

186 FERC ¶ 61,230
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;
Allison Clements and Mark C. Christie.

City of Corona, California

Docket No. EL23-99-000

v.

California Independent System Operator Corporation

ORDER GRANTING COMPLAINT

(Issued March 27, 2024)

1. On September 19, 2023, City of Corona, California (Corona) submitted a complaint (Complaint), pursuant to sections 206 and 306 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission’s Rules of Practice and Procedure,² against the California Independent System Operator Corporation (CAISO). In the Complaint, Corona challenges the application of CAISO’s Open Access Transmission Tariff (Tariff) section 37 and appeals \$342,000 in penalties assessed by CAISO for incorrect meter data reporting during trading days of April 1, 2021 through March 14, 2022. Corona requests that the Commission nullify the assessed penalties because a strict application of Tariff section 37 for a minor, inadvertent meter data error produces penalties that are unjust and unreasonable. In this order, we grant Corona’s Complaint, as discussed below.

I. Background

2. Under Tariff section 37.5.2, CAISO requires scheduling coordinators to submit Settlement Quality Meter Data³ in order to financially settle its markets through an iterative process between CAISO and scheduling coordinators that begins with CAISO issuing an initial settlement statement nine business days after the trading day, followed by a series of deadlines for CAISO to issue recalculation settlement statements and for

¹ 16 U.S.C. §§ 824e, 825e.

² 18 C.F.R. § 385.206 (2023).

³ Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in CAISO’s Tariff.

scheduling coordinators to submit new or revised meter data for CAISO to use in the recalculation settlement statements. A scheduling coordinator's failure to submit actual meter data by the 52nd day after the trading date (T+52B) is considered a late meter data submission (Late Submission).⁴

3. Pursuant to Tariff section 37.11, failure to submit revised meter data by the 214th day after the trading date (T+214B) for the resettlement statement that CAISO issues at the 11th month after the trading day (T+11M) is considered an inaccurate meter data submission (Inaccurate Submission). Regardless of whether the submission is a Late Submission or an Inaccurate Submission, a violation subjects the scheduling coordinator to a penalty of \$1,000 for each trading day after the above mentioned deadlines have been missed. A scheduling coordinator that fails to submit data for the T+11M settlement statement faces an additional penalty of \$3,000 per trading day (totaling \$4,000 for every trading day with missing meter data).⁵

4. Tariff section 37.9.4 requires CAISO to place all penalty proceeds collected under Tariff section 37 into a trust account and those proceeds are allocated to scheduling coordinators representing "those Market Participants that were not assessed a financial penalty pursuant to this [s]ection 37 during the calendar year."⁶

5. CAISO's meter data penalties are part of its rules of conduct, which it administers through a process defined in Tariff section 37. If CAISO believes that a market participant may have committed a Tariff violation subject to CAISO penalties, it conducts an investigation, providing notice and an opportunity for the market participant to present relevant information. Where CAISO determines that a penalty is warranted, the market participant may obtain immediate review of CAISO's determination by directly appealing to the Commission under Tariff section 37.8.10, in which case the penalty will be tolled until the Commission renders its decision on appeal.⁷

6. Corona manages electrical infrastructure and services, and acts through a scheduling coordinator within the CAISO balancing authority area.⁸ Corona provides

⁴ CAISO, CAISO eTariff, § 37.5.2 (Accurate and Timely Actual SQMD) (7.0.0).

⁵ CAISO, CAISO eTariff, § 37.11 (Method For Calculating Penalties) (0.0.0).

⁶ CAISO, CAISO eTariff, § 37.9.4 (Disposition of Proceeds) (1.0.0).

⁷ CAISO, CAISO eTariff, § 37.8.10 (Review of Determination) (6.0.0).

⁸ Corona Complaint at 2.

retail electric service to approximately 2,775 Direct Access and Bundled Service customers, with a peak demand of 22.4 MW.

II. Corona's Complaint

7. Corona states that, as a result of a minor error, it had been underreporting meter data covering the trade days of April 1, 2021 through March 14, 2022, resulting in \$342,000 in penalty charges.⁹ Corona claims that the error began as the result of Southern California Edison Company (SoCal Edison) changing its billing system, requiring new account numbers for Corona's direct access customers. Although SoCal Edison and Corona worked to migrate account information related to Corona's meter data, several account numbers did not get changed in Corona's third-party contractor's customer account file or backup standing data file.¹⁰

8. Corona argues that it acted in good faith as it brought the meter data error to CAISO's attention as soon as the error was identified and evaluated.¹¹ Corona states that the meter data error resulted in an underreporting of 7,595 MWhs. This accounts for less than five percent of Corona's customer load requirements in 2021 and 0.008% of CAISO's deliveries to the SoCal Edison transmission access charge area in 2021.¹² Corona argues that the penalty amount far outweighs the severity of the violation resulting from the error. Corona claims that the amount of \$342,000 for a single entity the size of Corona is unnecessarily punitive.¹³ Corona states that market participants that may have been affected by the meter data error have been made financially whole through CAISO's billing and settlements process.¹⁴ Corona adds that the inadvertent

⁹ *Id.* at 1.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 8.

¹² *Id.* at 9.

¹³ *Id.* at 10. Corona states that it has also been assessed a market adjustment in the amount of \$256,861.59 for the meter data inaccuracies for the 187 trade days between April 24, 2021 and October 27, 2021 that were not corrected through the recalculation settlement process described above as the meter error was not corrected by the meter data resubmittal deadline for those trade dates. *See id.* at 8.

¹⁴ *Id.* at 11.

meter data error led to an underreporting that had a *de minimis* impact on the CAISO market.¹⁵

9. Corona also states that it has implemented multiple safeguards going forward to address meter data issues including additional reports and data confirmation, quarterly self-audits, increased staff training, and the development of reporting tools.¹⁶

10. Corona also notes that if CAISO, after an investigation, determines that a penalty is warranted, the market participant may obtain immediate review of CAISO's determination under Tariff section 37.8.10 by directly appealing to the Commission, in which case the penalty will be tolled until the Commission renders its decision on appeal. Corona adds that a waiver of Tariff section 37.8.10 does not violate the filed rate doctrine or rule against retroactive ratemaking.¹⁷

11. Corona states that CAISO has no discretion to reduce or choose not to apply a penalty assessed under Tariff section 37. According to Corona, the Commission has previously found that CAISO's Tariff can produce a penalty that is not commensurate with the targeted conduct and is therefore not just and reasonable. Corona states that in response to the Commission's recommendation "to consider proposing modifications to its Tariff to better align its penalty and market adjustment allocation provisions with its stated intent to incentivize compliance while avoiding disproportionately high penalties,"¹⁸ CAISO has initiated a stakeholder process that will lead to a proposed tariff modification associated with Tariff section 37.9.¹⁹

III. Notice and Responsive Pleadings

12. Notice of Corona's Complaint was published in the *Federal Register*, 88 Fed. Reg. 65,996 (Sept. 26, 2023), with interventions and protests due on or before

¹⁵ *Id.* at 6-7.

¹⁶ *Id.* at 9.

¹⁷ *Id.* n.6 (citing *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1231 (D.C. Cir. 2018)).

¹⁸ *Id.* at 4 (citing *Cal. Indep. Sys. Operator Corp.*, 175 FERC ¶ 61,043, at PP 24, 30 (2021) (*NV Energy*)).

¹⁹ Corona adds that CAISO has previously requested a temporary blanket waiver of pending and future penalties for the inaccurate submission of meter data, but the request for waiver was denied by the Commission as "not limited" in scope. *Id.* at 5 (citing *Cal. Indep. Sys. Operator Corp.*, 184 FERC ¶ 61,009 (2023) (*CAISO*)).

October 10, 2023. Timely motions to intervene were filed by NRG Business Marketing LLC and Idaho Power Company (Idaho Power). Idaho Power submitted comments in support of Corona's Complaint. On October 10, 2023, CAISO submitted its answer to Corona's Complaint.

A. CAISO's Answer

13. CAISO states that it supports Corona's request and agrees that the assessed penalty is excessive and exceeds the approximate value of the error by a significant degree.²⁰ CAISO also notes that it opened the Rules of Conduct Enhancements stakeholder initiative in May 2023 to address a variety of rules of conduct issues, including the potential for excessive penalties in circumstances such as those that triggered Corona's penalty. CAISO states that until those rule changes are evaluated by the Commission, CAISO supports relief for parties such as Corona that have established that they are exposed to inequitable penalties under the existing Tariff rules.²¹

B. Idaho Power Comments

14. Idaho Power states that it supports the relief Corona is seeking.²² Idaho Power contends that the circumstances faced by Corona, and similarly by Idaho Power and other scheduling coordinators, involve inadvertent meter data errors of small amounts that result in substantial penalties.²³ Idaho Power states that CAISO has recognized that its penalty structure often results in disproportionate penalties for minor inaccuracies that have no effect on the market and recently sought a blanket waiver for applying the portion of its Tariff that results in these penalties. According to Idaho Power, the Commission has noted that CAISO should modify its Tariff to better align its penalty provisions with the intent of incentivizing compliance while avoiding disproportionate penalties.²⁴ Idaho Power argues that until such time as a new penalty structure is in

²⁰ CAISO Answer at 2.

²¹ *Id.*

²² Idaho Power notes that it has filed a complaint similar to Corona's complaint in Docket No. EL23-94-000. Idaho Power Comments at 2.

²³ *Id.* at 2-3.

²⁴ *Id.* at 3 (citing Petition for Limited Waiver of the California Independent System Operator Corporation, Docket No. ER23-1699-000 (filed Apr. 24, 2023)).

effect, Corona, much like Idaho Power, may only get relief from these unreasonable penalties by seeking a waiver of these penalties from the Commission.²⁵

III. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2023), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

16. As an initial matter, we find that Corona's Complaint is properly before the Commission and, as discussed below, we grant the Complaint. Tariff section 37.8.10 permits "[a] Market Participant that receives a Sanction [to] obtain immediate review of [] CAISO's determination by directly appealing to FERC, in accordance with FERC's rules and procedures."²⁶ The Commission has previously interpreted this Tariff provision as referring to Rule 206 of the Commission's Rules of Practice and Procedure, which governs complaints, and Rule 218, which establishes simplified procedures for complaints involving small controversies.²⁷ Subsequently, in *NV Energy*, when granting CAISO's request for waiver of Tariff section 37 as applied to NV Energy, Inc., the Commission noted that in that proceeding CAISO sought waiver of its own Tariff; however, the appropriate procedural vehicle for market participants to appeal penalties imposed under CAISO's Tariff is to file a complaint with the Commission under Rule 206 or Rule 218, consistent with Tariff section 37.8.10. This provision permits market participants to appeal the imposition of penalties under Tariff section 37,²⁸

²⁵ *Id.*

²⁶ CAISO, CAISO eTariff, § 37.8.10.

²⁷ *Hanwha Q-CELLS USA Corp.*, 174 FERC ¶ 61,013, at P 9 (2021); *Mission Solar LLC*, 174 FERC ¶ 61,014, at P 10 (2021); *Golden Springs Dev. Co.*, 174 FERC ¶ 61,163, at PP 14-15 (2021). In those orders, the Commission denied the appeals on procedural grounds because these market participants invoked neither Rule 206 nor Rule 218 in their appeals.

²⁸ *NV Energy*, 175 FERC ¶ 61,043 at n.29. In *CAISO*, the Commission stated in regard to the intervenor Idaho Power's request for a waiver of the same section in its comments that:

Tariff section 37.8.10 . . . permits a market participant to seek review of a CAISO penalty by appealing to the Commission

thereby providing adequate notice to the market that the penalty procedures set forth in that Tariff section may be subject to further Commission review.²⁹ Thus, we find that Corona's Complaint is consistent with the Commission's previous findings.³⁰

17. Further, we agree with Corona that nullifying the Tariff section 37 penalties under the instant circumstances will not violate the filed rate doctrine or the rule against retroactive ratemaking. Consistent with the analysis above, we conclude that Tariff section 37 provides adequate notice that the penalty procedures delineated in that Tariff section may be subject to further Commission review.³¹ Because market participants are placed on notice at the outset that the rates being promulgated are subject to subsequent review, the Commission is not engaging in impermissible retroactive ratemaking when reviewing a penalty under this Tariff procedure.

18. Based on the evidence presented by Corona in this proceeding, we find that Corona has met its burden under FPA section 206 to demonstrate that Tariff section 37 is unjust and unreasonable as it applies to these circumstances. We agree with Corona that the penalties assessed are not commensurate with any potential damage caused by the inadvertent errors, which were properly reported upon discovery, promptly fixed, and had a *de minimis* effect on the CAISO market.³² We, therefore, grant Corona's Complaint and direct CAISO to nullify the meter data error penalties assessed against Corona.

“in accordance with the FERC's rules and procedures.” The Commission has interpreted that language in CAISO's Tariff as a reference to Rule 206 and Rule 218.

CAISO, 184 FERC ¶ 61,009 at P 24 (internal footnotes omitted).

²⁹ See *Pac. Gas & Elec. Co.*, 173 FERC ¶ 61,051, at P 14 (2020).

³⁰ We note that appeals under Tariff section 37.8.10, which are made pursuant to Rule 206 or Rule 218, are not analyzed under the four criteria that the Commission uses to analyze tariff waiver requests.

³¹ Pursuant to Tariff section 37, CAISO has no discretion to reduce or choose not to apply the Penalty. See Corona Complaint at 5.

³² *NV Energy*, 175 FERC ¶ 61,043 at P 30 (noting that “CAISO's current Tariff may lead to disproportionate penalties and improper allocation of market adjustment funds in certain circumstances”).

The Commission orders:

Corona's Complaint is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Acting Secretary.