

149 FERC ¶ 61,151
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

3 Phases Energy Services, LLC

Docket No. ER14-2609-000

ORDER DENYING REQUEST FOR WAIVER

(Issued November 21, 2014)

1. On August 6, 2014, as amended on August 12, 2014, 3 Phases Energy Services, LLC¹ (3 Phases) submitted a request for waiver of a provision in the California Independent System Operator Corporation's (CAISO) open access transmission tariff (Tariff), which imposes financial penalties on scheduling coordinators that submit untimely meter data. In this order, we deny 3 Phases' waiver request, as discussed below.

I. Waiver Request

2. 3 Phases requests waiver of section 37.11.1 of CAISO's Tariff, which imposes financial penalties on scheduling coordinators that submit untimely meter data. 3 Phases states that it submitted incorrect meter data because of two instances of unintentional errors.² 3 Phases states that the financial penalties for which it seeks waiver total \$83,000.³

¹ 3 Phases is an electric service provider and offers its direct access customers the option of choosing a higher mix of renewable energy than what is required by California's renewable portfolio standard requirement. 3 Phases provides 100,000 to 300,000 MWh each year to approximately 1,000 retail electric customers.

² 3 Phases August 12, 2014 Waiver Request at 1 (Waiver Request).

³ Waiver Request at 9; Section 37.11.1 of CAISO's Tariff states: "failure by a Scheduling Coordinator...to submit Actual Settlement Quality Meter Data by forty-eight (48) Business Days after the Trading Day (T+48B)...is late Actual Settlement Quality Meter Data and constitutes a Rule of Conduct violation. The Sanction is \$1,000 per each trading day after the relevant deadline."

3. As to the first instance, 3 Phases states that its meter data management agent provided incorrect meter data for one customer during the March 2013 meter cycle.⁴ 3 Phases states that the meter data management agent notified 3 Phases of this error on May 22, 2013, and, one week later, 3 Phases provided the correct data to CAISO. 3 Phases explains that, on the same day that the meter data management agent provided notice of the error, it submitted timely revised meter data to CAISO for March 15, 2013, through April 1, 2013. 3 Phases states that the meter data for the remaining period of March 1, 2013, through March 14, 2013, was untimely and thus subject to the 48-day penalty deadline.⁵

4. In the second instance, 3 Phases states that a malfunctioning meter for one of its retail customers produced higher readings than the customer's actual usage from March 2013 through August 2013, resulting in readings that were 100 to 200 megawatt-hours higher per month than the customer's actual usage.⁶ 3 Phases states that the meter data management agent notified it of the error on August 19, 2013, and 3 Phases provided the correct data to CAISO on September 5, 2013. 3 Phases states the meter data for the period March 1, 2013, through June 27, 2013, was considered untimely and thus subject to the 48-day penalty deadline. Also, 3 Phases states that it subsequently replaced the malfunctioning meter.⁷

5. As a result of both of the foregoing errors, 3 Phases states that it has received sanctions totaling \$58,000-\$22,000 for March 2013, \$7,000 for April 2013, and \$29,000 for May 2013-in connection with the incorrect meter data it was unable to correct on time. In addition, 3 Phases states that it anticipates a \$25,000 penalty for its June 2013 data corrections, totaling \$83,000 in financial penalties.⁸ 3 Phases did not receive financial penalties for the incorrect meter data it submitted for July 2013 and August 2013 because it was able to submit correct meter data to CAISO before the 48-day Tariff deadline.⁹

⁴ Waiver Request at 2.

⁵ *Id.* (citing CAISO, eTariff, FERC Electric Tariff, OATT, § 37.5.2.).

⁶ *Id.* at 3.

⁷ *Id.*

⁸ *Id.* at 4.

⁹ *Id.* at 2, 3.

6. 3 Phases contends that its submission of untimely meter data for both circumstances was unintentional and that it has acted in good faith to correct the settlement data in as timely a manner as possible. 3 Phases asserts that it was unaware that it had submitted incorrect meter data for the two periods at issue until after the 48-day deadline had passed.¹⁰ Thus, 3 Phases argues that there is no action it could have taken in either circumstance to submit the corrected data earlier in order to avoid the financial penalties.

7. 3 Phases also argues that its waiver request meets the Commission's criteria for granting waiver of tariff provisions. First, 3 Phases contends that its request is of limited scope because it is limited to four months of meter corrections, the majority of which 3 Phases states require an adjustment of less than 0.4 MW per day.¹¹ Second, 3 Phases asserts that the imposition of the \$83,000 penalty creates the undesirable consequence of unfairly burdening 3 Phases, a comparatively small load-serving entity. 3 Phases states that on no day did the inaccuracy represent greater than 0.0421 percent of the CAISO market, asserting that its submission of untimely meter data could not have negatively impacted the market.¹² 3 Phases argues that, while the purpose of the financial penalties is to encourage scheduling coordinators to submit accurate and timely meter data, imposing financial penalties for small adjustments, such as in this case, will not incentivize a change in behavior because 3 Phases' submission of inaccurate data was due to unintentional error. Third, 3 Phases states that granting its request for waiver will benefit its customers by obviating the need to reduce service or increase rates to its end-use customers to account for the \$83,000 penalty. For these reasons, 3 Phases requests that the Commission grant its request for waiver for good cause shown.¹³

¹⁰ Section 37.5.2.1 of CAISO's Tariff states that, "Scheduling Coordinators...shall provide complete and accurate Settlement Quality Meter Data for each Trading Hour and shall correct any errors in such data no later than forty-eight (48) Business Days after the Trading Day (T+48B). Failure...to submit complete and accurate Actual Settlement Quality Meter Data...is late Actual Settlement Quality Meter Data and shall be a violation of this rule." CAISO, eTariff, FERC Electric Tariff, OATT, § 37.5.2.1.

¹¹ Waiver Request at 7.

¹² *Id.*

¹³ *Id.* at 9.

II. Notice, Intervention, and Responsive Pleadings

8. Notice of 3 Phases' August 6, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 48,137 (2014), with interventions, comments, and protests due on or before August 27, 2014. Notice of 3 Phases' August 12, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 51,149 (2014), with interventions, comments, and protests due on or before September 2, 2014. On September 2, 2014, CAISO filed comments and a motion to intervene.

9. In its comments, CAISO states that it does not take a position on whether 3 Phases' waiver request meets the Commission's criteria for granting waiver of tariff provisions; however, CAISO requests that the Commission consider two issues in evaluating 3 Phases' request. First, CAISO clarifies that it has properly implemented and applied the applicable Tariff provisions, which CAISO notes the Commission accepted in 2011 and upheld as just and reasonable in a complaint proceeding in 2012.¹⁴ Specifically, CAISO explains, under section 10.3.6.3 of CAISO's Tariff, a scheduling coordinator must submit its actual settlement quality meter data values to CAISO within 48 business days after the trading day to which the meter data applies. CAISO also states that sections 37.5.2 and 37.11 of its Tariff impose sanctions if the scheduling coordinator fails to submit the settlement quality meter data within a specific timeframe.¹⁵

10. Second, CAISO asserts that the circumstances underlying 3 Phases' waiver request are no different than those faced by other electric service providers similarly situated to 3 Phases. CAISO explains that all electric service providers rely on meter data management agents to provide the meter data that they ultimately submit to CAISO. Thus, if the Commission were to grant 3 Phases' waiver request, CAISO contends that any electric service provider who receives incorrect meter data could file a request for waiver based on the precedent established in the instant proceeding. CAISO explains that such precedent would risk creating a *de facto* penalty exemption for electric service providers who submit late data and, therefore, undermine the purpose of its tariff provisions for meter data submission.¹⁶

¹⁴ CAISO September 2, 2014 Comments at 4 (CASIO Comments). *See Shell Energy North America (US) L.P.*, 141 FERC ¶ 61,083 (2012).

¹⁵ *Id.* at 3. These provisions state that if a scheduling coordinator fails to submit actual settlement meter data values to CAISO by 48 days after the trading day to which the meter data applies, it will incur a \$1000 penalty for each trading day past the deadline.

¹⁶ *Id.* at 5.

11. CAISO argues that establishing a *de facto* penalty exemption for electric service providers would require the Commission to scrutinize the facts on a case-by-case basis and eliminate the effectiveness of what is essentially a strict liability rule. CAISO asserts that strict adherence to the liability rule ensures that parties have adequate notice of the implications of their actions, ensures that CAISO does not have discretion regarding the parties against whom it applies the penalty, and encourages market participants to submit accurate and timely meter data to preserve the efficacy of the CAISO's settlements process.¹⁷ CAISO states that the Commission has been clear that penalties administered by a regional transmission organization or independent system operator must be non-discretionary and based on objective determinations. CAISO contends that considering fault (or lack thereof) in response to an individual market participant's waiver request is a subjective and discretionary process that contradicts both the Commission and CAISO's "traffic-ticket" penalty framework.¹⁸

III. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motion to intervene serves to make CAISO a party to this proceeding.

B. Commission Determination

13. The Commission has at times granted one-time waivers of tariff provisions where: (1) the waiver was of limited scope; (2) the underlying error was made in good faith; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.¹⁹ As discussed below, we deny 3 Phases' waiver request.

¹⁷ *Id.* at 6.

¹⁸ *Id.*

¹⁹ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,132, at P 15 (2014); *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,058, at P 16 (2014); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010); *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 Gas 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 the inclusion of certain data in the variance adjustment calculation).

14. 3 Phases' waiver request does not satisfy the Commission's criteria because we are not persuaded that the submission of incorrect data by 3 Phases constitutes a good faith error. Although 3 Phases has access to the same meter data as its customers, 3 Phases states, without adequate justification, that its review process consists of looking at usage in the aggregate, and that it "cannot reasonably analyze all individual customer account meter reads for each trading day."²⁰ Despite this claim, it is important to note that scheduling coordinators, such as 3 Phases, are obligated by the scheduling coordinator agreement to comply with CAISO's Tariff, which places ultimate responsibility for the accurate and timely submission of meter data on scheduling coordinators.²¹ Pursuant to section 10.3.6.3 of CAISO's Tariff, after a scheduling coordinator submits meter data for each trading hour, the scheduling coordinator is the sole party responsible for correcting "any errors in such data no later than forty-eight (48) Business Days after the Trading Day."²² We further note that CAISO revised the relevant sections of its Tariff in order to comply with Order No. 741,²³ which required independent system operators to implement shorter billing and settlement periods to reduce the risks and costs associated with defaults by market participants. We expect scheduling coordinators such as 3 Phases to be diligent in assuring the accuracy and timely submission of meter data, in order to maintain the integrity of an efficient settlement process.

15. In response to 3 Phases' argument that granting its request for waiver will not result in undesirable consequences because its submission of untimely data did not negatively impact CAISO's market, we find that this argument is not relevant to 3 Phases' obligations under section 37.11.1 of CAISO's Tariff. Scheduling coordinators that submit untimely meter data are subject to the sanctions described in section 37.11.1 of CAISO's Tariff regardless of whether the untimely data negatively impacts the CAISO market. Therefore, we find that CAISO's decision to impose a financial sanction on

²⁰ Waiver Request at 5.

²¹ The scheduling coordinator agreement states that the CAISO Tariff governs all aspects of bidding and scheduling on the CAISO controlled grid and that scheduling coordinators are required to abide by and perform all of the obligations under the CAISO Tariff placed on scheduling coordinators. CAISO eTariff, FERC Electric Tariff, OATT, Appendix B.1, Scheduling Coordinator Agreement, Sections 2.1.1 and 2.1.2.

²² CAISO, eTariff, FERC Electric Tariff, OATT, § 37.5.2.1 (emphasis added).

²³ *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, FERC Stats. & Regs. ¶ 31,317, at P 32 (2010), *order on reh'g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 (2011), *reh'g denied*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

3 Phases for its submission of untimely meter data, even though the untimely data did not negatively affect the market, is appropriate and consistent with the Tariff.

16. For the foregoing reasons, we deny 3 Phases' request for waiver.

The Commission orders:

3 Phases' request for waiver of section 37.11.1 of CAISO's Tariff is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.