

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

Exelon Corporation ) Docket No. ER12-1994-000  
 )

**MOTION TO INTERVENE AND COMMENTS OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (ISO) hereby submits this Motion to Intervene and Comments in response to the waiver request made by Exelon Corporation on behalf of its wholly-owned subsidiary Constellation NewEnergy (CNE), which was filed in the above-referenced docket on June 11, 2012.<sup>1</sup> Exelon requests a one-time waiver of a previously applicable penalty provision in the ISO's FERC Electric Tariff and instead requests that the Commission apply the currently-effective penalty provision.

As discussed below, in a recent tariff amendment filing with the Commission, the ISO referred to the then-existing penalty formula at issue as "overly burdensome" and requested that the Commission approve the ISO's amendment to this tariff provision. Accordingly, the ISO supports Exelon's request insofar as there is a reasonable basis for the Commission to conclude that the penalty derived based on the prior provision is excessive in the present circumstances.

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<sup>1</sup> This motion and comments are submitted pursuant to Rules 212 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.214 (2010) and the Combined Notice of Filings issued in this proceeding on June 21, 2012.

## I. BACKGROUND

On May 24, 2012, the ISO issued a settlement statement to CNE that included a \$281,831 penalty for violating section 37.5.2.1 of the ISO tariff. Section 37.5.2.1 of the ISO tariff requires market participants to “provide complete and accurate Settlement Quality Meter Data for each Trading Hour.” The penalty for violating section 37.5.2.1 is delineated in section 37.11. As it existed during the period of CNE’s violation and as applied to CNE’s violation, section 37.11 provides for a penalty of 30% of the value of the misreported meter data.<sup>2</sup> This penalty is in addition to a market adjustment that, according to section 37.11, “approximates the financial impact on the market” from the meter data error.

On August 1, 2011, the ISO filed proposed tariff amendments necessary to implement changes to the market settlement process timeline, including changes to the timeline for submitting meter data.<sup>3</sup> Along with altering the meter data submission timeline, the ISO also amended section 37.11. The ISO explained that a penalty “based on the volume difference from the initial meter data submittal and the corrected submittal” 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

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<sup>2</sup> Under the then-effective version of section 37.11, the penalty varies depending on whether the scheduling coordinator or the ISO identified the error and whether the misreported data was to the benefit or detriment of the scheduling coordinator. Because CNE identified the error and because the error was to CNE’s benefit, the penalty is 30% of the value of the error.

<sup>3</sup> *Cal. Indep. Sys. Operator Corp.*, Settlements Process Timeline Changes, FERC Docket No. ER11-4171-000 (Aug. 1, 2011) (Settlements Process Timeline filing).

corrected.”<sup>4</sup> On September 30, 2011, the Commission approved the proposed amendments to section 37.11, with the amendments becoming effective October 1, 2011.

On April 3, 2012, the Commission granted a request from Pacific Gas and Electric Company (PG&E) for a one-time waiver of section 37.11, as it existed prior to October 1, 2011, and ordered that PG&E’s penalty be calculated according to section 37.11, as it exists today.<sup>5</sup> In that case, PG&E received a penalty under section 37.11 after October 1, 2011 for conduct that occurred before the amendments to section 37.11 became effective. On June 11, 2012, Exelon filed the instant waiver request, petitioning for CNE to receive similar treatment to what the Commission provided to PG&E. Exelon requests that the ISO apply section 37.11, as it existed after October 1, 2011, to the conduct that gave rise to the penalty.

## **II. COMMENTS**

The ISO supports the notion that a \$281,831 penalty could be viewed as excessive in CNE’s circumstances and supports Exelon’s request to the degree that the Commission could reasonably find that the penalty is excessive. Accordingly, the ISO does not object to the substance of Exelon’s filing. The ISO does note that the Commission previously indicated that appeals of ISO “traffic ticket” penalties should be

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<sup>4</sup> *Id.* at 18.

<sup>5</sup> *Pacific Gas and Electric Co.*, 138 FERC ¶ 61,007 (2012).

made as a complaint under section 206 of the Federal Power Act<sup>6</sup> and that this waiver request could be viewed as essentially a traffic ticket penalty appeal.<sup>7</sup>

The ISO concluded that the prior penalty formula was burdensome because outside of the penalty, market participants committing errors already face the market adjustment, plus interest as applicable. As a result, the primary function of any penalty is to “incent market participants to put into place applicable controls to assure that settlement quality meter data is submitted by the required due date . . . .”<sup>8</sup> The ISO concluded that a 30% penalty: (1) was higher than necessary to provide such an incentive; and (2) can sometimes impose a penalty that is disproportionate to the severity of the violation. In some instances, a single configuration error in how meter data gets reported from a particular resource can lead to flawed meter data reporting over many days. In such a circumstance, each additional trade date of meter data counts as a distinct violation subject to a 30% penalty even though the market participant committed only one substantive error. In such a scenario, a 30% penalty for each day can create an overall disproportionate penalty.<sup>9</sup>

The ISO understands that this is the situation with CNE’s violation. As a result of a human error, certain customers’ data was not included in CNE’s meter data submissions for an approximately seven-week period. As a result, CNE’s submissions of meter data were inaccurate during that time period. Considering that CNE has

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<sup>6</sup> *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,050, P 37 n.32 (2011).

<sup>7</sup> In PG&E’s case, PG&E initially filed as a section 206 complaint, see FERC Docket No. EL12-5-000, but later withdrew its complaint and filed a tariff waiver request, see FERC Docket No. ER12-1009-000. This is the waiver request that the Commission granted on April 3, 2012.

<sup>8</sup> Settlements Process Timeline filing at 20.

<sup>9</sup> Under the new penalty provision, each day will still count as a separate violation. The distinction, however, is that the penalty for each such day will be notably reduced, creating more proportionate penalties.

already been subject to a market adjustment, a penalty of \$281,831 reasonably could be viewed as disproportionate in these circumstances and higher than necessary to prevent a recurrence of the errors that lead to the penalties in the first place.

### **III. MOTION TO INTERVENE**

The ISO is a non-profit public benefit corporation organized under the laws of the State of California, with a principal place of business at 250 Outcropping Way, Folsom, CA 95630. The ISO is a balancing authority responsible for the operation of transmission facilities placed under the ISO's operational control pursuant to a Transmission Control Agreement between the ISO and participating transmission owners. The ISO conducts markets for energy and ancillary services transactions under the provisions of the ISO tariff.

Exelon's filing concerns a waiver of the ISO tariff, which the ISO is responsible for implementing under the Federal Power Act. No other party can adequately represent the ISO's interests. Accordingly, the ISO requests the Commission's permission to intervene with full rights of a party.

### **IV. Communications**

Please address all communications concerning this proceeding to the following persons:

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18 C.F.R. § 203(b)(3).

**V. Conclusion**

For the foregoing reasons, the ISO believes that a \$281,831 penalty for CNE's violation of section 37.5.2.1 as it existed prior to October 1, 2011 could be viewed as excessive in CNE's circumstances and that the Commission would be justified in approving an alternative outcome.

Respectfully submitted,

**By: /s/ David S. Zlotlow**

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Attorneys for the California Independent  
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Dated: July 2, 2012

## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service lists in the above-referenced 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 2<sup>nd</sup> day of July, 2012.

*/s/ Anna Pascuzzo*

Anna Pascuzzo