ORDER DENYING WAIVER REQUEST  

(Issued October 16, 2020) 

1. On May 8, 2020, Pacific Gas and Electric Company (PG&E) filed a petition for a limited one-time waiver (Petition) of the meter data submission provision in section 10.3.6.4 of the California Independent System Operator Corporation’s (CAISO) tariff. In this order, we deny the Petition as discussed below.

I. Background

2. Section 10.3.6 of the CAISO tariff requires scheduling coordinators to submit settlement quality meter data according to timelines set forth in the tariff.\(^1\) In particular, as relevant to the Petition, section 10.3.6.4 of the tariff allows 172 days for scheduling coordinators to submit corrected data that CAISO will use to perform recalculations. This tariff section also specifies that “[a]ny Actual Settlement Quality Meter Data that is submitted by a Scheduling Coordinator after T+172B, will be rejected by the CAISO and not used in settlement calculations.”\(^2\)

3. PG&E explains that CAISO’s tariff requires scheduling coordinators to submit settlement quality meter data for its customers by established deadlines. PG&E explains that, in order to make the data submissions required by section 10.3.6.4, it compiles retail load meter data through individual meters and passes the meter data through PG&E’s collection systems and into a centralized data warehouse, where internal system processes validate, estimate, and edit the meter data to be used for billing systems, rate development research, and retail load submissions. For CAISO retail load submissions, PG&E aggregates data into total hourly values which are formatted and submitted to CAISO.\(^3\) PG&E states that it added a new data validation process in August 2019 in

\(^1\) CAISO Tariff, § 10.3.6.

\(^2\) Id. § 10.3.6.4.

\(^3\) Petition at 2-3.
order to validate specific accounts with high usage. As a result, PG&E states, the meter data submission team identified irregularities in certain accounts and determined that 37 meters were misconfigured, resulting in incorrect usage reported to the central meter data warehouse and billing systems.4

4. For the first meter misconfiguration, PG&E explains that the Kings River Conservation District generating facility’s meter wiring was found to be inadvertently reversed, resulting in the facility’s generation recorded as load and its actual load recorded as generation. PG&E determined that meter data between March 7, 2019, and August 22, 2019, was affected, resulting in a daily retail load impact of 1,000-4,000 MWh. PG&E states that the second meter misconfiguration involved numerous virtual meters. PG&E explains that virtual meters are used to reflect usage of individual customers where a single physical meter aggregates usage for several customers. PG&E determined that a virtual meter for Sacramento Municipal Utility District load was misconfigured to export to the central data warehouse and that the meter data aggregated into submissions provided to CAISO. PG&E explains that the data was manually corrected between November 30, 2018, and June 30, 2019 resulting in a daily retail load impact of 6,000+ MWh. PG&E states that its billing team corrected this virtual meter configuration, reviewed other virtual meters, and determined that 35 additional virtual meters were misconfigured. PG&E reports that it corrected the misconfigured meters by December 13, 2019.5

5. PG&E asserts that it continuously reviews and validates meter data after its initial submission to CAISO and resubmits corrected meter data. PG&E acknowledges that section 10.3.6.4 of the CAISO tariff allows for resubmission of corrected meter data up to 172 business days after the trading date, but CAISO rejects meter data submitted after that time. PG&E states that it notified CAISO of the misconfigured meters on December 19, 2019, and that, in response, CAISO instructed PG&E to resubmit meter data that fell within the 172-day window. PG&E states that it resubmitted the data for 69 trade dates from April 17, 2019 to June 24, 2019. PG&E also states that on January 24, 2020, it provided a summary to CAISO of the meter misconfiguration issues and impacts and requested guidance from CAISO on resubmitting corrected meter data outside of the 172-day window. PG&E states that, on March 20, 2020, CAISO responded that it could not accept corrected meter data for earlier trade dates outside of the 172-day window, and that PG&E would have to obtain a waiver of tariff

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4 Id. at 3.

5 Id. at 3-4.
section 10.3.6.4 from the Commission to allow CAISO to process the affected data submission.\(^6\)

6. In addition to rectifying the specific meter misconfigurations, PG&E asserts that it has added new validation processes to identify issues and prioritize resolutions, and is also pursuing long-term improvements to the related processes. PG&E states that it will report the meter data issues and new validation processes to CAISO in a 2020 internal audit.\(^7\)

II. Petition

7. PG&E requests a waiver of section 10.3.6.4 of the CAISO tariff so that it can submit corrected meter data for the period of November 30, 2018, through April 16, 2019, and CAISO can re-run settlements for this time. PG&E estimates a 7,000 MWh impact per trade date from November 30, 2018, through April 16, 2019, resulting in approximately $20 million net impact to PG&E’s financial settlements.\(^8\)

8. PG&E argues that the Petition satisfies the Commission’s waiver criteria. First, PG&E asserts that the meter data errors were made in good faith. PG&E explains that one of the errors was the result of an inadvertent wiring installation issue and that the virtual meters were inadvertently exporting data to PG&E’s central data warehouse. PG&E asserts that its settlement group acted quickly to correct meter data errors and notify CAISO, a key element to demonstrate good faith. Second, PG&E asserts that its request is limited in scope because it applies only to 37 specific meters out of over five million retail load meters for a limited and defined number of days. Further, PG&E contends that its request is consistent with the Commission’s prior determinations that waiver requests to permit the submission of corrected data for settlements are limited in scope.\(^9\) PG&E also argues that its request is consistent with the Commission’s consideration of magnitude in determining whether a waiver request is limited in scope, since the total meters at issue is below one half of one percent of the total pricing records created during the relevant time period.\(^10\) Third, PG&E asserts that granting waiver would address a concrete problem; in this case, misconfigured meters providing incorrect

\(^{6}\) Id. at 4-5.

\(^{7}\) Id. at 5-6.

\(^{8}\) Id.

\(^{9}\) Id. at 8 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 160 FERC ¶ 61,067, at PP 24, 30 (2017) (*MISO*).)

\(^{10}\) Id. (citing *Cal. Indep. Sys. Operator Corp.*, 155 FERC ¶ 61,039, at P 33 (2016)).
data to PG&E’s central data warehouse. Fourth, PG&E asserts that granting waiver would not result in undesirable consequences such as harming third parties. PG&E contends that, while some customers may see increased bills for the timeframe in question, resettling the market with corrected meter data is not an undesirable consequence because those customers will now be invoiced based on their actual usage. PG&E notes that the circumstances here are similar to those in a recent proceeding where the Commission granted waiver to allow corrected meter data to be submitted past the date allowed in the New York Independent System Operator, Inc. (NYISO) tariff.11

9. PG&E argues that its request does not violate the rule against retroactive ratemaking. PG&E contends that the Commission previously granted a similar request for waiver, which permitted the Midcontinent Independent System Operator, Inc. (MISO) to use corrected congestion data to resettle approximately $1.2 million in charges.12 PG&E asserts that the Commission determined that MISO’s request did not involve retroactive ratemaking because MISO was seeking to correct erroneous data, not to recover costs that were prohibited by the tariff or were not previously included in the tariff.13 PG&E argues that MISO is instructive here because PG&E, like MISO, is seeking to correct meter data so that the filed rate is implemented with correct data. Moreover, PG&E contends that its request is consistent with the CAISO tariff provisions that allow up to 36 months for the recalculation of settlement statements.14 PG&E states that the transactions at issue here fall within the 36 months and thus there is no retroactive ratemaking.15 Furthermore, PG&E asserts that its Petition is consistent with the Commission precedent affirming that “[t]he general authority [independent system operators] have under the filed rate doctrine allows automatic resettlements to address data input errors, or software malfunctions, for instance.”16

11 Id. at 9 (citing Consol. Edison of N.Y., 168 FERC ¶ 61,047, at PP 1, 4, 10 (2019) (Consolidated Edison)).

12 Id. at 9-10 (citing MISO, 160 FERC ¶ 61,067 at PP 4-5).

13 Id. (citing MISO, 160 FERC ¶ 61,067 at P 2).

14 CAISO Tariff, § 11.29.7.1.

15 Petition at 9-11.

16 Id. at 11 (citing Cal. Indep. Sys. Operator Corp., 137 FERC ¶ 61,180, at P 24 (2011)).
III. Notice and Responsive Pleadings

10. Notice of PG&E’s Petition was published in the Federal Register, 85 Fed. Reg. 29,442 (May 15, 2020), with interventions and protests due on or before May 29, 2020. Timely motions to intervene were filed by City of Santa Clara, California and California Department of Water Resources State Water Project. CAISO filed a timely motion to intervene and comments.

11. In its comments, CAISO confirms that granting waiver would result in an estimated net impact of roughly $20 million to PG&E’s financial settlements, a combination of a $42 million net impact for un instructed imbalance energy charge code and a $22 million net impact for unaccounted for energy charge code. CAISO explains that PG&E would not receive a lump sum payment of this amount; rather, CAISO would resett le each individual trading day based on the updated data. CAISO notes that scheduling coordinators with higher measured demand would be more impacted if the waiver is granted. CAISO also notes that the $20 million estimate does not include all 47 charge codes and that the corrected meter data may potentially impact all charge codes and pro rata weightings. However, CAISO states that, in total, the corrected PG&E meter data would represent an approximate change of seven percent of PG&E’s total CAISO demand during the time period in question, reducing PG&E’s total share of CAISO demand from 19.6% to 18.6%. CAISO asserts that the changes in pro rata weightings for other charge codes will be insignificant.\(^{17}\)

IV. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

13. We find that the relief sought by PG&E, under the circumstances here, is prohibited by the filed rate doctrine and the rule against retroactive ratemaking. Accordingly, we deny the Petition, as discussed below.

14. The filed rate doctrine “forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate federal regulatory authority.”\(^{18}\) The

\(^{17}\) Id. at 3-4.

related rule against retroactive ratemaking also “prohibits the Commission from adjusting current rates to make up for a utility’s over- or under-collection in prior periods.”\(^9\)

When evaluating whether granting the requested relief would violate either the filed rate doctrine or the rule against retroactive ratemaking, the Commission considers whether the ratepayers had sufficient notice that the approved rate was subject to change.\(^{20}\) In this case, we find that ratepayers did not have sufficient notice that the meter data at issue was subject to change after the 172-day deadline specified in the CAISO tariff had passed.

15. PG&E does not dispute that section 10.3.6.4 of the CAISO tariff sets a 172-day deadline for the submission of corrected settlement quality meter data; in fact, the tariff affirmatively provides that late-submitted data “will be rejected by the CAISO and not used in settlement calculations.” Nor does PG&E dispute that the meter data at issue here—November 30, 2018 through April 16, 2019—falls outside the 172-day deadline. Instead, PG&E argues that its request does not constitute retroactive ratemaking because the correction is necessary to implement the actual filed rate and because section 11.29.7.1 of the CAISO tariff permits CAISO to recalculate settlement statements for a period of 36 months after the trade date.

16. We disagree on both counts. The plain language of section 10.3.6.4 of the CAISO tariff, which is part of the filed rate, terms, and conditions of service and binds both

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\(^{20}\) See _Pub. Utils. Comm’n of Cal. v. FERC_, 988 F.2d 154, 164 (D.C. Cir. 1993); see also _PJM Interconnection, L.L.C.,_ 146 FERC ¶ 61,078, at P 46 (2014) (“The waiver is effective prospectively, as of the date of this order, and therefore does not retroactively change the rules . . . . Further, the instant filing puts market participants on notice regarding a possible rule change.”); _Columbia Gas Transmission Corp. v. FERC_, 895 F.2d 791, 794-97 (D.C. Cir. 1990) (“The same principle obtains when the Commission itself places parties on notice . . . that the rates they will be paying are subject to retroactive adjustment at a later date . . . . Notice does not relieve the Commission from the prohibition against retroactive ratemaking. Instead, it 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.”); _Consol. Edison Co. of N.Y. v. FERC_, 347 F.3d 964, 968-70 (D.C. Cir. 2003) (applying same concepts in waiver context); _Old Dominion Elec. Coop. Inc. v. FERC_, 892 F.3d 1223, 1230 (D.C. Cir. 2018) (“The filed rate doctrine and the rule against retroactive ratemaking leave the Commission no discretion to waive the operation of a filed rate or to retroactively change or adjust a rate for good cause or for any other equitable considerations.”).
PG&E and CAISO,\textsuperscript{21} limits the time for submitting corrected meter data to 172 days and does not include any exceptions to that general tariff provision. Further, although CAISO’s tariff does expressly permit CAISO to recalculate settlement statements for 36 months after the trade date, in this case CAISO cannot do so without the corrected data that its tariff prohibits CAISO from accepting. Thus, the 36-month recalculation authority in section 11.29.7.1 of CAISO’s tariff does not put customers on notice that CAISO may change rates using corrected meter data that falls outside the tariff-specified 172-day time limit to submit corrected settlement quality meter data when section 10.3.6.4 of the CAISO tariff expressly provides to the contrary. Accordingly, we find that the 36-month deadline for resettlements in section 11.29.7.1 does not warrant our granting PG&E’s request and that granting PG&E’s request would fail to give effect to part the filed rate, i.e., section 10.3.6.4 of the CAISO tariff. As a result, we disagree with PG&E that section 10.3.6.4 can be waived, under the circumstances here, without violating the filed rate doctrine and rule against retroactive ratemaking.

17. We find PG&E’s reliance on \textit{Consolidated Edison} and \textit{MISO} to be misplaced. In \textit{Consolidated Edison}, the Commission found that NYISO’s tariff contains a provision that provides sufficient notice to customers that finalized metering data could be subject to further correction by the Commission upon application for redress outside the otherwise applicable time bar.\textsuperscript{22} The CAISO tariff contains no analogous provision. In \textit{MISO}, the time bar tariff provision at issue did not apply to the data error for which MISO sought waiver.\textsuperscript{23} By comparison, and as discussed above, PG&E acknowledges that the 172-day deadline applies to its requested changes, and we find that nothing in the CAISO tariff provides the requisite notice to customers that their rates may change based on corrected meter data submitted after the tariff-specified 172-day deadline for such submission had passed.

\textsuperscript{21} See, e.g., \textit{Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.}, 139 FERC ¶ 61,254, at P 44 (2012) (agreeing that the time bar provision was part of the filed rate), \textit{reh’g denied}, 153 FERC ¶ 61,037 (2015), \textit{aff’d sub nom. Seminole Elec. Coop., Inc. v. FERC}, 861 F.3d 230 (D.C. Cir. 2017); \textit{N.Y. Indep. Sys. Operator}, 128 FERC ¶ 61,086, at P 22 (2009) (determining that the filed rate doctrine was not violated by giving effect to a time bar provision because both the tariff provision at issue and the time bar provision were part of the filed rate).

\textsuperscript{22} \textit{Consolidated Edison}, 168 FERC ¶ 61,047 at P 11. Specifically, section 7.4 of the NYISO tariff states that “finalized data and invoices shall not be subject to further correction, including by [NYISO] except as ordered by the Commission or a court of competent jurisdiction . . . .”

\textsuperscript{23} \textit{MISO}, 160 FERC ¶ 61,067 at P 27.
Because we are denying the Petition on the basis that, at the outset, the relief PG&E seeks would violate the filed rate doctrine and the rule against retroactive ratemaking, we need not address whether PG&E’s request otherwise would satisfy the four criteria used by the Commission to evaluate waiver requests.

The Commission orders:

PG&E’s Petition is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Danly is concurring with a separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.
DANLY, Commissioner, concurring:

1. The Commission’s order issued today in this docket addresses a request for a retroactive waiver.\(^1\) Nine other orders issued at the Commission’s October Public Meeting address similar waiver requests.\(^2\) In addition, the Commission issued two such orders on September 30, 2020, shortly before the October Public Meeting.\(^3\) In total, that is twelve orders issued in less than three weeks addressing retroactive waiver requests. I have several concerns about these orders, which I discussed briefly in my dissents to the Montana-Dakota and Lightsource orders that were issued on September 30 and again in greater detail in my dissent to the Sunflower order that is being issued today.

2. I agree with the result and the reasoning of this order. On May 8, 2020, Pacific Gas and Electric Company (PG&E) filed a petition for a limited one-time waiver of the meter data submission provision in section 10.3.6.4 of the California Independent System Operator Corporation’s (CAISO) tariff. Section 10.3.6.4 of the tariff allows 172 days for scheduling coordinators to submit corrected data that CAISO will use to perform recalculations. PG&E seeks to submit corrected meter data for the period of November 30, 2018 through April 16, 2019 in order for CAISO to re-run settlements for this time. The 172-day correction period lapsed by the time PG&E sought the waiver.

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3. The Commission denies this waiver because the Commission does not have the legal authority to grant it under the filed rate doctrine and the rule against retroactive ratemaking. This is correct. I write separately only to highlight that the Commission should have reached the same result in all the retroactive waiver cases identified above. In other cases where it reached the right result, the Commission should have adopted the same reasoning it adopts in this case. There is nothing about these other cases that justifies a different result or different reasoning, and certainly the Commission does not identify any such justification.

    For these reasons, I respectfully concur.

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James P. Danly
Commissioner