

168 FERC ¶ 61,047
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

Consolidated Edison Company of New York, Inc. Docket No. ER19-814-000

ORDER GRANTING LIMITED WAIVER

(Issued July 22, 2019)

1. On January 11, 2019, Consolidated Edison Company of New York, Inc. (Con Edison) filed a request for a limited one-time waiver of section 7.4.1.1.4 of the New York Independent System Operator, Inc. (NYISO) Market Administration and Control Area Services Tariff (Tariff). Tariff section 7.4.1.1.4 requires a meter authority to provide any final updates or corrections to metering data within 130 days from the date of the initial invoice. Con Edison seeks waiver of Tariff section 7.4.1.1.4 so that it can correct metering data for April 2018 beyond the 130-day period. We grant the request for a limited one-time waiver to permit the correction of the April 2018 metering data, as discussed below.

I. Background

2. Section 7 of NYISO's Tariff specifies the rules and procedures related to billing and payment between NYISO and customers purchasing wholesale energy and other services from NYISO's market.¹ Section 7.4.1.1 of the Tariff specifies that settlement information shall be subject to review, comment, and challenge by a customer, and correction or adjustment by NYISO or the meter authority for errors within specified time periods.² Relevant here, section 7.4.1.1.4 of the Tariff requires the meter authority to provide NYISO with any final updates or corrections to load serving entity (LSE) bus metering data within 130 days from the date of the initial invoice, after which NYISO will post the data, allow an additional ten days for customers to review the data, and then finalize the data.³

¹ NYISO Tariff, § 7 (0.0.0).

² NYISO Tariff, § 7.4.1.1 (2.0.0).

³ NYISO Tariff, § 7.4.1.1.4 (2.0.0).

II. Waiver Request

3. In its request for a limited one-time waiver of section 7.4.1.1.4 of NYISO's Tariff, Con Edison states that it is the meter authority for its transmission district and that it is requesting waiver so that it can correct LSE bus metering data for the month of April 2018 for the LSEs that purchased energy on behalf of retail customers in Con Edison's service territory.⁴ Con Edison states that this metering data is used by NYISO to calculate each LSE's hourly consumption obligation, which NYISO then bills to each LSE. Con Edison explains that, because the time period specified in the Tariff to correct April 2018's LSE bus metering data has passed, Con Edison has been informed by NYISO that, without a tariff waiver, NYISO is unable to reopen and correct the invoices and resettle billings for the affected LSEs.⁵

4. Con Edison explains that it recently started migrating new computer code to its Transmission Owner Data Reporting System (TODRS), with the goal of enhancing the reporting and accuracy of energy consumption and summer peak load contributions by recognizing the accounts with Advanced Metering Infrastructure (AMI) meters installed and speeding up the processing time of loading interval data in the TODRS.⁶ Con Edison states that, on July 13, 2018, during the submission of the April 2018 four-month true-up energy report to NYISO, it noticed a larger than average difference between the total amount of Con Edison's service territory demand and the total aggregated demand from customer meter data.⁷ Con Edison explains that it started investigating this issue immediately but was not able to identify the underlying error in TODRS' meter data aggregation process until the first week of October 2018, after NYISO's challenge period end date of October 1, 2018 for any changes to the April 2018 LSE closeout bus metering data.⁸

5. To correct the April 2018 LSE bus metering data affected by the TODRS computer error, Con Edison is requesting waiver of section 7.4.1.1.4 of the Tariff, which specifies the final review deadline for LSE bus metering data. Con Edison asserts that the requested waiver satisfies the Commission's standards for granting a waiver and is

⁴ Waiver Request at 2.

⁵ *Id.*

⁶ *Id.* at 3.

⁷ *Id.*

⁸ *Id.* at 3-5.

similar to the types of waivers that the Commission has granted in the past.⁹ Con Edison argues that it acted in good faith, stating that the underlying error was the unintentional result of a computer software “mishap” and that it acted expeditiously to resolve the problem and rectify the impact on market participants.¹⁰ Con Edison contends that the requested waiver is limited in scope because it pertains to the one-month period of April 2018 and because its impact is limited to parties that purchased energy in Con Edison’s service territory during April 2018.¹¹ Con Edison states that the waiver deals with the specific, concrete problem of a computer database mishap.¹² Finally, Con Edison asserts that granting a waiver would not harm market participants because it will enable LSEs to pay the actual amount their customers used.¹³

6. Con Edison explains that, while a few LSEs (including Con Edison) received lower energy bills for April 2018, the rest of the LSEs received higher energy bills and will experience a decrease in their NYISO bill if the waiver is granted.¹⁴ Con Edison further explains that it is instituting two preventative measures to minimize the chance of future errors with the submission of energy data to NYISO.¹⁵

III. Notice and Responsive Pleadings

7. Notice of Con Edison’s Waiver Request was published in the *Federal Register*, 84 Fed. Reg. 2219 (2019), with interventions and protests due on or before February 1, 2019. Direct Energy,¹⁶ the New York Retail Choice Coalition, and NYISO filed timely

⁹ *Id.* at 6-7.

¹⁰ *Id.* at 7-8.

¹¹ *Id.* at 8-9.

¹² *Id.* at 9.

¹³ *Id.* at 10.

¹⁴ *Id.*

¹⁵ *Id.* at 10-11.

¹⁶ Direct Energy filed on behalf of itself and its affiliates Direct Energy Business Marketing, LLC, Direct Energy Business, LLC, Direct Energy Services, LLC, and Gateway Energy Services Corporation (collectively, Direct Energy).

motions to intervene. Direct Energy and NYISO filed comments in support of the waiver request.

IV. Discussion

A. Procedural Matters

8. Pursuant to Rule 214(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(c) (2018), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Commission Determination

9. The Commission has granted waiver of tariff provisions where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹⁷ We find, as discussed below, that Con Edison's request for tariff waiver satisfies the foregoing criteria.

10. First, we find that the error by Con Edison affecting the April 2018 bus metering data was made in good faith, as it was the unintentional result of a computer error. As soon as Con Edison discovered the discrepancy, it worked to address the problem.¹⁸ As explained by Con Edison, because the problem was caused by a computer software error, it took time to identify and correct the error, which resulted in Con Edison missing the correction deadline for the April 2018 LSE bus metering data.¹⁹ Second, the waiver is limited in scope because Con Edison requests to have the LSE energy report re-submitted and resettled only for April 2018.²⁰ Third, the waiver request addresses a concrete and discrete software problem that has already been fixed. Con Edison states that it has also implemented preventative measures to minimize the chance of such errors in the future.²¹

¹⁷ See, e.g., *New Brunswick Energy Mktg. Corp.*, 167 FERC ¶ 61,252, at P 12 (2019); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

¹⁸ Waiver Request at 8.

¹⁹ *Id.*

²⁰ *Id.* at 8-9.

²¹ *Id.* at 10-11.

11. Regarding the fourth criterion, we find that the requested waiver does not have undesirable consequences because granting the waiver will allow Con Edison to submit corrected data to NYISO, which can then resettle bills for April 2018 and bill LSEs for the corrected amount of energy their customers actually used.²² While the overall impact of resettling the invoices will result in some customers seeing increased bills as a result of the invoice re-settlement, they will be paying for the energy they actually used at the rate specified in the Tariff. Further, section 7.4 of NYISO's Tariff provides sufficient notice to customers that finalized metering data could be subject to further correction by the Commission upon an application for "redress" submitted to the Commission outside of the otherwise applicable time bar.²³

12. Accordingly, we grant Con Edison's request for a limited, one-time waiver of section 7.4.1.1.4 of NYISO's Tariff in order to permit NYISO to use corrected metering bus data for April 2018 and issue corrected invoices for that period.

The Commission orders:

Con Edison's waiver request is hereby granted, as discussed in the body of this order.

By the Commission. Commissioner McNamee is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²² *Id.* at 10.

²³ Section 7.4 states, "'finalized' data and invoices shall not be subject to further correction, including by the ISO, except as ordered by the Commission or a court of competent jurisdiction; provided, however, that nothing herein shall be construed to restrict any stakeholder's right to seek redress from the Commission in accordance with the Federal Power Act." *See also Niagara Mohawk Power Corp.*, 123 FERC ¶ 61,314, at PP 24-25 (2008) (directing NYISO to correct metering invoices from three years prior, pursuant to section 7.4 of NYISO's Tariff). This language also provides sufficient notice for purposes of the filed rate doctrine in the circumstances presented here.

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