

163 FERC ¶ 61,068
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

California Independent System Operator Corporation Docket No. ER18-857-000

ORDER GRANTING WAIVER

(Issued April 30, 2018)

1. On February 14, 2018, the California Independent System Operator Corporation (CAISO) filed a request for a limited waiver of Section 40.9.2.1 of the CAISO tariff to permit CAISO to process out-of-time annual recertification for certain resources as Acquired Resources for the 2018 resource adequacy compliance year and also to provide certainty to those resources that their Resource Adequacy Availability Incentive Mechanism (RAAIM) exemption for the 2017 resource adequacy compliance year will not be unwound. We grant the waiver, as discussed below.

I. Background

2. CAISO explains that in 2009, it implemented the resource adequacy Standard Capacity Product, which created a standard product definition for resource adequacy with defined performance incentives. The performance incentives included charges for resources providing resource adequacy capacity when their forced outage rate fell below a defined threshold and payments to resources when their forced outage rate exceeded the threshold. CAISO indicates that the Standard Capacity Product exempted legacy contracts from the performance incentives if the resource specific power supply contract existed prior to June 28, 2009. These exempt resources are called Acquired Resources. CAISO explains that the purpose of exempting such legacy contracts was to acknowledge that the existing contracts likely contained agreed-upon performance incentives. According to CAISO, the exemption applies to the initial term of the contract and terminates upon the conclusion of the initial contract term.¹

¹ CAISO Filing at 3-4.

3. CAISO explains that on November 1, 2016, it replaced the Standard Capacity Product with RAAIM, which retained the exemption from performance incentives for Acquired Resources.² CAISO indicates that for RAAIM, its tariff was revised to require scheduling coordinators to submit an affidavit for the 2016 resource adequacy compliance year (the first year of RAAIM) to CAISO demonstrating that each Acquired Resource meets the eligibility criteria in tariff Section 40.9.2.1(a) (Acquired Resource Exemption), in accordance with the process and schedule in the Reliability Requirements Business Practice Manual (BPM). Section 40.9.2.1(b)(2) (Acquired Resource Request) of CAISO's tariff was also revised to indicate that, for each resource adequacy compliance year thereafter until the contract terminates, the scheduling coordinator for the resource must submit confirmation to CAISO that the information in the affidavit is still accurate and the Acquired Resource continues to meet the eligibility criteria in Section 40.9.2.1(a). CAISO also modified the Reliability Requirements BPM to provide that, if there were no changes to the underlying contract, the annual recertification could take the form of a confirmation to CAISO that the information in the existing affidavit is still accurate or an affidavit stating that the contract meets the criteria in tariff Section 40.9.2.1. According to CAISO, the general idea was that for the first year of RAAIM, an initial affidavit was required for Acquired Resource eligibility, whereas thereafter, unless the contract was modified, recertification could simply be a confirmation to CAISO that the resource remained eligible as an Acquired Resource. CAISO explains that the Reliability Requirements BPM sets the annual deadline for the Acquired Resource exemption as the last business day of October.³ CAISO also notes that it initially requested a March 1, 2016, effective date for the RAAIM provisions. However, the effective date of the RAAIM tariff provisions was later extended to November 1, 2016.⁴

4. CAISO indicates that it experienced issues with the recertification process for Acquired Resources in the first year of RAAIM. CAISO explains that while making changes to the effective date of the RAAIM tariff provisions, it inadvertently neglected to update the tariff provision referring to the 2016 resource adequacy compliance year (i.e., the tariff should have been amended to reference the 2017 resource adequacy compliance year) and also neglected to amend the Reliability Requirements BPM to set forth a due-date for the initial affidavits. CAISO explains that it issued a market notice on October 31, 2016 and requested the initial affidavits by November 21, 2016, but continued to accept affidavits into January 2017, which was still several months before

² *Id.* at 5.

³ *Id.* at 6-8.

⁴ *Id.* at 8-9.

binding RAAIM incentive payments and charges began. As such, CAISO collected the first set of RAAIM Acquired Resource affidavits for the 2017 resource adequacy compliance year (rather than the 2016 resource adequacy compliance year contemplated by the tariff).⁵

5. CAISO also experienced some issues with the recertification process for Acquired Resources in the second year of RAAIM. CAISO explains that on October 18, 2017, it issued a market notice reminding scheduling coordinators of the need to recertify their acquired resource status for the 2018 resource adequacy compliance year. According to CAISO, the market notice stated that recertification required the scheduling coordinator either to: (1) confirm that the affidavit provided for the 2017 resource adequacy compliance year remained accurate; or (2) for resources under a modified contract, provide a new affidavit attesting that the modified contract still meets the tariff requirements for an Acquired Resource. CAISO explains that the market notice also extended the recertification deadline from the last business day in October to November 15, 2017, providing scheduling coordinators approximately two additional weeks to recertify their units.⁶

6. CAISO indicates that nine scheduling coordinators failed to renew their exemption by the November 15, 2017, deadline. CAISO explains that, pursuant to Section 40.9.2.1 of CAISO's tariff these resources would lose their Acquired Resource status and be subject to RAAIM starting with the January 2018 resource adequacy month.⁷

7. CAISO explains that through its outreach to the affected entities, it discovered that some scheduling coordinators were not aware of the deadline and stated that they did not realize that recertification was an annual requirement. In particular, CAISO was informed that the elimination of the requirement to submit an affidavit every year was mistaken for an elimination of the annual recertification requirement altogether. CAISO further explains that some scheduling coordinators indicated they thought recertification was only necessary when there was a material change to the underlying contract.⁸

8. CAISO claims that this latter point can be linked to the potentially confusing heading titles for Sections 9.8.1 and 9.8.2 of the Reliability Requirements BPM, which could be read to suggest that recertification is not required unless there is an underlying

⁵ *Id.* at 9.

⁶ *Id.* at 10.

⁷ *Id.*

⁸ *Id.* at 11-12.

contractual change, even though CAISO's tariff and the body of those BPM sections is straightforward in the requirements. According to CAISO, the organization of Section 9.8 of the Reliability Requirements BPM, which is the portion of the BPM addressing Acquired Resources, could be seen as causing confusion. Section 9.8.1 is titled "Exempting RA Resources," and Section 9.8.2 is titled "Notification of change in Acquired Resources." There is no separate subsection addressing recertification of Acquired Resource status. CAISO contends that while the body of Sections 9.8.1 and 9.8.2 address recertification requirements, their titles, at a glance, would not be expected to address the recertification requirements. CAISO states that it will modify the BPM before the next annual recertification process to remove any potential confusion.⁹

9. CAISO explains that during its outreach, the affected entities expressed a desire to retain Acquired Resource status and requested that CAISO retroactively extend the deadline. Although CAISO was sympathetic to these concerns because of the large number of scheduling coordinators expressing confusion, CAISO concluded that it did not have authority under its tariff based on the plain meaning of Section 40.9.2.1 and the mandate that eligibility for the exemption terminates automatically upon failure to meet the recertification deadline. Absent a waiver, the resources identified in Attachment A of the filing will no longer will be Acquired Resources and will be subject to RAIM.¹⁰

10. CAISO indicates that in early January 2018, it notified the affected scheduling coordinators of its intent to file a waiver request with the Commission. CAISO states that it also reminded the affected parties that the recertification is an annual requirement and that for future years it did not anticipate filing a similar waiver or otherwise supporting another party's similar waiver. CAISO states that it encouraged the scheduling coordinators to intervene in the forthcoming waiver proceeding and provide firsthand accounts of the confusion regarding the deadline and the need to recertify annually.¹¹

II. Request for Waiver

11. CAISO requests that the Commission grant a limited waiver of CAISO's tariff Section 40.9.2.1 to permit the nine scheduling coordinators for the 18 resources identified in Attachment A of the filing to submit out-of-time requests to recertify those units as Acquired Resources for the 2018 resource adequacy compliance year. CAISO additionally requests that the Commission allow CAISO to waive any otherwise applicable RAIM availability charges or incentive payments under the tariff for a unit that submits a valid recertification request by the extended deadline created through this

⁹ *Id.* at 8, 12.

¹⁰ *Id.* at 12.

¹¹ *Id.* at 12-13.

waiver request. Finally, to the extent the Commission deems CAISO's procedures used to process affidavits for the start of RAAIM were non-compliant with the applicable tariff provisions, CAISO requests a waiver to ensure that no resource will lose Acquired Resource status based on the date on which it submitted its initial affidavit collected for the start of RAAIM.

12. CAISO contends that good cause exists to grant the limited, one-time waiver because it is possible that scheduling coordinators were confused about the deadline for recertifying their resources as Acquired Resources due to the changes in implementation deadlines and notices issued by CAISO. CAISO explains that the confusion could have been the reason for the delay in submissions, which would cause them to lose the RAAIM exemption to which they are otherwise entitled. CAISO explains that the Commission has previously granted requests for tariff waivers where: (1) the applicant acted in good faith; (2) the waiver was of limited scope; (3) the waiver addressed a concrete problem; and (4) the waiver did not have undesirable consequences, such as harming third parties.¹² According to CAISO, its request satisfies all four elements.

13. CAISO asserts that it has acted in good faith because it submitted this waiver request as soon as practical once it determined that the parties covered by this waiver request: (1) risked losing Acquired Resource status despite their underlying contracts not having changed; (2) presented a facially reasonable basis for excusing their untimely submissions; and (3) could not be accommodated under the existing tariff provisions absent a waiver.¹³

14. CAISO also believes that the parties covered by this waiver request acted in good faith. According to CAISO, a large number of entities expressed their confusion with the requirements. CAISO asserts that considering the uncertainty surrounding the deadline for submission of the initial affidavits, these participants could have been led to believe that the submission deadline was not a binding constraint on retaining exempt status. CAISO has also reviewed its Reliability Requirements BPM and recognized that the headings for Sections 9.8.1 and 9.8.2 could be interpreted to suggest that Acquired Resources must only recertify their status where the underlying contract has changed.¹⁴

¹² *Id.* at 13 (citing *Cal. Indep. Sys. Operator Corp.*, 158 FERC ¶ 61,072, at P 5 (2017); *N.Y. Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,061, at P 19 (2014); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,041, at P 5 (2014); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011)).

¹³ *Id.* at 14.

¹⁴ *Id.*

15. CAISO explains that the waiver is of limited scope because it applies solely to the nine scheduling coordinators for the 18 resources identified in Attachment A. If granted, this waiver would only provide CAISO with one-time authority to process a defined set of out-of-time Acquired Resource recertification for the relevant parties, along with providing assurances to those resources that their RAAIM exemptions for the 2017 resource adequacy compliance year are not at risk of being unwound. CAISO indicates that it has clarified to the affected parties it does not intend to file a similar waiver request for additional years nor does it intend to support such a request submitted by a scheduling coordinator or generating unit for any further years.¹⁵

16. CAISO explains that the waiver addresses the concrete problem that the scheduling coordinators and generating units identified in Attachment A are at risk of losing Acquired Resource status even though their underlying supply contracts—the contracts that entitle them to such status—have not changed. This waiver remediates a concrete problem not only for the identified parties but also would avoid a problem for all other units providing resource adequacy capacity. Until the issues raised by this waiver are resolved, there will be continued uncertainty for all suppliers of resource adequacy capacity regarding the universe of units that might pay into, and be paid from, the closed pool of RAAIM funds. Because CAISO does not wish to extend similar treatment to resources that submit untimely recertification for future years, it is submitting a limited waiver request, rather than a tariff amendment. According to CAISO, this addresses the concrete problem identified most appropriately.¹⁶

17. CAISO contends that there will be no undesirable consequences, such as harming third parties, if the Commission grants the waiver because the waiver merely maintains the status quo. No new resources would receive Acquired Resource status through this waiver. Instead, resources that already have been exempt from RAAIM and the Standard Capacity Product for nine years simply would be provided an opportunity to maintain that exempt status—a status to which they would be entitled but for their failure to submit a timely recertification. Without this waiver, however, the resources identified in Attachment A will lose their Acquired Resource status permanently and risk the threat of facing duplicative or inconsistent availability incentives under both RAAIM and their bilateral supply contracts. CAISO notes that this risk is the reason it created the exemptions in the first place.¹⁷

¹⁵ *Id.* at 14-15.

¹⁶ *Id.* at 15.

¹⁷ *Id.* at 15-16.

18. CAISO requests that the Commission issue an order on this request by May 1, 2018, and that the waiver be effective by that date. An order by this date will allow CAISO and its market participants to proceed with certainty regarding RAIM applicability for the balance of the 2018 resource adequacy compliance year and beyond.¹⁸

III. Notice and Responsive Pleadings

19. Notice of CAISO's filing was published in the *Federal Register*, 83 Fed. Reg. 7472 (2018) with interventions and protests due on or before March 7, 2018. Timely motions to intervene were filed by Southern California Edison Co., and NRG Power Marketing LLC, and GenOn Energy Management, LLC jointly. The City of Colton, California (Colton), Avangrid Renewables, LLC, (Avangrid Renewables) and Power and Water Resources Pooling Authority (Pooling Authority) each filed timely motions to intervene and comments in support of the filing. Shell Energy North America (US), L.P. (Shell) filed a motion to intervene out of time and comments in support of the filing.

20. Colton, Avangrid Renewables, Pooling Authority, and Shell support CAISO's waiver request. Colton states that it supports CAISO's waiver request because it has four resources that were impacted by the confusion in the recertification process and therefore fall within the scope of CAISO's requested waiver.¹⁹ Avangrid Renewables explains that it did not recognize the need to submit a recertification of the accuracy of its previously submitted affidavits, but once it became aware of the passed deadline, it began working collaboratively with CAISO to correct the failure and better understand the timing requirements going forward. Avangrid Renewables states that, without CAISO's requested waiver, resources that continue to have their capacity committed under a resource specific contract will be stripped of their Acquired Resource status, despite the fact that they continue to be unable to appropriately respond to CAISO's resource adequacy incentive/penalty program.²⁰ Pooling Authority contends that it fully complied with CAISO's original RAIM protocols for grandfathering its Acquired Resources for the 2017 resource adequacy compliance year, but it experienced confusion about the steps necessary to recertify the eligibility of its Acquired Resources for the 2018 resource adequacy compliance year. Pooling Authority states that it stands to lose indefinitely the exempt status of approximately 93 megawatts of Acquired Resources capacity without

¹⁸ *Id.* at 16.

¹⁹ Colton Comments at 3.

²⁰ Avangrid Renewables Comments at 5-6.

the requested waiver.²¹ Shell states that it supports CAISO's waiver request to ensure that no resource will lose Acquired Resource status based on the date on which it submitted its annual affidavit, and asserts that CAISO has provided a clear and legitimate basis for the Commission to grant the requested waiver.²²

IV. Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

22. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2017), the Commission will grant Shell's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Substantive Matters

23. The Commission has granted one-time waivers 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.²³ We find that CAISO's request for waiver satisfies these conditions, as discussed below. Therefore, we grant CAISO authority to allow Acquired Resources that submitted an initial affidavit for the start of RAIM and an out-of-time recertification to maintain Acquired Resource status. We thereby provide certainty to those resources that their RAIM exemption will not be unwound.

24. We find that CAISO acted in good faith because it submitted this waiver request once it determined that the parties covered by this waiver request risked losing Acquired Resource status due to confusion about the recertification process in the transition to RAIM. We also find that the requested waiver is of limited scope because it grants CAISO with one-time authority to process a defined set of out-of-time Acquired Resource recertification for the parties referenced in Attachment A, along

²¹ Pooling Authority Comments at 2.

²² Shell Comments at 2.

²³ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Servs., Inc.*, 154 FERC ¶ 61,082, at P 12 (2016); *N.Y. Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

with providing assurances to those resources that their RAAIM exemptions for the 2017 resource adequacy compliance year are not at risk of being unwound.

25. Further, we find that CAISO's waiver addresses a concrete problem because the scheduling coordinators and generating units identified in Attachment A are at risk of losing Acquired Resource status even though their underlying supply contracts—the contracts that entitle them to such status—have not changed. It also provides certainty for all suppliers of resource adequacy capacity regarding the universe of units that might pay into, and be paid from, the closed pool of RAAIM funds. Finally, we find that the requested waiver will not have undesirable consequences, such as harming third parties. Rather, we find that the waiver maintains the status quo for Acquired Resources because no new resources would receive Acquired Resource status through this waiver yet resources that already have been exempt from RAAIM and the Standard Capacity Product would be provided an opportunity to maintain that exempt status without facing duplicative or inconsistent availability incentives under both RAAIM and their bilateral supply contracts. Therefore, we grant CAISO's request for a limited waiver of tariff Section 40.9.2.1 to permit CAISO to process out-of-time annual recertification for certain resources for the 2018 resource adequacy compliance year and also to provide certainty to those resources that their RAAIM exemption for the 2017 resource adequacy compliance year will not be unwound.

The Commission orders:

CAISO's request for waiver is hereby granted, effective May 1, 2018, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.