

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

Duty of Candor

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Docket No. RM22-20-000

**COMMENTS OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (CAISO) submits these comments in response to the Commission’s Notice of Proposed Rulemaking (NOPR) in this docket.

I. Background

Several elements of the Commission’s existing regulations impose a duty of candor on entities under the Commission’s jurisdiction. Notably, under 18 C.F.R. 35.41(b), “a Seller must provide accurate and factual information and not submit false or misleading information, or omit material information” in its communications with the Commission, independent system operators (ISOs) and regional transmission organizations (RTOs), or ISO/RTO market monitoring units “unless Seller exercises due diligence to prevent such occurrences.” Similarly, 18 CFR 1c.1 and 1c.2 prohibits fraudulent schemes or misrepresentations in connection with a jurisdictional sale of energy or natural gas, respectively.

In the NOPR, the Commission observes these existing rules generally have been effective but contain several gaps that may limit their overall

effectiveness. For example, 18 CFR 35.41(b) applies to “Sellers,” which are defined under Commission regulations as “any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the Federal Power Act.”¹ This term does not cover all ISO/RTO market participants,² which means some ISO/RTO market participants do not face a generally-applicable duty of candor under Commission regulations. Intentionally false statements from such entities might only be prohibited under Commission regulations if made in violation of either 18 CFR 1c.1 and 1c.2 as part of a fraudulent or manipulative scheme.³

To address these limitations, the Commission proposes through the NOPR to create a broad duty of candor by adopting a new regulation that states:

Any entity must provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, jurisdictional transmission or transportation providers, or the Electric Reliability Organization and its associated Regional Entities, where such communication relates to a matter subject to the jurisdiction of the Commission, unless the entity exercises due diligence to prevent such occurrences.

¹ 18 CFR 35.36(a)(1).

² NOPR at P 22.

³ *Id.*

II. Comments

The CAISO supports the general proposition that all participants in markets and commercial transactions subject to the Commission's jurisdiction should communicate with candor and not inject false information into those activities. The CAISO specifically supports the proposed rule to the extent it would create a universal and broadly-applicable duty of candor for all communications a market participant in an ISO/RTO market engages in with the ISO/RTO and its market monitoring unit.

The NOPR explains that "absent a restriction contained in a tariff provision, there may be no explicit requirement of candor for various important communications fundamental to the functioning of a market that produces just and reasonable rates" ⁴ Before 2011, the CAISO had such a tariff provision. ⁵ In the process of complying with Commission Order No. 719, ⁶ the Commission found that the prior tariff provision seemed merely to duplicate Commission regulations and should be removed absent the CAISO showing a particularized need for maintaining the provision. ⁷ The CAISO removed the provision in

⁴ *Id.*

⁵ Section 37.5.1 of the CAISO tariff contained language that parallels 18 CFR 35.41(b), requiring "communications by a Market Participant [to] be submitted by a responsible company official who is knowledgeable of the facts submitted" and that a market participant "shall provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with FERC, FERC-approved market monitors, FERC-approved regional transmission organizations, or FERC-approved independent system operators, or jurisdictional transmission providers, unless the Market Participant exercised due diligence to prevent such occurrences."

⁶ *Wholesale Competition in Regions with Organized Electric Market*, 125 FERC ¶ 61,071 (2008) (Order No. 719).

⁷ *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,050, P 65 (2011) (ordering removal of CAISO tariff section 37.5.1).

compliance with the Commission's guidance.⁸ Since then, the CAISO has relied on the Commission's enforcement of 18 CFR 35.41(b) to address cases where a market participant potentially submitted false or misleading information to the CAISO or its Department of Market Monitoring.

Because of the NOPR's clarifications, the CAISO understands some of its market participants that are not "Sellers" under the Commission's regulations are not subject to 18 CFR 35.41(b). Such market participants include those whose activities are limited to holding congestion revenue rights, providing demand response services, or engaging in convergence bidding. The CAISO sees no justification for this differential treatment. All market participants should face the same obligation to communicate honestly and transparently with an ISO/RTO and its market monitoring unit. In this regard, the CAISO supports the NOPR's efforts to create a level playing field among all ISO/RTO market participants.

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⁸ *Cal. Indep. Sys. Operator Corp.*, Compliance Filing, FERC Docket No. ER09-1048-002 (Apr. 20, 2011) (compliance filing removing CAISO tariff section 37.5.1).

III. Conclusion

The CAISO supports the Commission's proposal to create rules that require all ISO/RTO market participants to communicate in an honest and forthcoming manner with the Commission, ISOs/RTOs, and market monitoring units.

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CERTIFICATE OF SERVICE

I certify that I have served the foregoing document upon the parties listed on the official service list in the captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 10th day of November, 2022.

/s/ Martha Sedgley

Martha Sedgley

An employee of the California ISO