

138 FERC ¶ 61,007
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company

Docket No. ER12-1009-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued April 3, 2012)

1. On February 7, 2012, Pacific Gas and Electric Company (PG&E) filed a request¹ for a one-time waiver of section 37.11, the Inaccurate Meter Data Penalty provisions, of the California Independent System Operator Corporation's (CAISO) Tariff, as it existed prior to modifications that became effective on October 1, 2011. PG&E states that the one-time waiver would reduce the penalty amount assessed by CAISO against PG&E from \$5.77 million to \$845,000 for certain violations by PG&E of section 37.5.2.1 of CAISO's Tariff prior to October 1, 2011.² For the reasons discussed below, we grant PG&E's Request for Waiver.

I. Background

2. On October 11, 2011, CAISO issued an invoice to PG&E that included a \$5.77 million penalty for violating section 37.5.2.1 of CAISO's Tariff, which requires market participants to submit accurate meter data. Section 37.11 of CAISO's Tariff establishes the penalty for violating section 37.5.2.1. As it existed during the period of PG&E's violation (i.e., on trade dates September 15, 2011 through September 30, 2011),

¹ PG&E February 7, 2012 Request for One Time Waiver of Certain Tariff Provisions in Docket No. ER12-1009-000 (Request for Waiver).

² On October 24, 2011, in Docket No. EL12-5-000, PG&E filed a complaint against CAISO that asked the Commission to find that application of section 37.11 of CAISO's Tariff, as it existed prior to modifications that became effective on October 1, 2011, is unjust and unreasonable. On February 6, 2012, PG&E filed a notice of withdrawal of its complaint.

section 37.11 provided for a penalty of 30 percent of the value of the misreported meter data.³ This penalty would be in addition to a market adjustment that, according to the version of section 37.11 then in effect, “approximates the financial impact on the market” from the meter data error.⁴

3. On August 1, 2011, as amended on August 2, 2011, CAISO filed proposed revisions to its tariff, including a revised section 37.11. Specifically, CAISO explained that a penalty “based on the volume difference from the initial meter data submittal and the corrected submittal” was “overly burdensome for submitting corrected 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.”⁵ On September 30, 2011, the Commission accepted CAISO’s proposed revisions to section 37.11, effective October 1, 2011.⁶

II. PG&E’s Request for a Waiver

4. PG&E requests a one-time waiver of section 37.11 of CAISO’s Tariff, as it existed prior to modifications that became effective on October 1, 2011, for its violation which occurred from September 15 through September 30, 2011. PG&E also requests that the current version of section 37.11 be applied to PG&E for calculating the penalty for violating section 37.5.2.1. PG&E states that the revised section 37.11 would result in a penalty of \$845,000, approximately one-seventh of the penalty imposed on PG&E under the earlier version of section 37.11.⁷

5. PG&E argues that its request for a one-time waiver meets the Commission’s three-factor test that the waiver be limited in scope, not have undesirable consequences, and be beneficial to customers. PG&E states that granting a one-time waiver of section 37.11 is

³ Under the then-effective version of section 37.11, the penalty varied depending on whether the scheduling coordinator or CAISO identified the error and whether the misreported data was to the benefit or detriment of the scheduling coordinator. Because PG&E identified the error and because the error was to PG&E’s benefit, the penalty is 30 percent of the value of the error. CAISO February 22, 2012 Comments in Docket No. ER12-1009-000 at n.1 (CAISO Comments).

⁴ *Id.* at 2.

⁵ *Id.* at 2 (citing Cal. Indep. Sys. Operator Corp., Settlements Process Timeline Changes, Docket No. ER11-4176-000 (August 1, 2011)).

⁶ *Cal. Indep. Sys. Operator Corp.*, 136 FERC ¶ 61,232 (2011).

⁷ Request for Waiver at 2.

limited in scope and will not have undesirable consequences because a penalty amount will be assessed by CAISO, applying the current version of section 37.11 to calculate the penalty. PG&E states that granting a waiver of the earlier version of section 37.11 will be beneficial to customers because it would avoid imposing an “overly burdensome” charge on PG&E’s customers.⁸

III. Notice of Filing and Responsive Pleadings

6. Notice of the PG&E filing was published in the *Federal Register*, 77 Fed. Reg. 8249 (2012), with interventions, comments and protests due on or before February 28, 2012.

7. On February 22, 2012, CAISO filed a timely motion to intervene and comments stating that it “supports PG&E’s request insofar as there is a reasonable basis for the Commission to conclude that the larger penalty amount is excessive in the present circumstances and that a lower penalty could be justified.”⁹

8. CAISO, in its proposed revisions to section 37.11 of its tariff, concluded that the penalty formula was overly burdensome because market participants committing errors already face the market adjustment, plus interest. CAISO concluded that a 30 percent penalty: (1) was higher than necessary to provide an incentive to submit accurate and timely meter data; and (2) can sometimes impose a penalty that is disproportionate to the severity of the violation.¹⁰

9. CAISO explains that in the instant case, “PG&E made a configuration error in establishing how it reports meter data from a specific resource,” which resulted in PG&E reporting inaccurate data over a period of time.¹¹ CAISO states that since PG&E has already been subject to a market adjustment, a penalty of \$5.77 million could be viewed as disproportionate and higher than necessary to provide incentives for PG&E to establish controls going forward. CAISO submits that, for these reasons, a \$5.77 million penalty for PG&E’s violations could be viewed as excessive, and that the Commission could consider approving a reduced penalty amount.¹²

⁸ Request for Waiver at 4.

⁹ CAISO Comments at 1.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 4.

¹² *Id.* at 5.

IV. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹³ the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

B. Commission Determination

11. The Commission has granted one-time waivers of tariffs involving an emergency situation or an unintentional error.¹⁴ In addition, the Commission has found good cause to grant waiver where the waiver is of limited scope, where there are no undesirable consequences, and where there are resultant benefits to customers.¹⁵ We find PG&E's waiver request meets these criteria.

12. Here, the waiver would be limited in scope, as it would be limited to waiving section 37.11 of the CAISO Tariff as it existed during the period of PG&E's violation only on trade dates September 15, 2011 through September 30, 2011.

13. In addition, we find that the waiver would have no undesirable consequences. Waiver of the tariff does not extinguish PG&E's liability for violating section 37.11. Instead, PG&E proposes to pay the penalty for violating section 37.5.2.1 according to the current version of section 37.11, reducing the penalty amount from approximately \$5.77 million to \$845,000.¹⁶ This adjustment is reasonable based on the disproportionate amount of the penalty to the violation. Finally, we agree that customers will benefit from a reduced penalty of \$845,000.

¹³ 18 C.F.R. § 385.214 (2011).

¹⁴ 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 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 calculation in variance adjustment).

¹⁵ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 135 FERC ¶ 61,159 (2011); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,132 (2010); *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,020 (2010); *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,031 (2008); *Cal. Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,226 (2007).

¹⁶ Request for Waiver at 1.

14. For these reasons, the Commission finds good cause for granting a one-time waiver of section 37.11, as it existed prior to modifications that became effective on October 1, 2011, and, instead, calculating PG&E's penalty for violating section 37.5.2.1 of CAISO's Tariff under the current version of section 37.11.

The Commission orders:

PG&E's request for waiver of CAISO Tariff section 37.11, as it existed prior to modifications that became effective on October 1, 2011, and for application of the current version of section 37.11 for violating section 37.5.2.1 is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.