

171 FERC ¶ 61,250
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket No. ER20-1552-000

ORDER GRANTING WAIVER REQUEST

(Issued June 23, 2020)

1. On April 10, 2020, the California Independent System Operator Corporation (CAISO) filed a request for a limited one-time waiver of Sections 11.29.7 and 11.29.24 of its tariff to permit CAISO to perform certain resettlement calculations in relation to its Resource Adequacy Availability Incentive Mechanism (RAAIM) outside of the timeline specified in its tariff. In this order, we grant CAISO's request, as discussed below.

I. Background

2. CAISO explains that the RAAIM is CAISO's tariff-based tool to create financial incentives for resources providing resource adequacy capacity to meet their availability obligations. Through the RAAIM, CAISO: (1) makes monthly availability incentive payments to resource adequacy resources that exceed their availability target; and (2) assesses monthly non-availability charges against resources that fail to meet their minimum availability target. The availability incentive payments are funded entirely by the non-availability charges collected, and subject to a monthly cap. If the non-availability charges collected result in an incentive payment exceeding the monthly cap, funds will be rolled over to be distributed in future months.¹

3. CAISO states that, after a market participant submitted a timely settlement dispute pursuant to section 13 of the CAISO tariff, CAISO determined that it should reduce the RAAIM non-availability charges that were assessed to one market participant for the month of April 2017 by \$537,872.² CAISO explains that the basis for the adjustment was that the excess charges resulted from the market participant using information that CAISO posted on its website about how non-availability charges would be calculated for

¹ CAISO Petition at 4-5.

² *Id.* at 5.

certain types of resource adequacy units. CAISO later determined that the posted information was incorrect (which it then removed), and that the relevant tariff language was ambiguous. CAISO notes that this is the only settlement dispute that stemmed from the erroneous information, and that the dispute deadline has passed. Therefore, CAISO states it does not expect to make any other adjustments related to this issue. In order to credit this amount back to the affected market participant, CAISO asserts that it must also issue offsetting charges to the market participants who were the recipients of those payments. In this case, CAISO explains, the funds collected from the erroneous April 2017 non-availability charges were not credited to market participants until August 2017.³

4. CAISO explains that when it adjusts settlements as the result of a dispute, its standard practice is to allocate any offsetting charges to market participants that benefited from the initial settlements in order to maintain revenue neutrality. Ordinarily, the offsetting charges are issued for the same trading interval as the relevant credits. However, due to the distinct nature of RAAIM, issuing the offsetting charges is complicated by the fact that the initial settlement covered the April 2017 period, whereas the offsetting charges affect the August 2017 period. Thus, if CAISO were to follow its standard practice of issuing the adjustment credits and offsetting charges for the same time period, i.e., April 30, 2017, the total credits would exceed total charges, causing an imbalance. To achieve revenue neutrality under its tariff, CAISO would be required to assess offsetting charges to load and exports—which did not benefit from the excess RAAIM availability payments.⁴ Thus, according to CAISO, achieving revenue neutrality under these circumstances would violate cost causation principles.⁵

5. CAISO notes that it could resolve the neutrality and cost causation issues by refunding the load and exports (for the offsetting charges they paid) in August 2017 by using the excess incentive payments it would recover from the entities who received it. However, CAISO argues that this approach would make the accounting more complex and less transparent.⁶ Importantly, CAISO also notes that due to seasonal and other differences between load and exports in April and in August, the credit to neutrality

³ *Id.* at 5-6. CAISO explains that it collected significantly more non-availability charges in April than it paid in availability incentive payments.

⁴ *Id.* at 9-10 (citing CAISO tariff, § 11.29.14).

⁵ *Id.* at 6-8.

⁶ *Id.* at 10 n.13.

would not actually reimburse the parties that funded the initial refunds and, therefore, the approach may ultimately violate cost causation principles.⁷

6. To avoid this complication, CAISO explains that the charges to offset the RAIM refunds must be issued at the same time as the refund credit and invoiced together. CAISO asserts that this requires a waiver of rules governing the schedule for issuing recalculation settlement statements in tariff Sections 11.29.7 and 11.29.24⁸ to permit CAISO to issue recalculation settlement statements and invoices for the affected trading days on a schedule different than what is mandated by the tariff.

7. Thus, CAISO asserts that granting the requested waiver would be the most efficient solution that also adheres to both CAISO's revenue neutrality rules and principles of cost causation. In addition, CAISO notes that it will initiate a stakeholder process in 2020 to amend the tariff in a way that would prevent a recurrence of this issue.⁹

II. Waiver Request

8. CAISO requests that the Commission grant a limited waiver of tariff Sections 11.29.7 and 11.29.24, which would otherwise restrict the timing of recalculation settlement statements to resolve this matter. CAISO argues that its waiver request satisfies the Commission's criteria for granting such requests. First, CAISO asserts that it is acting in good faith because it has identified a discrete issue related to the tariff-mandated timing of billing and settlements—as explained above—and has requested this waiver proactively to avoid unintended consequences and ensure transparency. CAISO also notes that—unlike many cases in which the Commission has granted tariff waivers—no tariff violation has occurred here.

9. Second, CAISO contends that the waiver is limited in scope because it is confined to resolving this single settlement dispute. CAISO states that its planned stakeholder process on this issue, scheduled for later this year, will avoid the need for any further tariff waiver requests related to RAIM settlement adjustments.

⁷ *Id.*

⁸ Section 11.29.7 of the tariff, “Settlements Cycle,” sets forth the timelines for CAISO's settlement processes for each calculation interval; and, section 11.29.24 “CAISO Payments Calendar” provides timing details for CAISO to publish its annual settlement calendar, including dates on which CAISO issues initial and recalculation settlement statements.

⁹ CAISO Petition at 8-11.

10. Third, CAISO argues that the waiver will address the concrete and clearly defined issue of a disconnect between CAISO's ordinary practice for adjusting settlements consistent with cost causation after a settlement dispute, and the tariff rules governing billing and settlements. CAISO emphasizes that, without a waiver, the refund of the RAAIM unavailability charges will be paid by load and exports instead of the market participants who benefited from the August 2017 payment of those funds (in the form of availability incentive payments).

11. Fourth, CAISO asserts that there will be no undesirable consequences if the Commission grants this limited waiver because it applies to a single settlement correction. Thus, CAISO anticipates no harm to other market participants. On the contrary, CAISO argues that the waiver will benefit market participants by allowing it to resolve this settlement dispute in a manner that is consistent with cost causation.¹⁰

III. Notice and Responsive Pleadings

12. Notice of CAISO's filing was published in the *Federal Register*, 85 Fed. Reg. 21,423 (Apr. 17, 2020) with interventions and protests due on or before May 1, 2020. Timely motions to intervene were filed by Pacific Gas and Electric Company; Southern California Edison Company; San Diego Gas & Electric Company; Alliance for Retail Energy Markets; and Powerex Corp.

IV. Discussion

A. Procedural Matters

13. 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

14. The Commission has granted waiver of tariff provisions where: (1) the underlying error was made in good faith; (2) the waiver is limited in scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹¹ We find that the circumstances of CAISO's waiver request

¹⁰ *Id.* at 11-13.

¹¹ 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).

satisfy these criteria. Therefore, we grant CAISO's request for a limited one-time waiver of Sections 11.29.7 and 11.29.24 of its tariff.

15. First, we find that the underlying error was made in good faith, as evidenced by CAISO's actions in identifying a tension between the tariff rules governing the timing of its billing and settlement process and the timing of its RAIM charges and payments, and requesting a prospective waiver of the identified tariff provisions in order to resolve the tension.

16. Second, we find that the waiver is limited in scope because it applies only to this single settlement dispute. In addition, CAISO states that it plans to hold a stakeholder process on this issue later this year to address the issue in its tariff and avoid the need for any further tariff waiver requests related to RAIM settlement adjustments.

17. Third, we find that the waiver addresses a concrete problem, namely, that following the tariff-mandated billing and resettlement procedure could violate cost causation principles by offsetting the RAIM non-availability credit with charges to entities that did not benefit from the initial erroneous settlement.

18. Fourth, we find that granting the waiver will not result in any undesirable consequences, such as harming third parties, because granting the waiver will allow CAISO to issue the RAIM refunds and offsetting charges in a way that achieves revenue neutrality and adheres to cost causation principles. We also find that granting this waiver will benefit market participants by allowing CAISO to resolve this settlement dispute in a single recalculation settlement statement, re-balance the charges to accurately reflect availability hours, and invoice the resettlement transactions such that the only affected market participants will be those who received the excess RAIM availability incentive payments in August 2017,¹² which would not have occurred but for the error in the April 2017 assessment of RAIM unavailability charges.

¹² Doing so would also prevent the downstream risk that the load and exports who were charged to preserve revenue neutrality might not necessarily be compensated in the subsequent resettlement statement consistent with the charges they paid due to seasonal variance.

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The Commission orders:

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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