UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company	))	Docket No. ER12-1009-000

COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION ON THE WAIVER REQUEST OF PACIFIC GAS AND ELECTRIC COMPANY

The California Independent System Operator Corporation (ISO) hereby submits these Comments in response to the waiver request of Pacific Gas and Electric Company (PG&E), which was filed in the above-referenced docket on February 6, 2012. PG&E requests a one-time waiver of a previously applicable penalty provision in the ISO's FERC Electric Tariff that would result in the ISO assessing a $5.77 million penalty on PG&E. PG&E requests that the Commission instead mandate that the ISO assess a $845,000 penalty, which is what the penalty would be based on the provision that exists in the ISO tariff at present, rather than on the provision as it existed at the time the conduct giving rise to the penalty occurred.

As discussed below, in a recent tariff amendment filing with the Commission, the ISO referred to the then-existing penalty formula at issue in PG&E's waiver request as "overly burdensome" and requested that the Commission approve the ISO's amendment to the tariff provision. Accordingly, the ISO supports PG&E's request insofar as there is a reasonable basis for the Commission to conclude that the larger penalty amount is excessive in the present circumstances and that a lower penalty could be justified.

I. Background

On October 11, 2011, the ISO issued an invoice to PG&E that included a $5.77 million penalty for violating section 37.5.2.1 of the ISO's tariff. Section 37.5.2.1 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 PG&E's violation and as applied to PG&E's violation, section 37.11 provides for a penalty of 30% of the value of the misreported meter data.[1] 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.[2] 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."[3] On September 30, 2011, the Commission approved the proposed

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[1] 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 PG&E identified the error and because the error was to PG&E's benefit, the penalty is 30% of the value of the error.

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

[3] *Id.* at 18.

amendments to section 37.11, with the amendments becoming effective October 1, 2011.

On October 24, 2011, PG&E filed a complaint with the Commission,[4] arguing that the $5.77 million penalty is unjust and unreasonable and requesting that the Commission instead approve a penalty of $845,000. The lower amount reflects what PG&E asserts its penalty would be under the version of section 37.11 that became effective on October 1, 2011. On February 6, 2012, PG&E withdrew its complaint and simultaneously filed the instant waiver request. In its February 6 filing PG&E again requests that the Commission approve a penalty of $845,000, rather than $5.77 million. On February 10, 2012, the ISO filed a motion to intervene in the instant docket. The ISO now files these comments.

II. Answer

The ISO supports the notion that a penalty of $5.77 million could be viewed as excessive in PG&E's circumstances. 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 . . . ."[5] 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

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4 FERC Docket No. EL12-5-000. The ISO filed its answer on November 14, 2011.

5 Settlements Process Timeline filing at 20.

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.[6]

The ISO understands that this is the situation with PG&E's violation. PG&E made a configuration error in establishing how it reports meter data from a specific resource. Based on that error, PG&E reported inaccurate data over a period of time. Considering that PG&E has already been subject to a market adjustment, a penalty of $5.77 million could be viewed as disproportionate to the nature of PG&E's error and higher than necessary to provide adequate incentives for PG&E to establish applicable controls going forward.

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[6] 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. Conclusion

For the foregoing reasons, the ISO believes a $5.77 million penalty for PG&E's violation of section 37.5.2.1 could be viewed as excessive and that the Commission would be justified in approving a reduced penalty amount.

Respectfully submitted,
By: *<u>/s/ David S. Zlotlow</u>*

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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 list in the captioned 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 22nd day of February, 2012.

/s/ Anna Pascuzzo

Anna Pascuzzo