

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**California Independent System)
Operator Corporation) Docket No. ER21-____-000**

**PETITION FOR LIMITED TARIFF WAIVER OF THE CALIFORNIA
INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.207, the California Independent System Operator Corporation (CAISO) respectfully requests limited waivers of CAISO tariff sections 37.5.2 and 37.11 that would: (a) excuse the CAISO from assessing penalties against NV Energy, Inc. for late meter data revisions; and (b) permit the CAISO to distribute the funds it collects from NV Energy that approximate the market impact of its error using the CAISO's established penalty distribution methodology.¹

Regarding the first waiver, applying the tariff-defined meter data penalties in NV Energy's circumstances produces an overly punitive result out of line with the purposes those penalties should serve. Regarding the second waiver, the CAISO's tariff provisions governing distribution of market adjustment funds that approximate the market impact of the error would result in the CAISO immediately allocating the funds back to NV Energy. The CAISO does not view that as an appropriate outcome. The CAISO thus requests these limited waivers

¹ The CAISO requests the Commission consider each aspect of this waiver request on its own as severable and not treat the distinct requests as interdependent elements of this filing.

both to avoid charging NV Energy exorbitant penalties and ensure NV Energy's restitution is shared broadly with the market.

I. Background

A. Meter Data Submission Process

The CAISO financially settles its markets through an iterative process that includes an initial settlement statement three business days after the trading day (T+3B) and several subsequent recalculation settlement statements.² The final recalculation settlement statement produced in the ordinary course of business is published fifty-five business days after the trading day (T+55B). The next recalculation settlement statement after T+55B is published nine months after the trading day (T+9M). The T+9M statement is optional. Scheduling coordinators may submit meter data for the CAISO to use on the T+9M statement by the one-hundred seventy-second business day (T+172B) after the trading day.³ If the CAISO publishes a T+9M statement, then it will calculate those statements based on that new meter data.

B. Meter Data Penalties

Although scheduling coordinators may submit new or revised meter data to be used on the T+9M statement, a scheduling coordinator's failure to submit

² The full settlement statement timeline is outlined in CAISO tariff section 11.29.7.1. The Commission recently accepted a CAISO proposal to amend the settlements timeline effective January 1, 2021. *Cal. Indep. Sys. Operator Corp.*, Letter Order approving tariff revisions, Docket No. ER20-2617-000 (Oct. 2, 2020). That prospective change in the timeline does not impact this waiver request.

³ This deadline is sometimes referred to as T+8M instead of T+172B.

any meter data by T+48B⁴ or its submission of revised meter data for the T+9M statement violates the tariff.⁵ This violation subjects the scheduling coordinator to a penalty of \$1,000 for each trading day with missing or late data.⁶ The penalty applies on a scheduling coordinator basis, rather than a per-meter basis; a scheduling coordinator with errors for multiple meters on the same trading day is subject to a single penalty. A scheduling coordinator that fails to submit meter data for the T+55B settlement statement and also fails to submit meter data for the T+9M settlement statement faces an additional penalty of \$3,000 (totaling \$4,000 for every trading day with missing meter data). The overall purpose of these penalties is to incentivize scheduling coordinators to provide accurate and timely meter data.

Where the late or revised meter data is not processed on the T+9M and the initial error was to the scheduling coordinator's benefit (*i.e.*, over-reported generation or under-reported load), the CAISO calculates a market adjustment that "approximates the financial impact on the market."⁷ The market adjustment is the product of the revised hourly data and the greater of: (a) the average of the 12 five-minute prices for the hour; or (b) \$10/MWh. The funds collected from the

⁴ CAISO tariff section 10.3.6.3 ("Scheduling Coordinators must submit Actual Settlement Quality Meter Data for the Scheduling Coordinator Metered Entities they represent to the CAISO no later than midnight on the forty-eighth (48) Business Day after the Trading Day (T+48B) for the Recalculation Settlement Statement T+55B calculation.").

⁵ CAISO tariff section 10.3.6.4 ("Scheduling Coordinators submitting Actual Settlement Quality Meter Data after forty-eight Business Days after the Trading Day (T+48B) but up to T+172B have failed to provide complete and accurate Settlement Quality Meter Data").

⁶ CAISO tariff sections 37.5 & 37.11.

⁷ CAISO tariff section 37.11.2. Where revised data is not processed and the initial error is to the scheduling coordinator's detriment, "then no market adjustment will be made but the Sanction of \$1,000 still shall be levied."

market adjustment are “returned to the market based on the average of the pro rata share of Unaccounted for Energy (UFE) charged in the utility Service Area during the period of the inaccurate Meter Data event.”⁸

C. Rules of Conduct Administration

The CAISO’s meter data penalties are part of CAISO tariff section 37, which is called the rules of conduct. The CAISO administers the rules of conduct through a process defined in the tariff. If the CAISO believes a market participant may have committed a tariff violation subject to CAISO penalties, it “shall conduct a reasonable investigation seeking available facts, data, and other information relevant to the potential” violation.⁹ That investigation must include “notice of the investigation in sufficient detail to allow for a meaningful response”¹⁰ and an opportunity for the market participant “to present any issues of fact or other information relevant to the potential” violation.¹¹ Any penalties resulting from the investigation must be assessed within “one year after discovery of the events constituting the violation, but no later than three years after the date of the violation.”¹² Where the CAISO determines a penalty is warranted, the market participant “may obtain immediate review of the CAISO’s determination by directly appealing to FERC,” in which case the “penalty will be tolled until FERC renders its decision on the appeal.”¹³

⁸ *Id.*

⁹ CAISO tariff section 37.8.3.

¹⁰ CAISO tariff section 37.8.4.

¹¹ CAISO tariff section 37.8.5.

¹² CAISO tariff section 37.10.1.

¹³ CAISO tariff section 37.8.10.

D. NV Energy Late Meter Data Revisions for the Kings Beach Generation Facility

On July 15, 2020, NV Energy notified the CAISO it reported incorrect meter data for the two meters at the Kings Beach Generation Facility for the December 1, 2015, through April 21, 2020, trading days. NV Energy explained that on June 28, 2020, it discovered it inadvertently had been reporting station power values as the plant's generating output. NV Energy further explained the error was due to these meters reporting output on channel one of the meter and station power on channel three, whereas all (or virtually all) other generator meters for which NV Energy has responsibility has the opposite configuration.

Following the required investigation, on October 27, 2020, the CAISO notified NV Energy that its meter data errors violated the CAISO tariff and that NV Energy faced a penalty of \$685,000 and a market adjustment of \$35,668.51. These charges will appear on the T+12B settlement statement for the October 27 trading day.

Although NV Energy's error covered 1,451 trading days, its ultimate sanction is limited by two factors. First, the CAISO already assessed NV Energy late meter data penalties for other issues with the Kings Beach meters for 69 of the trading days covered by the current issue at Kings Beach. These 69 days resulted in \$69,000 of late meter data penalties. Because a scheduling coordinator can only be assessed meter data penalties once for the same trading day, the CAISO excluded these days from the calculations regarding this issue with Kings Beach. Second, the three-year limitations period on assessing penalties means the CAISO cannot levy penalties for trading days before

November 1, 2017. The penalty calculation thus only considers trading days three years or less from the date on which the penalties are assessed.¹⁴ The combination of these two factors results in 685 trading days subject to penalties, for a total penalty of \$685,000.

Of the 1,451 trading days affected by the issue at Kings Beach, 1,290 of those days will not have a T+9M statement processed with the correct meter data because the meter data submission window has passed. Of those 1,290 trading days, 593 are still within the three-year limitations period.¹⁵ The corresponding market adjustment calculated per tariff section 37.11.2 is \$35,668.51.¹⁶

E. CAISO Concerns with the Outcome

The CAISO is concerned the rules of conduct tariff provisions have not created the appropriate outcome in this instance. These concerns include the excessive penalty amount and the inappropriate allocation of the market adjustment.

Before October 1, 2011, the CAISO's meter data penalties were based on a percentage of the error. The penalty was 30 percent of the value of the energy in error if the scheduling coordinator identified the error and 75 percent of the error if the CAISO discovered the error. In proposing the change to a per-day

¹⁴ CAISO tariff section 37.8.10 ("For the purpose of applying the time limitations set forth in Section 37.10.1, a Sanction will be considered assessed when it is included on a Recalculation Settlement Statement").

¹⁵ Of the 685 trading days subject to penalty, 161 trading days will have correct meter data processed for the T+9M recalculation settlement statement.

¹⁶ This market adjustment value covers 517 of the 524 trading days; seven of the trading days involved errors that initially were to NV Energy's detriment and are thus excluded from calculating the market adjustment. Per CAISO tariff section 37.11.2, the market adjustment does not net for days where the initial error was to the scheduling coordinator's detriment.

penalty, the CAISO stated the percentage-based penalty 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.”¹⁷ The CAISO’s concern was that it set mixed incentives to impose exorbitant penalties for meter data violations where nearly all violations are identified by market participants, and reporting issues to the CAISO relies on voluntary compliance.

In response to several penalty appeals submitted by scheduling coordinators, the CAISO further explained the concerns that motivated the change. For example, Pacific Gas and Electric Company (PG&E) filed a waiver request with the Commission for penalties assessed shortly before the penalty methodology was changed.¹⁸ There, the percentage-based penalty created a \$5.77 million penalty; whereas, the per-day penalty would have created an \$845,000 penalty. In response to PG&E’s waiver request, the CAISO explained that the 30 percent penalty can create “a penalty that is disproportionate to the severity of the violation” because “a single configuration error in how meter data gets reported from a particular resource can lead to flawed meter data reporting over many days.”¹⁹ Shortly thereafter, Exelon Corporation filed a similar waiver

¹⁷ *Cal. Indep. Sys. Operator Corp.*, Settlements Process Timeline Changes Transmittal Letter, at 18, FERC Docket No. ER11-4171-000 (Aug. 1, 2011) (Settlements Process Timeline filing).

¹⁸ *Pac. Gas & Elec. Co.*, Request for Waiver, FERC Docket No. ER12-1009-000 (Feb. 6, 2012).

¹⁹ *Pac. Gas & Elec. Co.*, CAISO Comments on Waiver, at 3-4, FERC Docket No. ER12-1009-000 (Feb. 22, 2012).

request. The CAISO filed similar comments in response and the Commission again approved the request.²⁰

The CAISO's concern in prior cases was that the percentage-based penalty created excessive penalties where there was a persistently large meter data error, whereas the per-day penalty created a more proportionate penalty and more reasonable incentives for compliance. However, the CAISO did not consider the opposite scenario—the case where a per-day penalty yielded a disproportionate penalty if there were a persistently small meter data error. That is the situation the CAISO faces here. In NV Energy's case, the “estimated value of the Energy error” under the prior percentage-based penalty structure would be \$69,663.86, which translates to a 30 percent penalty of \$20,899.16.²¹ On the other hand, under the current penalty structure a penalty of \$685,000 on that \$69,663.86 error represents a 983 percent penalty. This far surpasses the 30 percent penalty the CAISO acknowledged in prior proceedings was excessive. NV Energy already has paid \$69,000 in penalties for other meter data issues with these trading days. That represents approximately a 100 percent penalty, which is still well above the penalty under the prior methodology. It is unnecessarily punitive to impose penalties beyond that level.

The CAISO is also concerned how the market adjustment will be allocated. NV Energy was the only party assessed unaccounted for energy in its service area during the trading days involved. The CAISO thus would assess the

²⁰ *Exelon Corp.*, 141 FERC ¶ 61,070 (2012).

²¹ Prior tariff section 37.11 (in effect prior to October 1, 2011).

market adjustment to NV Energy and then immediately allocate the funds back to NV Energy. This outcome, where NV Energy effectively faces no market adjustment, is inconsistent with the disgorgement principle that underlies the market adjustment tariff provisions.

The CAISO requests waivers to remedy these two inappropriate outcomes. Specifically, the CAISO seeks a waiver that would excuse NV Energy's additional meter data penalties and permit the CAISO to distribute NV Energy's market adjustment as if it were a penalty assessed under tariff section 37.9 (*i.e.*, to scheduling coordinators without a penalty assessed in 2020 pro rata by grid management charge paid).²²

Distributing the market adjustment using the penalty distribution process provides an established and administrable approach that, to a degree, offsets the loss of funds to the rules of conduct penalty pool that would occur if the Commission grants the requested waiver on NV Energy's penalty. This approach is also beneficial because it avoids the complicated market impact and cost causation inquiries posed by NV Energy's status as an energy imbalance market participant.

II. Petition for Waiver

Good cause exists for the Commission to grant a limited waiver to: (a) excuse the CAISO from assessing penalties against NV Energy for its late revisions to the meter data from Kings Beach; and (b) permit the CAISO to

²² The \$69,000 in penalties NV Energy already paid for its meter data issues at Kings Beach were assessed in 2020. For this reason, NV Energy already is not an "eligible Market Participant" under tariff section 37.9.4, meaning that if the market adjustment were allocated as if it were a rules of conduct penalty, NV Energy would be ineligible to receive an allocation of those funds.

allocate NV Energy's market adjustment as if it were a penalty collected under the rules of conduct.

A. Meeting the Four Traditional Waiver Criteria

The Commission previously has granted requests for tariff waivers where: (1) the applicant acted in good faith; (2) the waiver was of limited scope; (3) the waiver addressed a concrete problem; and (4) the waiver did not have undesirable consequences, such as harming third parties. This waiver petition meets all four conditions.

Both the CAISO and NV Energy have acted in *good faith*. The CAISO is bringing this waiver request to the Commission's attention as soon as feasible after the penalties were assessed. NV Energy has represented to the CAISO it brought the meter data error to the CAISO's attention as soon as feasible after it was identified.

The waiver requests are of *limited scope* in that they pertain only for matters arising from the incorrect meter data reported from Kings Beach.

The waivers address two *concrete problems*. The first waiver addresses NV Energy meter data penalties far in excess of what is necessary to support the objectives of the penalties. The second waiver facilitates the CAISO allocating the market adjustment funds in a more appropriate manner and ensures the market adjustment does not merely shift funds within NV Energy.

Finally, the waiver requests are structured to avoid *undesirable consequences*. Distributing the market adjustment as a rules of conduct penalty avoids the undesirable consequence of NV Energy essentially facing no market

adjustment. The waiver, instead, would ensure the adjustment is distributed equitably to market participants that did not violate the rules of conduct in 2020.

Excusing the \$685,000 in penalties that are beyond the \$69,000 in penalties that NV Energy already paid avoids the undesirable consequence of imposing unreasonably high meter data penalties. The CAISO acknowledges granting this waiver would reduce the overall pool of rules of conduct funds to distribute to entities without a violation in 2020. The CAISO does not, however, view reducing the ultimate payment to those market participants as an undesirable consequence that should prevent the Commission from granting this request. The goal of the rules of conduct process is not to maximize the assessed penalties but instead is to incentivize compliance. The threat of penalties is the main incentive with the eligibility for being allocated a share of the penalty funds a secondary incentive. In this case, those goals are met. NV Energy already has incurred meter data penalties. Further, by treating the market adjustment as a rules of conduct penalty, NV Energy will have contributed \$104,668.51 to be allocated to market participants without a violation in 2020.²³

Finally it is speculative to claim any particular third party would be harmed by this waiver because no market participant is guaranteed to be eligible for an allocation from the 2020 funds. Parties that have yet to be assessed a violation for 2020 could still have a violation, and thus become ineligible, in the time remaining in 2020.

²³ This figure is the sum of the meter data penalties already assessed (\$69,000) and the market adjustment (\$35,668.51).

B. The CAISO is not Requesting an Impermissible Retroactive Waiver

This filing does not request the Commission to violate the filed rate doctrine or otherwise engage in retroactive ratemaking. In a recent order rejecting a CAISO market participant's request for a waiver to submit updated meter data after the T+172B deadline, the Commission noted the key factor the Commission considers in evaluating whether a requested waiver "would violate either the filed rate doctrine or the rule against retroactive ratemaking, is whether the ratepayers had sufficient notice that the approved rate was subject to change."²⁴ In that scenario, the Commission found it dispositive that the CAISO tariff expressly states that meter data submitted after the deadline "will be rejected by the CAISO and not used in settlement calculations."²⁵

In contrast, section 37 of the CAISO tariff, which is the subject of this waiver, provides clear notice to the market that consequences outlined in that tariff section are subject to further Commission review. As noted above, section 37.8.10 provides that if the CAISO determines a penalty is warranted, the market participant "may obtain immediate review of the CAISO's determination by directly appealing to FERC" This portion of the CAISO's filed rate directly enables the Commission to perform its own after-the-fact review of NV Energy's penalty and the disposition of its market adjustment and "changes what would be

²⁴ *Pac. Gas & Elec. Co.*, 173 FERC ¶ 61,051, P 14 (2020). See also *Sunflower Elec. Power Corp.*, 173 FERC ¶ 61,054, Comm'r Danly dissent at P 7 (2020) ("the Commission is legally barred by the filed rate doctrine and the rule against retroactive ratemaking from granting a retroactive waiver request unless . . . the parties had notice that the tariff provision could be waived retroactively").

²⁵ *Id.* at 16.

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.”²⁶

III. Conclusion

The Commission should find that good cause exists to grant the CAISO’s request for limited waiver of NV Energy’s meter data penalties and of the distribution methodology for market adjustments.

Respectfully submitted,

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²⁶ *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791, 797 (D.C.Cir. 1990).