rate design change on a prospective basis); *Consumers Energy Co.*, 89 FERC ¶ 61,138, at 61,397 (1999) (same); *Union Elec. Co.*, 58 FERC ¶ 61,247, at 61,818 (1992) (same); *Commonwealth Edison Co.*, 25 FERC ¶ 61,323, at 61,732 (1983); *accord Second Taxing Dist. of City of Norwalk v. FERC*, 683 F.2d 477, 490 (D.C. Cir. 1982) (affirming determination to make rate design changes prospective only); *Cities of Batavia v. FERC*, 672 F.2d 64 (D.C. Cir. 1982) (same)); *Occidental Chemical Corp. v. PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,378, at P 10 (2005) (stating 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").

30. The Entergy Remand Order went on to discuss why the distinction between the two types of circumstances exists. If a utility has collected revenues from its customers that it is not entitled to under its tariff, fairness dictates that the excess revenues should be refunded to customers."[55] By contrast, "in cases where a cost allocation or rate design has been found unjust and unreasonable, but where no over-collection of revenue has occurred, other factors come into play."[56] For example, the Commission explained that "a different cost allocation or rate design could have led to different decisions by consumers or a utility… but it is now too late to alter decisions that were in fact made."[57] Further, the Entergy Remand Order stated:

> [R]efunds in cost allocation cases where over-recovery has not occurred must be implemented through surcharges, which create a zero sum game in which customers, not regulated public utilities, are the source of refunds made to other customers. While it may be inequitable that some customers paid too much under the filed rate, the Commission also considers the equities involved in assessing additional charges on other customers who were not responsible for the misallocation but who would be required to make additional payments for past purchases they reasonably concluded were final and cannot revisit. In balancing these equities, the Commission has traditionally denied refunds and made the new, corrected rate applicable prospectively.[58]

31. In this proceeding, CAISO did not collect more than the Commission-approved rate; rather, CAISO collected a rate that would have to be reallocated after Commission orders later found that the original rate was unjust and unreasonable. Moreover, in considering the equities of this case, 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.

32. We also note that CAISO, in its answer to the Coalition's protest, represented that it had already prospectively reallocated costs associated with the Miguel and South of Lugo constraints to reflect the Commission's underlying orders.[59] Therefore, CAISO

---

[55] Entergy Remand Order, 155 FERC ¶ 61,120 at P 27.

[56] *Id.*

[57] *Id.* P 28.

[58] *Id.* P 36.

[59] CAISO Answer at 6.

appropriately revised its tariff on compliance so that, on a going forward basis, the just and reasonable rate was allocated to customers, and this prospective reallocation appropriately reflected the Commission's orders in this proceeding. Because CAISO has represented that it had already made prospective reallocations from the relevant time periods going forward, we find that no further action is necessary, notwithstanding the Refund Report's coverage of the entire 2004-2009 time period.

33. Further, given our conclusion that CAISO's surcharging of market participants was improper for any past periods, we find that parties' arguments related to whether interest should be applied to the resettlements are moot and therefore dismiss them.[60]

III. Coalition Complaint

34. Largely reiterating its protest to the Refund Report, the Coalition in its Complaint alleges that CAISO intends to charge the Coalition and similarly situated entities retroactive rate increases or surcharges through market resettlements not authorized by the Commission in the Amendment No. 60 Proceeding. The Coalition also asserts that the Commission could not order retroactive rate increases or surcharges, as the FPA and filed rate doctrine would bar such an action.[61] The Coalition also requests that the Commission institute a process to verify that retroactive rate increases or surcharges are being instituted by CAISO, and, if so, require CAISO to cease and desist from imposing such charges.[62] Noting the $22.9 million calculation error that CAISO highlighted in the Amended Refund Report, the Coalition also requests that, to the extent that the resettlements are lawful, the Commission should ensure that CAISO has invoiced market participants for the appropriate amounts.[63] Finally, the Coalition requests that the Commission issue an order requiring CAISO to stay its resettlement process during the pendency of the Complaint, noting that CAISO was preparing to issue invoices to market participants related to the resettlements.[64]

---

[60] We expect that any invoices that CAISO issued in accordance with the Refund Report be addressed and remedied, in the first instance, under CAISO's billing dispute processes.

[61] Complaint at 4-6.

[62] *Id.* at 2.

[63] *Id.* at 6-7.

[64] *Id.* at 7.

A. Notice of Filing and Responsive Pleadings

35. Notice of the Complaint was published in the *Federal Register*, 79 Fed. Reg. 36,048 (2014) with interventions and protests due on or before July 7, 2014. Timely motions to intervene were filed by Six Cities, California Department of Water Resources State Water Project, NRG Companies, and PG&E. Timely motions to intervene and comments were filed by Morgan Stanley, Powerex Corp. (Powerex), SoCal Edison, and CAISO. On July 18, 2014, Exelon Corporation (Exelon) filed a motion to intervene out of time. On July 18, 2014, the Coalition submitted a response to CAISO's comments. On July 25, 2014, CAISO filed a response to Morgan Stanley's and Powerex's comments.

36. On September 15, 2014, the Coalition filed a Motion to Lodge, in which it seeks to supplement the record with the D.C. Circuit's opinion in *West Deptford Energy, LLC v. FERC*, issued on August 26, 2014.[65] On September 25, 2014, CAISO filed an answer to the Coalition's Motion to Lodge. On October 1, 2014, the Coalition filed a Motion to Strike, or in the alternative, a reply to CAISO's September 25 answer (Motion to Strike).

37. Morgan Stanley supports the Coalition's request for relief and asserts that the Commission has generally declined to order market resettlements in similar circumstances in recent years, even if authorized by the FPA. Morgan Stanley states that it had received an invoice of $496,858.33, but notes that it did not serve metered load inside CAISO during the relevant time period and is concerned that costs may have been erroneously allocated.[66]

38. Powerex asserts that CAISO has failed to provide Powerex with sufficient information to independently verify that the charges are being reallocated correctly and as directed by the Commission.[67] Therefore, Powerex states that it fully supports the Coalition's request that the Commission direct CAISO to institute a meaningful process to address disputes to its market reallocation calculations.

39. In its answer, CAISO asserts that the Commission should dismiss the Complaint as premature because the Coalition's members have submitted settlement disputes to CAISO regarding the same resettlements, which involve the same issues as in the Complaint, pursuant to CAISO's standard dispute resolution process.[68] CAISO states

---

[65] Coalition Motion to Lodge at 1-2.

[66] Morgan Stanley Comments at 4.

[67] *Id.* at 7.

[68] CAISO Comments at 1-2.

that dismissing the Complaint would therefore be consistent with precedent.[69] CAISO also argues that even if the Commission declines to dismiss the Complaint as premature, the Commission should deny the Complaint on the merits as a collateral attack on final Commission orders establishing refund effective dates for CAISO resettlements.[70]

40. SoCal Edison asserts that the Complaint is an untimely appeal of the Commission's orders. SoCal Edison states that market participants were clearly on notice that the Commission could implement changes to CAISO's cost allocation methodology following rehearing when it originally accepted the proposal subject to refund.[71]

41. In reply to CAISO and SoCal Edison, the Coalition asserts that the Complaint is ripe for Commission resolution, rather than CAISO's dispute resolution process, because the Complaint relates to legal issues and calculations stemming from Commission proceedings and not invoices reflecting services provided in the CAISO market.[72]

B. Discussion

1. Procedural Matters

42. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the timely, unopposed motions to intervene serves to make the entities that filed them parties to the proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2016), the Commission will grant the late motion to intervene filed by Exelon given its interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

43. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will reject the Coalition's July 18 answer and CAISO's July 25 answer. We will deny the Coalition's Motion to Lodge. The Commission "can take official notice of any judicial decision at any time, so there is no need to reopen the

---

[69] *Id.* at 6 (citing *J.P. Morgan Ventures Energy Corp. v. Cal. Indep. Sys. Operator Corp.*, 141 FERC ¶ 61,191, at P 14 (2012), *reh'g denied*, 142 FERC ¶ 61,150 (2013)).

[70] *Id.* at 2.

[71] SoCal Edison Comments at 3.

[72] Coalition Reply at 3.

record for this purpose."[73] Because we deny the Motion to Lodge, we will also deny CAISO's answer and the Coalition's Motion to Strike.

2. Commission Determination

44. The Complaint's threshold issue of refunds and surcharges paid pursuant to CAISO's attempted market resettlement for Amendment No. 60 has been rendered moot as a result of our rejection of the Refund Report, as discussed above. Accordingly, we dismiss the Complaint as moot.

IV. CAISO Informational Filing

45. In a separate order issued on September 16, 2011, the Commission directed CAISO to submit an informational filing explaining how CAISO's website included adequate information to provide market participants with the ability to confirm the accuracy of the incremental cost of local allocations.[74] On May 15, 2012, as amended on May 16, 2012, CAISO submitted an informational filing in response to the 2011 Compliance Order.[75]

46. CAISO states that on May 14, 2012, it posted three reports on its website that provide sufficient information for market participants to calculate the incremental cost of local component of the minimum load compensation costs for the final Amendment No. 60 cost allocation methodology, as directed by the Commission in the 2011 Compliance Order.

A. Notice of Filing and Responsive Pleadings

47. Notice of CAISO's informational filing was published in the *Federal Register*, 77 Fed. Reg. 34,944-01 (2012), with interventions and protests due on or before June 19, 2012. A timely motion to intervene and protest was filed by SoCal Edison. On July 5, 2012, CAISO filed an answer to SoCal Edison's protest. On July 20, 2012, SoCal Edison filed supplemental comments.

48. In its protest, SoCal Edison states that the posted data does not show the costs that would have been incurred to meet system requirements only, and thus SoCal Edison cannot confirm that the incremental cost of local calculations are accurate.[76] SoCal

---

[73] *Pacific Gas & Elec. Co.*, 109 FERC ¶ 61,205, at P 7 (2004).

[74] 2011 Compliance Order, 136 FERC ¶ 61,198 at P 21.

[75] CAISO filed an errata to fix an incorrect link in the informational filing.

[76] SoCal Edison Protest at 1-2.

Edison also states that in CAISO's request for extension of time to submit informational filing, CAISO estimated that it would take six months to make the final calculations for must-offer compensation costs, and the resultant refunds due. However, SoCal Edison states that the informational filing includes no information on refund calculations, and it believes that significant refunds are due to SoCal Edison.[77]

49. In its answer, CAISO states that it has expressed a willingness to work with SoCal Edison regarding the availability of data in order to facilitate SoCal Edison's review and understanding of the incremental cost of local allocation calculation process.[78] With respect to refunds, CAISO states that it intends to consolidate all refunds into a single calculation, so that market participants will have a single refund or surcharge total. Further, CAISO notes that because market participants receiving refunds are entitled to interest, in accordance with Commission's regulations, no party will be prejudiced by the delay in process.[79]

50. In its supplemental comments, SoCal Edison states that it has been working with CAISO to try to address the issues that it raised in its original protest to the filing. Because SoCal Edison and CAISO continue to work together to address the issues SoCal Edison raised, SoCal Edison requests that the Commission delay any action on CAISO's informational filing until SoCal Edison can verify that the information provided by CAISO is correct and compliant with the 2011 Compliance Order and is correct.

51. Finally, on June 2, 2014, SoCal Edison filed comments stating that it has been able to work with CAISO to alleviate SoCal Edison's concerns regarding the calculation of the incremental cost of local. SoCal Edison also states that it has reviewed the Refund Report and agrees with the CAISO's calculations.

B. Discussion

1. Procedural Matters

52. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the timely, unopposed motion to intervene serves to make SoCal Edison a party to the proceeding.

53. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to a protest unless otherwise ordered by the

---

[77] *Id.* at 3.

[78] CAISO Answer at 7.

[79] *Id.* at 8.

decisional authority. We will accept CAISO's and SoCal Edison's answers because they have provided information that assisted us in our decision-making process.

2. Commission Determination

54. We accept the Informational Filing. Noting that CAISO has been able to resolve SoCal Edison's concerns regarding the calculation of the incremental cost of local component of the minimum load compensation costs, we find that CAISO has complied with the 2011 Compliance Order. As to SoCal Edison's assertions regarding refunds due to SoCal Edison, that issue is beyond the scope of the Informational Filing.

The Commission orders:

(A) The Refund Report is hereby rejected, as discussed in the body of this order.

(B) The Complaint in Docket No. EL04-67-000 is hereby dismissed as moot, as discussed in the body of this order.

(C) CAISO's May 15, 2012 informational filing in Docket Nos. ER04-835-007, *et al.*, is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.