

186 FERC ¶ 61,229  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

City of Tacoma, Department of Public Utilities, Light Division	Docket Nos.	EL23-103-000 EL24-14-000 EL24-25-000 EL24-40-000
v.		
California Independent System Operator Corporation		

ORDER GRANTING COMPLAINTS

(Issued March 27, 2024)

1. On September 28, 2023, the City of Tacoma, Department of Public Utilities, Light Division (Tacoma Power), pursuant to sections 206 and 306 of the Federal Power Act (FPA)<sup>1</sup> and Rule 206 of the Commission’s Rules of Practice and Procedure,<sup>2</sup> filed a complaint in Docket No. EL23-103-000 (Complaint 1) appealing penalties of \$42,000 assessed by the California Independent System Operator Corporation (CAISO) pursuant to CAISO’s Open Access Transmission Tariff (Tariff) section 37.8.10 for the period of May 20, 2022 to June 30, 2022, and requesting that the Commission nullify the penalties in their entirety.<sup>3</sup>

2. On November 13, 2023, Tacoma Power, pursuant to sections 206 and 306 of the FPA and Rule 206 of the Commission’s Rules of Practice and Procedure, filed a complaint in Docket No. EL24-14-000 (Complaint 2) appealing penalties of \$31,000 assessed by CAISO pursuant to Tariff section 37.8.10 for the period of July 1, 2022 through July 31, 2022 and requesting that the Commission nullify the penalties in their entirety.<sup>4</sup>

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<sup>1</sup> 16 U.S.C. §§ 824e, 825e.

<sup>2</sup> 18 C.F.R. § 385.206 (2023).

<sup>3</sup> Complaint 1 at 1-2.

<sup>4</sup> Complaint 2 at 2.

3. On November 21, 2023, Tacoma Power, pursuant to section 206 and 306 of the FPA and Rule 206 of the Commission’s Rules of Practice and Procedure, filed a complaint in Docket No. EL24-25-000 (Complaint 3) appealing penalties of \$31,000 assessed by CAISO pursuant to Tariff section 37.8.10 for the period of August 1, 2022 to September 31, 2022 and requesting that the Commission nullify the penalties in their entirety.<sup>5</sup>

4. On December 12, 2023, Tacoma Power, pursuant to section 206 and 306 of the FPA and Rule 206 of the Commission’s Rules of Practice and Procedure, filed a complaint in Docket No. EL24-40-000 (Complaint 4) appealing penalties of \$30,000 assessed by CAISO pursuant to Tariff section 37.8.10 for the period of September 1, 2022 to September 30, 2022 and requesting that the Commission nullify the penalties in their entirety.<sup>6</sup>

5. In this order, we grant the Complaints, as discussed below.

### **I. Background**

6. Under Tariff section 37.5.2, CAISO requires Scheduling Coordinators to submit Settlement Quality Meter Data<sup>7</sup> 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 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).<sup>8</sup>

7. 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

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<sup>5</sup> Complaint 3 at 2.

<sup>6</sup> Complaint 4 at 2. Citations referencing identical statements in each of the four complaints will appear collectively as “Complaints.”

<sup>7</sup> Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in CAISO’s Tariff.

<sup>8</sup> CAISO, CAISO eTariff, § 37.5.2 (Accurate and Timely Actual SQMD) (7.0.0).

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).<sup>9</sup>

8. 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.”<sup>10</sup>

9. 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.<sup>11</sup>

10. Tacoma Power is a vertically integrated, publicly-owned utility that owns and operates 2,386 miles of transmission and distribution lines and is directly interconnected to the transmission systems of Puget Sound Energy and the Bonneville Power Administration.<sup>12</sup> Tacoma Power explains that, on March 2, 2022, it joined the Western Energy Imbalance Market (WEIM), which provides balancing authority areas in the Western Interconnect

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<sup>9</sup> CAISO, CAISO eTariff, § 37.11 (Method For Calculating Penalties) (0.0.0).

<sup>10</sup> CAISO, CAISO eTariff, § 37.9.4 (Disposition of Proceeds) (1.0.0).

<sup>11</sup> CAISO, CAISO eTariff, § 37.8.10 (Review of Determination) (6.0.0).

<sup>12</sup> Complaints at 3-4.

with the opportunity to participate in the real-time market for imbalance energy that CAISO operates in its own balancing authority area.<sup>13</sup> Further, Tacoma Power is a party to the CAISO Energy Imbalance Market Entity Agreement that accounts for the legal, regulatory and operational issues specific to Tacoma Power.<sup>14</sup>

11. Tacoma Power explains that upon its integration into CAISO, it elected not to have CAISO settle Unaccounted For Energy. Tacoma Power explains that rather than set its Transmission System Loss Factor to zero, it initially included a Transmission System Loss Factor of 1.87% in its EIM External Load Aggregation Point (ELAP) calculation, which is the loss factor in Tacoma Power's Open Access Transmission Tariff.<sup>15</sup> According to Tacoma Power, retaining the Transmission System Loss Factor created an error in the ELAP metered demand calculation. Upon discovering the meter data inaccuracies in late January 2023, Tacoma Power corrected the underlying issue the next day when it also reported the error to CAISO.<sup>16</sup> Tacoma Power explains that it corrected its error by performing a configuration change in its third-party Meter Data Management system.<sup>17</sup>

## II. Tacoma Power's Complaints

12. In Complaint 1, Tacoma Power explains that for the period May 20, 2022 to June 30, 2022, it under-reported load by an hourly average of 1.87%, resulting in an

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<sup>13</sup> *Id.* at 4.

<sup>14</sup> *Id.* (citing *Cal. Indep. Sys. Operator, Inc.*, Docket No. ER21-674-000 (Oct. 22, 2020) (delegated order) (accepting EIM Entity Agreement to facilitate its entry into and govern its participation in the WEIM); *Cal. Indep. Sys. Operator, Inc.*, Docket No. ER20-581-000 (Dec. 12, 2019) (delegated order) (accepting Tacoma Power's Implementation Agreement with CAISO to incorporate Tacoma Power into the WEIM, which includes key milestones and associated payment provisions)).

<sup>15</sup> *Id.* at 5-6. Tacoma Power also explains that its subject matter expert for WEIM Settlements passed away on August 31, 2021, which created a gap in the Tacoma Power implementation team. Tacoma Power also explains that its staff was focused on the final activities leading up to WEIM Go-Live and during this time did not appreciate the full nuance of each WEIM calculation input. For these reasons, the Tacoma Power staff did not catch the error in advance of Tacoma Power's integration into the CAISO market. *Id.*

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.*

average error of 7.86 MWh.<sup>18</sup> In Complaint 2, Tacoma Power states that for the period July 1, 2023 to July 31, 2023, it under-reported load by an hourly average of 1.87%, resulting in an average error of 8.32 MWh.<sup>19</sup> In Complaint 3, Tacoma Power explains that for the period August 1, 2022 to August 31, 2022, it under-reported load by an hourly average of 1.87%, resulting in an average error of 8.45%.<sup>20</sup> In Complaint 4, Tacoma Power explains that for the period September 1, 2022 to September 30, 2022, it under-reported load by an hourly average of 1.87%, resulting in an average error of 7.72 MWh.<sup>21</sup> Tacoma Power explains that the meter data for the periods that are subject to the penalty disputed in these Complaints were recalculated through the normal settlement recalculation process and that the recalculation primarily affected the Tacoma Power balancing authority area.<sup>22</sup> Tacoma Power asserts that the recalculation produced a benefit to Tacoma Power because on net, the error negatively affected Tacoma Power rather than the broader market.<sup>23</sup> As a result, Tacoma Power explains that, while the error initially resulted in overpayment to Tacoma Power for energy, several associated charge codes resulted in charges to Tacoma Power that were greater than the overpayment for energy. Tacoma Power explains that, when it resubmitted the meter data, a reversal of those charges created a net payment to Tacoma Power.<sup>24</sup> Additionally, in Complaint 1, Tacoma Power explains that the recalculation produced an invoice deviation interest distribution credit which indicated that Tacoma Power had overpaid the market because of its error and was refunded interest accrued on that overpayment.<sup>25</sup>

13. Tacoma Power requests that the Commission waive the penalties imposed by Tariff section 37. Tacoma Power asserts that CAISO's Tariff provision establishing the penalty rate for meter data inaccuracies does not permit CAISO any discretion to reduce or choose not to apply the penalty. In Complaint 1, Tacoma Power states that CAISO's

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<sup>18</sup> Complaint 1 at 2, 8.

<sup>19</sup> Complaint 2 at 8.

<sup>20</sup> Complaint 3 at 8.

<sup>21</sup> Complaint 4 at 8.

<sup>22</sup> Complaints at 8.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Complaint 1 at 9.

Tariff required that CAISO issue penalties of \$42,000 for May 20, 2022 to June 30, 2022.<sup>26</sup> In Complaint 2, Tacoma Power states that CAISO's Tariff required that CAISO issue penalties of \$31,000 for July 1, 2022 to July 31, 2022.<sup>27</sup> In Complaint 3, Tacoma Power states that CAISO's Tariff required that CAISO issue penalties of \$31,000 for August 1, 2022 to August 31, 2022.<sup>28</sup> In Complaint 4, Tacoma Power states that CAISO's Tariff required that CAISO issue penalties of \$30,000 for September 1, 2022 through September 30, 2022.<sup>29</sup> Tacoma Power asserts that the actual Tariff violation is the result of a minor and inadvertent meter data error that had negligible effect upon the market.<sup>30</sup>

14. Tacoma Power argues that the Commission should waive CAISO's Tariff penalty provisions and excuse the meter data penalties because the current penalties are unjust and unreasonable, particularly as CAISO's Tariff requires that additional penalties must be issued to Tacoma Power for the full period of the meter data error.<sup>31</sup> Tacoma Power explains that it anticipates that in the near future CAISO will issue additional penalties to cover the remaining time period of meter error totaling approximately \$250,000.

15. In support of the Complaints, Tacoma Power argues that, in *NV Energy*,<sup>32</sup> the Commission granted the request for waiver filed by CAISO, on behalf of NV Energy, Inc. (NV Energy) to allow CAISO to excuse penalties where NV Energy made an inadvertent error, in that case involving metering at a generation point. Tacoma Power asserts that meter data provided by generation and by load have similar effects on the WEIM. Further, Tacoma Power comments that in *NV Energy* and in its own circumstances, the effect on the WEIM was not immediately detected because they involved a small amount of energy and the market participant acted promptly.<sup>33</sup> Tacoma Power asserts that, similar to NV Energy, Tacoma Power also took substantially similar actions to bring the meter data error to

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<sup>26</sup> *Id.* at 2.

<sup>27</sup> Complaint 2 at 2.

<sup>28</sup> Complaint 3 at 2.

<sup>29</sup> Complaint 4 at 2.

<sup>30</sup> Complaints at 2.

<sup>31</sup> *Id.* at 10.

<sup>32</sup> *Cal. Indep. Sys. Operator Corp.*, 175 FERC ¶ 61,043 (2021) (*NV Energy*).

<sup>33</sup> Complaints at 10.

CAISO's attention as soon as feasible, promptly filing corrective meter data, and confirming that the underlying error had been resolved.<sup>34</sup>

16. Further, as Tacoma Power explains, the error occurred because of a misunderstanding in the treatment of line losses that occurred during the WEIM implementation.<sup>35</sup> Tacoma Power comments that correcting the underlying error required a configuration change in its third-party Meter Data Management system. Because this system is the last step in processing the information and transmitting it to CAISO, no corrective actions were required for upstream systems or processes.<sup>36</sup>

17. Further, Tacoma Power asserts that its requested waivers are of limited scope because the waivers are only related to meter data involved in the calculation load of Tacoma Power for a limited period of time.<sup>37</sup>

18. Tacoma Power explains that in Complaint 1, its requested waiver addresses the concrete problem of \$42,000 in penalties based upon meter data error that resulted in the under-reporting of energy by 7.86 MWh on average.<sup>38</sup> In Complaint 2 Tacoma Power's requested waiver addresses the concrete problem of \$31,000 in penalties assessed based upon meter data error that resulted in the under-reporting of energy by 8.32 MWh on average.<sup>39</sup> In Complaint 3, Tacoma Power's requested waiver addresses the concrete problem of \$31,000 in penalties assessed based upon meter data error that resulted in the under-reporting of energy by 8.45 MWh on average.<sup>40</sup> In Complaint 4, Tacoma Power's requested waiver addresses the concrete problem of \$30,000 in penalties assessed based upon meter data error that resulted in the under-reporting of energy by 7.72 MW per hour.<sup>41</sup> Tacoma Power asserts that this is a *de minimis* quantity that had a negligible

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<sup>34</sup> *Id.* at 10-11.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 11.

<sup>37</sup> *Id.* at 12.

<sup>38</sup> Complaint 1 at 12.

<sup>39</sup> Complaint 2 at 12.

<sup>40</sup> Complaint 3 at 12.

<sup>41</sup> Complaint 4 at 12.

effect on CAISO's markets.<sup>42</sup> Tacoma Power argues that these penalties are unnecessarily punitive to achieve the goal of submission of accurate and timely settlement quality meter data, especially in view of the minor nature of the meter data inaccuracy that resulted in the penalty.<sup>43</sup>

19. Additionally, Tacoma Power argues that, given the specific language in Tariff section 37.8.10 that permits any penalty to be tolled pending appeal to the Commission, a waiver does not violate the filed rate doctrine or the rule against retroactive ratemaking.<sup>44</sup> Tacoma Power asserts that the Commission has recognized that no violation of the filed rate doctrine occurs when buyers are on adequate advanced notice that resolution of some specific issue may cause a later adjustment to the rate being collected at the time of service. Therefore, Tacoma Power argues that where a tariff indicates that a specific tariff provision is subject to a remedial waiver, granting such a waiver does not violate the filed rate doctrine or the rule against retroactive ratemaking.<sup>45</sup>

20. Tacoma Power explains that although CAISO is in the process of developing through its stakeholder process proposed Tariff modifications to its penalty provisions that are commensurate with the harm of the violation, the current Tariff-produced penalties are not commensurate with the targeted conduct, are not just and reasonable, and are unduly punitive. For these reasons, Tacoma Power requests that the Commission waive application of CAISO's Tariff by nullifying the penalties invoiced against it.<sup>46</sup>

21. Finally, Tacoma Power argues that its request does not have undesirable consequences because the data error had a negligible effect on WEIM market participants and, similar to the Commission's findings in *NV Energy*, the third parties in the CAISO markets were not harmed and the error only affected energy imbalance requirements for

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<sup>42</sup> Complaints at 12.

<sup>43</sup> *Id.* (citing *NV Energy*, 175 FERC ¶ 61,043 at P 28).

<sup>44</sup> *Id.* at 13-14 (citing *Upstream Wind Energy LLC*, 173 FERC ¶ 61,057, at P 22 (2020); *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1231 (D.C. Cir. 2018) (quoting *Nat. Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1075 (D.C. Cir. 1992))).

<sup>45</sup> *Id.* at 14. Tacoma Power comments that CAISO's Rules of Conduct and penalties for non-compliance, which were changed in 2011 to mitigate the effect of "significant penalties for load serving entities," apply to the WEIM. *Id.* (citing CAISO, CAISO eTariff, § 29.37 (Rules of Conduct) (0.0.0)).

<sup>46</sup> *Id.* at 15-16.



the Tacoma Power balancing authority area.<sup>47</sup> Tacoma Power also asserts that, to the extent penalties are intended to incentivize compliance, it has demonstrated its commitment to compliance by promptly self-reporting the error.<sup>48</sup>

### **III. Notices and Responsive Pleadings**

22. Notice of Tacoma Power's Complaint 1 in Docket No. EL23-103-000 was published in the *Federal Register*, 88 Fed. Reg. 68,597 (Oct. 4, 2023), with interventions and protests due on or before October 30, 2023. CAISO filed an answer in support of Tacoma Power's Complaint 1.

23. Notice of Tacoma Power's Complaint 2 in Docket No. EL24-14-000 was published in the *Federal Register*, 88 Fed. Reg. 80,710 (Nov. 20, 2023), with interventions and protests due on or before December 4, 2023. NRG Business Marketing LLC (NRG) filed a timely motion to intervene. CAISO filed a combined answer in support of Tacoma Power's Complaint 2 and Complaint 3.

24. Notice of Tacoma Power's Complaint 3 in Docket No. EL24-25-000 was published in the *Federal Register*, 88 Fed. Reg. 83,114 (Nov. 28, 2023), with interventions and protests due on or before December 11, 2023. NRG filed a timely motion to intervene. CAISO filed a combined answer in support of Tacoma Power's Complaint 2 and Complaint 3.

25. Notice of Tacoma Power's Complaint 4 in Docket No. EL24-40-000 was published in the *Federal Register*, 88 Fed. Reg. 87,421 (Dec. 18, 2023), with interventions and protests due on or before January 2, 2024. NRG filed a timely motion to intervene. CAISO filed an answer in support of Tacoma Power's Complaint 4.

### **IV. CAISO's Answers**

26. In its answer to Tacoma Power's Complaint 1, CAISO states that it supports Tacoma's request that the Commission dismiss the \$42,000 sanction because this penalty is inequitable based upon the facts of the complaint. CAISO explains that the current \$1,000 per trading day sanction can result in disproportionate penalties, particularly in cases that involve relatively minor and inadvertent, but long-lasting metering errors.<sup>49</sup> Also, CAISO comments that Tacoma Power's request represents another case where a CAISO market participant would face disproportionate penalties arising from an

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<sup>47</sup> *Id.* at 16.

<sup>48</sup> *Id.*

<sup>49</sup> CAISO Answer to Complaint 1 at 2.

inadvertent meter data error that the participant corrected and reported upon discovery.<sup>50</sup> CAISO requests that, in the event the Commission grants Tacoma Power's requested relief, it also grant relief for all trade dates affected by this inaccurate loss factor issue.<sup>51</sup>

27. In its answer to Tacoma Power's Complaint 2 and Complaint 3, CAISO explains that both of these complaints are substantially similar to Complaint 1 and that, aside from the affected trading days, the underlying issues in the Complaints are similar. CAISO also comments that its answer to Complaint 1 supporting Tacoma Power's requested relief, applies equally to the later complaints. CAISO reiterates its request that the Commission consider granting "relief for all trade dates affected by the inaccurate lost factor" to "lessen the administrative burden on Tacoma, the Commission and . . . CAISO."<sup>52</sup>

28. In its answer to Tacoma Power's Complaint 4, CAISO states that aside from the affected trading days, the underlying issues in the three previously filed Tacoma Power Complaints are essentially the same as the issues in this fourth docket.<sup>53</sup> CAISO reiterates its support for Tacoma Power's request for relief, explaining that Tacoma Power has established that it was subject to inequitable penalties under the existing tariff rules.<sup>54</sup>

## V. Discussion

### A. Procedural Matters

29. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2023), NRG's timely, unopposed motions to intervene serve to make it a party to Docket Nos. EL24-14-000, EL24-25-000, and EL24-40-000.

### B. Substantive Matters

30. As an initial matter, we find that Tacoma Power's Complaints are properly before the Commission and, as discussed below, we grant the Complaints. Tariff section 37.8.10

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<sup>50</sup> *Id.* at 1 (citing *City of Corona, Cal. v. Cal. Indep. Sys. Operator Corp.*, Answer to Complaint, Docket No. EL23-99-000; *Idaho Power Co. v. Cal. Indep. Sys. Operator Corp.*, Answer to Complaint, Docket No. EL23-94-000).

<sup>51</sup> *Id.* at 3.

<sup>52</sup> CAISO Answer to Complaint 2 at 2 (quoting CAISO Answer to Complaint 1 at 3); CAISO Answer to Complaint 3 at 2 (same).

<sup>53</sup> CAISO Answer to Complaint 4 at 1.

<sup>54</sup> *Id.* at 1-2.

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.”<sup>55</sup> 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.<sup>56</sup> Subsequently, in *NV Energy*, when granting CAISO’s request for waiver of Tariff section 37 as applied to NV Energy, 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,<sup>57</sup> thereby providing adequate notice that the penalty procedures delineated in that Tariff section may be subject to further Commission review.<sup>58</sup> Thus, we find that Tacoma Power’s Complaints are consistent with the Commission’s previous findings.<sup>59</sup>

31. Further, we agree with Tacoma Power that nullifying the Tariff section 37 penalties under the instant circumstances will not violate the filed rate doctrine or the rule against

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<sup>55</sup> CAISO, CAISO eTariff, § 37.8.10 (Review of Determination) (6.0.0).

<sup>56</sup> *Hanwha Q-CELLS USA Corp.*, 174 FERC ¶ 61,013, at P 9; *Mission Solar LLC*, 174 FERC ¶ 61,014, at P 10; *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.

<sup>57</sup> *NV Energy*, 175 FERC ¶ 61,043 at n.29. The Commission has also stated in regard to the intervenor Idaho Power Company’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 “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).

<sup>58</sup> *See Pac. Gas & Elec. Co.*, 173 FERC ¶ 61,051, at P 14 (2020).

<sup>59</sup> 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.

retroactive ratemaking. Consistent with the analysis above, we conclude that Tariff section 37 provides adequate notice to the market that the penalty procedures delineated in that Tariff section may be subject to further Commission review.<sup>60</sup> 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.

32. Based on the evidence presented by Tacoma Power in this proceeding, we find that Tacoma Power 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 Tacoma Power 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 market clearing prices in the WEIM.<sup>61</sup> We, therefore, grant Tacoma Power's Complaints and direct CAISO to nullify the meter data error penalties assessed against Tacoma Power.

The Commission orders:

Tacoma Power's Complaints are hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Debbie-Anne A. Reese,  
Acting Secretary.

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<sup>60</sup> Pursuant to Tariff section 37, CAISO has no discretion to reduce or choose not to apply the Penalty. *See, e.g.*, Tacoma Power Complaint 1 at 2.

<sup>61</sup> *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.").