

168 FERC ¶ 61,159
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Panoche Valley Solar, LLC

Docket No. ER18-855-000

ORDER ON REFUND REPORT

(Issued September 19, 2019)

1. In this order, we accept a refund report filed by Panoche Valley Solar, LLC (Panoche Valley) on May 15, 2018, as amended on May 21, 2019, as discussed below.

I. Background

2. On April 12, 2018, Panoche Valley's market-based rate tariff was accepted, effective April 15, 2018.¹ The April 2018 Order directed refunds because Panoche Valley made unauthorized wholesale sales of electric power from October 31, 2017 through April 14, 2018, prior to receiving Commission authorization to make sales at market-based rates under section 205 of the Federal Power Act.² The order also directed Panoche Valley to submit a refund report regarding the basis for and calculations of the refunds paid.

3. Where a utility has made sales without authorization, the Commission requires the utility to refund to its customers the time-value of the gross revenues collected for the entire period that the rate was collected without Commission authorization. In addition, when dealing with market-based rate sales that are not timely filed, the utility will be required to refund all revenues resulting from the difference, if any, between the market-based rate and the cost-justified rate.³

¹ *Panoche Valley Solar, LLC*, Docket No. ER18-855-000 (Apr. 12, 2018) (delegated order) (April 2018 Order).

² 16 U.S.C. § 824d (2018).

³ April 2018 Order at 4 (citing *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (*Prior Notice*)).

(continued ...)

4. In its refund report, Panoche Valley states that it tendered to California Independent System Operator Corporation (CAISO) a wire transfer in the amount of \$58,107, which Panoche Valley states represents the time-value of the revenues received from CAISO during the refund period.⁴

5. With respect to the difference between the market-based rate and the cost-justified rate, Panoche Valley states that it operated at a loss during the refund period. Specifically, Panoche Valley states that it was a price taker during the refund period and that the revenues it received were less than its cost-justified rate. Panoche Valley concludes that no refunds are owed for the difference between the market-based rate and the cost-justified rate during this period.⁵

II. Notice of Filings and Responsive Pleadings

6. Notice of Panoche Valley's May 15, 2018 and May 21, 2019 filings was published in the *Federal Register*,⁶ with interventions and protests due on or before June 11, 2019. On June 11, 2019, CAISO filed a motion to intervene and comments.

7. CAISO confirms that it has received \$58,107 via wire transfer from Panoche Valley. CAISO further states that Panoche Valley's refund report assumes that CAISO will distribute Panoche Valley's refunds to market participants, and asks that the Commission direct CAISO to make this distribution because the CAISO tariff does not include a provision that would otherwise govern how CAISO handles these funds. Specifically, CAISO proposes that the Commission direct CAISO to distribute the funds on a *pro rata* basis to all market participants who paid CAISO's Grid Management Charge during the refund period. CAISO states that an allocation based on the Grid Management Charge is appropriate because there is no basis to allocate the refunds to participants who made purchases in the market. CAISO explains that, because Panoche Valley made sales as a price taker, "the sales that are subject to refund could not have affected market prices or caused losses for the market participants who made purchases."⁷ Finally, CAISO states that this approach would impose a lower administrative burden on CAISO and suggests that this approach is appropriate given the relatively small refund under consideration in this case.

⁴ May 21, 2019 Refund Report at 3. As part of its Refund Report, Panoche Valley provided the monthly revenues and interest calculations supporting the time-value refund amount. *Id.*, Exhibit A, *see also* May 15, 2018 Refund Report Exhibit A.

⁵ May 15, 2018 Refund Report at 4.

⁶ 83 Fed. Reg. 23,664 (2018); 84 Fed. Reg. 24,770 (2019).

⁷ CAISO Comments at 5.

(continued ...)

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), CAISO's timely, unopposed motion to intervene serves to make it a party to this proceeding.⁸

B. Substantive Matters

9. We accept Panoche Valley's refund report. As the Commission has previously explained, where a utility made wholesale sales at market-based rates without prior authorization, the utility will be required to refund all revenues resulting from the difference, if any, between the market-based rate and the cost-justified rate.⁹ In addition, the utility must refund to its customers the time value of the gross revenues collected, calculated pursuant to 18 C.F.R. § 35.19a of the Commission's regulations,¹⁰ for the entire period that the rate was collected without Commission authorization.¹¹

10. We accept Panoche Valley's arguments that no refund is due with respect to the difference between the market-based rate and the cost-justified rate. Further, we find that Panoche Valley correctly calculated the time-value refund obligation for the refunds Panoche Valley paid to CAISO.

11. In response to CAISO's request, we authorize CAISO to distribute the refunds paid by Panoche Valley on a *pro rata* basis to all market participants who paid CAISO's Grid Management Charge during the refund period based on the small amount to be refunded and the administrative burdens of distributing the refund on another basis.

⁸ Although CAISO's motion to intervene presumed its request was "out-of-time," CAISO's intervention is, in fact, timely as it was filed on the June 11, 2019 intervention deadline.

⁹ We remind Panoche Valley that it must submit required filings on a timely basis, or face possible sanctions by the Commission.

¹⁰ 18 C.F.R. § 35.19a (2019).

¹¹ *Prior Notice*, 64 FERC ¶ 61,139 at 61,980.

The Commission orders:

Panoche Valley's refund report is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.