141 FERC ¶ 61,070
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.

Exelon Corporation Docket No. ER12-1994-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued October 26, 2012)

1. On June 11, 2012, Exelon Corporation (Exelon) filed, on behalf of its wholly-owned subsidiary Constellation NewEnergy, Inc., a request for a limited, one-time waiver of section 37.11.1 of the California Independent System Operator Corporation (CAISO) tariff that was in effect prior to October 1, 2011, to avoid a penalty of $281,831.84 for untimely submission of settlement meter data. As discussed below, we grant Exelon's request for waiver to allow reduction of the penalty to $42,000, consistent with the currently-effective tariff section 37.11.1.

I. Background

2. Exelon states that in August 2011, its internal review of the settlement quality meter data submitted to CAISO, pursuant to section 10.3.2.1, revealed errors in the process used to collect and transmit customer account data to Exelon's third-party aggregator.[1] Exelon explains that the error caused it to underreport usage for the customers that were affected from June 1, 2011 through July 17, 2011. Exelon further states that it resubmitted corrected data to CAISO on September 10, 2011 for the trading days in question.[2]

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[1] Specifically, Exelon states that it discovered that certain customers with contracts reaching the end of their terms had converted to month-to-month service, and it assumed that these customers had moved to another service provider. However, Exelon determined that the affected customers were, in fact, dropped from the data file that was provided to its third-party aggregator. Exelon Filing at 4.

[2] *Id.* at 3.

3. On September 30, 2011, the Commission accepted CAISO's proposed tariff revisions, including revisions to the calculation of the Inaccurate Meter Data Penalty in section 37.11, with an effective date of October 1, 2011.[3] Under this currently-effective section 37.11, market participants that fail to timely submit accurate and complete settlement meter data are subject to sanction of $1,000 for each trade day corrected.

4. On January 19, 2012, CAISO informed Exelon that it was investigating a potential violation of the CAISO tariff based on Exelon's late submission of corrected settlement meter data. On March 12, 2012, CAISO informed Exelon that it was in violation of section 37.5.2 of its tariff. On May 8, 2012, CAISO issued a settlement statement that imposed a $281,831.84 penalty to Exelon for its violation.[4] The penalty was derived according to the version of section 37.11.1 that was in effect at the time of the tariff violation.[5]

II. Exelon's Request for Waiver

5. Exelon requests a limited, one-time waiver of section 37.11.1 of CAISO's tariff, as it existed prior to modifications that became effective on October 1, 2011 for its violation of failing to submit corrected settlement data. Exelon also requests that the current version of section 37.11.1 be applied for the purposes of calculating the penalty for Exelon's tariff violation. Exelon contends that if the current tariff is applied, it would be assessed a $42,000 penalty.[6] According to Exelon, when CAISO sought revisions to its tariff, CAISO argued that the penalty for submitting corrected meter data was "overly burdensome" 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."[7]

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

[4] Exelon Filing at 6.

[5] The prior penalty calculation for the submission of corrected meter data to CAISO past the 43 calendar day deadline was based on the volume difference from the initial data submittal and the corrected submittal multiplied by a 30 percent penalty of the value of the energy in error, i.e., (MWh*applicable price)*0.30.

[6] *Id.* at 1.

[7] *Id.* at 2 and 5 (citing CAISO Filing, Docket No. ER11-4176-000, (Aug. 1, 2011)).

6. Exelon argues that its request for a limited, one-time waiver meets the Commission's standard for such waiver of tariff provisions.[8] First, Exelon contends that the meter data error was inadvertent and was made in good faith. Exelon states that, due to human error, its third-party aggregator received meter data based on the mistaken belief that customers whose contracts had expired had migrated to other suppliers, but it was later discovered that these contracts were converted to month-to-month contracts.[9]

7. Second, Exelon asserts that its waiver request is limited in scope and addresses a discrete set of trading days, from June 1, 2011 through July 17, 2011. Moreover, Exelon argues that the tariff provision for which it seeks waiver was modified and replaced by the CAISO, effective October 1, 2011.

8. Third, Exelon contends that its request for waiver remedies a concrete problem. Exelon explains that the error that caused the incomplete meter data was the mistaken belief that service to certain customers ended when their contracts expired when, in fact, these customers continued to be served on a month-to-month basis.[10] Exelon contends that the single error contributed to a substantial penalty, as it affected the aggregate settlement meter data for a number of trading days.[11]

9. Finally, Exelon explains that there are no undesirable consequences to its request for waiver, and no third party will be affected. Exelon states that it submitted corrected meter data for the June 1, 2012 through July 17, 2012 time period and also paid a settlement adjustment calculated by CAISO in accordance with the previous provision in its tariff. According to Exelon, granting its request will only reduce the amount of the penalty it will pay to CAISO for its late submission of corrected settlement meter data that is currently prescribed in CAISO's tariff.[12] Exelon also explains that it will still be penalized for the late submission of its corrected meter data, and in the future will be

[8] Exelon cites *Diamond State Gene Partners, LLC*, 139 FERC ¶ 61,087, at P 12 (2012); *Green Mountain Energy Co.*, 137 FERC ¶ 61,238 at PP 9-11 (2011); *Pittsfield Generation Co., L.P. and Pawtucket Power Associates, L.P.*, 130 FERC ¶ 61,182, at PP 8-11 (2010); *Acushnet Co.*, 122 FERC ¶ 61,045, at PP 14-16 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225, at PP 28-29 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007, at PP 31-34 (2007). *See id.* at 7.

[9] *Id.* at 9.

[10] *Id.* at 10.

[11] *Id.*

[12] *Id.*

subject to the same incentives as all other market participants to ensure that accurate meter data is provided to CAISO on a timely basis.[13]

10. In addition, Exelon 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.[14] According to Exelon, in *PG&E,* the request for waiver, which sought to calculate the penalty in accordance with the currently-effective provisions of the CAISO tariff, resulted in a reduction of the applicable penalty from approximately $5.77 million to $845,000. Exelon argues that its situation is very similar to that addressed in *PG&E* and thus should be treated the same by the Commission.

III. Notice of Filing and Responsive Pleadings

11. Notice of Exelon'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 Exelon's request because there is a reasonable basis for the Commission to conclude that the penalty derived under the prior version of section 37.11 of its tariff is excessive in the present circumstances.[15] Moreover, CAISO supports the view that a $281,831.84 penalty could be viewed as excessive. Therefore, in Exelon's circumstances, CAISO supports Exelon's request to the degree that the Commission could reasonably find that the penalty is excessive.[16]

13. CAISO further states that since Exelon has already been subject to market adjustments, a penalty of $281.831.84 could reasonably be viewed as disproportionate in these circumstances and higher than necessary to prevent a recurrence of the errors that lead to the penalties in the first place.[17]

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[13] *Id.*

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

[15] CAISO Comments at 1.

[16] *Id.* at 3.

[17] *Id.* at 4-5.

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule No. 214 of the Commission Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motion to intervene serves to make CAISO a party to this proceeding.

B. Commission Determination

15. The Commission historically has granted certain waiver requests involving an emergency situation or an unintentional error.[18] 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.[19] We find that good cause exists here to grant Exelon's request for a limited, one-time waiver of tariff section 37.11.1.

16. In *PG&E*, the Commission granted a similar one-time waiver of the tariff provision that had been subsequently revised, and we permitted application of the penalty provision that went into effect following the violations at issue in that proceeding.[20] 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 tariff section 37.11.1 that is no longer in effect to allow for calculation of the applicable penalty in accordance with the currently-effective tariff provision.

17. In addition, the tariff violation in the instant case resulted from an unintentional single error that affected the aggregate settlement data for a number of trading days. We also find that this waiver request is limited in scope, because it only applies to the June 1, 2011 through July 17, 2011 time period. In addition, Exelon discovered and

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[18] *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).

[19] *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).

[20] *PG&E*, 139 FERC ¶ 61,007.

corrected its own error. Therefore, the waiver would not have any undesirable consequences because the corrected data avoided unaccounted for energy from being charged to the market.[21] Accordingly, we find good cause to grant Exelon's request for a limited, one-time waiver of the tariff provision that is no longer in effect.

18. We note that CAISO, the only intervener in this case, has expressed its general support of Exelon'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.[22] In granting waiver as noted above, the Commission is not limited to a specific type of circumstance to determine whether good cause exists. In addition, we note that the justness and reasonableness of the penalty imposed by the previously-effective tariff provisions is not at issue here.[23]

The Commission orders:

Exelon's request for a limited, one-time waiver of section 37.11.1 as it existed prior to modifications that became effective October 1, 2011, and the application of the currently effective tariff provision is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[21] According to Exelon, it paid settlement adjustments assessed by CAISO after the corrected settlement meter data were submitted. Exelon Filing at 9.

[22] *See San Diego Gas & Electric Co.*, 140 FERC ¶ 61,122, at P 18 (2012).

[23] *Id*.