

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Shell Energy North America (US) L.P.)

v.)

**California Independent System)
Operator Corporation)**

Docket No. EL15-94-000

**COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION
IN SUPPORT OF SHELL ENERGY NORTH AMERICA L.P.**

Pursuant to Rules 211, 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§385.211, 385.212 & 385.214 (2014), the Electric Power Supply Association (“EPSA”) hereby files these Comments in Support of the Shell Energy North America L.P. (“Shell”) Complaint pursuant to Section 206 of the Federal Power Act (“FPA”) against the California Independent System Operator Corporation (“CAISO”),¹ seeking a declaration that the timeline for disputes of the T+35M recalculation settlement statement in Section 11.29.8.4.6 of the CAISO Tariff² is unjust and unreasonable. In its Complaint, Shell requested that the Commission issue an order directing the CAISO to correct Shell’s invoice and settlement statement for trade month August 2010 and refund improper charges caused by the CAISO’s acknowledged unilateral error appearing for the first time in the 35th month of a 36-month invoice and settlement cycle pursuant to the CAISO Tariff. Shell contended that the Commission did not intend to deprive market participants of a reasonable time period to dispute invoice and

¹ *Complaint*, Shell Energy North America (U.S.) L.P. v. California Independent System Operator, Docket No. EL15-94-000 (August 24, 2015). [“Complaint”].

² Section 11.29.8.4.6 Dispute of Recalculation Settlement Statement T+35M, CAISO Tariff, available at https://www.caiso.com/Documents/ConformedTariff_Jun12_2015.pdf at pp. 427 (Updated Jan. 1, 2015).

settlement errors appearing for the first time at the very tail end of a 36-month process, and that CAISO had an obligation to apply its filed rate and correct charges not reflected in the filed rate without requiring specific Commission approval.³ Shell further requested that the Commission issue a waiver to the extent that the Commission agreed with the CAISO's contention that the current Tariff precludes the issuance of a refund under the facts of the Complaint.

Shell also sought prospective relief, requesting that the Commission issue an order declaring that Section 11.29.8.4.6 of the CAISO Tariff is unjust and unreasonable, and direct the CAISO to revise it to provide a more reasonable timeframe in which to dispute errors appearing for the first time in the 35th month statement during the 36-month invoicing and settlement cycle (the T+35M Recalculation Settlement Statement or "T+35M statement"). Shell specifically requested that the Commission revise the Tariff to provide at least 30 days but not less than 10 business days for parties covered by Tariff Section 11.29.8.4.6 to raise disputes on the T+35M statement.⁴

EPSA files these comments in support of Shell's Section 206 Complaint that the seven calendar day/five business day deadline for disputes on the T+35M statement is not just and reasonable, and requests that the Commission direct appropriate revisions to the CAISO Tariff that will extend the deadline for raising disputes on the T+35M statement to 30 business days but not less than 10 calendar days. EPSA also encourages the Commission to direct the CAISO to administer any Tariff provisions governing dispute resolution to which Section 13 of the CAISO Tariff⁵ applies, such that

³ Complaint, at pp. 8 – 13.

⁴ Complaint, at pp. 13-14.

⁵ Section 13 Dispute Resolution, CAISO Tariff, available at https://www.caiso.com/Documents/ConformedTariff_Jun12_2015.pdf at pp. 505 et seq. (Updated Jan. 1, 2015).

when the CAISO has acknowledged unilateral errors, the applicable Business Practice Manual assures timely correction of any invoice issues related to such unilateral CAISO errors.

II. COMMENTS

EPSA supports Shell's request that the Commission determine that the CAISO Tariff Section 11.29.8.4.6 is unjust and unreasonable, and revise it to provide at least 30 days but not less than 10 business days for scheduling coordinators and other parties covered thereunder to raise disputes on the T+35M statement.⁶ The Commission had reasoned in its 2009 CAISO Order⁷ that seven calendar days would be sufficient time for market participants to identify and report any disputes upon receipt of the T+35 M statement, "given that the market participants and the CAISO have had, at that point in the settlement process, 35 months to achieve an accurate settlement of market transactions."⁸ However, Shell's Complaint aptly demonstrates that this timeline is insufficient when the facts at hand involve a wholly new error appearing in CAISO-issued documentation (which runs over a thousand pages), occurring without prior notice to the market participant just weeks before the 36-month cycle comes to a close.⁹

The CAISO itself has stated that the purpose of its tariff revisions regarding dispute processes is to provide for "greatly expanded provisions on disputes and exceptions in new Section 11.29.8.4" as well as a "detailed process and timeline for the CAISO to respond to disputes, in the appropriate Business Practice Manual."¹⁰ Thus,

⁶ Complaint, at pp. 13-14.

⁷ *Order Conditionally Accepting Tariff Provisions*, California Independent System Operator Corp., 128 FERC ¶ 61,265 (2009) ["2009 CAISO Order"].

⁸ 2009 CAISO Order, at P 40.

⁹ See Complaint, at pp. 9 – 10.

¹⁰ *Motion for Leave to File Answer and Answer to the Motions to Intervene, Comments and Protests of the California Independent System Operator Corporation*, Docket Nos. ER09-1247-000, -001 (July 10, 2009), available [online](#).

the CAISO has credited the “expanded” nature and “detailed process and timeline” for its proposed dispute settlement provisions.

However, the facts of Shell’s Complaint are contrary to the CAISO’s assertions, as the Tariff does not provide an “expanded” or a “detailed” opportunity for review and dispute of a wholly new error occurring in relation to a transaction that took place nearly three years prior. Specifically, the Complaint demonstrates that: Shell did not have the benefit of any prior notification in the previous 35 months that CAISO would submit an erroneous charge on the T+35M statement; Shell reasonably relied on the CAISO to issue an accurate statement in light of having already corrected this error several months prior; and, pursuant to the Tariff, Shell had merely five business days to investigate whether or not the CAISO might have yet again committed the same unilateral error, just weeks before the close of the settlement period.

Shell’s recent experience demonstrates that the CAISO timeline for raising disputes related to the T+35M statement is unreasonably short, and that the Tariff is unduly restrictive for reaching appropriate resolution of such disputes. The Tariff does not accommodate the reality that the CAISO may unilaterally make an error at the tail-end of the settlement process, and that even though an adequate remedy is indisputably and readily available, it may not be timely dispensed to ensure a just and reasonable outcome to the market participant.

Shell’s experience also demonstrates that it did not have, as the Commission discusses in the 2009 CAISO Order, “thirty-five (35) months to achieve an accurate settlement of market transactions.”¹¹ Rather, the dispute timeline for the T+35M statement is not long enough to accommodate the circumstance in which a market

¹¹ 2009 CAISO Order, at P 40.

participant and the CAISO only have a few weeks to achieve an accurate settlement of market transactions.¹² And, in the case of Shell, the market participant had merely a week – not almost three years – to discover and dispute the wholly new CAISO error.

EPSA emphasizes that the Tariff has resulted in an unjust and unreasonable outcome to a market participant even though the CAISO has acknowledged that it is solely responsible for the erroneous charge. Given these facts, it is clear that the Tariff is overly restrictive in preventing the swift resolution of settlement disputes even when those disputes are non-controversial and openly acknowledged by the CAISO as unilateral errors that should be corrected in order to make the market participant whole. Therefore, the Commission should affirm that the Tariff permits the CAISO to correct such settlement errors, especially when the appropriate remedy for such errors could be indisputably, readily and swiftly provided by the CAISO to prevent an unfair outcome to the market participant.

For these reasons, EPSA argues that the Tariff is unjust and unreasonable, and should be revised to provide for a more reasonable timeline for disputing wholly new errors discovered at the tail end of the settlement cycle. In light of the fact that a market participant has 22 business days in CAISO to dispute the second and third recalculation settlement statements, a mere five business days to dispute the fourth such statement is unreasonably short – especially given the reality that the CAISO could, as occurred in this proceeding, make wholly new errors on the fourth recalculation settlement statement.

¹² See also *Protest on behalf of the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California Independent System Operator Corp.*, Docket No. ER09-1247-000 (filed June 22, 2009) (discussing that the timeline for disputes of the T+35M statement would be unreasonably short at seven calendar days, and that the CAISO has shown no justification for a truncated review period where the transactions involved will have taken place nearly three years previously).

EPSA therefore agrees with Shell's request that the Commission issue an order directing that the CAISO modify its Tariff to provide at least 30 days, but not less than 10 business days, to permit market participants adequate time to review, discover and file disputes related to wholly new errors which can occur in the T+35M statement. Alternatively, the Tariff should provide for the standard timeframe of 22 business days for filing a dispute, as is provided for in the CAISO's Business Practice Manual for Settlement and Billing.¹³

III. CONCLUSION

WHEREFORE, EPSA respectfully requests that the Commission accept Shell's Complaint as filed and grant the relief requested therein and other such relief as the Commission deems appropriate and necessary, and find that Section 11.29.8.4.6 of the CAISO Tariff, which limits the time for a Scheduling Coordinator to raise invoice disputes to five business days, even when wholly new invoice errors occur, is unjust and unreasonable, and revise the Tariff accordingly to provide adequate time in such instances.

Respectfully Submitted,



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Dated September 25, 2015.

¹³ See CAISO Business Practice Manual for Settlement and Billing, at 21 (stating that the standard timeframe for submitting a dispute for all statements subsequent to the T+12B Recalculation Statement, except for the T+35M and T+36M statements, is twenty-two (22) business days).

CERTIFICATE OF SERVICE

I hereby certify that I have serve a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding. Dated at Washington, DC, September 25, 2015.



Nancy Bagot, Senior Vice President, Regulatory Affairs