140 FERC ¶ 61,122
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

San Diego Gas and Electric Company Docket No. ER12-1993-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued August 10, 2012)

1. On June 11, 2012, San Diego Gas and Electric Company (SDG&E) filed a request for a limited, one-time waiver of certain provisions in the California Independent System Operator Corporation (CAISO) tariff related to the submission of settlement meter data that were in effect prior to October 1, 2011, and would otherwise subject SDG&E to a penalty of $189,802.55. As discussed below, we will grant SDG&E's request for waiver of sections 10.3.6.3, 37.5.2.1, and 37.11 of the CAISO tariff for the reasons stated herein.

I. **Background**

2. On September 30, 2011, to be effective October 1, 2011, the Commission accepted CAISO's proposed tariff revisions, including revisions to the Meter Data Submittal Timeline in section 10.3.6.3 of the CAISO tariff and the calculation of the Inaccurate Meter Data Penalty in section 37.11.[1]

3. Under this currently-effective section 37.5.2.1 of the CAISO Tariff, market participants are required to provide complete and accurate Settlement Quality Meter Data for each trading hour and correct any errors in the data no later than 48 business days (instead of the previous eight business days) after the trading day. Under section 10.3.6.3, failure to either submit complete and accurate actual Settlement Quality Meter Data or to replace estimated Settlement Quality Meter Data with complete and accurate actual meter data by this timeline would constitute a violation of section 37.5.2.1 and subject the market participant to penalties under section 37.11.

[1] *Cal. Indep. Sys. Operator Corp.*, 136 FERC ¶ 61,232 (2011).

4. On October 12, 2011, SDG&E submitted to the CAISO corrections to previously submitted load data for trading dates August 22-28, 2011, when the eight-day correction period was in effect. According to SDG&E, the errors in its meter data reporting system resulted in SDG&E's load being underreported by an average of 4.2 percent for the affected days. At its own volition, correct load date was resubmitted to CAISO on October 12, 2011, 36 business days from the oldest trade date.

5. On May 24, 2012, CAISO issued SDG&E a settlement statement that included an Inaccurate Meter Data Penalty charge of $189,802.55 for the aforementioned incident. Again, the penalty amount was determined based on CAISO tariff section 37.11, as it was in effect prior to October 1, 2011.[2]

II. SDG&E Request for Waiver

6. In its request for waiver, SDG&E argues that its request for one-time waiver for the incident meets the criteria for granting such waivers established in the Commission's prior orders. Specifically, SDG&E argues that, under the timeline for submission of corrected meter data set forth in the currently-effective version of section 10.3.6.3 of CAISO's tariff, there would be no penalty, as the correct Settlement Quality Meter Data would have been submitted timely. SDG&E further explains that submission of slightly incorrect load data for seven days was inadvertent, unintentional, and corrected with expedition upon SDG&E's discovery of the errors. SDG&E points out that, under the new timeline, which allows more time for data review prior to submission, the data error would have been discovered and corrected before it was required to be submitted.

7. SDG&E asserts that CAISO's rationale for amending these provisions was to "provide for a more accurate market settlement earlier in the settlement timeline . . . and provide for a more efficient submittal process for market participants."[3] According to SDG&E, the compressed timeline for data submission which was formerly in effect made it difficult to identify and correct errors timely.[4]

[2] Under CAISO tariff section 37.11.1 that was in effect at the time, the penalty for submitting inaccurate load data was 30 percent of the financial or monetary value of the error, if the error was discovered by the scheduling coordinator, and 75 percent of the monetary value of the error, if the error was discovered by CAISO.

[3] SDG&E Petition at 2.

[4] *Id*.

Moreover, SDG&E contends that the CAISO itself has acknowledged that the penalty provision under section 37.11, that was in effect prior to October 1, 2011, was "overly burdensome" on market participants.[5]

8. SDG&E further argues that the scope of this request is limited. SDG&E states that it is seeking a one-time waiver of a specific tariff provision that is no longer in effect. SDG&E explains that the tariff change at issue had already been proposed by CAISO prior to SDG&E's submission of erroneous data, and had become effective before SDG&E's submission of the corrected data.

9. In addition, SDG&E points to a prior Commission order, where the Commission granted Pacific Gas and Electric Company's (PG&E) request for waiver of formerly-effective tariff provisions changed by the same CAISO Filing as in the instant request.[6] According to SDG&E, in *PG&E*, the request for waiver sought to calculate the penalty in accordance with the currently-effective provisions of the CAISO tariff, resulting in a reduction in the applicable penalty, from approximately $5.77 million to $845,000. SDG&E argues that, unlike in the instant case, in *PG&E*, the Commission did not eliminate the penalty entirely because the corrected data would not have been considered submitted timely even pursuant to the revised settlement timeline. SDG&E adds that the waiver granted in *PG&E* resulted in approximately $4.92 million in penalties being waived, an amount that is more than 20 times the size of the penalty at issue in this waiver request.

10. SDG&E further argues that this waiver will not have undesirable consequences on the accuracy of the data because the corrected data submitted by SDG&E have already been incorporated by CAISO into final settlement statements. Finally, SDG&E argues, this limited, one-time waiver will benefit SDG&E's customers because the alternative may render SDG&E's customers ineligible for the sharing of penalty amounts collected by CAISO.[7]

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[5] *Id*. at 1-2.

[6] SDG&E refers to *Pacific Gas and Electric Co.*, 139 FERC ¶ 61,007 (2012) (*PG&E*).

[7] Under section 37.9.4 of the CAISO tariff, non-offenders (eligible market participants) share the penalty proceeds on a *pro-rata* basis.

III. Notice and Responsive Pleadings

11. Notice of SDG&E's Filing was published in the *Federal Register*, 77 Fed. Reg. 37,393 (2012), with interventions, comments, and protests due on or before July 2, 2012. A timely motion to intervene and comments were submitted by CAISO.

12. In its comments, CAISO states that it does not object to the substance of SDG&E's Filing. CAISO, moreover, states that it supports SDG&E's request if the Commission could reasonably find the penalty at issue to be excessive.[8] CAISO also notes that the Commission has previously indicated that appeals of CAISO's "traffic ticket" penalties should be made as a complaint under section 206 of the Federal Power Act and that this waiver request could be viewed as essentially a traffic ticket penalty appeal.[9] In support, CAISO points out that, in the *PG&E* proceeding, PG&E initially filed a complaint which it then withdrew and instead submitted a request for waiver.

13. Further, CAISO acknowledges that SDG&E's submission of corrected load data under the currently-effective tariff provision would be considered timely and would not have triggered any penalties. CAISO argues that that the Commission could reasonably find that a $189,802 penalty is disproportionate to the nature of SDG&E's error and higher than necessary to provide adequate incentives for SDG&E to meet current tariff requirements.

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motion to intervene serves to make CAISO party to this proceeding.

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[8] CAISO claims that, under the new penalty provision, each day will still count as a separate violation. The distinction between the pre- and post- October 1, 2011 versions being that the penalty for each day will be notably reduced, creating more proportionate penalties.

[9] CAISO Comments at 3.

B. Commission Determination

15. The Commission historically has granted certain waiver requests involving an emergency situation or an unintentional error.[10] 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.[11] We find that good cause exists here to grant SDG&E's request for a limited, one-time waiver of tariff sections 37.5.2.1, 10.3.6.3, and 37.11.

16. In *PG&E*, the Commission granted a similar one-time waiver of the tariff provision that had been subsequently revised, and permitted application of the penalty provision that went into effect following the violations at issue in that proceeding.[12] Here, SDG&E seeks substantially the same type of relief that was granted to PG&E with the exception that SDG&E's submission would be considered timely and no violation of the rules would occur under the currently effective tariff. Given the Commission's precedent in this regard, we believe that it is appropriate in the instant case to grant a limited, one-time waiver of the tariff provisions that are no longer in effect.

17. In addition, we find that this waiver request is limited in scope, since it only applies to a six-day period in August 2011. The waiver would not have any undesirable consequences because the corrected data avoided unaccounted for energy from being charged to the market. Finally, we agree with SDG&E that its customers will benefit from the waiver because imposing a penalty created under previously-effective tariff provisions would render SDG&E's customers ineligible for the sharing of penalty amounts collected by CAISO. Accordingly, we believe that it is appropriate in the instant case to grant a limited, one-time waiver of the tariff provisions that are no longer in effect.

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[10] *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).

[11] *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).

[12] *PG&E*, 139 FERC ¶ 61,007.

18. We note that CAISO, the only intervenor in this case, has expressed its general support of SDG&E's request. However, we disagree with CAISO that, in order to grant the requested waiver, the Commission should make a finding that the penalty imposed by the previously-effective tariff provisions was excessive. In granting waiver as noted above, the Commission is not limited to a specific type of circumstance to determine whether good cause exist. In addition, we note that the justness and reasonableness of the penalty imposed by the previously-effective tariff provisions is not at issue here.

The Commission orders:

SDG&E's request for one-time waiver as proposed is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.