

186 FERC ¶ 61,231  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Idaho Power Company

Docket No. EL23-94-000

v.

California Independent System Operator Corporation

ORDER GRANTING COMPLAINT

(Issued March 27, 2024)

1. On August 29, 2023, Idaho Power Company (Idaho Power) submitted a complaint (Complaint), 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> against the California Independent System Operator Corporation (CAISO). In the Complaint, Idaho Power challenges the application of CAISO's Open Access Transmission Tariff (Tariff) section 37 and appeals \$639,000 in penalties assessed by CAISO for incorrect meter data reporting during specified trading days between January 9, 2020 through May 3, 2022.<sup>3</sup> Idaho Power requests that the Commission nullify the assessed penalties because a strict application of Tariff section 37 for a minor, inadvertent meter data error produces penalties that are unjust and unreasonable. In this order, we grant Idaho Power's Complaint, as discussed below.

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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> On September 14, 2023, Idaho Power filed a Notice of Partial Withdrawal stating that due to information identified since the time of filing, it is no longer requesting relief from the market adjustment assessed by CAISO for specified trade dates in 2020 and 2021, but Idaho Power continues to request relief from the base penalty of \$639,000 assessed by CAISO for specified trade dates between January 9, 2020 through May 3, 2022. This order only addresses issues pertaining to the remaining request for relief.

## I. Background

2. Under Tariff section 37.5.2, CAISO requires scheduling coordinators to submit Settlement Quality Meter Data<sup>4</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>5</sup>

3. 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 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>6</sup>

4. 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>7</sup>

5. 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

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<sup>4</sup> Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in CAISO's Tariff.

<sup>5</sup> CAISO, CAISO eTariff, § 37.5.2 (Accurate and Timely Actual SQMD) (7.0.0).

<sup>6</sup> CAISO, CAISO eTariff, § 37.11 (Method For Calculating Penalties) (0.0.0).

<sup>7</sup> CAISO, CAISO eTariff, § 37.9.4 (Disposition of Proceeds) (1.0.0).

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>8</sup>

6. Idaho Power is a vertically integrated public utility that provides wholesale and retail electric service throughout its service area in southern Idaho and eastern Oregon. Idaho Power's transmission system is directly interconnected with many other transmission systems in the Northwest. In 2018, Idaho Power became the seventh balancing authority to participate in the Western Energy Imbalance Market (WEIM) operated by CAISO under its Tariff. Through the WEIM, Idaho Power participates in the real-time market for imbalance energy that CAISO operates in its own balancing authority area.<sup>9</sup>

## **II. Idaho Power's Complaint**

7. Idaho Power's Complaint concerns the Arrowrock Hydroelectric Project (Arrowrock), a 19.5 MW hydroelectric generator located within the Idaho Power balancing authority area that is owned and operated by the United States Bureau of Reclamation with the output sold to Idaho Power. According to Idaho Power, Arrowrock is not an EIM Participating Resource in the WEIM, and is not eligible to submit energy bids into the WEIM and is dispatched for native load service only. Idaho Power further explains that Arrowrock is interconnected to the Idaho Power transmission system through a few miles of generator interconnection facilities and that metering occurs at the point of generation. Idaho Power states that, because the point of transmission interconnection is several miles away from the generation site, transmission line losses must be accounted for between the location of the metering and the point of interconnection to calculate the quantity of generation that reaches the Idaho Power transmission system.<sup>10</sup>

8. Idaho Power states that in July 2022, it discovered that transmission line losses were being double-counted in the meter data being provided to CAISO and had been double-counted since the time that Idaho Power joined the WEIM. Idaho Power explains that prior to Idaho Power joining the WEIM, the Arrowrock meter was programmed to account for transmission line losses. When programming the WebAccounting software that communicates meter data to CAISO to also account for transmission line losses, Idaho Power indicates that there was a miscommunication in how the Arrowrock meter was programmed. As a result, transmission line losses were programmed in both the

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<sup>8</sup> CAISO, CAISO eTariff, § 37.8.10 (Review of Determination) (6.0.0).

<sup>9</sup> Idaho Power Complaint at 3-4.

<sup>10</sup> *Id.* at 5.

meter and the WebAccounting software, while the transmission line losses should be reflected in either the meter or the WebAccounting software, but not both.<sup>11</sup>

9. Idaho Power further states that it discovered the double-counting of transmission line losses only on July 13, 2022 during a thorough testing of the meters and their programming. According to Idaho Power, on July 19, 2022, it re-programmed the Arrowrock meter to correct for the double-counting and self-reported the inadvertent meter data error to CAISO. In response to Idaho Power's self-reported meter data error, CAISO assessed penalties against Idaho Power in the amount of \$639,000.<sup>12</sup>

10. Idaho Power argues that the inadvertent meter data error led to an under-reporting of energy produced by Arrowrock by an hourly average of 2.72% or 0.37 MWh from the time Idaho Power joined the WEIM in 2018 until the time the meter was correctly programmed in 2022.<sup>13</sup> Idaho Power believes that it is a *de minimis* quantity that did not affect the applicable locational marginal price of energy in a material amount had it been reported correctly originally. Idaho Power adds that meter data can be corrected after the fact, which does not affect WEIM market runs because the effect of corrected meter data is addressed through settlements after the WEIM market has run. Idaho Power also notes that the under-reporting of generation resulted in Idaho Power producing energy that its own load used, reducing the need for additional WEIM energy. Idaho Power thus concludes that any effect of the data error was limited to the Idaho Power balancing authority area.<sup>14</sup>

11. Idaho Power explains that the penalty rate for meter data inaccuracies is established by Tariff section 37, and CAISO has no discretion to reduce or choose not to apply the penalty. According to Idaho Power, the Commission has previously found that CAISO's Tariff can produce a penalty that it is not commensurate with the targeted conduct and, thus, is not just and reasonable, and encouraged CAISO "to consider proposing modifications to its Tariff to better align its penalty and market adjustment allocation provisions with its stated intent to incentivize compliance while avoiding disproportionately high penalties."<sup>15</sup> Idaho Power further states that to partially remedy the unjust and unreasonable results that can flow from application of its Tariff, CAISO recently sought waiver of the penalty

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<sup>11</sup> *Id.* at 6 (citing Ex. 5).

<sup>12</sup> *Id.* at 7-8 (citing Ex. 3).

<sup>13</sup> *Id.* at 6 (citing Ex. 1).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 3 (citing *Cal. Indep. Sys. Operator Corp.*, 175 FERC ¶ 61,043, at PP 24, 30 (2021) (*NV Energy*)).

provision of its Tariff, but the manner in which CAISO proposed its waiver request was denied by the Commission.<sup>16</sup> Idaho Power adds that CAISO has a stakeholder process underway that will lead to a proposed Tariff modification, but its Tariff has not yet been modified. Idaho Power states that because CAISO's Tariff has produced penalties that are not commensurate with the targeted conduct and are not just and reasonable, Idaho Power requests that the Commission waive application of CAISO's Tariff in these circumstances by nullifying the penalties invoiced by CAISO against Idaho Power.

12. Further, Idaho Power argues that the Commission should waive CAISO Tariff's penalty provisions and excuse the pending inaccurate meter data penalties because the current penalties assessed against Idaho Power are unjust and unreasonable. Idaho Power adds that the Commission recently granted a similar waiver request by CAISO for penalties assessed against NV Energy, Inc. (NV Energy).<sup>17</sup> Idaho Power contends that because the facts surrounding the penalties assessed in *NV Energy* are analogous to the facts in the instant proceeding, the Commission should grant Idaho Power's waiver request, as it is consistent with Commission precedent.

13. Idaho Power argues that the underlying error was made in good faith, as it did not intentionally double-account for transmission line losses. Idaho Power adds that it corrected all the errors and undertook remedial measures to ensure this inadvertent error does not occur again by including an additional requirement to determine whether losses are programmed into the meter in its annual meter verification process.<sup>18</sup> Idaho Power notes that *NV Energy* also experienced an inadvertent error in the initial set-up of metering at the facility that, like Arrowrock, was not bid into the WEIM. According to Idaho Power, NV Energy also brought the meter data error to CAISO's attention as soon as feasible after it was discovered, promptly filed corrective meter data, and confirmed that the other units in its balancing authority were being correctly reported.<sup>19</sup> Idaho Power concludes that these are the same actions that Idaho Power took with respect to Arrowrock and thus the Commission should find Idaho Power acted in good faith.

14. Further, Idaho Power argues that the Commission should nullify the penalties based on a meter data error that resulted in the under-reporting of a *de minimis* quantity of energy that did not affect CAISO's markets. Idaho Power observes that, in *NV Energy*, the Commission determined that the assessment of a meter data penalty is "far in excess of

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<sup>16</sup> *Id.* (citing *Cal. Indep. Sys. Operator Corp.*, 184 FERC ¶ 61,009 (2023) (*CAISO*)).

<sup>17</sup> *Id.* at 9 (citing *NV Energy*, 175 FERC ¶ 61,043 at P 30).

<sup>18</sup> *Id.* (citing Ex. 5).

<sup>19</sup> *Id.* at 10 (citing *NV Energy*, 175 FERC ¶ 61,043 at P 26).

what is necessary to support the objective of the penalty, which is to provide an incentive for market participants to submit accurate and timely settlement quality meter data.”<sup>20</sup>

15. Idaho Power also asserts that its error did not affect any WEIM market participants and only affected the Idaho Power balancing authority area.<sup>21</sup> Idaho Power adds that the error was also self-punishing because Idaho Power under-reported its generation, which resulted in Idaho Power producing energy for which it was not financially compensated. Idaho Power argues that imposing additional large penalties to incentivize compliance is simply unnecessary, because Idaho Power has already experienced financial consequences on par with the magnitude of the harm it caused.<sup>22</sup>

16. Idaho Power also contends that granting its Complaint is consistent with Commission precedent.<sup>23</sup> Idaho Power explains that in *NV Energy*, the Commission determined that the waiver request did not have undesirable consequences because third parties were not harmed, and it struck a balance between incentivizing compliance and avoiding disproportionately high penalties.<sup>24</sup> Idaho Power argues that granting Idaho Power’s Complaint ensures similar treatment for all WEIM market participants because to deny Idaho Power’s Complaint would result in preferential and unfair treatment of one WEIM market participant, NV Energy, to the detriment of another, Idaho Power.

17. Idaho Power states that in the circumstances presented in this case, the imposition of the penalties is unjust and unreasonable under FPA section 206 because the costs imposed by the penalties in question are not commensurate to the burdens imposed by the *de minimis* meter data error at Arrowrock.<sup>25</sup>

18. Idaho Power argues that given the specific language in CAISO’s Tariff that permits any penalty to be tolled pending appeal to the Commission,<sup>26</sup> granting the

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<sup>20</sup> *Id.* at 11 (citing *NV Energy*, 175 FERC ¶ 61,043 at P 28).

<sup>21</sup> *Id.* at 13 (citing Ex. 1).

<sup>22</sup> *Id.* at 13-14.

<sup>23</sup> *Id.* at 15 (citing *Pac. Gas & Elec. Co.*, 139 FERC ¶ 61,007, at P 13 (2012); *Exelon Corp.*, 141 FERC ¶ 61,070, at P 18 (2012)).

<sup>24</sup> *Id.* (citing *NV Energy*, 175 FERC ¶ 61,043 at P 29).

<sup>25</sup> *Id.* at 11 (citing *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254, 1256 (D.C. Cir. 2018); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368, *reh’g denied*, 905 F.3d 671 (D.C. Cir. 2018)).

<sup>26</sup> Idaho Power refers to Tariff section 37.8.10 stating in relevant part that “[t]he

requested relief does not violate the filed rate doctrine or the rule against retroactive rate-making.<sup>27</sup> According to Idaho Power, the Commission has recognized that no violation of the filed rate doctrine occurs when buyers are on adequate advance notice that resolution of some specific issue may cause a later adjustment to the rate being collected at the time of service.<sup>28</sup>

### **III. Notice and Responsive Pleadings**

19. Notice of Idaho Power's Complaint was published in the *Federal Register*, 88 Fed. Reg. 60,936 (Sept. 6, 2023), with interventions and protests due on or before September 18, 2023. Timely motions to intervene were filed by: Calpine Corporation; NRG Business Marketing LLC; Southern California Edison Company; Nevada Power Company and Sierra Pacific Power Company (jointly, NV Energy); and the City of Corona, California (Corona). NV Energy and Corona also submitted comments. On September 18, 2023, CAISO submitted its answer to Idaho Power's Complaint.

#### **A. CAISO's Answer**

20. CAISO states that it supports Idaho Power's Complaint and agrees that the penalty of \$639,000 is inequitable based on the facts presented.<sup>29</sup> CAISO states that its current \$1,000 per trading day sanction<sup>30</sup> can result in disproportionate penalties, particularly in cases such as Idaho Power's that involve relatively minor and inadvertent, but long-lasting, metering errors. CAISO explains that in Idaho Power's case, the penalty is more than 10 times the approximate value of the error, which exceeds a penalty ratio both CAISO and the Commission already have agreed is "unnecessarily punitive."<sup>31</sup> Further, CAISO reports that it opened a stakeholder initiative in May 2023 to address a variety of rules of conduct issues, including the potential for excessive penalties in circumstances such as those that triggered Idaho Power's penalty.<sup>32</sup>

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penalty will be tolled until FERC renders its decision on the appeal." *See id.* at 12 n.31.

<sup>27</sup> *Id.* at 12 (citing *Upstream Wind Energy, LLC*, 173 FERC ¶ 61,057, at P 22 (2020)).

<sup>28</sup> *Id.*

<sup>29</sup> CAISO Answer at 1.

<sup>30</sup> *Id.* at 2 (citing CAISO Tariff §§ 37.11.1, 37.11.2).

<sup>31</sup> *Id.* (citing *NV Energy*, 175 FERC ¶ 61,043 at P 28).

<sup>32</sup> *Id.* (stating that "Phase 1 of the initiative is being presented for joint approval to the CAISO Board of Governors and the Western Energy Imbalance Market Governing

**B. Comments**

21. NV Energy and Corona support Idaho Power's Complaint, acknowledging having similar issues with CAISO's Tariff.<sup>33</sup> NV Energy notes that CAISO has stated that it is inappropriate to continue enforcing the penalties as constructed when they can lead to unjust and unreasonable outcomes in circumstances such as those presented by Idaho Power.<sup>34</sup> Both NV Energy and Corona state that the Commission has previously indicated that the current meter penalty provisions in CAISO's Tariff can produce "disproportionate" results when applied to small volume, long duration events.<sup>35</sup>

22. Both NV Energy and Corona note that until CAISO submits, and the Commission approves, a Tariff filing to change these penalty provisions, the only avenue available to parties, such as Idaho Power, is to seek a waiver under FPA section 206.<sup>36</sup> Further, each asserts that a large penalty for a low-volume, long duration event, such as that described by Idaho Power in its Complaint, is clearly excessive and unrelated to the objective of incentivizing compliance while avoiding disproportionately high penalties.<sup>37</sup>

**V. Discussion****A. Procedural Matters**

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2023), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

**B. Substantive Matters**

24. As an initial matter, we find that Idaho Power's Complaint is properly before the Commission and, as discussed below, we grant the Complaint. Tariff section 37.8.10 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

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Body on September 20, 2023.").

<sup>33</sup> NV Energy Comments at 2; Corona Comments at 1.

<sup>34</sup> NV Energy Comments at 3 (citing *CAISO*, 184 FERC ¶ 61,009 at PP 8, 13).

<sup>35</sup> *Id.* at 1-2 (citing *NV Energy*, 175 FERC ¶ 61,043 at P 30); Corona Comments at 3 (same).

<sup>36</sup> NV Energy Comments at 5; Corona Comments at 3.

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



rules and procedures.”<sup>38</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>39</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>40</sup> thereby providing adequate notice to the market that the penalty procedures set forth in that Tariff section may be subject to further Commission review.<sup>41</sup> Thus, we find that Idaho Power’s Complaint is consistent with the Commission’s previous findings.<sup>42</sup>

25. Further, we agree with Idaho Power that nullifying the Tariff section 37 penalties under the instant circumstances will not violate the filed rate doctrine or the rule against retroactive ratemaking. Consistent with the analysis above, we conclude that Tariff

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<sup>38</sup> CAISO, CAISO eTariff, § 37.8.10.

<sup>39</sup> *Hanwha Q-CELLS USA Corp.*, 174 FERC ¶ 61,013, at P 9 (2021); *Mission Solar LLC*, 174 FERC ¶ 61,014, at P 10 (2021); *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>40</sup> *NV Energy*, 175 FERC ¶ 61,043 at n.29. In *CAISO*, the Commission stated in regard to the intervenor Idaho Power’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>41</sup> *See Pac. Gas & Elec. Co.*, 173 FERC ¶ 61,051, at P 14 (2020).

<sup>42</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.

section 37 provides adequate notice that the penalty procedures delineated in that Tariff section may be subject to further Commission review.<sup>43</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.

26. Based on the evidence presented by Idaho Power in this proceeding, we find that Idaho 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 Idaho 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>44</sup> We, therefore, grant Idaho Power's Complaint and direct CAISO to nullify the meter data error penalties assessed against Idaho Power.

The Commission orders:

Idaho Power's Complaint is 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>43</sup> Pursuant to Tariff section 37, CAISO has no discretion to reduce or choose not to apply the Penalty. *See* Idaho Power Complaint at 3.

<sup>44</sup> *See 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.").