

162 FERC ¶ 61,280
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. ER18-838-000

Order Granting Request for Waiver of Tariff Provisions

(Issued March 29, 2018)

1. In this order, the Commission grants the California Independent System Operator Corporation's (CAISO) petition for limited tariff waiver (Petition) to exempt affected demand response resources participating in the California Public Utilities Commission's (CPUC) Demand Response Auction Mechanism (DRAM) that have delivery obligations between April 2018 through October 2018 and April 2019 through October 2019 from the requirement to bid into the CAISO markets during availability assessment hours.

I. Background

2. CAISO assesses the performance of resource adequacy resources by measuring the availability of generation during pre-determined hours of the day, called "availability assessment hours." Under its Resource Adequacy Availability Incentive Mechanism (RAAIM), resource adequacy resources that are available for 98.5 percent of availability assessment hours for a month are eligible for availability incentive payments, while resources that are available for less than 94.5 percent of availability assessment hours for that month are subject to non-availability charges.¹

3. The CAISO business practice manual lists availability assessment hours and CAISO can alter them through a business practice manual change management proceeding without input from the Commission. The tariff requires that, for local and system capacity,² CAISO set five consecutive availability assessment hours for each month, and that CAISO set these availability assessment hours prior to the start of the resource adequacy compliance year. The tariff also requires that availability assessment

¹ CAISO Tariff, § 40.9.6.

² Resources providing flexible capacity have separate availability assessment hours. Those availability assessment hours are not at issue in the instant filing.

hours must: (1) correspond to the operating periods when high demand conditions typically occur and when the availability of Resource Adequacy Capacity is most critical to maintaining system reliability; (2) vary by season as necessary so that the coincident peak load hour typically falls within the five-hour range each day during the month, based on historical actual load data; and (3) apply to each Trading Day that is a weekday and not a federal holiday.³ Once the availability assessment hours are determined, CAISO updates the business practice manual.

4. CAISO's availability assessment hours for 2017 were set at 1 pm to 6 pm from April to October and at 4 pm to 9 pm for all other months. On April 11, 2017, CAISO issued a market notice to begin a business practice manual change management proceeding, called Proposed Revision Request No. 986 (PRR No. 986), to establish availability assessment hours for 2018. On June 6, 2017, CAISO presented the results of its annual review of availability assessment hours. The presentation showed that CAISO's coincident peak load is shifting to later in the day as more behind-the-meter solar photovoltaic is installed. As a result, CAISO proposed to change the resource adequacy availability assessment hours during April to October 2018 to 4 pm to 9 pm (from 1 pm to 6 pm).⁴

5. CAISO received adverse comments from the CPUC and other stakeholders. These commenters argued that CAISO's revised availability assessment hours would cause difficulties for demand response resources who had offered to provide capacity based on the CPUC 2017 availability assessment hours, i.e., the 1 pm to 6 pm time frame.⁵

6. In response to these comments, CAISO sought waiver from the Commission to keep its 2017 availability assessment hours in place for 2018. CAISO argued that it needed a waiver because maintaining the 2017 availability assessment hours in 2018 may be inconsistent with the provisions of Section 40.9.3.1(a)(2)(B) of the CAISO tariff, which requires that the availability assessment hours "vary by season as necessary so that

³ CAISO Tariff, § 40.9.3.1(a).

⁴ Petition at 6.

⁵ *Id.* at 7-8. CAISO notes that CPUC's and CAISO's availability assessment hours are not updated synchronously due to a lack of alignment between CAISO's tariff and CPUC rules.

the coincident peak load hour typically falls within the five-hour range each day during the month, based on historical actual load data.”⁶

7. The Commission denied this waiver request in an order issued on October 24, 2017.⁷ The Commission found that the waiver request was not limited in scope because CAISO was proposing to waive the availability assessment hours for all resource adequacy resources in order to accommodate the small amount of DRAM resources that require relief.⁸ The Commission also found that the waiver may have undesirable consequences because, if the Commission were to grant CAISO’s proposed request for waiver, it could result in weakening the incentives for resources to be available at the times of highest anticipated system need.⁹

8. However, the Commission also acknowledged that CAISO had potentially identified a problem. The Commission stated that demand response resources provide valuable contributions to CAISO’s system and should not be unnecessarily prevented from participating in CAISO markets due to a misalignment between CAISO and CPUC processes. The Commission stated that it denied the waiver request without prejudice to CAISO submitting a more narrowly tailored waiver request to address the identified issue.¹⁰

9. Because the Commission denied request for the waiver, CAISO updated the availability assessment hours, changing the five-hour block for the months of April through October of 2018 from 1 pm to 6 pm to 4 pm to 9 pm.¹¹ On February 9, 2018, CAISO filed this Petition requesting a limited exemption for the affected demand response resources.

⁶ Petition at 5, 9-10.

⁷ *California Indep. Sys. Operator Corp.*, 161 FERC ¶ 61,088 (2017) (October 24 Order).

⁸ October 24 Order, 161 FERC ¶ 61,088 at P 30.

⁹ *Id.* P 31.

¹⁰ *Id.* P 35

¹¹ Petition at 10.

II. Petition

10. CAISO asserts that good cause exists to exempt the affected demand response resources from the provisions of Section 40.9 of CAISO's tariff for the months of April through October in 2018 and 2019. CAISO defines the affected demand response resources as those participating in the CPUC's DRAM with delivery obligations during that time period. CAISO states that the CPUC will work together with demand response providers to identify the affected demand response resources and that the CPUC will then transmit a list of the affected resources to CAISO to exempt the specified demand response resources from the requirement to bid during the availability assessment hours.¹² CAISO states that Section 40.9 of its tariff requires CAISO to determine the availability of resources providing local and system resource adequacy capacity during the availability assessment hours each month and then assess the resultant availability incentive payments and non-availability charges through the CAISO's settlements process.¹³ CAISO states that the waiver would temporarily exempt resources in a manner similar to the existing exemptions for Variable Energy Resources and Combined Heat and Power Resources contained in Section 40.9.2(b)(1) of the CAISO tariff, such that the affected DRAM resources would not be eligible for availability payments and would not be assessed non-availability penalties.¹⁴

11. CAISO contends that the waiver addresses the concrete problem that arises because of a disconnect between the hours demand response resources are procured to participate in the market per the CPUC's rules and the hours the resources must participate per CAISO's rules. CAISO states that the affected demand response resources made binding commitments through CPUC programs to provide resource adequacy capacity in 2018 and 2019 based on qualifying capacity values that differ from the availability assessment hours recently updated by CAISO. CAISO states that these resources often rely on third-party contracts that cannot be easily updated to fit changes in availability assessment hours. Thus, CAISO asserts that absent a waiver these resources would be forced to break contracts with investor owned utilities that require them to bid during CAISO availability assessment hours and face financial losses. CAISO argues that the waiver request represents a reasonable transition period for these

¹² *Id.* at 14.

¹³ *Id.* at 15.

¹⁴ *See* CAISO Tariff, § 40.9(b)(1).

resources as an alternative to penalizing them for a mismatch in CAISO and CPUC rules.¹⁵

12. CAISO argues that granting the waiver request would be consistent with Commission policy that requires the elimination of “barriers to participation of demand response resources in organized power markets.”¹⁶ CAISO also notes that the Commission’s orders have highlighted the benefit of demand response resources participating in CAISO markets.¹⁷

13. CAISO argues that it has acted in good faith because the waiver seeks to address this concrete problem in a manner consistent with the direction of the October 24 Order.¹⁸

14. CAISO contends that its request is limited in scope because it applies solely to Section 40.9 as it applies to the affected demand response resources. CAISO asserts that, unlike the waiver request rejected in the October 24 Order, this request only applies to affected demand response resources. CAISO states that the demand response resources participating in CAISO markets only constitute 0.4 to 0.6 percent of resource adequacy capacity, and that the demand response resources affected by the waiver would be a subset of that percentage.¹⁹

15. Further, CAISO argues that the request is limited in scope because it will only apply for the months of April through October of 2018 and 2019. CAISO asserts that this will allow CAISO and CPUC to coordinate to ensure that CPUC’s programs for procurement of demand response resources to provide resource adequacy capacity beginning in 2020 will reflect qualifying capacity values that are consistent with CAISO’s availability assessment hours. CAISO states that the CPUC will address this issue in a decision that will be issued in June 2018. CAISO contends that the waiver must extend to 2019 because certain DRAM contracts based on the 1 pm to 6 pm

¹⁵ Petition at 15-16.

¹⁶ *Id.* at 17 (citing *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008) (cross-referenced at 125 FERC ¶ 61,071) (Order No. 719), *order on reh’g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292, *order on reh’g*, Order No. 719-B, 129 FERC ¶ 61,252, at P 84 (2009).

¹⁷ *Id.* (citing October 24 Order, 161 FERC 61,088 at P 35.)

¹⁸ *Id.* at 18.

¹⁹ *Id.*

availability assessment hours extend through the 2019 resource adequacy compliance year.²⁰

16. Finally, CAISO argues that the waiver will have no undesirable consequences because the affected demand response resources are expected to constitute no more than 0.6 percent of all resource adequacy resources during the summer of 2018 and 2019. Thus, CAISO argues that this waiver will not significantly reduce the overall capacity available during hours of highest anticipated system need during the months of April through October in 2018 and 2019. CAISO asserts that, on the other hand, denying the waiver could harm resources that made commitments in the CPUC programs in good faith. CAISO also contends that denying this waiver also could diminish demand response participation, preventing consumers from realizing the full range of additional benefits from increased participation of demand response resources in the CAISO markets.²¹

III. Notice and Responsive Pleadings

17. Notice of CAISO's filing was published in the *Federal Register*, 83 Fed. Reg. 7,175 (2018), with interventions and protests due on or before March 2, 2018. NRG Power Marketing LLC and GenOn Energy Management, LLC, Pacific Gas and Electric Company, and the Northern California Power Agency filed timely motions to intervene. CPUC filed a notice of intervention and comments. EnerNOC, OhmConnect, Inc. (OhmConnect), California Efficiency and Demand Management Council (California Council), and Advanced Energy Management Alliance (AEMA) filed timely motions to intervene and comments. CAISO's Department of Market Monitoring (DMM) filed comments.

A. Comments

18. CPUC, AEMA, EnerNOC, and California Council all support CAISO's Petition. CPUC argues that it addresses a concrete problem because it allows certain demand response resources to participate in the CAISO markets during the 2018 and 2019 timeframe that would otherwise be unable to due to CAISO's changed availability assessment hours.²² CPUC asserts that it is important that these DRAM resources be allowed to participate in order to foster a more competitive environment that will

²⁰ *Id.* at 19.

²¹ *Id.* at 20.

²² CPUC Comments at 3.

ultimately serve to increase demand response participation.²³ CPUC argues that the waiver is limited in scope and consistent with the October 24 Order because it only affects a small number of resources. CPUC notes that the resources involved constitute approximately 250 MW in total. CPUC states that it has already confirmed both the ability and willingness of several providers to conform to the CAISO's updated availability assessment hours, and that this will reduce the number of resources requiring a waiver.²⁴

19. EnerNOC argues that the issues regarding scope of the waiver in the October 24 Order are not present here because the waiver request is targeted toward those resources that would be most harmed by the change in availability assessment hours. EnerNOC argues that the waiver will prevent market confusion and adverse consequences for resources that participated in good faith in the CPUC's demand response programs. EnerNOC notes that if CPUC's measurement hours were synchronized with CAISO's revised availability assessment hours, EnerNOC would have recruited other customers or would have bid to provide services in a completely different manner.²⁵ AEMA states that it supports EnerNOC's comments.²⁶

20. California Council argues that granting the waiver will give certainty to the affected demand response resources as to their bidding obligations, and provides a reasonable transition period to the new availability assessment hours.²⁷

21. The DMM opposes CAISO's request for waiver as it applies to 2019. The DMM argues that the RAIM and the must-offer obligation exist to ensure that capacity is available during the hours that are most critical to maintaining system reliability. The DMM argues that new DRAM resources contracted after the Commission's October 24 Order should be expected to perform during the updated availability assessment hours, because the order clearly established the shift in availability assessment hours.²⁸

²³ *Id.* at 5.

²⁴ *Id.* at 3-4.

²⁵ EnerNOC Comments at 6.

²⁶ AEMA Comments at 3.

²⁷ California Council Comments at 3-4.

²⁸ DMM Comments at 2.

22. The DMM states that it supports the integration of new demand response resources into CAISO's market but argues that market rules should encourage the entry of resources that can best support system needs. The DMM argues that CAISO's Petition would hinder this goal as it would signal that resources that can perform in high demand intervals are no more valuable than those that cannot. The DMM states that this would allow cheaper demand response resources that cannot operate during high demand intervals to displace entry of more valuable demand resources that are capable of operating during those intervals.²⁹

23. OhmConnect requests clarification that the waiver will apply only to affected DRAM resources, and that resources that can participate during CAISO's updated availability assessment hours may opt out of the waiver. OhmConnect argues that resources capable of bidding during the hours of greatest system need should not be forced to bid during the 1 pm to 6 pm period.³⁰

B. Answers

24. EnerNOC filed an answer to address comments by the DMM and OhmConnect. EnerNOC states that DMM's concerns about the scope and impact of the waiver are misplaced. EnerNOC notes that CPUC will not resolve the discrepancy between its rules and CAISO's until June 2018, and argues that this will be too late to provide clarity for DRAM participants currently soliciting demand response bids for delivery in 2019.³¹ EnerNOC states that these demand response resources should not be penalized for procedural schedules and program requirements beyond their control.³²

25. EnerNOC argues that the DMM's argument that the waiver will cause capable demand response providers to be displaced overlooks the minimal market impact of the waiver, which will apply to less than 0.6 percent of all resources adequacy resources. EnerNOC also contends that the DMM's argument ignores the harm rejecting the waiver will do to the DRAM program. EnerNOC notes that CPUC is expected to determine sometime this year whether to transition the DRAM pilot to a full-scale program. EnerNOC states that rejecting the waiver request, or further restricting the application of the waiver so as to exclude 2019 DRAM resources, would negatively affect CPUC's

²⁹ *Id.* at 3-4.

³⁰ OhmConnect Comments at 2.

³¹ EnerNOC Answer at 2-3.

³² *Id.* at 4.

analysis of the effectiveness of the DRAM program by reducing the amount of capacity committed for DRAM deliveries.³³

26. EnerNOC also argues that the DMM ignores the operational complexity of requiring that similarly situated resources meet different requirements for delivery.³⁴ EnerNOC notes that if the waiver were only partially applied, the 4 pm to 9pm availability assessment hours would be waived for DRAM resources procured in 2017 for delivery in years 2018 and 2019, but the availability assessment hours would not be waived for resources contracted in 2018 for delivery in 2019. EnerNOC argues that this would be confusing for customers and create unnecessary complexity for demand response providers and CAISO.³⁵

27. Regarding OhmConnect's request for clarification, EnerNOC state that it does not necessarily oppose the request but states that OhmConnect's comments are informed by a different customer base than that of EnerNOC and some other demand response providers. EnerNOC states that it serves commercial and industrial clients, which have much less operational flexibility than the residential customers that OhmConnect serves.³⁶

IV. Discussion

A. Procedural Issues

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

29. Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept EnerNOC's answer because it provided information that assisted us in our decision-making process.

³³ *Id.* at 4-5.

³⁴ *Id.* at 5.

³⁵ *Id.*

³⁶ *Id.* at 6.

B. Substantive Issues

30. 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.³⁷ As discussed below, we find that CAISO has met these criteria here and therefore grant CAISO's request for waiver of Section 40.9 of its tariff as it applies to affected demand response resources for the months of April through October of 2018 and 2019.

31. First, we find that CAISO has acted in good faith because it has narrowly tailored its request such that it will apply only to the small subset of demand response resources adversely impacted by the change in availability assessment hours, consistent with the Commission's guidance in the October 24 Order.

32. Second, we find that the waiver is limited in scope because it is a one-time waiver narrowly tailored to apply to a small number of resources for a limited time period—namely demand response resources participating in the CPUC's DRAM with delivery obligations between April and October of 2018 and 2019, which will constitute less than 0.6 percent of all resource adequacy capacity. We find that tailoring the waiver to apply only to these resources addresses concerns about the scope of the waiver denied in the October 24 Order.

33. Third, we find that CAISO's waiver addresses a concrete problem because it allows demand response resources that have participated in good faith in CPUC's DRAM to avoid adverse consequences beyond their control resulting from the misalignment between CAISO and CPUC rules.

34. We agree with the DMM that a market rule should encourage the entry of resources that provide capacity during the hours of greatest need. However, we find that in the circumstances presented here, it is appropriate to provide the affected resources with a reasonable transition period to the new availability assessment hours.

35. Finally, we find that the waiver will not have undesirable consequences. The affected demand response providers will ultimately comprise a very small portion of total resource adequacy capacity and thus will not significantly reduce the overall capacity available during the hours of most need. In the October 24 Order, the Commission rejected CAISO's request for waiver on the basis that its request weakened incentives for

³⁷ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Servs. L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

all resources to be available at the time of greatest system need.³⁸ However, that waiver request applied to all resource adequacy capacity, whereas the waiver requested in the Petition will apply to less than 0.6 percent of all resource adequacy capacity. Therefore, the concerns we had with granting CAISO's prior waiver request do not apply to the waiver requested in the Petition.

36. We believe that the method by which CAISO and CPUC propose to implement the waiver mitigates the DMM's concern that DRAM participants could displace demand response resources that could otherwise bid during the hours of greatest need. According to CAISO, the CPUC will identify the resources eligible for exemption based on its knowledge of the underlying contractual obligations of resources that have already made commitments to provide resource adequacy in 2018 and 2019.³⁹ Thus demand resources that, after the date of this order, make new binding commitments that tie them to the 1 pm to 6 pm availability assessment hours should not be eligible for the exemption.

37. We agree with OhmConnect that demand response resources should not be forced to accept an exemption from Section 40.9. The request for waiver only applies to those demand response resources that are affected, and thus cannot meet CAISO's updated availability assessment hours because the resources have been contracted based on different participation hours. Because CPUC will be providing CAISO with a list of the affected demand response resources, a resource can inform the CPUC and CAISO that it does not wish to be covered by the exemption.

The Commission orders:

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³⁸ October 24 Order, 161 FERC 61,088 at P 31.

³⁹ Petition at 2.