

172 FERC ¶ 61,031
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

Liberty Power Holdings LLC

Docket No. EL20-27-000

v.

Eversource Energy Co.
ISO New England Inc.

ORDER DENYING COMPLAINT

(Issued July 16, 2020)

1. On February 28, 2020, pursuant to section 206 of the Federal Power Act,¹ Liberty Power Holdings LLC (Liberty) filed a complaint against Eversource Energy Company (Eversource) and ISO New England Inc. (ISO-NE). The complaint alleges that ISO-NE inappropriately refused to correct a billing error that arose from Eversource's reporting to ISO-NE load² mistakenly attributed to Liberty in November and December 2018. We deny Liberty's complaint, as discussed below.

I. Background

2. Liberty is an independent retail electricity provider headquartered in Fort Lauderdale, Florida, serving residential, small and medium businesses and large commercial and industrial customers.³ Eversource is the service company affiliate for NSTAR Electric Company, an electric transmission and distribution company in the Commonwealth of Massachusetts, which is divided into NSTAR-East and NSTAR-West.⁴ Smith & Wesson, whose load's incorrect assignment to Liberty in

¹ 16 U.S.C. § 824e (2018).

² Liberty refers to "load" as hourly energy and capacity. Complaint at 5 n.9.

³ *Id.* at 3.

⁴ Eversource Answer at 2.

November 2018 is the subject of the dispute here, is a large industrial customer located in Massachusetts (NSTAR-West service territory), which has the ability to select its retail electric supplier as a result of restructuring in that state.⁵ Eversource is responsible for reporting information pertaining to NSTAR-West load to ISO-NE because Eversource is the Host Participant⁶ and Assigned Meter Reader⁷ under the definition section of ISO-NE's Transmission, Markets and Services Tariff (ISO-NE Tariff), § I (General Terms and Conditions) (ISO-NE Tariff).⁸ ISO-NE, as the Regional Transmission Organization operating the New England transmission system and energy and capacity markets, is responsible for billing both to compensate supply and charge consumption.⁹

3. In its reports to ISO-NE for November and December 2018, Eversource incorrectly assigned load from a Smith & Wesson account to Liberty.¹⁰ ISO-NE corrected the December 2018 error because it received a timely bill adjustment from Eversource.¹¹ However, ISO-NE did not correct the November 2018 error. Although Eversource and ISO-NE concede that Liberty was incorrectly billed for the November 2018 load, they argue that Liberty missed the applicable ISO-NE Tariff deadline for seeking the billing correction.¹² The dispute turns on whether the billing error is subject

⁵ *Id.*

⁶ The Host Participant or Host Utility is “a Market Participant or a Governance Participant transmission or distribution provider that reconciles the loads within the metering domain with OP-18 compliant metering.” ISO-NE Tariff § I.2.2 (Definitions).

⁷ The Assigned Meter Reader “reports to the ISO the hourly and monthly MWh associated with the Asset. These MWh are used for settlement. The Assigned Meter Reader may designate an agent to help fulfill its Assigned Meter Reader responsibilities; however, the Assigned Meter Reader remains functionally responsible to the ISO.” ISO-NE Tariff § I.2.2 (Definitions).

⁸ Eversource Answer at 2.

⁹ *See* ISO-NE Answer at 3.

¹⁰ Complaint at 1, 4.

¹¹ ISO-NE Answer at 5.

¹² *See* Eversource Answer at 2, 4; ISO-NE Answer at 2-6.

to section 6.3.1 of the ISO-NE Billing Policy¹³ or to Market Rule 1, which is section III of the ISO-NE Tariff.

4. Section 6.3.1 of the ISO-NE Billing Policy provides that a “Disputing Party must submit its Requested Billing Adjustment within three months of the date that the Invoice or Remittance Advice containing the Disputed Amount was issued by the ISO unless the Disputing Party could not have reasonably known of the existence of the alleged error within such time.” Section 6.1 of the ISO-NE Billing Policy explains, however, that a request for a correction of a Meter Data Error¹⁴ is not considered a Requested Billing Adjustment under the ISO-NE Billing Policy and requests for corrections of Meter Data Errors are handled through the procedures set out in Market Rule 1. Pursuant to Market Rule 1, either the Host Participant (Eversource) or the Asset Owner¹⁵ (Liberty) has to submit a request to correct Meter Data Errors to ISO-NE no later than 30 calendar days after issuance of the Data Reconciliation Process bill.¹⁶ Pursuant to Market Rule 1 and Manual M-28 for Market Rule 1 Accounting (Manual M-28), the deadline by which Liberty was required to request a Meter Data Error correction for the November 2018 error was May 16, 2019.¹⁷

II. Complaint

5. Liberty asks the Commission to find that (1) Liberty is not responsible for the Smith & Wesson November 2018 load; and (2) ISO-NE violated the filed rate doctrine by failing to charge Eversource for the November 2018 load and incorrectly charging

¹³ ISO-NE Tariff, § I (General Terms and Conditions), Ex. ID (Billing Policy).

¹⁴ A Meter Data Error is “an error in meter data on an invoice issued by ISO-NE after the completion of the Data Reconciliation Process as described in the ISO New England Manuals and section III.3.8 of Market Rule 1.” ISO-NE Tariff, § I.2.2 (Definitions).

¹⁵ An Asset is “a Generator Asset, a Demand Response Asset, a component of an On-Peak Demand Resource or Seasonal Peak Demand Resource, a Load Asset (including an Asset Related Demand), an Alternative Technology Regulation Resource, or a Tie-Line Asset.” ISO-NE Tariff, § I.2.2 (Definitions).

¹⁶ See ISO-NE Tariff, § I.2.2 (Definitions).

¹⁷ See *id.*; see also *id.* §§ III.3.6, III.3.6.1; Manual M-28, Rev. 61 (effective Oct. 4, 2018), https://www.iso-ne.com/static-assets/documents/2018/10/manual_28_market_rule_1_accounting_rev61_20181004.pdf.

Liberty. Liberty asks the Commission to grant its complaint and correct the error by: (1) directing Eversource to refund \$191,440, plus interest, to ISO-NE; and (2) directing ISO-NE to refund that amount to Liberty.¹⁸

6. Liberty bases its arguments on the language in section 6.3.1 of the ISO-NE Billing Policy, which, as noted above, provides that “[a] Disputing Party must submit its Requested Billing Adjustment within three months of the date that the Invoice or Remittance Advice containing the Disputed Amount was issued by the ISO *unless the Disputing Party could not have reasonably known of the existence of the alleged error within such time.*”¹⁹ Liberty contends that, because Eversource did not notify Liberty of the errors in reporting load until June 3, 2019, Liberty could not have reasonably known of the November 2018 error within three months of the issuance of the invoice or remittance advice containing the disputed amount.²⁰

7. Liberty provides a timeline of events in support of its argument.²¹ Liberty states that, on November 13, 2018, it received Eversource’s synchronization list²² for November 2018, which did not contain the Smith & Wesson account. Liberty states that, on December 26, 2018, it received the December 2018 synchronization list, which contained the Smith & Wesson account. Liberty states that it expected the Smith & Wesson account on the list because Smith & Wesson was to become a new customer of Liberty and its records showed that the Smith & Wesson account had a December 31, 2018 effective date; therefore, it reasonably believed by the end of December 2018 that its records were in sync with Eversource with regard to the new assignment of Smith & Wesson’s account to Liberty. Liberty claims that “[t]he subject issue was only discovered as a result of Eversource’s resettlement process, which is performed four (4) months in arrears.”²³ Liberty contends that “[i]n March 2019, while reconciling November 2018, Eversource mistakenly had the Smith & Wesson account as part of

¹⁸ Complaint at 13.

¹⁹ *Id.* at 2-3, 5, 9 (citing ISO-NE Billing Policy, § 6.3.1) (emphasis added by Liberty)).

²⁰ *Id.* at 5.

²¹ *Id.* at 5-6; *see also id.*, Ex. A, B.

²² Liberty explains that this list contains a snapshot of all the accounts that Eversource shows “to be flowing” with Liberty that month. *Id.* at 5. Liberty states that it reconciles the list with Liberty’s internal account lists and reports any discrepancy to Eversource. *Id.* at 5-6.

²³ *Id.* at 6.

Liberty's portfolio for November and December of 2018."²⁴ Liberty claims that it remained unaware of the error because Eversource did not provide Liberty a resettlement synchronization list at that time. Liberty states that, on May 13, 2019, it submitted an inquiry to Eversource about the unusually large reconciliation charges for the November and December 2018 operating periods. Liberty states that, on May 29, 2019, Eversource responded to Liberty's inquiry, stating that the issue was related to "Load Asset 14083," which Liberty states it identified as utility WMECO, a subsidiary of Eversource. Liberty contends that, on that same date, it opened an inquiry with Eversource regarding the billing error. Liberty states that, on June 3, 2019, Eversource responded via email, explaining that the Smith & Wesson account in question had been inadvertently associated with Liberty's asset for both the November and December 2018 resettlements. Eversource stated that, while it was in the process of requesting a billing adjustment from ISO-NE for the December 2018 period, the deadline for updating the data for November 2018 had passed. Liberty states that, on July 11, 2019, it requested a bill adjustment from ISO-NE for the November 2018 period.

8. Liberty contends that, because it could not have reasonably known of the existence of the alleged error within the three months required in section 6.3.1 and because Liberty was not informed of the billing errors until Eversource brought them to Liberty's attention on June 3, 2019, the three month window to request an adjustment was suspended.²⁵ Liberty claims that it acted diligently once it knew of the error to attempt to remedy it.²⁶ Liberty adds that it would be inequitable for Liberty to suffer the adverse consequences from an error that Eversource has admitted to making, and which could have been corrected if Eversource had identified its mistake one month earlier.²⁷

9. Liberty also argues that ISO-NE's failure to correct the November 2018 billing error violates the ISO-NE Tariff and the filed rate doctrine.²⁸ Liberty explains that ISO-NE Tariff section II.12.2 provides that the user of the transmission system who withdraws energy at a particular load bus is "responsible for the increased cost of energy."²⁹ Therefore, Liberty asserts that, by imposing charges on Liberty that were not authorized by the ISO-NE Tariff, ISO-NE violated the filed rate doctrine. Liberty points

²⁴ *Id.*

²⁵ *Id.* at 5, 9.

²⁶ *Id.* at 7, 9.

²⁷ *Id.* at 7, 8.

²⁸ *Id.* at 9-10.

²⁹ *Id.* at 9 & n.14.

to *Exelon* for support, emphasizing the Commission's finding that, even after a delay of many years, Exelon was entitled to reimbursement because the filed rate was misapplied to Exelon due to a billing error.³⁰

10. Liberty contends that granting the billing adjustment will not harm any party. For support, Liberty points out that ISO-NE was able to correct Eversource's December 2018 billing error by billing the proper party (Eversource) and providing Liberty with a refund.³¹ Liberty notes that it did not use the Commission's Enforcement Hotline or Dispute Resolution Service, the ISO-NE Tariff dispute resolution mechanisms, or other informal dispute resolution procedures because (1) the facts here are not in dispute and (2) ISO-NE has not shown any interest in modifying its initial decision on the billing adjustment.³²

III. Notice and Responsive Pleadings

11. Notice of the complaint was published in the *Federal Register*, 85 Fed. Reg. 14,193 (Mar. 11, 2020), with interventions and protests due on or before March 19, 2020. Eversource, ISO-NE and New England Power Pool Participants Committee filed timely motions intervene. On March 18, 2020, and March 19, 2020, respectively, Eversource and ISO-NE filed answers.

IV. Answers

12. Eversource and ISO-NE dispute both Liberty's claim that section 6.3.1 of the ISO-NE Billing Policy applies here and Liberty's assertions in support of its arguments.

13. Eversource and ISO-NE assert that section 6.1 of the ISO-NE Billing Policy states that Meter Data Errors, which they assert is the issue here, are handled exclusively through the procedures set out in Market Rule 1.³³ Therefore, ISO-NE contends that,

³⁰ *Id.* at 10-11 (citing *Exelon Corp. v. PPL Elec. Utils. Corp.*, 111 FERC ¶ 61,065, at PP 10, 27, 29 (2005); *La. Pub. Serv. Comm'n*, 106 FERC ¶ 61,228, at P 89 (2004); *Philadelphia Elec. Co.*, 57 FERC ¶ 61,147, at 61,566 (1991); *N. Nat. Gas Co.*, 110 FERC ¶ 61,253 (2005); *Ala. Elec. Coop., Inc. v. Ala. Power Co.* 5 FERC ¶ 61,274 (1978)).

³¹ *Id.* at 8.

³² *Id.* at 11.

³³ See ISO-NE Answer at 5-10; Eversource Answer at 1-2, 3-4.

contrary to Liberty's assertion, the tolling provision in section 6.3.1 that provides a safe harbor if a party discovers an error after the deadline has passed does not apply here.³⁴

14. ISO-NE states that, per Market Rule 1, after the Host Participant (Eversource) submits an initial reading to ISO-NE and ISO-NE issues an initial bill, the Host Participant (Eversource) or the Asset Owner (Liberty) have 101 days to ensure that the data relied upon by ISO-NE is accurate and, if not, to submit any corrected meter data to ISO-NE. ISO-NE explains that, at the end of the 101-day period, ISO-NE issues a data-reconciliation process bill. ISO-NE notes that an error in the meter data that is not corrected during the 101-day period, such as the November and December 2018 errors, is considered a Meter Data Error. ISO-NE explains that a request to correct Meter Data Errors must be submitted by the Host Participant (Eversource) or Asset Owner (Liberty) no later than 30 calendar days after the issuance of the data-reconciliation process bill.³⁵

15. ISO-NE explains that, because the resettlement bills are based on distinct monthly periods, the Meter Data Errors for November and December 2018 are subject to different timelines.³⁶ Specifically, ISO-NE states that the request to correct the November 2018 error was due on May 16, 2019, while the request for December 2018 was due on July 12, 2019. Therefore, ISO-NE states that it corrected the December 2018 error because Eversource submitted its June 7, 2019 request on time; however, ISO-NE rejected Liberty's July 11, 2019 request to correct the November 2018 error because it was not filed on time.

16. ISO-NE and Eversource challenge Liberty's assertion that it was unable to timely address the November 2018 error, arguing that Liberty had numerous opportunities to detect the November 2018 error and request a timely correction.³⁷ ISO-NE and Eversource point to several occasions prior to the deadline for requesting a billing adjustment for a Meter Data Error when ISO-NE and Eversource provided Liberty with information that should have alerted it that an error existed: (1) on February 24, 2019, ISO-NE provided Liberty with a report on November 2018 metered data, which included the Smith & Wesson load data in question and showed a significant increase in Liberty's

³⁴ ISO-NE Answer at 3.

³⁵ *Id.* at 5 (citing ISO-NE Tariff, §§ I.2.2, III.3.7).

³⁶ *Id.* at 4-6.

³⁷ *Id.* at 10-13; Eversource Answer at 4-6. In addition, Eversource disputes Liberty's claim that it submitted an inquiry to Eversource on May 13, 2019. Eversource states that Liberty has not produced any evidence of this inquiry and Eversource's records show Liberty's earliest contact as an e-mail from Liberty on May 29, 2019. Eversource Answer at 6 & n.15 (citing Complaint, Ex. A).

meter reading from the previous month; (2) on February 28, 2019, Eversource notified Liberty via email that this same report was available for Liberty's review on the File Transfer Protocol site; (3) on March 10, 2019, ISO-NE issued a second report that provided Liberty with the same information in the February 24, 2019 report; (4) on March 26, 2019, ISO-NE provided Liberty with several settlement reports, which showed a significant increase in MWh usage compared to the ISO-NE initial settlement reports; and (5) on April 16, 2019, ISO-NE issued its monthly services invoice, which included all billing information for November 2018. ISO-NE adds that, after the conclusion of this data-reconciliation process and issuance of the April 16, 2019 resettlement bill, Liberty had 30 days (until May 16, 2019) to provide ISO-NE or Eversource with notice of the Meter Data Error discrepancy, which it did not do.

17. In addition, ISO-NE states that the dates on which these reports were posted to Liberty's secure File Transfer Protocol site were announced on the ISO-NE website.³⁸ ISO-NE notes that its governing documents require Liberty to review these data to ensure that they are accurate.³⁹

18. Eversource and ISO-NE also challenge Liberty's complaint on policy and legal grounds. First, Eversource argues that Market Rule 1 and Manual M-28 are consistent with Commission policy that, "once invoices are finalized, they should generally remain unchanged, even if later found to contain errors, so that the market participants can rely on the charges contained in the invoices,"⁴⁰ adding that the Commission has routinely denied complaints seeking resettlement in cases such as this.

19. Second, Eversource and ISO-NE disagree with Liberty's assertion that ISO-NE's refusal to correct the November 2018 billing error violates the ISO-NE Tariff and the filed rate doctrine. Eversource asserts that, contrary to Liberty's arguments, the Commission has found that enforcing a tariff provision that places a time limitation on the correction of invoices is consistent with the filed rate doctrine, even where such provision results in a lack of refunds for a violation of the filed rate.⁴¹ ISO-NE adds that the ISO-NE Tariff provision that Liberty contends that ISO-NE violated (section II.12.2) relates to Regional Network Service, which is not at issue here. Eversource and ISO-NE further argue that this proceeding is distinguishable from *Exelon* because the ISO-NE

³⁸ ISO-NE Answer at 11.

³⁹ *Id.* at 10-11 (citing Manual M-28); *see also* Eversource Answer at 7.

⁴⁰ Eversource Answer at 7 (citing *N.Y. State Elec. & Gas Corp.*, 133 FERC ¶ 61,094, at P 63 (2010)).

⁴¹ *Id.* at 7-8 (citing *Sw. Power Pool, Inc.*, 166 FERC ¶ 61,160, at P 50 (2019), *reh'g denied*, 170 FERC ¶ 61,125, at P 23 (2020)).

Tariff includes a clear billing correction limitation period, while, at the time of *Exelon*, PJM's tariff did not.⁴²

20. Eversource and ISO-NE disagree with Liberty that granting the requested billing adjustment would not harm any party. Eversource claims that Liberty improperly identifies Eversource, rather than a different retail supplier, as the proper party to pay for the Smith & Wesson load.⁴³ Therefore, Eversource argues that directing it to refund \$191,440 plus interest to ISO-NE would be inequitable.⁴⁴ ISO-NE claims that, in order to resettle the November 2018 Meter Data Error, it would have to resettle all New England markets (energy, capacity and ancillary services) for every Market Participant for every interval of the month of November 2018.⁴⁵ ISO-NE argues that such a resettlement would violate the ISO-NE Tariff in numerous ways, undermine the finality of ISO-NE settlement processes, and introduce financial uncertainty for all market participants.⁴⁶

21. Eversource adds that, in determining whether to grant refunds, the Commission considers whether a billing discrepancy was discernable and whether the complainant's own failure contributed to the delay.⁴⁷ Eversource argues that, although Liberty may not have known the cause of the November 2018 error, it would have been able to discern that there was an issue and raise it in a timely manner. Eversource notes that the Commission has denied refunds where, as here, the entity's failure to carefully review its invoices is the primary reason that the error was not discovered earlier.⁴⁸

⁴² *Id.* at 8 (citing *FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,289, at P 34 (2008)); ISO-NE Answer at 15-16 (citing *Exelon*, 111 FERC ¶ 61,065 at PP 24, 26).

⁴³ Eversource Answer at 11-12.

⁴⁴ *Id.*

⁴⁵ ISO-NE Answer at 14.

⁴⁶ *Id.* at 14-15.

⁴⁷ Eversource Answer at 9-11.

⁴⁸ *Id.* at 11 (citing *N.Y. Indep. Sys. Operator, Inc.*, 128 FERC ¶ 61,086, at P 20 (2009), *reh'g denied*, 133 FERC ¶ 61,028 (2010)).

V. Discussion

A. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

23. We deny the complaint because we find that ISO-NE followed the applicable Tariff provisions with respect to Liberty's untimely request for a billing adjustment and, therefore, Liberty is not entitled to the requested November 2018 billing adjustment.

24. We disagree with Liberty that section 6.3.1 of the ISO-NE Billing Policy applies in this situation. Section 6.3.1 applies generally to requested billing adjustments. We find, however, that the dispute at issue here is a Meter Data Error as that term is defined in the ISO-NE Tariff. Specifically, the November 2018 error meets the Tariff definition of a Meter Data Error because it is an error in the meter data in an invoice issued by ISO-NE after the completion of the 101-day Data Reconciliation Process.⁴⁹

25. As Eversource and ISO-NE explain, section 6.1 of the ISO-NE Billing Policy applies to Meter Data Errors.⁵⁰ Section 6.1 of the ISO-NE Billing Policy states that Meter Data Errors are handled exclusively through the procedures set out in Market Rule 1 (and the related Manual M-28 procedures).⁵¹

26. Consistent with section 6.1.1 of Manual M-28 (Market Rule 1 Accounting), ISO-NE provided to Liberty either the billing meter data, or access to such data, on four occasions between February 24, 2019, and April 16, 2019, all prior to the May 16, 2019 deadline to submit a Requested Billing Adjustment to ISO-NE for the November 2018 Meter Data Error.⁵² In addition, on February 28, 2019, Eversource e-mailed Liberty,

⁴⁹ See Tariff §§ I.2.2 (Definitions) (defining a Meter Data Error as "an error in meter data, including an error in Coincident Peak Contribution values, on an Invoice issued by the ISO after the completion of the Data Reconciliation Process as described in the ISO-NE Manuals and in section III.3.8 of Market Rule 1").

⁵⁰ See ISO-NE Tariff, §§ I.2.2, III.3.8.

⁵¹ See *supra* notes 11, 14.

⁵² See ISO-NE Answer at 5-6 n.10, 10-13, Exs. 1-6.

notifying Liberty that the billing meter data was available for review.⁵³ Manual M-28 requires Liberty to review its billing meter data and invoices for accuracy.⁵⁴ Liberty's failure to review this data in a timely fashion was the reason that the error was not discovered by the deadline.

27. We disagree with Liberty's claim that ISO-NE violated the filed rate doctrine by failing to charge Eversource for the November 2018 load and incorrectly charging Liberty. The time bar provision in Market Rule 1 constitutes part of the filed rate. As recognized in *Seminole*, enforcing a tariff provision that places a time limitation on the correction of invoices (e.g., a time bar provision) is consistent with the filed rate doctrine, even where such provision results in a lack of refunds for a violation of the filed rate as Liberty alleges.⁵⁵ Further, the facts here are distinguishable from *Exelon* because the ISO-NE Tariff includes a clear billing correction limitation period, which was not part of the PJM tariff at the time of *Exelon*.⁵⁶ It is undisputed that Liberty did not submit a Requested Billing Adjustment until July 11, 2019, after the May 16, 2019 deadline stipulated by Market Rule 1 and Manual M-28. Thus, we find that ISO-NE's refusal to correct the November 2018 billing error does not violate the ISO-NE Tariff or the filed rate doctrine. For these reasons, we deny the complaint.

The Commission orders:

Liberty's complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁵³ Eversource Answer at 5 & n.13, Exs. 1, 2.

⁵⁴ See Manual M-28, § 6.1.1(17) ("On or before the 90th day, the Profiled Load Asset Owners must review the Profiled Load Asset data.").

⁵⁵ *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 139 FERC ¶ 61,254, at P 43 (2012), *reh'g denied*, 153 FERC ¶ 61,037 (2015), *pet. for review denied*, *Seminole Elec. Coop., Inc. v. FERC*, 861 F.3d 230 (D.C. Cir. 2017).

⁵⁶ *FPL Energy Marcus Hook*, 123 FERC ¶ 61,289 at P 34; *N.Y. State Elec. & Gas Corp.*, 142 FERC ¶ 61,151, at P 26 (2013); *cf. Exelon*, 111 FERC ¶ 61,065 at PP 24, 26.