

166 FERC ¶ 61,139
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

California Independent System Operator Corporation Docket No. ER19-308-000

ORDER GRANTING PETITION

(Issued February 21, 2019)

1. On November 8, 2018, the California Independent System Operator Corporation (CAISO) submitted, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure¹ and Section 37.9.4 of the CAISO tariff, a petition seeking Commission approval to distribute the penalty proceeds collected for violations of CAISO's Rules of Conduct and certain nonrefundable study deposits stemming from interconnection projects (Petition). As discussed below, we grant CAISO's Petition.²

I. Background

2. CAISO explains that the Rules of Conduct and related provisions set forth in Section 37 of its tariff require it to collect penalties and to deposit such amounts into an interest-bearing trust account. CAISO states that, after the end of each calendar year, it allocates these proceeds, with accrued interest, to the scheduling coordinators of eligible market participants that were not assessed a financial penalty pursuant to Section 37 during the calendar year. CAISO allocates the proceeds in accordance with the formula set forth in Section 37.9.4 of its tariff. CAISO states that the formula is based on the product of: (a) the amount in the trust account, including interest; and (b) the ratio of the grid management charge payments by each scheduling coordinator on behalf of eligible market participants to the total grid management charge payments by all scheduling

¹ 18 C.F.R. § 385.207 (2018).

² Petition at 1.

coordinators.³ Further, CAISO explains that it must obtain the Commission's approval to distribute the penalty proceeds prior to any disbursement.⁴

3. In the instant Petition, CAISO seeks approval to distribute the proceeds from penalties assessed during the 2017 calendar year, plus accrued interest. In Attachment A of its Petition, CAISO sets forth the calculation of each scheduling coordinator's share of the penalty proceeds.⁵ CAISO states that it assessed \$533,500 in penalties for 2017. CAISO explains that, once it receives Commission approval to distribute the penalty proceeds, the final interest amount will be recalculated to correspond to the actual day on which the distribution will occur.⁶

4. CAISO also explains that Southern California Edison Company's (SoCal Edison) Wholesale Distribution Access Tariff in certain cases calls for funds from an "Interconnection Study Deposit not otherwise reimbursed to the Interconnection Customer or applied to costs incurred or irrevocably committed to be incurred for the Interconnection Studies [to be] remitted to the ISO and treated in accordance with ISO Tariff Section 37.9.4."⁷

5. Therefore, CAISO also seeks in this filing approval to distribute excess Wholesale Distribution Access Tariff interconnection study funds provided to CAISO from SoCal Edison for 2017. CAISO stated that Attachment B of its filing sets forth the calculation for SoCal Edison's interconnection funds.⁸ CAISO notes that it calculated the allocation based on the *pro rata* share of the grid management charge payments made by scheduling coordinators without accounting for whether a scheduling coordinator was assessed a financial penalty under Section 37 of its tariff during the relevant calendar year, consistent with its past practices. CAISO states that the total interconnection funds for 2017 are \$1,323,175.72.⁹ CAISO explains that, similar to the distribution of penalty

³ *Id.* at 2-3.

⁴ *Id.* at 3 (citing CAISO, eTariff, 37.9.4 Disposition of Proceeds (1.0.0)).

⁵ *Id.* at 4.

⁶ *Id.* at 3.

⁷ *Id.* at 5 (citing SoCal Edison Wholesale Distribution Access Tariff, Clustering Large Generator Interconnection Procedures, section 3.4.1.2).

⁸ *Id.*

⁹ *Id.*

revenues, once it receives Commission approval to distribute the interconnection funds, the final interest amount will be recalculated to correspond to the actual day on which the distribution will occur.¹⁰

II. Notice and Responsive Pleadings

6. Notice of the Petition was published in the *Federal Register*, 83 Fed. Reg. 57,470 (2018), with interventions and comments due on or before November 29, 2018. Motions to intervene were filed by SoCal Edison, Northern California Power Agency, and Public Citizen, Inc. (Public Citizen). On November 28, 2018, Public Citizen filed a motion for extension of time to file comments, and CAISO filed an answer not opposing this request. On November 29, 2018, a notice granting Public Citizen's request for an extension of time was issued. On December 3, 2018, Public Citizen filed comments on CAISO's filing. On December 17, 2018, CAISO filed an answer to Public Citizen's comments. On January 3, 2019, Public Citizen filed an answer to CAISO's answer.

A. Comments

7. Public Citizen challenges CAISO's decision to classify as non-public the identities of scheduling coordinators that committed Rules of Conduct violations, as well as the amount of financial penalty paid by such rule violators. According to Public Citizen, CAISO's Petition requests that such information remains non-public and privileged on the basis that "scheduling coordinators involved would consider their CAISO settlement data information to be confidential business information, which is information of the type that CAISO typically does not release to the public."¹¹ Public Citizen bases its request, in part, on CAISO's recently established Meter Rules Enhancement Initiative, which authorizes scheduling coordinator metered entities to provide settlement quality meter data to CAISO. Public Citizen asserts that it is important for scheduling coordinators to submit accurate settlement data in order for the grid operator to manage and monitor power generation in real time.¹²

8. Moreover, Public Citizen argues that it is not consistent with the public interest to classify the identity of Rules of Conduct violators, and the amount of the financial penalty assessed for such violations, as "confidential business information" since violating market rules is not a legitimate business practice. Public Citizen further states that public identification of Rules of Conduct violators can act as an effective deterrent

¹⁰ *Id.* at 6.

¹¹ Public Citizen Comments at 1 (quoting Petition at 2).

¹² *Id.* at 1.

against future violations and may ensure greater adherence to the Commission's market rules. Public Citizen states that it only seeks to make public two columns of Attachment A, "Name" and "Penalty Allocation."¹³

B. CAISO Answer

9. In response, CAISO clarifies that, in seeking confidentiality of the identities of the scheduling coordinators and confidential business information in Attachment A, it seeks to protect the business information of the scheduling coordinators that *were not* assessed a Rules of Conduct sanction in 2017. CAISO states that details of the specific payments that would be made to these *non-violators* is protected information under the CAISO tariff. CAISO states that Section 6.2.1.5 of the CAISO tariff mandates that information the CAISO provides to scheduling coordinators through its secure communication system "shall be subject to the confidentiality obligations contained in (s)ection 20." CAISO states that Section 20 obligates CAISO to not publicly disclose confidential or commercially sensitive information. CAISO states that the Rules of Conduct penalty distributions, once approved, will be included on scheduling coordinators' settlement statements, which are provided through its secure communications system. Therefore, CAISO argues that the affected scheduling coordinators have a reasonable expectation grounded in the CAISO tariff that the information covered in Attachment A will remain non-public.¹⁴

10. Furthermore, CAISO notes that public release of Attachment A would only provide minimal information regarding the underlying Rules of Conduct violations in 2017. CAISO argues that, at its core, Public Citizen is requesting that CAISO disclose publicly the details of what parties have been assessed Rules of Conduct penalties in a year. CAISO notes that Section 6.2.2 of its tariff details what information must be disclosed publicly and at what intervals, and CAISO states that no such disclosure obligation exists for Rules of Conduct violators. CAISO therefore contends that imposing such a disclosure requirement is beyond the narrow scope of this proceeding.¹⁵

11. According to CAISO, requiring public disclosure of Rules of Conduct violators contradicts the Commission's approach in granting Independent System Operators (ISO) and Regional Transmission Organizations (RTO) penalty authority separate from the Commission's own enforcement procedures. CAISO argues that the Commission has granted ISOs and RTOs authority over "traffic ticket" penalties for minor tariff violations

¹³ *Id.* at 1-2.

¹⁴ CAISO Answer at 2-3.

¹⁵ *Id.* at 3-4.

objectively determined and addressed by formulaic penalties.¹⁶ CAISO argues that if a Rules of Conduct violation separately raised concerns about market manipulation or submission of false information, such conduct is subject to referral to the Commission's Office of Enforcement.¹⁷ CAISO states that these existing processes provide a balance between preventing unwarranted reputational harm to market participants and the public interest in disclosing when market participants may have engaged in serious wrongdoing.

C. Public Citizen Answer

12. In response to CAISO's answer, Public Citizen acknowledges that it erred in its initial comments by requesting that portions of Attachment A be publicly disclosed. Public Citizen states that the intent of its request was to publicly disclose the identities of those committing Rules of Conduct violations, and the amount of financial penalty paid by such rule violators, and that it believed such information was contained in Attachment A. However, Public Citizen states that the information it actually wants publicly disclosed is contained in the table at the top of page 4 of CAISO's Petition. Public Citizen requests that the Commission require the public release of the names of the entities with nine violations of inaccurate Settlement Quality Meter Data (with assessed penalties of \$431,000); the names of the entities responsible for the six late Settlement Quality Meter Data violations (totaling \$9,000), and the entities responsible for the six late Resource Adequacy or Supply Plan violations (totaling \$93,500).¹⁸

13. Public Citizen further argues that, despite CAISO's contention that its tariff does not require the disclosure of the names of violators, the CAISO tariff does not prohibit the release of names of Rules of Conduct violators. According to Public Citizen, disclosing the names of the violators is important for the public interest because without such information the public is robbed of a critical metric for evaluating the efficiency of the Meter Rules Enhancement Initiative. Public Citizen contends that public accountability of rule violators that undermine the efficiency of the market must include the public identification of such violators.¹⁹

14. According to Public Citizen, CAISO's position that the names of violators should not be publicly disclosed leaves CAISO as an outlier among similarly situated private

¹⁶ *Id.* at 4 (citing *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,050, PP 34-35 (2011)).

¹⁷ *Id.* at 5 (citing CAISO eTariff, Appendix P, 11.1.3.).

¹⁸ Public Citizen Answer at 1.

¹⁹ *Id.* at 1-2.

organizations tasked by federal regulators with enforcement powers. Public Citizen states that other similarly situated private organization tasked by federal regulators with enforcement powers disclose violations of entities under their jurisdiction, however minor, because the public has an inherent right to know of these violations, events, and occurrences.²⁰

15. Public Citizen also generally argues against CAISO's characterization of Rules of Conduct violations as minor. Public Citizen states that the goals of CAISO's Meter Rules Enhancement Initiative are undermined by any participant submitting incorrect or tardy Settlement Quality Meter Data, and any violation that undermines market efficiency should not be consider minor. Further, Public Citizen states that it is perplexed by CAISO's claim that public identification of violators would cause reputational harm, and that if entities want to avoid such reputational harm they should simply submit accurate and timely Settlement Quality Meter Data. Public Citizen states that it is befuddled as to why CAISO wants to conceal the identities of violators from the public, especially since the public suffers the consequences of inefficient market operations that could result in unjust and unreasonable rates.²¹

III. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept CAISO's and Public Citizen's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

18. We grant CAISO's Petition. First, we accept CAISO's proposal to distribute penalty proceeds to scheduling coordinators, as stated in Attachment A of its Petition. The methodology in CAISO's proposal is consistent with the relevant provisions in its tariff for allocating and distributing penalty proceeds to scheduling coordinators.

²⁰ *Id.* at 2-3 (referencing the Financial Industry Regulatory Authority and the CME Group).

²¹ *Id.* at 3.

Therefore, in accordance with Section 37.9 of CAISO's tariff and consistent with prior Commission orders,²² we grant CAISO's Petition to distribute penalty proceeds in accordance with Attachment A of the Petition, subject to CAISO's final interest calculation.

19. We reject Public Citizen's request for disclosure of the identities of violators and the amount of each penalty as outside the scope of this proceeding. That is, CAISO's instant filing is submitted pursuant to its tariff, which requires CAISO to seek Commission approval that it has properly applied the required distribution methodology for the penalty proceeds and interconnection proceeds, as discussed above. And, Public Citizen does not object to the procedures or methodologies CAISO has used to calculate the distributions or the amounts that CAISO proposes to distribute. CAISO's Petition is also consistent with similar petitions that CAISO has submitted previously and which the Commission has granted, as noted above.²³

20. CAISO's filing also proposes a separate distribution of funds unrelated to the violation of the Rules of Conduct.²⁴ Specifically, SoCal Edison's Wholesale Distribution Access Tariff provides that any proceeds of interconnection study deposits "not otherwise reimbursed to the Interconnection Customer" or "applied to costs incurred or irrevocably committed to be incurred for Interconnection Studies," shall be remitted to CAISO and treated in accordance with CAISO tariff Section 37.9.4. Consistent with prior Commission orders,²⁵ we accept CAISO's proposal to distribute interconnection proceeds, as stated in Attachment B of its Petition. The methodology in CAISO's proposal is consistent with Section 37.9 of the tariff (i.e., the distribution is in proportion to the share of the grid management charge), with an exception noted by CAISO (i.e., not accounting for whether a scheduling coordinator was assessed a financial penalty under Section 37 of its tariff during the relevant calendar year). Also, our acceptance here is consistent with the Commission's disposition of prior CAISO filings where CAISO

²² See *Cal. Indep. Sys. Operator Corp.*, 157 FERC ¶ 61,220 (2016); *Cal. Indep. Sys. Operator Corp.*, 154 FERC ¶ 61,127 (2016); *Cal. Indep. Sys. Operator Corp.*, 151 FERC ¶ 61,099 (2015); *Cal. Indep. Sys. Operator Corp.*, 145 FERC ¶ 61,222 (2013).

²³ See *supra* n.22.

²⁴ See *Cal. Indep. Sys. Operator Corp.*, 157 FERC ¶ 61,220.

²⁵ See *Cal. Indep. Sys. Operator Corp.*, 163 FERC ¶ 61,058 (2018); *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,292, at P 160 (2008) (finding that CAISO's proposal to distribute forfeited security to scheduling coordinators and their market participants in proportion to their contributions to the grid management charge as just and reasonable and not unduly discriminatory).

proposed to distribute forfeited interconnection funds, with interest, pursuant to Section 37.9 of the CAISO tariff without accounting for whether or not a scheduling coordinator had been assessed a financial penalty under Section 37 of the CAISO tariff during the relevant calendar year.²⁶ Therefore, in accordance with Section 37.9 of CAISO's tariff and consistent with prior Commission orders, we grant CAISO's Petition to distribute penalty proceeds in accordance with Attachment B of its Petition, subject to CAISO's final interest calculation.

The Commission orders:

CAISO's Petition to distribute penalty proceedings in accordance with Attachment A of its Petition and to distribute interconnection proceeds in accordance with Attachment B is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁶ See *Cal. Indep. Sys. Operator Corp.*, 163 FERC ¶ 61,058; *Cal. Indep. Sys. Operator Corp.*, 157 FERC ¶ 61,220; *Cal. Indep. Sys. Operator Corp.*, 149 FERC ¶ 61,272 (2014); *Cal. Indep. Sys. Operator Corp.*, 149 FERC ¶ 61,231, at PP 25-29 (2014).