

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 SDG&E’s violation and as applied to SDG&E’s violation, section 37.11 provides for a penalty of 30% of the value of the misreported meter data.² 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.³ 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 corrected.”⁴ On September 30, 2011, the Commission approved the proposed amendments to section 37.11, with the amendments becoming effective October 1, 2011.

² 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 SDG&E identified the error and because the error was to SDG&E’s benefit, the penalty is 30% of the value of the error.

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

⁴ *Id.* at 18.

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.⁵ 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, SDG&E filed the instant waiver request, petitioning for similar treatment to what the Commission provided to PG&E. SDG&E 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 \$189,802 penalty could be viewed as excessive in SDG&E's circumstances and supports SDG&E'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 SDG&E's filing. The ISO does note that the Commission previously indicated that appeals of ISO "traffic ticket" penalties should be made as a complaint under section 206 of the Federal Power Act⁶ and that this waiver request could be viewed as essentially a traffic ticket penalty appeal.⁷

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

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

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

⁷ 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.

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”⁸ 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.⁹

The ISO understands that this is the situation with SDG&E’s violation. An error in its meter data reporting system caused SDG&E to submit incorrect meter data for a one-week period in August 2011. Notably, SDG&E provided the ISO with corrected meter data within the currently effective meter data submission timeline. Accordingly, had the meter data errors occurred after October 1, 2011, SDG&E’s submission of corrected data would not have triggered any penalties. In these circumstances, the ISO believes that the Commission could reasonably find that a \$189,802 penalty is disproportionate to the nature of SDG&E’s error and higher than necessary to provide adequate incentives for SDG&E to meet current tariff requirements.

⁸ Settlements Process Timeline filing at 20.

⁹ 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.

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.

SDG&E'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 \$189,802 penalty for SDG&E's violation of section 37.5.2.1 as it existed prior to October 1, 2011 could be viewed as excessive in SDG&E's circumstances and that the Commission would be justified in approving an alternative outcome.

Respectfully submitted,

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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 2nd day of July, 2012.

Is/ Anna Pascuzzo

Anna Pascuzzo