186 FERC ¶ 61,228
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Direct Energy Business, LLC Docket No. EL24-11-000

v.

California Independent System Operator Corporation

ORDER GRANTING COMPLAINT

(Issued March 27, 2024)

1. On November 3, 2023, Direct Energy Business, LLC (Direct) submitted a complaint (Complaint), pursuant to sections 206 and 306 of the Federal Power Act (FPA)[1] and Rule 206 of the Commission's Rules of Practice and Procedure,[2] against the California Independent System Operator Corporation (CAISO). In the Complaint, Direct challenges the application of CAISO's Open Access Transmission Tariff (Tariff) section 37 and appeals $825,000 in penalties assessed by CAISO for incorrect meter data reporting during trading days of March 1, 2021 through June 3, 2023. Direct 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 Direct's Complaint, as discussed below.

I. Background

2. Under Tariff section 37.5.2, CAISO requires scheduling coordinators to submit Settlement Quality Meter Data[3] 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

[1] 16 U.S.C. §§ 824e, 825e.

[2] 18 C.F.R. § 385.206 (2023).

[3] Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in CAISO's Tariff.

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).[4]

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).[5]

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."[6]

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 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.[7]

6. Direct is a wholesale and retail power marketer and a wholly owned subsidiary of NRG Energy, Inc. Direct's marketing activities include a longstanding arrangement with Home Depot USA Inc. (Home Depot) under which Direct serves various Home Depot locations throughout California under the California Public Utilities Commission's Direct Access program. Direct acts as Home Depot's Scheduling Coordinator with respect to the load and generation at these locations, and is responsible for submitting to CAISO

[4] CAISO, CAISO eTariff, § 37.5.2 (Accurate and Timely Actual SQMD) (7.0.0).

[5] CAISO, CAISO eTariff, § 37.11 (Method For Calculating Penalties) (0.0.0).

[6] CAISO, CAISO eTariff, § 37.9.4 (Disposition of Proceeds) (1.0.0).

[7] CAISO, CAISO eTariff, § 37.8.10 (Review of Determination) (6.0.0).

meter data relating to Home Depot's participation in net metering programs administered by Southern California Edison Company (SoCal Edison) and other load-serving utilities. This meter data is provided initially to Direct by the load-serving utilities, and Direct then submits it to CAISO.[8]

II. Direct's Complaint

7. Direct states that, in September 2021, it contacted SoCal Edison about discrepancies in the meter data being provided for its Home Depot accounts. SoCal Edison later informed Direct that, in November 2021, SoCal Edison learned that the processing of fuel cell generation data for unbundled (Direct Access and Community Choice Aggregator) customers was not automated as part of SoCal Edison's billing system conversion that occurred in March 2021. In July 2022, SoCal Edison began working on enhancements to its billing system to include unbundled fuel cell generation data. SoCal Edison informed affected suppliers, including Direct, about these changes in October 2022. SoCal Edison did not complete its system enhancements until July 2023 and provided the last of the corrected data to Direct in August 2023.[9]

8. Direct further states that, in parallel with its communications with SoCal Edison, it discussed options for resettlement and potential penalty exposure with CAISO starting in December 2022. During these discussions, CAISO confirmed that its Tariff does not allow resettlements more than 214 business days after the Trading Day. In an October 23, 2023 Settlement Statement, CAISO formally assessed penalties totaling $825,000 for the late submission of meter data for the affected Home Depot locations for the 825 Trading Days during the period March 1, 2021 through June 3, 2023. Direct explains that the errors giving rise to these penalties involved the underreporting of fuel cell generation totaling approximately 28,170 MWh, representing a dollar amount of approximately $1.28 million.[10] Direct adds that the underreported volumes, averaging approximately 52 MWh, represented less than 1% of Direct's daily submission to CAISO for its business unit in the SoCal Edison service territory.[11]

9. Direct requests that the Commission nullify these penalties. Direct points to Commission precedent in *NV Energy,* which involved a waiver request filed by CAISO.[12]

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[8] Direct Complaint at 3.

[9] *Id.* at 7.

[10] *Id.* at 7-8.

[11] *Id*. at 9.

[12] *Id.* at 8 (citing to *Cal. Indep. Sys. Operator Corp*., 175 FERC ¶ 61,043, at PP 24,

Direct explains that it is seeking the same relief through a complaint in light of the Commission's interpretation of Tariff section 37.8.10 as requiring a market participant challenging a penalty that has already been assessed to do so through a complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure. Direct argues that its Complaint should be granted because the standards for waiver are satisfied here just as they were in *NV Energy* and Direct has complied with Rule 206.[13]

10. Direct asserts that its Complaint does not violate the filed rate doctrine, nor does it present retroactive ratemaking concerns because Tariff section 37.8.10 expressly contemplates "after-the-fact" Commission review of penalties assessed under Tariff section 37 and thereby "provides clear notice to the market that consequences outlined in that tariff section are subject to further Commission review."[14]

III. Notice and Responsive Pleadings

11. Notice of Direct's Complaint was published in the *Federal Register*, 88 Fed. Reg. 77,574 (Nov. 13, 2023), with interventions and protests due on or before November 24, 2023. None was filed. On November 20, 2023, CAISO submitted its answer to Direct's Complaint.

12. CAISO states that it supports Direct's request and agrees that the assessed penalty is excessive and exceeds the approximate value of the error by a significant degree.[15] CAISO also notes that it opened the Rules of Conduct Enhancements 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 Direct's penalty. CAISO states that until those rule changes are evaluated by the Commission, CAISO supports relief for parties such as Direct that have established they are exposed to inequitable penalties under the existing Tariff rules.[16]

III. Discussion

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

30 (2021) (*NV Energy*)).

[13] *Id.*

[14] *Id.* at 8, 13.

[15] CAISO Answer at 2.

[16] *Id*.

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 rules and procedures."[17] 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.[18] Subsequently, in *NV Energy*, when granting CAISO's request for waiver of Tariff section 37 as applied to NV Energy, Inc., 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,[19] thereby providing adequate notice to the market that the penalty procedures set forth in that Tariff section may be subject to further Commission review.[20] Thus, we find that Direct's Complaint is consistent with the Commission's previous findings.[21]

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[17] CAISO, CAISO eTariff, § 37.8.10.

[18] *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.

[19] *NV Energy*, 175 FERC ¶ 61,043 at n.29. The Commission has also stated in regard to the intervenor Idaho Power Company'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.

Cal. Indep. Sys. Operator Corp., 184 FERC ¶ 61,009, at P 24 (2023) (internal footnotes omitted).

[20] *See Pac. Gas & Elec. Co.*, 173 FERC ¶ 61,051, at P 14 (2020).

[21] 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.

14. Further, we agree with Direct 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 section 37 provides adequate notice that the penalty procedures delineated in that Tariff section may be subject to further Commission review.[22] 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.

15. Based on the evidence presented by Direct in this proceeding, we find that Direct 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 Direct that the penalties assessed are not commensurate with any potential damage caused by the inadvertent errors which were *de minimis*, properly reported upon discovery, and promptly fixed.[23] We, therefore, grant Direct's Complaint and direct CAISO to nullify the meter data error penalties assessed against Direct.

<u>The Commission orders</u>:

Direct'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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[22] Pursuant to Tariff section 37, CAISO has no discretion to reduce or choose not to apply the Penalty.

[23] *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").