

188 FERC ¶ 61,207
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;
Mark C. Christie, David Rosner,
Lindsay S. See and Judy W. Chang.

Tucson Electric Power Company

Docket No. EL24-15-000

v.

California Independent System Operator Corporation

ORDER ON PAPER HEARING AND GRANTING COMPLAINT

(Issued September 24, 2024)

1. On November 14, 2023, 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 Tucson Electric Power Company (Tucson) filed a complaint against the California Independent System Operator Corporation (CAISO). In the complaint, Tucson challenged the application of CAISO's Open Access Transmission Tariff (Tariff) section 37 and, pursuant to Tariff section 37.8.10, appealed \$191,000 in penalties assessed by CAISO for incorrect meter data reporting during the trading days of May 2, 2022 through November 30, 2022. Tucson requested that the Commission nullify the penalties in their entirety.³ On March 27, 2024, the Commission granted the complaint with respect to one of the nine penalty periods at issue and directed nullification of that penalty.⁴ However, the Commission also determined that the evidentiary record lacked sufficient information for the Commission to determine whether Tucson's complaint concerning the other penalty periods had been filed in accordance with the timing requirements of Tariff section 11.29.8, and the Commission

¹ 16 U.S.C. §§ 824e, 825e.

² 18 C.F.R. § 385.206 (2024).

³ Complaint at 1-2.

⁴ *Tucson Elec. Power Co. v. Cal. Indep. Sys. Operator Corp.*, 186 FERC ¶ 61,232 (2024) (Paper Hearing Order). The Commission granted Tucson's complaint for the penalty period that included 11 Trade Dates between November 1, 2022 and November 30, 2022, with an assessed penalty of \$9,000. *Id.* P 23.

established a paper hearing to provide Tucson an opportunity to supplement the record to demonstrate that its complaint was timely with respect to the remaining penalty periods.⁵

2. On April 26, 2024, Tucson filed a brief in response to the Paper Hearing Order and provided additional information and documentary evidence to demonstrate its compliance with the Tariff. Tucson requests that the Commission grant waiver for all penalty periods and nullify the outstanding penalties. As discussed below, we grant Tucson's complaint seeking nullification of the penalties not previously granted in the Paper Hearing Order.

I. Tucson's Complaint

3. On November 14, 2023, Tucson filed a complaint appealing CAISO's assessment of penalties for submission of incorrect meter data during the trading days of May 2, 2022 through November 30, 2022, identified in nine separate Notices of Review. Tucson argued that the Tariff does not permit CAISO to waive Tariff-imposed penalties without an order of the Commission and, therefore, Tucson's only remedy was to file a complaint with the Commission disputing these penalties. Tucson requested nullification of all of the penalties imposed under the Tariff, totaling \$191,000.⁶

4. In its complaint, Tucson explained that pursuant to Tariff section 37.5.2, CAISO requires Scheduling Coordinators to submit Settlement Quality Meter Data (SQMD) in order to financially settle its markets.⁷ Prior to Tucson joining the Western Energy Imbalance Market (WEIM) on May 3, 2022, CAISO approved a SQMD plan that Tucson first used during parallel operations, prior to entry into the market, and thereafter, for several months at the start of its participation in WEIM. However, after receiving feedback from its customers about billing discrepancies, Tucson discovered that its SQMD contained configuration errors. Tucson asserted that these meter data errors were made inadvertently and that on February 15, 2023, it reported the problem to CAISO.⁸

⁵ *Id.* P 24.

⁶ Complaint at 1-2 (citing CAISO, CAISO eTariff, § 37.8.10 (Review of Determination) (6.0.0)).

⁷ *Id.* at 2; Paper Hearing Order, 186 FERC ¶ 61,232 at P 2 (citing CAISO, CAISO eTariff, § 37.5.2 (Accurate and Timely Actual SQMD) (7.0.0)).

⁸ Complaint at 7.

Further, Tucson explained that, in compliance with CAISO's Tariff, it submitted the corrected meter data.⁹

5. Tucson also explained that its submission of corrected meter data prompted CAISO to issue Notices of Review stating that CAISO was reviewing potential violations of the accurate and timely actual SQMD requirements,¹⁰ and that Tucson was subject to Tariff sanctions.¹¹ Tucson stated that it responded to each of CAISO's Notices of Review by submitting Customer Inquiry, Dispute and Information (CIDI) Inquiry Tickets explaining why the original data was inaccurate and why the corrected meter data had been submitted. For each CIDI Ticket, CAISO sent Tucson results of review concluding that Tucson had violated the Tariff.¹²

6. Tucson requested that the Commission nullify the penalties because the sanctions assessed against Tucson were disproportionate to its conduct and were otherwise unjust and unreasonable. Further, Tucson stated that the Commission granted a similar waiver request filed by CAISO for penalties assessed against NV Energy, Inc. (NV Energy),¹³ and that although NV Energy's meter data error was due to metering at a generation point in WEIM, meter data provided by generation and by load have similar impacts on WEIM. Tucson asserted that in both cases, generation will not be bid into WEIM for a misreported amount. Tucson contended that because these facts create similar impacts on WEIM, with minimal to negligible consequences, there is no need to distinguish the circumstances between generation and load-based meter data error.¹⁴

7. Also, Tucson asserted that the underlying errors were made in good faith because it relied upon CAISO's Business Practice Manual for Metering (Metering BPM) and CAISO's approval of its SQMD plan,¹⁵ and did not have any indication from CAISO that

⁹ *Id.* at 7-8 (citing CAISO, CAISO eTariff, § 10.3.6. (Settlement Quality Meter Data Submission) (12.0.0), § 10.3.6.4).

¹⁰ *Id.* at 8 (citing CAISO, CAISO eTariff, § 10.3.6 (Settlement Quality Meter Data Submission) (12.0.0)).

¹¹ *Id.* (citing CAISO, CAISO eTariff, § 37.8.4 (Notice) (2.0.0)).

¹² *Id.*

¹³ *Id.* at 9 (citing *Cal. Indep. Sys. Operator Corp.*, 175 FERC ¶ 61,043 (2021) (*NV Energy*)).

¹⁴ *Id.*

¹⁵ *Id.* at 2.

there was a problem with the data.¹⁶ Tucson asserted that it discovered five of its seven resources had been configured incorrectly from the beginning of its entry into WEIM.¹⁷ Further, Tucson stated that when it identified the errors, it immediately reported them to CAISO and made the necessary corrections.¹⁸ Tucson argued that the Commission granted CAISO's request for waiver of penalties in *NV Energy* where it determined that NV Energy also reported the meter data error immediately to CAISO, and promptly filed corrective meter data. Tucson argued that it took substantially similar action in bringing the meter data error to CAISO's attention, promptly filing corrective meter data, and confirming that the underlying errors had been resolved.¹⁹

8. Further, Tucson asserted that it faced the same problem identified in *NV Energy*, namely, the assessment of meter data penalties that were "far in excess of 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."²⁰ Tucson asserted that waiving the meter data penalties avoids the undesirable consequence of imposing unreasonably severe penalties. Also, Tucson argued that its error did not harm CAISO's markets and only affected energy imbalance requirements for Tucson's balancing authority area.²¹ Tucson argued that, as the Commission found in *NV Energy*, granting its waiver request would not harm third parties and would achieve a balance between incentivizing compliance and avoiding disproportionately high penalties.²² Finally, Tucson asserted that to deny Tucson's complaint would result in preferential and unfair treatment of NV Energy to the detriment of Tucson.²³

¹⁶ *Id.* at 10.

¹⁷ Tucson stated that one incorrect configuration resulted from using an incorrect formula to calculate the data, and the other four were the result of other configuration errors that escaped its and CAISO's review. *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 11 (citing *NV Energy*, 175 FERC ¶ 61,043 at P 26).

²¹ *Id.* at 14 (citing *id.*, attach. B, Rush Aff. at P 10).

²² *Id.* at 15 (citing *NV Energy*, 175 FERC ¶ 61,043 at P 29).

²³ *Id.*

II. Paper Hearing Order

9. In the Paper Hearing Order, the Commission granted Tucson's request for nullification of the meter data penalties included in the Notice of Review dated October 31, 2023. This Notice of Review assessed penalties of \$9,000 for 11 Trade Dates between November 1, 2022 and November 30, 2022.

10. The Commission explained that it had previously determined that the appropriate procedural vehicle for market participants to appeal penalties imposed under CAISO's Tariff section 37.8.10 is to file a complaint with the Commission under either Rule 206 of the Commission's Rules of Practice and Procedure, which governs complaints, or Rule 218, which provides simplified procedures for complaints involving small controversies.²⁴ In the Paper Hearing Order, the Commission concluded that Tucson's complaint concerning the penalty associated with the CAISO Notice of Review dated October 31, 2023 was consistent with the Commission's previous findings.²⁵

11. In particular, the Commission agreed with Tucson that nullifying the Tariff section 37 penalties associated with the October 31, 2023, Notice of Review under the instant circumstances would not violate the filed rate doctrine or the rule against retroactive ratemaking. The Commission concluded that Tariff section 37 provides adequate notice to the market that the penalty procedures delineated in that Tariff section may be subject to further Commission review. Because market participants are placed on notice at the outset that the rates being promulgated are subject to subsequent review, the Commission found that it is not engaging in impermissible retroactive ratemaking when reviewing a penalty under this Tariff procedure.²⁶ The Commission also stated that Tariff section 37.8.10 provides that "the applicable Scheduling Coordinator shall . . . dispute the Settlement Statement containing the financial penalty, in accordance with section 11. The Settlement Statement dispute and appeal to FERC must be made in accordance with the timeline specified in Tariff section 11.29.8." The Commission explained that CAISO's Tariff further provides that the complaint must be filed consistent with

²⁴ Paper Hearing Order, 186 FERC ¶ 61,232 at P 20 (citing *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); *NV Energy*, 175 FERC ¶ 61,043 at n.29)).

²⁵ The Commission also noted 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. *Id.*

²⁶ *Id.* P 21.

Tariff section 11.29.8.2(v), which states that “[a] dispute of a Settlement Statement must be submitted no later than twenty-two (22) business days from the date of issuance.”²⁷

12. Applying the Tariff to Tucson’s circumstances, the Commission determined that, in accordance with Tariff section 37.8.10, Tucson’s complaint, filed on November 14, 2023, was submitted to the Commission within 22 business days of CAISO’s issuance of the October 13, 2023 notice, as required by Tariff section 11.29.8.2(v).²⁸ The Commission also determined that Tucson had met its burden under FPA section 206 to demonstrate that Tariff section 37 is unjust and unreasonable as applied to CAISO’s October 31, 2023 Notice of Review because the Commission agreed with Tucson that the Tariff penalty for each of the 11 Trade Dates between November 1, 2022 and November 30, 2022 was 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 WEIM.²⁹

13. However, the Commission noted that Tucson had not provided the CAISO Settlement Statements for any of the other eight Notices of Review that were submitted with the complaint. Because all of these Notices of Review were dated more than 22 business days prior to the filing of the Complaint, the Commission was not able to determine whether Tucson’s complaint was filed within the Tariff-mandated 22-business day period from the date of issuance of any corresponding Settlement Statement, as required for appeals to the Commission.³⁰ Accordingly, the Commission established a paper hearing to develop the record for the purpose of determining whether Tucson’s complaint complied with the timeline for raising disputes specified in Tariff section 11.29.8.

III. Paper Hearing

14. In its paper hearing brief, Tucson asserts that it has provided information and documentary evidence requested by the Commission in the Paper Hearing Order showing that Tucson timely disputed CAISO’s meter data penalties when it filed its complaint on November 14, 2023. Accordingly, Tucson argues that its complaint satisfies the Tariff

²⁷ *Id.* (citing CAISO, CAISO eTariff, § 37.8.10 (Review of Determination) (6.0.0)).

²⁸ *Id.* P 23.

²⁹ *Id.* n.49 (citing *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.”)).

³⁰ *Id.* P 24.

requirement that an appeal of the CAISO penalty must be submitted to the Commission within 22 business days of the issuance of the first Settlement Statement.³¹

15. Tucson comments that the Commission correctly noted in the Paper Hearing Order that Tucson had submitted nine Notices of Review in support of its complaint, but that Tucson had not submitted any of the corresponding CAISO Settlement Statements assessing the data meter penalties.³² Tucson also acknowledges that Tariff section 11.29.8.2(v), which permits appeal to the Commission within 22 business days from the issuance of a Settlement Statement, is not triggered by the issuance of a Notice of Review; instead, Tariff section 11.29.8.2(v) is triggered by the issuance of Settlement Statements. Tucson explains that following CAISO's October 13, 2023 issuance of the first Settlement Statement, which included meter data penalties for the months of May, June, and July 2022, Tucson filed its complaint on November 14, 2023, which is within the Tariff's 22-business day appeal period. Tucson also explains that at the time it filed its complaint, CAISO had not issued Settlement Statements for the other Trade Dates at issue in this proceeding. In the absence of these other Settlement Statements, Tucson submitted the Notices of Review with the complaint.³³

16. In response to the Commission's request for addition information demonstrating Tucson's compliance with the Tariff requirements for appealing penalties to the Commission, Tucson provided the requested Settlement Statements in its Paper Hearing Brief.³⁴ These Settlement Statements document the relevant Trade Dates on which CAISO assessed penalties and the amount of total penalties for each set of monthly sanctions as follows:

³¹ Tucson Paper Hearing Brief at 1, 3 (citing CAISO, CAISO eTariff, § 11.29 (CAISO as Counterparty; Billing and Payment) (5.0.0); *id.* § 37.8.10 (Review of Determination) (6.0.0)).

³² *Id.* at 4-5.

³³ *Id.*

³⁴ Tucson also provides with the exhibits the corresponding CIDI tickets that Tucson opened with CAISO to memorialized Tucson's objection to each Settlement Statement penalty. Tucson Paper Hearing Brief at 5-6.

Exhibit A

Trade Dates: May 3, 2022 – May 31, 2022
June 1, 2022 – June 30, 2022
July 1, 2022 – July 31, 2022
Published: October 13, 2023
Total Penalty: \$90,000

Exhibit B

Trade Dates: August 1, 2022 – August 31, 2022
Published: October 23, 2023
Total Penalty: \$31,000

Exhibit C

Trade Dates: September 1, 2022 – September 30, 2022
Published: November 28, 2023
Total Penalty: \$30,000

Exhibit D

Trade Dates: November 1, 2022 – November 31, 2022
Published: January 3, 2024
Total Penalty: \$31,000

17. Tucson asserts that these four exhibits demonstrate that Tucson properly disputed the first applicable Settlement Statement by filing its complaint with the Commission on November 14, 2023, within 22 business days after it received the first Settlement Statement – provided in Exhibit A – and that CAISO issued the other Settlement Statements – provided in Exhibits B, C, and D – after Tucson filed its complaint.³⁵ Tucson concludes that it met the requirements of Tariff section 11.29.8 by timely disputing each applicable Settlement Statement.³⁶ Accordingly, Tucson requests that the Commission grant the complaint for the CAISO Settlement Statements Tucson submitted as Exhibits A through D, and nullify the associated CAISO penalties.³⁷

³⁵ *Id.* at 3; *see id.*, Exs. A-D.

³⁶ *Id.* at 3.

³⁷ *Id.* at 3, 6.

18. CAISO did not submit a reply brief.

IV. Discussion

19. We find that the four CAISO Settlement Statements included in Exhibits A through D of Tucson's paper hearing brief and Tucson's related explanations demonstrate that Tucson complied with the CAISO Tariff requirements for timely contesting all of the penalties identified in Tucson's complaint. Accordingly, as explained below, on the basis of this record, we grant Tucson's complaint and direct CAISO to nullify the penalties associated with the eight penalty periods not addressed in the Paper Hearing Order.³⁸

20. Tucson's Exhibit A is a Settlement Statement reflecting the penalties for the months of May, June, and July of 2022, which total \$90,000. This Settlement Statement was assessed by CAISO on October 13, 2023³⁹ and triggered Tariff section 11.29.8's provisions for appealing penalty disputes to the Commission. Tucson also submitted Exhibit B (\$31,000 penalty), Exhibit C (\$30,000 penalty) and Exhibit D (\$31,000 penalty), all of which are CAISO Settlement Statements that were issued after Tucson filed its complaint, but were included in the total of \$191,000 in penalties that Tucson identified in its complaint. Based upon this evidence, we find that Tucson timely appealed all of these CAISO Tariff penalties.

21. Moreover, consistent with the analysis in the Paper Hearing Order, we find that nullifying Tariff section 37 penalties under the instant circumstances will not violate the filed rate doctrine or the rule against retroactive ratemaking.⁴⁰ We reiterate that Tariff section 37 provides adequate notice to the market that the penalty procedures delineated in that Tariff section may be subject to further Commission review.⁴¹

³⁸ We note that in the Paper Hearing Order, the Commission granted Tucson's complaint for the \$9,000 penalty associated with the CAISO Notice of Review dated October 31, 2023. Accordingly, the total amount of penalties that are the subject of this paper hearing is reduced by \$9,000.

³⁹ Tucson states that this Settlement Statement was dated October 11, 2023, but that it was published and made available to Tucson on October 13, 2023. Paper Hearing Brief at 6.

⁴⁰ Paper Hearing Order, 186 FERC ¶ 61,232 at P 21.

⁴¹ Pursuant to Tariff section 37 in effect at the time of the instant meter data violations, CAISO had no discretion to reduce or choose not to apply the penalty. However, on March 22, 2024, CAISO's proposed revisions to the meter data penalty provisions in section 37 of CAISO's Tariff were accepted. These revisions adjust the penalty for inaccurate meter data to reflect the lower of: (a) 30% of the absolute value

Because market participants are placed on notice at the outset that the rates being promulgated are subject to subsequent review, the Commission is not engaged in impermissible retroactive ratemaking when reviewing a penalty under this Tariff procedure. Tariff section 37.8.10 also provides that “the applicable Scheduling Coordinator shall . . . dispute the Settlement Statement containing the financial penalty, in accordance with section 11. The Settlement Statement dispute and appeal to FERC must be made in accordance with the timeline specified in Tariff section 11.29.8.” CAISO’s Tariff further provides that the complaint must be filed consistent with Tariff section 11.29.8.2(v), which states that “[a] dispute of a Settlement Statement must be submitted no later than twenty-two (22) business days from the date of issuance.”⁴²

22. Also, similar to the Commission’s determination in the Paper Hearing Order, we find that Tucson has met its burden under FPA section 206 to demonstrate that Tariff section 37 is unjust and unreasonable as it applies to the penalties assessed for the additional 222 trading days included in the CAISO Settlement Statements that were not addressed in the Paper Hearing Order. We agree with Tucson that the penalties assessed pursuant to the Tariff⁴³ for these 222 trading days 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 WEIM.⁴⁴

23. Accordingly, we grant Tucson’s complaint as to the Settlement Statement penalty periods that are the subject of the Paper Hearing and direct CAISO to nullify the meter data error penalties identified in these Settlement Statements and assessed against Tucson.

of the error; or (b) \$1,000 per trading day. *Cal. Indep. Sys. Operator Corp.*, Docket No. ER24-872-000, at 2 (Mar. 22, 2024) (delegated order).

⁴² CAISO, CAISO eTariff, § 37.8.10 (Review of Determination) (6.0.0).

⁴³ CAISO, CAISO eTariff, § 37.11.1 (Inaccurate or Late Actual SQMD Penalty) (6.0.0); *id.* § 37.11.2 (Inaccurate Actual SQMD Penalty Without Recalculation Settlement Statement) (0.0.0).

⁴⁴ *See NV Energy*, 175 FERC ¶ 61,043 at P 30.

The Commission orders:

Tucson'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.