

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

**California Independent System    )  
Operator Corporation            )**      **Docket No. ER23-\_\_\_\_-000**

**PETITION FOR LIMITED WAIVER OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (CAISO) respectfully requests limited waivers of CAISO tariff sections 37.5.2, 37.9.4, and 37.11 to: (a) excuse the CAISO from assessing pending or future financial penalties for late meter data revisions until the earlier of the effective date of future revisions to the late revision penalties in section 37.11 or May 1, 2024; and (b) treat entities subject to this waiver as ineligible market participants under CAISO tariff section 37.9.4 for purposes of distributing penalty proceeds.

Regarding the first waiver, in multiple cases the existing meter data penalties have produced an overly punitive result out of line with the purposes those penalties should serve. Regarding the second waiver, the CAISO distributes the penalty proceeds collected in a year to market participants without a penalty in that year. It would be inappropriate for the parties whose financial penalties would be waived under this filing to receive a share of other participants' penalties when they committed violations that, but for this filing, also would have been sanctioned.

## **I. Background**

### **A. Meter Data Submission Process**

The CAISO financially settles its markets through an iterative process that includes an initial settlement statement nine business days after the trading day (T+9B) followed by several subsequent recalculation settlement statements.<sup>1</sup> The CAISO publishes the final recalculation settlement statement produced in the ordinary course of business 70 business days after the trading day (T+70B). Scheduling coordinators must submit meter data by the fifty-second business day after the trading day (T+52B) for that data to be processed on the T+70B recalculation settlement statement.

After the T+70B statement, the CAISO publishes the next recalculation settlement statement 11 months after the trading day (T+11M). The T+11M statement is optional. Scheduling coordinators may submit new or revised meter data for the CAISO to use on the T+11M statement by the two-hundred fourteenth day (T+214B) after the trading day.<sup>2</sup> If the CAISO publishes a T+11M statement, it calculates those statements based on that new meter data.

### **B. Meter Data Penalties**

Although scheduling coordinators may submit new or revised meter data for use on the T+11M statement, a scheduling coordinator's failure to submit any

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<sup>1</sup> CAISO tariff section 11.29.7.1 outlines the CAISO's full timeline for publishing settlement statements.

<sup>2</sup> CAISO tariff section 10.3.6.4. This deadline is sometimes referred to as T+10M instead of T+172B.

meter data by T+52B<sup>3</sup> or its submission of revised meter data for the T+11M statement violates the tariff.<sup>4</sup> The CAISO refers to the former scenario of submitting nothing by the deadline as submission of *late meter data* and refers to the latter scenario of submitting revisions to previously-submitted data after the deadline as submission of *inaccurate meter data*. Whether the scheduling coordinator submits late meter data or inaccurate meter data, the violation subjects the scheduling coordinator to a penalty of \$1,000 for each affected trading day.<sup>5</sup> A scheduling coordinator that fails to submit meter data for the T+70B settlement statement and fails to submit meter 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). The overall purpose of these penalties is to incentivize scheduling coordinators to provide accurate and timely meter data to facilitate accurate settlement statements as close as possible to the trading day.

Where the late or inaccurate meter data is not processed on the T+11M settlement statement and the initial error was to the scheduling coordinator's benefit (*i.e.*, over-reported generation or under-reported load), the CAISO

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<sup>3</sup> CAISO tariff section 10.3.6.3 ("Scheduling Coordinators must submit Actual Settlement Quality Meter Data for the Scheduling Coordinator Metered Entities they represent to the CAISO no later than midnight on the fifty-second (52) Business Day after the Trading Day (T+52B) for the Recalculation Settlement Statement T+70B calculation").

<sup>4</sup> CAISO tariff section 10.3.6.4 ("Scheduling Coordinators submitting Actual Settlement Quality Meter Data after fifty-two Business Days after the Trading Day (T+52B) have failed to provide complete and accurate Settlement Quality Meter Data as required by Section 37.5.2.1 and will be subject to monetary penalty pursuant to Section 37.5.2.2").

<sup>5</sup> CAISO tariff sections 37.5 & 37.11.

calculates a market adjustment that “approximates the financial impact on the market.”<sup>6</sup> The market adjustment is the product of the difference between the correct data and the misreported hourly data and the greater of: (a) the average of the 12 five-minute prices for the hour; or (b) \$10/MWh. The funds collected from the market adjustment are “returned to the market based on the average of the *pro rata* share of Unaccounted for Energy (UFE) charged in the utility Service Area during the period of the inaccurate Meter Data event.”<sup>7</sup>

### **C. Rules of Conduct Administration**

The CAISO’s meter data penalties are part of CAISO tariff section 37 (*i.e.*, the rules of conduct). The CAISO administers the rules of conduct through a tariff-defined process. If the CAISO believes a market participant may have committed a tariff violation subject to CAISO penalties, it “shall conduct a reasonable investigation seeking available facts, data, and other information relevant to the potential” violation.<sup>8</sup> That investigation must include “notice of the investigation in sufficient detail to allow for a meaningful response”<sup>9</sup> and an opportunity for the market participant “to present any issues of fact or other information relevant to the potential” violation.<sup>10</sup> The CAISO must assess any

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<sup>6</sup> CAISO tariff section 37.11.2. Where revised data is not processed and the initial error is to the scheduling coordinator’s detriment, “then no market adjustment will be made but the Sanction of \$1,000 still shall be levied.”

<sup>7</sup> *Id.*

<sup>8</sup> CAISO tariff section 37.8.3.

<sup>9</sup> CAISO tariff section 37.8.4.

<sup>10</sup> CAISO tariff section 37.8.5.

penalties resulting from the investigation within “one year after discovery of the events constituting the violation, but no later than three years after the date of the violation.”<sup>11</sup> Where the CAISO determines a penalty is warranted, the market participant “may obtain immediate review of the CAISO’s determination by directly appealing to FERC,” in which case the “penalty will be tolled until FERC renders its decision on the appeal.”<sup>12</sup>

#### **D. Annual Penalty Distribution Process**

Section 37.9.4 of the CAISO tariff requires the CAISO to place all penalties collected under section 37 into a trust account. After the end of the year, the CAISO allocates those proceeds, with interest, to scheduling coordinators representing eligible market participants. Section 37.9.4 provides that an eligible market participant “shall be those Market Participants that were not assessed a financial penalty pursuant to this Section 37 during the calendar year.” The “eligible market participant” rule ensures an entity is not rebated part of its penalty and creates additional incentives for compliance.

In distributing the funds, the CAISO pays eligible market participants based on the product of: (a) the amount in the trust account, including interest; and (b) the ratio of grid management charge payments by the scheduling coordinator on behalf of eligible market participants to the total of such amounts

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<sup>11</sup> CAISO tariff section 37.10.1.

<sup>12</sup> CAISO tariff section 37.8.10. Under tariff section 37.8.10, the scheduling coordinator must “also dispute the Recalculation Settlement Statement containing the financial penalty” to toll the penalty.

paid by all scheduling coordinators. The payment cannot be more than the grid management charge paid by the scheduling coordinator on behalf of all eligible market participants it represents. After the CAISO distributes the funds to the scheduling coordinator, the scheduling coordinator is responsible for distributing the amounts to the eligible market participants in proportion to their share of the grid management charge paid by the scheduling coordinator on their behalf.

**E. NV Energy, Inc. Penalty Waiver—Docket No. ER21-395-000**

In November 2020, the CAISO filed a waiver request with the Commission seeking to excuse the CAISO from assessing penalties against NV Energy, Inc. for inaccurate meter data.<sup>13</sup> NV Energy faced a penalty of \$685,000 for meter data errors on approximately 1,400 trading days.<sup>14</sup> The magnitude of the meter data in error was relatively small, but NV Energy faced significant penalties because the error persisted over such an extended period.

The CAISO's filing explained its concern that the tariff-defined penalties did not create an appropriate outcome in NV Energy's instance. This explanation included some of the history of the meter data penalties. Before October 1, 2011, the CAISO based its meter data penalties on a percentage of the error. The penalty was 30 percent of the value of the energy in error if the scheduling coordinator identified the error and 75 percent of the error if the CAISO

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<sup>13</sup> *Cal. Indep. Sys. Operator Corp.*, Request for Waiver, FERC Docket No. ER21-395-000 (Nov. 12, 2020).

<sup>14</sup> The total penalty was limited by, among other factors, the three-year limitations period.

discovered the error. The CAISO changed the penalty to a per-day penalty. In proposing the change to a per-day penalty, the CAISO stated the percentage-based penalty was “overly burdensome for submitting correcting meter data and that an appropriate incentive for the market participants to submit accurate and timely settlement quality meter data would be a set sanction of \$1,000 for each trade day corrected.”<sup>15</sup> The CAISO was concerned that a percentage-based penalty set mixed incentives by imposing exorbitant penalties for meter data violations when nearly all violations are identified by market participants, and reporting issues to the CAISO relies on voluntary compliance.

The CAISO’s concern with the percentage-based penalty was that it created excessive penalties when there was a persistently large meter data error, whereas the per-day penalty created a more proportionate penalty and more reasonable incentives for compliance. However, the CAISO did not consider the opposite scenario—the case where a per-day penalty yielded a disproportionate penalty if there were a persistently small meter data error. The CAISO explained that in NV Energy’s circumstance, the prior 30 percent penalty formula would result in a penalty of approximately \$21,000,<sup>16</sup> whereas the \$1,000 per trading

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<sup>15</sup> *Cal. Indep. Sys. Operator Corp.*, Settlements Process Timeline Changes Transmittal Letter, at 18, FERC Docket No. ER11-4176-000 (Aug. 1, 2011).

<sup>16</sup> NV Energy’s error had a value of \$69,663.86, yielding a 30 percent penalty of \$20,899.16 [ $.3 \times 69,663.86$ ].

day penalty created a 983 percent penalty.<sup>17</sup> The CAISO found this level of penalty was unwarranted and requested a waiver to excuse the penalties.

After considering the CAISO's request, in April 2021 the Commission granted the waiver.<sup>18</sup> In granting the relief, the Commission also "encourage[d] CAISO to consider proposing modifications to its Tariff to better align its penalty and market adjustment allocation provisions with its stated intent to incentivize compliance [and to] help CAISO avoid similar outcomes and the need to request waiver of its Tariff in the future."<sup>19</sup>

#### **F. Stakeholder Initiative on Rules of Conduct**

The CAISO prioritizes policy initiatives in consultation with its stakeholders through its annual policy roadmap process. This process sets a three-year forward-looking plan for policy initiatives. With limited time for both the CAISO and its stakeholders, it is critical the CAISO plans future efforts efficiently and comprehensively so all parties make the best use of their limited resources. The final roadmap for the 2022-2024 period, which was the first roadmap completed after the Commission's order on the NV Energy waiver, did not include a stakeholder initiative to review the rules of conduct.<sup>20</sup> The CAISO considered the

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<sup>17</sup> NV Energy's penalty of \$685,000 was 983 percent of the \$69,663.86 error [685,000/69,663.86].

<sup>18</sup> *Cal. Indep. Sys. Operator Corp.*, 175 FERC ¶ 61,043 (2021).

<sup>19</sup> *Id.* at P 30.

<sup>20</sup> Information on the roadmap process for the 2022-2024 period is available at <https://stakeholdercenter.caiso.com/RecurringStakeholderProcesses/Annual-policy-initiatives-roadmap-process-2022>.

matter further in the 2023 roadmap process, and the CAISO expects to begin a stakeholder initiative on rules of conduct issues in 2023 to consider these matters and mitigate the need for future waiver requests.<sup>21</sup>

### **G. Current Meter Data Penalty Issues**

Unfortunately, the CAISO cannot complete the upcoming stakeholder process in time to address several pending inaccurate meter data penalty issues under the existing rules for situations similar to what NV Energy faced. Six scheduling coordinators are in some stage of the rules of conduct process for correcting relatively small but long-lasting errors that, to the CAISO's best understanding, the scheduling coordinators made in good faith. Additionally, the CAISO believes the underlying problems leading to the initially incorrect meter data values have been addressed. Three of the scheduling coordinators are in the final stages of the process and, absent a penalty waiver, face penalties of \$639,000, \$365,000, and \$122,000. The other three scheduling coordinators are still in the initial stages of the process, so the CAISO does not have precise penalty figures for those entities but it estimates they all face penalties ranging from several hundred thousand dollars up to almost \$800,000. The total penalty exposure among these six parties is approximately \$2.4 million.

Of these six entities facing penalties for long-duration errors, four are participants in the Western Energy Imbalance Market (WEIM) and have reported

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<sup>21</sup> Information on the roadmap process for the 2023-2025 period is available at <https://stakeholdercenter.caiso.com/RecurringStakeholderProcesses/Annual-policy-initiatives-roadmap-process-2023>.

inaccurate meter data going back, in some cases, to the start of their participation in the WEIM and were triggered by errors or misunderstandings regarding the CAISO's meter data reporting expectations. The other two of the six entities serve load under California's Direct Access program.<sup>22</sup> They report their meter data to the CAISO based on underlying meter data values provided to them by a utility distribution company. Due to data transfer processing issues with the utility distribution company, the values they originally reported to the CAISO were incorrect and required revision. Those data transfer issues have since been addressed. In the CAISO's view, these six parties are in substantially similar circumstances to those NV Energy faced because they are exposed to significant penalties for inaccurate meter data because of relatively small but long-lasting errors that seem to have been made in good faith and that are largely, if not fully, corrected. The CAISO would be concerned if they faced penalties when NV Energy already had its penalties excused.

Along with the meter data penalties facing these six parties, there are ten other pending inaccurate meter data penalty cases covering nine parties ranging from \$1,000 to \$39,000. The total penalties across these ten cases is \$102,000. Although these penalties do not match the magnitude or nature of the NV Energy matter (or the six penalty cases described above), the CAISO would find it inappropriate to ask the Commission to excuse several million dollars of

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<sup>22</sup> General information on California's Direct Access program is available here: <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-costs/learn-more-about-costs-and-rates>.

penalties for large inaccurate meter data violations but enforce these small penalties for issues scheduling coordinators addressed relatively quickly. As further explained below, this could establish a perverse incentive for scheduling coordinators not to address meter data issues quickly. The CAISO thus also seeks to excuse these ten penalty cases totaling \$102,000.

Besides these 15 pending matters comprising approximately \$2.5 million in total penalties, the CAISO is deeply concerned about the potential for new inaccurate meter data penalty issues to arise before it can revise its tariff rules. The CAISO finds it inappropriate to continue enforcing the meter data penalties as constructed when they can lead to unjust and unreasonable outcomes. Rather than continue submitting further waivers as inappropriate meter data penalties accrue, the CAISO finds it more appropriate to suspend application of the inaccurate meter data penalties pending the CAISO's contemplated stakeholder initiative. A temporary suspension of further penalties for inaccurate meter data also will provide the CAISO and stakeholders the opportunity to focus on the initiative without the additional distraction of managing active inaccurate meter data penalty cases.

The CAISO acknowledges future penalty matters for inaccurate meter data may not necessarily follow the same pattern as with NV Energy, which motivated this filing. That possibility, however, does not suggest a temporary blanket suspension of meter data penalties is inappropriate. For example, some misreported meter data might cover a short period and thus lead to relatively small penalties, compared to the long-lasting and highly penalized errors with NV

Energy and the six scheduling coordinators referenced above. However, the CAISO would be concerned about the perverse incentives created only if long-standing meter data issues were excused, but issues addressed quickly continued to be penalized while the stakeholder initiative is pending. The CAISO desires to incent scheduling coordinators to report any meter errors promptly to promote accurate market settlement, and a blanket waiver during the interim period follows that objective. This is because the blanket suspension of the penalties does not create incentives for scheduling coordinators to wait for a longer period to obtain an exemption available only if the reporting of long-standing errors are excused. A suspension of penalties for inaccurate meter data only for long-lasting errors would unduly punish scheduling coordinators who report their meter data errors promptly, while rewarding those scheduling coordinators who delay.

The CAISO recognizes new inaccurate meter data issues arising during the penalty suspension period might not result from good faith errors. It might be concerning if there were no consequences for market participants whose meter data reporting failures are made in bad faith. The CAISO's established market monitoring procedures effectively address this concern. Regardless of this potential waiver, if the CAISO or its Department of Market Monitoring suspects an entity submitted incorrect meter data deliberately or recklessly in violation of

the Commission's duty of candor<sup>23</sup> or in violation of the Commission's market manipulation rules<sup>24</sup> as part of a broader scheme to defraud the market, then such conduct can be reviewed and remedied by the Commission's Office of Enforcement. The Commission's Office of Enforcement has authority under the Federal Power Act to pursue penalties far beyond the CAISO tariff's \$1,000 per trading day penalty.<sup>25</sup> Thus, waiving the meter data penalties for a short period will not undermine the ability to penalize the meter data submission issues that pose the greatest risk to the CAISO market.

#### **H. Penalty Distribution to "Eligible Market Participants"**

Although excusing meter data penalties pending completion of the CAISO's stakeholder initiative addresses a major CAISO concern, such a waiver would create a new issue. If these penalties are waived, the benefitting parties arguably would be "eligible Market Participants" under section 37.9.4 for purposes of distributing rules of conduct proceeds if they were not subject to other rules of conduct penalties during the year. That would be a problematic outcome. Any party whose penalties are excused per the requested penalty waiver must have violated the CAISO tariff. This waiver filing is about whether they should pay the existing financial penalties, which are assessed on a strict

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<sup>23</sup> 18 CFR § 35.41(b).

<sup>24</sup> 18 CFR § 1c.2.

<sup>25</sup> See 16 USC § 825o-1(b) ("Any person who violates any provision of subchapter II or any provision of any rule or order thereunder shall be subject to a civil penalty of not more than \$1,000,000 for each day that such violation continues").

liability basis. The CAISO believes they should not. It is, however, inappropriate for the CAISO to act as if no violations occurred. Ensuring that all parties whose penalties are excused are treated as ineligible market participants would recognize that the violations occurred and would promote greater equity for parties without violations.<sup>26</sup> If the penalty waiver were granted, parties without a violation already would see a reduction in their allocation because there will be fewer funds in the penalty pool. They should not see a further reduction that would happen if the parties subject to this waiver received a *pro rata* share of the pool that is available only to entities that did not violate the CAISO tariff.

## **II. Petition for Waiver**

Good cause exists for the Commission to grant a limited waiver to: (a) excuse the CAISO from assessing financial penalties for inaccurate meter data in the CAISO's rules of conduct enforcement process until the earlier of the effective date of future revisions to the meter data penalties outlined in section 37.11 or May 1, 2024; and (b) treat any entities whose penalties are excused under part (a) as ineligible market participants under CAISO tariff section 37.9.4.

While this request is pending, the CAISO will continue to follow the rules of conduct administrative procedures outlined in section 37.8, including assessing any applicable penalties on a settlement statement, for inaccurate

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<sup>26</sup> The "ineligible market participant" question was not at issue in the NV Energy waiver filing because NV Energy already was ineligible in 2020 for other reasons. Had this not been the case, the CAISO would have requested waiver for this issue as well.

meter data submissions.<sup>27</sup> Additionally, the CAISO is not seeking waiver of any penalties for late meter data submissions and will continue enforcing those penalties fully. Also, the CAISO does not seek waiver of the market adjustment provisions. Those provisions provide a proxy for a disgorgement calculation and do not serve as a financial sanction. For this reason, the CAISO would continue to charge market adjustments under section 37.11.2 if the Commission grants this waiver request. Finally, the CAISO only seeks waiver of penalties for inaccurate meter data violations currently in the rules of conduct enforcement process or that enter the process during the waiver period. The CAISO does not seek waiver for penalties relating to trading days that occur during the waiver period if those issues enter the process after the waiver period has expired. This limitation is important to avoid a protracted waiver period. Otherwise, meter data errors that occur during the waiver period but are reported to the CAISO several years later would still qualify for the waiver. It is important the CAISO knows with certainty which entities have qualified for the waiver. Imposing this clear cut-off will also create a greater incentive and sense of urgency for scheduling coordinators to identify all potential accumulated meter data issues promptly.

**A. Meeting the Four Traditional Waiver Criteria**

The Commission previously has granted requests for tariff waivers where: (1) the applicant acted in good faith; (2) the waiver was of limited scope; (3) the

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<sup>27</sup> The CAISO would treat this current filing as equivalent to a market participant appeal for purposes of the penalty tolling provision in section 37.8.10 because the CAISO is submitting this filing on behalf of the impacted entities.

waiver addressed a concrete problem; and (4) the waiver did not have undesirable consequences, such as harming third parties. This waiver petition meets all four conditions.

The CAISO and the market participants have acted in *good faith*. The CAISO is bringing this waiver request to the Commission's attention as soon as feasible after concluding that a temporary blanket waiver of the meter data penalties is necessary to avoid undesirable consequences. Additionally, meter data penalties are virtually always the result of self-reported meter data corrections.

The waiver requests are of *limited scope* because they would be in effect no later than May 1, 2024, and apply only to one of the two types of meter data penalties, which themselves are only one aspect of the CAISO's rules of conduct.

The waivers address three *concrete problems*. The first waiver addresses the concrete problem that penalties for inaccurate meter data can far exceed the amount needed to support the objectives of the penalties and can be misaligned with the severity of the violation. This waiver also addresses the concrete problem of the CAISO not having sufficient time to consider revisions to section 37 through the upcoming stakeholder initiative in a thoughtful and comprehensive manner without the distraction of further significant penalties continuing to accrue. The second waiver addresses a concrete problem the first waiver creates as a side effect. Absent this second waiver, scheduling coordinators whose penalties are excused could be eligible to receive an allocation of other scheduling coordinators' penalties for violating the tariff, which is inappropriate

because the parties benefiting from the waiver have themselves violated the CAISO tariff. Only scheduling coordinators that have not violated the tariff should be eligible for an allocation of penalty proceeds.

Finally, the waiver requests avoid *undesirable consequences*. The first waiver avoids the undesirable consequence of imposing unreasonable and excessive penalties on CAISO market participants that arguably are unjust and unreasonable. Notably, the CAISO will continue to apply all meter data submission requirements other than the penalties outlined in section 37.11. The CAISO also will maintain visibility of late corrections of meter data, and it can take appropriate actions outside of the rules of conduct if it appears market participants are intentionally or recklessly submitting inaccurate data. The second waiver avoids the undesirable consequence of permitting market participants to receive a share of the penalty proceeds when they have violated the tariff.

The CAISO acknowledges granting the first waiver will reduce the overall pool of rules of conduct funds to distribute to entities without a violation. However, the CAISO does not view reducing the ultimate payment to those market participants as an undesirable consequence that should prevent the Commission from granting this request. The rules of conduct process tries to incentivize compliance rather than maximize assessed penalties. Assessing disproportionate penalties would not create incremental incentives for compliance. Finally, it is speculative to claim any particular third party would be

harmed by this waiver because no market participant is guaranteed eligibility for an allocation from the rules of conduct funds until the year is over.

**B. This Request is not an Impermissible Retroactive Waiver**

Approving this waiver would not violate the filed rate doctrine or cause the Commission to engage in retroactive ratemaking. In a prior order rejecting a CAISO market participant's request for a waiver to submit updated meter data after the tariff-defined deadline, the Commission noted the key factor the Commission considers in evaluating whether a requested waiver "would violate either the filed rate doctrine or the rule against retroactive ratemaking, is whether the ratepayers had sufficient notice that the approved rate was subject to change."<sup>28</sup> In that scenario, the Commission found it dispositive that CAISO tariff section 10.3.6.4 (*i.e.*, the section to which the waiver request pertained) expressly states that meter data submitted after the deadline "will be rejected by the CAISO and not used in settlement calculations."<sup>29</sup>

In contrast, section 37 of the CAISO tariff, which is the subject of this filing, provides clear notice to the market that consequences outlined in that tariff section are subject to further Commission review. As noted above, section 37.8.10 provides that if the CAISO determines a penalty is warranted, the market

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<sup>28</sup> *Pac. Gas & Elec. Co.*, 173 FERC ¶ 61,051, P 14 (2020). See also *Sunflower Elec. Power Corp.*, 173 FERC ¶ 61,054, Comm'r Danly dissent at P 7 (2020) ("the Commission is legally barred by the filed rate doctrine and the rule against retroactive ratemaking from granting a retroactive waiver request unless . . . the parties had notice that the tariff provision could be waived retroactively").

<sup>29</sup> 173 FERC ¶ 61,051, at P 16.

participant “may obtain immediate review of the CAISO’s determination by directly appealing to FERC . . . .” This portion of the CAISO’s filed rate expressly enables the Commission to perform its own after-the-fact review of rules of conduct penalties, and “changes what would be purely retroactive ratemaking into a functionally prospective process by placing the relevant audience on notice at the outset that the rates being promulgated are provisional only and subject to later revision.”<sup>30</sup>

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<sup>30</sup> *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791, 797 (D.C. Cir. 1990). See also *Nat. Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1075 (D.C. Cir. 1992) (“filed rate doctrine simply does not extend to cases in which buyers are on adequate notice that resolution of some specific issue may cause a later adjustment to the rate being collected at the time of service”).

### III. Conclusion

The Commission should find that good cause exists to grant the CAISO's request for a limited tariff waiver to excuse pending inaccurate meter data penalties, excuse future inaccurate meter data penalties for a limited period, and treat the affected entities as ineligible market participants under CAISO tariff section 37.9.4.

Respectfully submitted,

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