

187 FERC ¶ 61,004
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;
Allison Clements and Mark C. Christie.

Consolidated Edison Company of New York, Inc.

Docket No. ER24-1291-000

ORDER GRANTING WAIVER REQUEST

(Issued April 3, 2024)

1. On February 16, 2024, as supplemented on February 22, 2024, pursuant to section 309 of the Federal Power Act (FPA)¹ and Rules 207 and 212 of the Commission's Rules of Practice and Procedure,² Consolidated Edison Company of New York, Inc. (Con Edison) submitted a request for waiver of section 7.4.1 of the New York Independent System Operator, Inc. (NYISO) Market Administration and Control Area Services Tariff (Services Tariff), which specifies the timing for meter authorities to challenge and correct energy injection and withdrawal data to NYISO.³ Con Edison seeks waiver to permit correction of the September 2023 generation production data for Astoria Energy, LLC's (Astoria Energy) generating unit (Astoria 1 Facility) for which Con Edison serves as a metering authority. As discussed below, we grant Con Edison's waiver request.

I. Background

2. Section 7 of the Services Tariff contains the rules and procedures related to billing and payment between NYISO and customers purchasing wholesale energy and other services from NYISO's market.⁴ Section 7.4 of the Services Tariff establishes the process and timeframes for review, challenge, and correction of customer invoices.⁵

¹ 16 U.S.C. § 825h.

² 18 C.F.R. §§ 385.207(a)(5), 385.212 (2023).

³ NYISO, NYISO Tariffs, NYISO MST, § 7.4 (MST Billing Disputes) (2.0.0), § 7.4.1.

⁴ NYISO, NYISO Tariffs, NYISO MST, § 7 (MST Billing and Payment) (0.0.0).

⁵ NYISO, NYISO Tariffs, NYISO MST, § 7.4 (MST Billing Disputes) (2.0.0).

3. Section 7.4.1.1.1 of the Services Tariff provides:

A Supplier or meter authority may review, comment on, and challenge Generator, tie-line, and sub-zone Load metering data for fifty-five (55) days from the date of the initial invoice for the month in which service is rendered. Following this review period, the ISO shall then have five (5) days to process and correct Generator, tie-line, and sub-zone Load metering data, after which time it shall be finalized.⁶

4. Section 7.4.1.1.4 of the Services Tariff provides:

The meter authority shall provide to the ISO any final updates or corrections to [load serving entity (LSE)] bus metering data within one hundred thirty (130) days from the date of the initial invoice. The ISO shall then post any updated and corrected LSE bus metering data within one hundred thirty-five (135) days from the date of the initial invoice. Customers may then review, comment on, and challenge the LSE bus metering data for an additional ten (10) days. Following this review period, the ISO shall have five (5) days to process and correct the LSE bus metering data, after which it shall be finalized.⁷

5. Section 7.4 of the Services Tariff provides, in relevant part:

For purposes of this Section 7.4, “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.⁸

6. Con Edison states that the Services Tariff requires it to provide data for its transmission district indicating the amount of energy injected into the grid by generation suppliers and the amount of energy withdrawn from the grid by LSEs on behalf of their

⁶ *Id.* § 7.4.1.1.1.

⁷ *Id.* § 7.4.1.1.4.

⁸ *Id.* § 7.4 (emphasis added).

customers.⁹ Con Edison states that, as the metering authority for its transmission district, it serves the Astoria 1 Facility.

7. Con Edison explains that, in August and September 2023, it discovered alarm issues with one of the revenue meters that measure the MWh output at the Astoria 1 Facility, which it subsequently replaced.¹⁰ Con Edison states that, as a result of the alarm issues, it temporarily used less accurate telemetry data for the Astoria 1 Facility's daily MWh report to NYISO from August 26, 2023, through the end of September 2023.¹¹ Con Edison states that, on October 6, 2023, Astoria Energy advised Con Edison that the telemetry data reported to NYISO may have underreported Astoria Energy's generation output for September 2023.¹² In response, Con Edison explains that it investigated the issue, and, on November 12, 2023, attempted to adjust the Astoria 1 Facility's generation data using revenue class meter data.¹³ However, according to Con Edison, it instead inadvertently uploaded data from another generating unit in its service territory, significantly underestimating the generation production values from the Astoria 1 Facility.¹⁴

8. Con Edison states that, on January 23, 2024, NYISO detected the error, accounting for an approximately 173,000 MWh discrepancy for the Astoria 1 Facility for September 2023.¹⁵ Upon learning of the error, Con Edison conducted its own investigation and confirmed that the generation reporting error was exclusive to Astoria Energy. Con Edison states that the deadline to correct generator data for the September 2023 billing month set forth in section 7.4.1.1.1 of the Services Tariff passed on December 5, 2023, and that the deadlines to challenge load data and for meter authorities to submit updated transmission owner load files set forth in section 7.4.1.1.4 of the Services Tariff are February 28, 2024, and March 4, 2024, respectively.¹⁶

⁹ Waiver Request at 1-2.

¹⁰ *Id.* at 4-5; Waiver Request, attach. A, Affidavit of Carlos Villalba (Villalba Aff.) ¶¶ 10-12.

¹¹ Waiver Request at 5; Villalba Aff. ¶¶ 10, 12.

¹² Waiver Request at 5; Villalba Aff. ¶ 13.

¹³ Waiver Request at 5; Villalba Aff. ¶ 14.

¹⁴ Waiver Request at 5-6; Villalba Aff. ¶ 14.

¹⁵ Waiver Request at 6; Villalba Aff. ¶¶ 15-17.

¹⁶ Waiver Request at 2.

II. Waiver Request

9. Con Edison requests waiver of the deadlines under section 7.4.1 of the Services Tariff to allow Con Edison to submit corrected generator data for the Astoria 1 Facility's production and NYISO to use that data to facilitate appropriate invoices and settlements or, alternatively, update its transmission owner load data file for September 2023.¹⁷ Con Edison also requests that the Commission direct NYISO to reopen and correct invoices and resettle billings. Con Edison argues that its waiver request satisfies the Commission's criteria for granting waiver.

10. First, Con Edison argues that it acted in good faith in attempting to correct the telemetry data underreporting in response to a meter error, but that it inadvertently uploaded data from another generating unit instead.¹⁸ Con Edison also states that it is developing a software application to streamline the reporting workflow and minimize the risk of error in the future.¹⁹

11. Second, Con Edison asserts that its requested relief is limited in scope because it is a one-time waiver that applies solely to correcting data from the month of September 2023. Con Edison contends that the impact of revising the billing data associated with this error would be limited to only one generator and just those LSEs in Con Edison's service territory.²⁰

12. Third, Con Edison argues that its requested relief addresses the concrete problem of the billing problems that arose as a result of the data reporting error.²¹ Con Edison states that granting the waiver request would allow NYISO to accept Con Edison's accurate generation billing data and correctly pay Astoria Energy for the energy it produced and sold during the month of September 2023.

13. Fourth, Con Edison asserts that its requested relief will not create undesirable consequences, such as harm to third parties.²² Con Edison states that granting the waiver would allow NYISO to accept Con Edison's correct generation billing data and enable NYISO to correctly pay Astoria Energy for all the energy it produced and sold during the

¹⁷ *Id.* at 2-3, 7, 12, 14.

¹⁸ *Id.* at 5, 8; Villalba Aff. ¶ 14.

¹⁹ Waiver Request at 11-12; Villalba Aff. ¶ 21.

²⁰ Waiver Request at 9-10; Villalba Aff. ¶ 18.

²¹ Waiver Request at 10.

²² *Id.* at 10-11.

month of September 2023 without any corresponding undue harm to other market participants. Con Edison notes that, while some LSEs may pay an increased amount for their September 2023 bills, the amount would be equal to the actual energy that those entities' customers used. Con Edison states that the Commission has previously recognized that section 7.4 of the Services 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

III. Notice and Responsive Pleadings

14. Notice of Con Edison's filing was published in the *Federal Register*, 89 Fed. Reg. 14,817 (Feb. 29, 2024), with interventions and protests due on or before March 8, 2024. Astoria Energy and NYISO filed timely motions to intervene and comments. Electree LLC (Electree) filed a timely motion to intervene and protest. On March 13, 2024, Astoria Energy filed an answer to Electree's protest. On March 21, 2024, Con Edison filed a motion for leave to answer and answer to Electree's protest. On March 25, 2024, Electree filed a response to Con Edison's answer. On April 1, 2024, Con Edison filed a motion for leave to answer and answer to Electree's answer.

A. Comments

15. Astoria Energy supports Con Edison's waiver request.²⁴ Astoria Energy notes that the inadvertent underreporting of the Astoria 1 Facility's production value by 90% for September 2023 has caused significant financial hardship to Astoria Energy. Astoria Energy asserts that granting waiver is consistent with the Commission's waiver criteria. Conversely, Astoria Energy claims that denying the waiver would unjustly result in significant and permanent underpayment to Astoria Energy for electricity provided to the NYISO market.

16. NYISO also supports Con Edison's request for relief and requests that the Commission order NYISO to: (1) allow Con Edison to correct generator data for the Astoria 1 Facility's production for September 2023; (2) re-settle the month of September 2023 with corrected generator data for the Astoria 1 Facility; and (3) allow Con Edison to correct its LSE metering data file for the Con Edison transmission district.²⁵ NYISO states that the timing and limited number of entities involved in this case warrant granting Con Edison's waiver request. NYISO further states that, in order to minimize impacts on

²³ *Id.* at 11 (citing *Consol. Edison Co. of N.Y., Inc.*, 168 FERC ¶ 61,047, at P 11 (2019) (*Con Edison*)).

²⁴ Astoria Energy Comments at 2-4.

²⁵ NYISO Comments at 3-5.

other market participants, if the Commission grants Con Edison's waiver request after the February 28, 2024 deadline for meter authorities to submit final LSE bus meter data under section 7.4.1.1.4 of the Services Tariff, it should act by April 15, 2024, and authorize Con Edison to correct both the generator data and the overall LSE bus metering data file and submit it to NYISO for the final bill posting date of May 6, 2024. NYISO also states that, while it supports the relief sought in the instant case, it relies on customers to carefully review and challenge, as necessary, their settlement information within the timeframes prescribed in the NYISO tariffs.

B. Electree's Protest

17. Electree opposes Con Edison's waiver request.²⁶ Electree states that it is an LSE within Con Edison's service territory. Electree argues that granting the requested waiver would threaten the integrity of NYISO's market operations, and that market participants must have full confidence that billing data cannot be adjusted once reporting deadlines have passed. Electree asserts that Con Edison must be held fully accountable and responsible for bearing the principal consequences of its own reporting inaccuracies, and that LSEs and consumers should not bear the financial repercussions of Con Edison's mistakes. Further, Electree argues that any process to adjust billing data after tariff deadlines have lapsed must be transparent to protect market participants from potential disadvantage, and Con Edison has not provided adequate justification for waiver that could unfairly impact other parties financially.

C. Answers

18. Astoria Energy asserts that granting the requested waiver is consistent with Commission precedent.²⁷ Astoria Energy states that Electree does not challenge the fact that granting the requested waiver is consistent with the Commission's criteria. In addition, Astoria Energy contests Electree's claim that the requested waiver "could unfairly impact other parties financially." Astoria Energy contends that granting the requested waiver would require market participants to pay the correct amount commensurate with the actual energy that their customers used. Conversely, Astoria Energy claims that denying the waiver would unjustly enrich LSEs by failing to charge them for the actual energy used.

19. Con Edison reiterates that its waiver request is consistent with Commission precedent and that granting the waiver is needed to align customer bills with actual energy used.²⁸ In addition, Con Edison contests Electree's asserted transparency

²⁶ Electree Protest at 1-3.

²⁷ Astoria Energy Answer at 1-3.

²⁸ Con Edison March 21 Answer at 1-3.

concerns by pointing to Con Edison's affidavit describing the inadvertent billing error and its efforts to fix it.

20. In its response to Con Edison's answer, Electree reiterates the importance of the broader implications of Con Edison's error with respect to market integrity, accountability, and transparency.²⁹ Electree argues that there is a need for independent oversight or an audit mechanism to verify the metering accounting and billing practices of utilities, as well as clear guidelines for the threshold of corrections. Furthermore, Electree contends that the reporting of negative line loss factors in April 2020 and May 2023 in Zone H calls for a reassessment of line loss calculations and reporting practices.³⁰

21. In its response to Electree's answer, Con Edison argues that the Commission should reject Electree's answer because Electree failed to seek leave to answer, makes unsupported allegations regarding Con Edison's role as a metering authority, and does not raise relevant substantive issues.³¹ Con Edison asserts that Electree's call for clear guidelines for the threshold of corrections and its request to reassess line loss calculations and reporting practices are not directly related to the instant waiver request. Rather, Con Edison maintains that these requests would change how NYISO markets operate and therefore they belong in the NYISO stakeholder process.

IV. Discussion

A. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2023), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2023), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

24. We grant Con Edison's request for waiver of sections 7.4.1.1.1 and 7.4.1.1.4 of the Services Tariff in order to permit the correction of the Astoria 1 Facility's September 2023 generator data for the May 6, 2024 final posting date and resulting appropriate

²⁹ Electree Answer at 1-3.

³⁰ *Id.* at 2.

³¹ Con Edison April 1 Answer at 1-3.

billing resettlement.³² As an initial matter, because Con Edison seeks to correct and update metering data outside of the time limitations set forth in the Services Tariff, Con Edison's waiver request is retroactive. However, section 7.4 of the Services Tariff provides that "'finalized' data and invoices shall not be subject to further correction, including by [NYISO], except as ordered by the Commission"³³ This provision provides sufficient notice to customers that finalized metering data could be subject to further correction by order of the Commission outside of the otherwise applicable time bar.³⁴ The Commission has granted waiver of tariff provisions where: (1) the applicant acted 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.³⁵ As discussed below, we find that the circumstances of Con Edison's waiver request satisfy these criteria.

25. First, we find that Con Edison acted in good faith. Con Edison promptly worked to correct telemetry data underreporting caused by the meter error, which was discovered after the deadline to challenge the metering data had passed, and thereafter worked to investigate the scope of the error and inadvertently uploaded data from another generating unit. Con Edison represents that it is also developing software to minimize the risk of error and states that the probability for this type of event to occur again is remote.³⁶

26. Second, we find that the waiver request is limited in scope because Con Edison seeks a one-time waiver of sections 7.4.1.1.1 and 7.4.1.1.4 of the Services Tariff to allow for correction of the September 2023 Astoria 1 Facility data. The waiver only applies to

³² Con Edison requests waiver of section 7.4.1 of the Services Tariff; however, Con Edison specifically requires waiver of sections 7.4.1.1.1 and 7.4.1.1.4 of the Services Tariff.

³³ NYISO, NYISO Tariffs, NYISO MST, § 7.4 (MST Billing Disputes) (2.0.0), §§ 7.4.1.1.1, 7.4.1.1.4.

³⁴ See *NRG Power Mktg. LLC*, 178 FERC ¶ 61,055, at P 10 (2022) (granting waiver to allow NYISO to correct metering data beyond the invoice correction time bar, consistent with section 7.4 of the Services Tariff); *Con Edison*, 168 FERC ¶ 61,047 at P 11 (same); 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 the Services Tariff).

³⁵ See, e.g., *Citizens Sunrise Transmission LLC*, 171 FERC ¶ 61,106, at P 10 (2020); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

³⁶ Waiver Request at 11-12; Villalba Aff. ¶ 21.

tariff deadlines to challenge and correct a single month's billing data for the Astoria 1 Facility.

27. Third, we find that the waiver request addresses a concrete problem because it will allow Con Edison to correct the Astoria 1 Facility September 2023 generation billing data, which will enable NYISO to resettle the September 2023 invoices and allow Astoria Energy to receive compensation for the energy produced and sold by the Astoria 1 Facility during that month.

28. Fourth, we find that the waiver request will not have undesirable consequences, such as harming third parties. We disagree with Electree that granting waiver will result in LSEs unfairly bearing the financial repercussions of Con Edison's mistakes. Instead, we find that waiver will ensure correct and accurate settlement amounts for the Astoria 1 Facility for September 2023, as well as reflect the actual energy that Electree's and other LSEs' customers consumed in September 2023. We also disagree with Electree that correction of the September 2023 generation billing data undermines confidence that billing data cannot be adjusted once reporting deadlines have passed. Granting waiver in this instance is consistent with section 7.4 of the Services Tariff, which provides that finalized metering data can be subject to further correction by order of the Commission outside of the otherwise applicable time bar. We note that NYISO—which filed comments supporting Con Edison's waiver request—states that Con Edison should submit both corrected generator data and corrected LSE bus metering data (the transmission owner load file) to NYISO for the final bill posting date of May 6, 2024.³⁷ Finally, we deny as beyond the scope of this proceeding Electree's request to require an independent oversight or an audit mechanism and a review of line loss reporting by Con Edison.

The Commission orders:

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

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Acting Secretary.

³⁷ NYISO Comments at 4.

