

135 FERC ¶ 61,159
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

California Independent System Operator Corporation Docket Nos. ER11-2819-000
EL11-41-000

ORDER GRANTING PETITION FOR WAIVER, INSTITUTING SECTION 206
PROCEEDING, AND ESTABLISHING REFUND EFFECTIVE DATE

(Issued May 19, 2011)

1. On February 1, 2011, the California Independent System Operator Corporation (CAISO) filed a petition for Commission approval to waive penalties imposed on scheduling coordinators pursuant to sections 37.5.2.2 and 37.11 of the CAISO tariff for submitting untimely meter data. CAISO requests that the waiver apply to violations committed during the time period from the November 1, 2009 trade date through the February 1, 2011 trade date.¹ As discussed below, we grant CAISO's waiver request, and institute an investigation in Docket No. EL11-41-000 under section 206 of the Federal Power Act (FPA)² and establish a refund effective date.

Background

2. CAISO states that on November 1, 2009, it implemented a Payment Acceleration Initiative to streamline the process by which CAISO invoices and settles market transactions.³ CAISO notes that an important feature of this Payment Acceleration Initiative was to shorten the timelines for scheduling coordinators to submit meter data and for CAISO to issue settlement statements.

¹ Implementation of the penalties imposed pursuant to CAISO tariff sections 37.5.2.2 and 37.11 are for violations of section 37.5.2.1.

² 16 U.S.C. §824e (2006).

³ *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,265 (2009).

3. CAISO states that, prior to this initiative, the first meter data submission was due 43 calendar days after the trade date. CAISO notes that these data were used in the Initial Settlement Statement, which was published 38 business days after the trade date. CAISO also states that market participants had until 47 business days from the trade date to resubmit meter data to be included in the Recalculation Settlement Statement, which was published 51 business days after the trade date. Any meter data revisions submitted after 47 business days from the trade date were subject to penalties because, as CAISO explains, a special settlement statement rerun was required to correct any errors. CAISO notes that the penalties served to dissuade parties from making late revisions to meter data after market settlements were issued. The penalties also served as a mechanism for encouraging parties to submit accurate meter data within the expected timeline.

4. Under the new schedule implemented by CAISO's Payment Acceleration Initiative, scheduling coordinators must report actual or estimated meter data 5 business days from the trade date to be included in an Initial Settlement Statement that is published 7 business days from the trade date. CAISO additionally publishes two Recalculation Settlement Statements 38 and 76 business days after the trade date. The meter data for those statements are due 43 calendar days and 61 business days after the trade date, respectively.

5. While the CAISO tariff provides for two Recalculation Settlement Statements, CAISO requires that scheduling coordinators submit complete and accurate meter data no later than 43 calendar days from the trade date, the deadline for the submission of meter data for the first Recalculation Settlement Statement. CAISO treats the submission of new or amended meter data later than 43 calendar days after the trade date as a failure to submit complete and accurate meter data and subject to penalties under the tariff.

6. CAISO further states that this process is significantly different from the process that was in place prior to the Payment Acceleration Initiative implementation. CAISO explains that, previously, as long as a market participant submitted accurate meter data in time for the Recalculation Settlement Statement, and before CAISO had to produce a special settlement statement to correct the error, the scheduling coordinator would not be subject to penalty. CAISO further states that, under the Payment Acceleration Initiative, a scheduling coordinator would be subject to penalty if it misses the deadline for submission of data for the first Recalculation Settlement Statement, even though a second Recalculation Settlement Statement is generated in the normal course of business.

7. CAISO states that, since the implementation of the Payment Acceleration Initiative, it has identified and investigated seventy instances of tariff violations by ten market participants. According to CAISO, these tariff violations resulted in penalties totaling approximately \$1.29 million. CAISO states that, in response to its investigations, several parties explained that they did not realize that their submission of meter data after 43 calendar days from the trade date would lead to penalties, and argued that the tariff was inconsistent in that it penalizes amended meter data submissions after 43 calendar

days⁴ but, under section 10.3.6.3, allows submission of data corrections until 61 business days from the trade date (i.e., data submission deadline for second Recalculation Settlement Statement).⁵ CAISO states that several market participants also argued that the penalties were unwarranted because the untimely data submittals did not have any negative financial or system impacts but rather punished scheduling coordinators for making an effort to provide the most accurate meter data possible. According to CAISO, these market participants viewed the penalties as a potential deterrent to a fair market settlement.

8. CAISO states that, contrary to the impression of market participants, the submission of amended meter data later than 43 calendar days after the trading date is a violation of its tariff requirement in section 37.5.2.1 to submit complete and accurate meter data by 43 calendar days after the trading date. According to CAISO, its intention was that data submitted after 43 calendar days from the trade date would be processed, pursuant to section 10.3.6.3, but that this processing would result in the imposition of penalties. However, CAISO states that it now realizes that market participants could have drawn a different inference from section 10.3.6.3, and mistakenly believed that they could submit amended meter data for the second Recalculation Settlement Statement without penalty.

CAISO's Request for Waiver

9. CAISO requests that the Commission waive sections 37.5.2.2 and 37.11 to excuse penalties that would otherwise be assessed under these tariff sections against scheduling coordinators that submitted amended meter data between 43 calendar days and 61 business days from the trade date. CAISO requests that the waiver be limited to sanctions that would apply for violations committed during the period starting from the November 1, 2009 trade date through the February 1, 2011 trade date. CAISO states that

⁴ Section 10.3.6.2 of the CAISO tariff establishes a deadline for scheduling coordinators to submit accurate meter data at 43 calendar days after trade date. Also, under section 37.5.2.1 of the CAISO tariff, “[f]ailure to provide complete and accurate ... meter data, as required by section 10 and that results in an error that is discovered after issuance of an Initial Settlement Statement [7 business days after trade date] or Recalculation Settlement Statement ... shall be a violation of this rule.”

⁵ Section 10.3.6.3 of the CAISO Tariff and the CAISO payment calendar states that meter data for the second Recalculation Settlement Statement will be accepted up to 61 business days from the trade date.

in prior similar circumstances, the Commission has granted CAISO a waiver of the type it seeks in the instant proceeding.⁶

10. CAISO argues that its request for waiver meets the Commission's three factor test that the waiver (1) be limited in scope, (2) not have undesirable consequences, and (3) be beneficial to customers. CAISO states that the waiver is of limited scope because the number of violations is small considering that section 37.5.1 can be violated for every trade date for every resource that has meter data submitted for it.

11. According to CAISO, the waiver will not have undesirable impacts on the accuracy of the data since CAISO generates a second Recalculation Settlement Statement after 47 days from the trade date. Further, CAISO argues that because scheduling coordinators are now charged interest for data adjustments made after 7 business days from the trade date, the scheduling coordinators whose penalties CAISO seeks to excuse have already suffered consequences for their tardy amendments.

12. CAISO recognizes that section 10.3.6.3 of the tariff and the payment calendar could have created a misunderstanding among scheduling coordinators. Thus, it argues that because scheduling coordinators did not realize that the Payment Acceleration Initiative created sanctions for submitting amended meter data after the first Recalculation Settlement Statement (i.e., after 43 calendar days from the trade date), penalizing them in this instance would undermine customers' confidence in CAISO and the fairness of its processes. CAISO further notes that none of the ten scheduling coordinators committed further violations once they were informed of their untimely submittals. CAISO argues that this indicates that the initial violations were inadvertent rather than intentional.

13. CAISO requests that the Commission act on its request by May 27, 2011. CAISO explains that if its waiver request is not granted, under tariff section 37.10.1, it would have to levy the first penalty no later than June 10, 2011. CAISO states that Commission action by May 27, 2011 would prevent a situation where CAISO would have to refund the previously levied penalties in the event that the waiver request is eventually granted.

⁶ According to CAISO, in 2006, the Commission granted its request for waiver of all penalties for late reporting of generator outages because CAISO's enforcement of a newly established rule demonstrated that the rule was overly broad and penalized conduct that had no discernable negative impact on the market. *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,226 (2006). Also, in 2007, the Commission granted a waiver of penalties imposed for failure to submit timely demand forecasts, to allow for a transition period while market participants gained experience in complying with their new reporting requirement. *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,011 (2007).

Notice, Motions to Intervene and Responsive Pleadings

14. Notice of the CAISO filing was published in the *Federal Register*, 76 Fed. Reg. 7557 (2011), with interventions, comments, and protests due on or before February 22, 2011. Timely motions to intervene and comments or protests were filed by Pacific Gas & Electric Company (PG&E), the Northern California Power Agency (NCPA), Calpine Corporation (Calpine), and the Alliance for Retail Energy Markets (AReM).

15. In its protest, AReM argues that the tariff provisions imposing penalties for data corrections after 43 calendar days from the trade date deadline are unjust and unreasonable and unduly discriminatory because scheduling coordinators could still be subject to penalties for submitting revisions to meter data after the 43 calendar days deadline, even if those revisions amount to *de minimus* changes.

16. According to AReM, CAISO's tariff provisions imposing penalties for even *de minimus* changes submitted after 43 calendar days from the trade date are against the longstanding practices of investor-owned utilities, who are the predominant meter data management agents in the California market for almost all market participants. AReM explains that, in practice, these utilities regularly update meter usage data after the regularly meter read date without regard to the settlement deadlines prescribed by the CAISO tariff and business practice manuals. AReM argues that it is unjustified that this commonly accepted practice is treated as a violation of the rules of conduct and made subject to penalties. Moreover, AReM notes that scheduling coordinators have no prior knowledge of existing meter reading errors in the data submitted by the meter data management agents.

17. AReM also argues that the CAISO tariff has no materiality threshold. AReM states that tariff section 37.11.1 specifies a threshold where a monetary sanction would be charged where the calculated value of the sanction is greater than \$1,000 for at least one trading day during the period where there was inaccurate meter data. AReM argues that this threshold is arbitrary and has no analytical nexus. AReM states that market participants with large settlement loads will reach this threshold much faster than market participants with smaller settlement loads. AReM argues that establishing an arbitrary monetary threshold results in the unjust application of sanctions.

18. AReM further argues that a more reasonable approach to penalties would be to apply penalties only when the revision represents a material percentage change in daily megawatt hours to the final meter data submitted for the first recalculation settlement statement. AReM states that this represents a common-sense limit that restricts rule of conduct violations to egregious circumstances.

19. PG&E and NCPA support CAISO's request for waiver of the penalties under sections 37.5.2.2 and 37.11 of the CAISO tariff for submitting untimely revisions of

meter data. Calpine also supports CAISO's request for waiver but argues that the waiver request is insufficient. Calpine states that the penalty provisions for meter data revisions during the period between 43 calendar days and 61 business days from the trade date do not reduce CAISO's administrative burden, since a follow-up Recalculation Settlement Statement is produced in the normal course of business. Calpine further argues that interest payments sufficiently encourage scheduling coordinators to submit accurate meter data. Calpine therefore argues that CAISO's requested waiver should be accepted without a sunset date and that CAISO should be directed to revise its tariff to eliminate penalties for revised meter data submitted between 43 calendar days from the trade date and 61 business days from the trade date.

Discussion

Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding.

Commission Determination

21. The Commission historically has granted certain waiver requests involving an emergency situation or an unintentional error.⁷ Waiver, however, is not limited to those circumstances. For example, in several recent cases, the Commission has found good cause to grant waiver where the waiver is of limited scope, where there are no undesirable consequences, or where there are resultant benefits to customers.⁸

22. In the instant filing, CAISO states that, because of a misunderstanding of new tariff provisions, certain scheduling coordinators made untimely submittals of meter data between November 1, 2009 and February 1, 2011. CAISO states that it is only requesting

⁷ See, e.g., *ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21 (2006) (granting limited and temporary change to tariff to correct an error); *Great Lakes Transmission LP.*, 102 FERC ¶ 61,331, at P 16 (2003) (granting emergency waiver involving *force majeure* event for good cause shown); and *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330, at P 5 (2003) (granting waiver for good cause shown to address calculation in variance adjustment).

⁸ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,226 (2007); *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,031 (2008); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,132 (2010); *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,020 (2010); *Coso Energy Developers*, 134 FERC ¶ 61,088 (2011).

waiver for this limited time period and that it will have no impact on the accuracy of data included in final settlement statements. According to CAISO, the waiver will also benefit customers by excusing penalties for inadvertent errors resulting from the implementation of CAISO's Payment Acceleration Initiative. For these reasons, we find good cause to grant CAISO's request for waiver.

23. However, the Commission also finds that tariff section 10.3.6.3 is unclear and should be clarified to avoid any further confusion in the future. We therefore establish under FPA section 206 an investigation to evaluate the justness and reasonableness of CAISO's tariff section 10.3.6.3 and direct CAISO to revise section 10.3.6.3 to reflect that amended meter data submitted later than 43 calendar days after the trading date will be subject to penalties pursuant to sections 37.5.2.2 and 37.11. We direct CAISO to make this revision in a compliance filing no less than 30 days from the date of this order.

24. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than publication of notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months subsequent to that date. We establish a refund date to be the earliest date possible in order to provide maximum protection to customers, i.e., the date the notice of the initiation of the investigation in Docket No. EL11-41-000 is published in the *Federal Register*. In addition, section 206 requires that, if no final decision has been rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it failed to do so and shall state its best estimate as to when it reasonably expects to make such a decision. We expect that we should be able to render a decision within five months of the date that CAISO submits the filing ordered below, or November 18, 2011.

25. We also reject the requests by Calpine and AReM to direct CAISO to eliminate from its tariff penalties for meter data submitted between 43 calendar days and 61 business days after the trade date. We note that prior to the CAISO's Payment Acceleration Initiative, scheduling coordinators had 47 business days for corrections to data without penalty. If we were to grant Calpine's request to remove penalties up to 61 business days, the result would be to extend the deadline to submit complete and accurate meter data 14 business days beyond what was in place prior to the Payment Acceleration Initiative. We find this result would be inconsistent with the intent of the Payment Acceleration Initiative. We therefore reject Calpine's and AReM's requests for tariff revisions.

The Commission orders:

(A) CAISO's request for waiver of tariff sections 37.5.2.2 and 37.11 for violations committed during the time period from the November 1, 2009 trade date through the February 1, 2011 trade date is hereby granted, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), the Commission hereby institutes a proceeding in Docket No. EL11-41-000 concerning the justness and reasonableness of CAISO's tariff section 10.3.6.3, as discussed in the body of this order. CAISO is hereby directed to revise section 10.3.6.3 in a compliance filing no later than 30 days from the date of this order, as discussed in the body of this order.

(C) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the investigation ordered in Ordering Paragraph (B) above, under section 206 of the FPA.

(D) The refund effective date established pursuant to section 206(b) of the Federal Act will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (B) above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.