

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

California Independent System Operator Corp.

Docket No. ER17-2263-000

ORDER DENYING REQUEST FOR WAIVER

(Issued October 24, 2017)

1. On August 8, 2017, the California Independent System Operator Corporation (CAISO) requested a waiver of section 40.9.3.1(a)(2)(B) of its Fifth Replacement FERC Electric Tariff (tariff), which requires that availability assessment hours “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.” As discussed below, we deny CAISO’s waiver request without prejudice.

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,” for each type of capacity. 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. Availability assessment hours are listed in a CAISO business practice manual (BPM) and can be altered by CAISO through a BPM 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

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.

that these availability assessment hours be set prior to the start of the resource adequacy compliance year. The tariff also requires that availability assessment 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 BPM through the BPM change management process as set forth in its tariff.

4. CAISO's availability assessment hours for 2017 were set at 1pm to 6pm from April to October and at 4pm to 9pm for all other months. On April 11, 2017 CAISO issued a market notice to begin a BPM 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 1pm to 6pm).⁴

5. In response to this proposal, CAISO received some support but also adverse comments from demand response providers and the California Public Utilities Commission (CPUC) staff expressing concern about the proposal.⁵ CPUC explained that CAISO's revised availability assessment hours would cause difficulties for demand response resources⁶ who had offered to provide capacity based on qualifying capacity values calculated under CPUC's Qualifying Capacity Manual, which are the same as those adopted for 2017.⁷ CPUC staff expressed concern that a change in the availability

³ CAISO Tariff at § 40.9.3.1(a).

⁴ CAISO Waiver Request at 5.

⁵ *Id.* Comments on PRR 986 are available at <https://bpmcm.caiso.com/Pages/default.aspx>.

⁶ The subset of demand response participants that would be adversely impacted by CAISO's revised availability assessment hours are participants in CPUC's Demand Response Auction Mechanism, a program administered by CPUC and intended to procure resources that are required to make offers and serve as qualifying capacity in CAISO markets. EnerNOC, Inc. (EnerNOC) Comments at 13.

⁷ CAISO Waiver Request at 6.

assessment hours for 2018 would negatively affect resource delivery by causing uncertainty and confusion and that, as a result, demand response resources might need to terminate or modify offers already made in the CPUC program, or seek exemptions.⁸ CPUC staff also noted that CAISO's use of the 4 pm to 9 pm hours would result in CPUC and CAISO assessing resource adequacy compliance differently. Demand response providers echoed these comments. CPUC staff also noted that, because CPUC had already issued a proposed decision in its resource adequacy proceeding, no additional changes to CPUC's resource adequacy program could be considered for implementation in 2018.

6. In response to these comments, CAISO decided to maintain its 2017 availability assessment hours for 2018. CAISO states that it needs 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 the coincident peak load hour typically falls within the five-hour range each day during the month, based on historical actual load data." CAISO therefore requests a waiver of this tariff provision.

II. CAISO Waiver Request

7. CAISO states 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.⁹ CAISO states that it has acted in good faith because, after considering stakeholder input, it decided after the June 6, 2017 web conference to retain the 2017 availability assessment hours for 2018. CAISO states that the waiver is limited in scope because it only applies to section 40.9.3.1(a)(2)(B), leaving the other requirements that apply to availability assessment hours in place. CAISO also argues that the waiver will be temporary and will only apply to 2018.¹⁰

8. CAISO states that the waiver addresses a concrete problem that the same availability assessment hours need to apply for 2018 as apply for 2017 to avoid imposing a burden on resources that have already committed to provide resource adequacy for

⁸ *Id.*

⁹ *Id.* at 8 (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)).

¹⁰ *Id.* at 8-9.

2018 through the CPUC program. CAISO states that a change in the availability assessment hours for 2018 could also negatively affect resource delivery and possibly cause problems for demand response resources.¹¹

9. CAISO states that the waiver will not have undesirable consequences because resources providing local and system capacity will continue to be subject to the same availability assessment hours as in 2017. CAISO further states that the availability assessment hours still meet the requirements of section 40.9.3.1(a)(2)(A), which requires that availability assessment hours correspond to operating periods when high demand conditions typically occur and when the availability of resource adequacy capacity is most critical to maintaining system reliability. CAISO also states that no stakeholder exercised its right under the tariff and the BPM to appeal the decision to maintain the 2017 hours in PRR No. 986.¹²

10. CAISO states that if the Commission does not approve this waiver request, CAISO will implement the availability assessment hours presented in PRR No. 986 and update its BPM for reliability requirements accordingly.¹³ CAISO states that stakeholders indicated that such a result could cause demand response providers to terminate contracts awarded under the Demand Response Auction Mechanism, thereby reducing the total resources available to meet resource adequacy requirements.

III. Notice and Responsive Pleadings

11. Notice of CAISO's filing was published in the *Federal Register*, 82 Fed. Reg. 37,853 (2017), with interventions and comments due on or before August 29, 2017. Southern California Edison Company and the Northern California Power Agency filed timely motions to intervene. CPUC filed a notice of intervention and comments. EnerNOC filed a timely motion to intervene and comments. Pacific Gas and Electric Company (PG&E) filed a timely motion to intervene and protest. NRG Power Marketing LLC (NRG PML) and GenOn Energy Management, LLC (GenOn), and Advanced Energy Management Alliance (AEMA) filed motions to intervene out-of-time. California Efficiency + Demand Management Council filed a motion to intervene out-of-time and comments. CAISO filed an answer to PG&E's protest and EnerNOC's comments. EnerNOC filed an answer to CAISO's answer.

¹¹ *Id.* at 9.

¹² *Id.* at 10.

¹³ *Id.*

A. Comments

12. EnerNOC filed comments in support of CAISO's waiver request.¹⁴ EnerNOC argues that the Commission should grant CAISO's waiver whether or not one is actually required. EnerNOC asserts that, if CAISO does not receive a waiver, CAISO will implement the availability assessment hours originally proposed in PRR No. 986, which EnerNOC argues would violate CAISO's tariff and California state law. EnerNOC argues that CAISO's proposal in PRR No. 986 violates a number of provisions in CAISO's tariff. EnerNOC argues that CAISO's tariff requires CAISO to use the criteria provided by CPUC or a local regulatory authority to determine the qualifying capacity of each resource adequacy resource.¹⁵ EnerNOC notes that the availability assessment hours proposed by CAISO in PRR No. 986 conflict with the assessment hours that CPUC will use to determine qualifying capacity in 2018. EnerNOC also objects that CAISO failed to propose the change in assessment hours during the CPUC's most recent resource adequacy proceeding, and that CPUC determines the qualifying capacity of demand response resources by their ability to provide capacity across certain hours. EnerNOC argues that CAISO failed to coordinate with CPUC's resource adequacy proceeding when it decided to change its availability assessment hours, thus its new availability assessment hours were not taken into account by the proceeding.¹⁶ EnerNOC also argues that CAISO is required by its tariff to use historical data to calculate availability assessment hours, whereas CAISO's proposal in PRR No. 986 relies on a forecast.¹⁷

13. EnerNOC further argues that CAISO circumvented the due process provided by CPUC by implementing the availability assessment hours unilaterally. EnerNOC notes that CPUC's process for setting resource adequacy qualifying capacity grants participants certain procedural rights, such as granting the possibility of a hearing and the ability to

¹⁴ AEMA and California Efficiency + Demand Management Council state that they support EnerNOC's comments.

¹⁵ EnerNOC Comments at 8. Specifically, EnerNOC cites CAISO Tariff § 40.4.1 ("The CAISO shall use the criteria provided by the CPUC ... to determine and verify, if necessary, the Qualifying Capacity of all Resource Adequacy Resources... Only if the CPUC, Local Regulatory Authority, or federal agency has not established any Qualifying Capacity criteria, or chooses to rely on the criteria in this CAISO Tariff, will the provisions of Section 40.8 apply.") and Cal. Pub Util. Code § 380(a) ("the [CPUC], in consultation with the [California] Independent System Operator... shall establish resource adequacy requirements for all load-serving entities.").

¹⁶ *Id.* at 9.

¹⁷ *Id.* at 8.

present witnesses, that CAISO ignored in setting the availability assessment hours. EnerNOC argues that, in setting the new availability assessment hours, CAISO did not provide sufficient evidentiary support for the new hours, did not provide meaningful stakeholder input, and did not consider the impact of the new hours on agreements entered into by market participants.¹⁸

14. EnerNOC also argues that the implementation of the new availability assessment hours would create a market disruption which would hamper the participation of demand response resources in the CAISO markets. EnerNOC states that the participation of demand response resources in the CAISO markets relies on the close coordination of CAISO and CPUC, and that CAISO's unilateral imposition of new availability assessment hours would undermine this coordination.¹⁹ EnerNOC argues that CAISO's unilateral action would violate section 205 and 206 of the Federal Power Act by creating unjust and unreasonable rates and would violate the Energy Policy Act of 2005, which called for the elimination of unnecessary barriers to the participation of demand response resources.²⁰

15. CPUC also filed comments in support of CAISO's waiver request for 2018 arguing that the waiver will allow adequate time for stakeholder processes at both CPUC and CAISO before changes are made to the availability assessment hours. CPUC argues that delaying a change in availability assessment hours until 2019 will allow for additional consideration of unresolved issues including: (1) a determination of the correct assessment hours for future years; (2) alignment of the CPUC measurement hours with the CAISO availability assessment hours; and (3) how to avoid negative impacts to existing contracts.²¹

16. PG&E protested CAISO's request for waiver. PG&E agrees with CAISO that coincident peak hours have shifted later, and PG&E states that it is not aware of any stakeholder that disagrees with this conclusion.²² PG&E argues that both CAISO's tariff and logic dictate that the availability assessment hours should be shifted to the later time frame for April through October. PG&E argues that, if the availability assessment hours do not correspond to the operating periods when peak load conditions typically occur,

¹⁸ *Id.* at 10.

¹⁹ *Id.* at 13.

²⁰ *Id.* at 14.

²¹ CPUC Comments at 2.

²² PG&E Protest at 5.

then the local and system resource adequacy program will not adhere to the principle of ensuring that capacity is available to meet peak loads.²³ PG&E states that setting the availability assessment hours from 1 pm to 6 pm rather than from 4 pm to 9 pm would create a perverse incentive for resources adequacy resources to operate at other times, when they are not needed most. PG&E argues that this could compromise system reliability or cause CAISO to rely on backstop procurement, which would increase costs to customers.²⁴

17. PG&E argues that the concerns expressed by CPUC and demand response providers do not justify the waiver. PG&E contends that based on an internal analysis of its portfolio, a minimal proportion of demand response resources would be affected (only one percent of its own total portfolio), and argues that no party has presented evidence that CAISO's changes would affect the ability of demand response resources to provide capacity.²⁵ Moreover, the availability assessment hours were created to assess the extent to which all resource adequacy resources have met the availability standards in the CAISO tariff. PG&E argues that maintaining the 2017 availability assessment hours to facilitate the participation of a small subset of resource adequacy resources shows undue preference toward a single class of those resources and is not justified by the potential impacts to system reliability.²⁶

B. Answers

18. CAISO filed an answer to address comments made by EnerNOC and PG&E. In response to PG&E's comments, CAISO states that it acknowledges that the waiver will result in availability assessment hours that do not align with the observed coincident peak load hours, but that the impact will be mitigated by the limited nature of the waiver request. CAISO also states that granting the waiver will ensure that certain resources will be available that otherwise might terminate their contracts and not be available for resource adequacy purposes for 2018.²⁷

²³ *Id.* at 5 (citing BPM for Reliability Requirements at 14).

²⁴ *Id.* at 5-6.

²⁵ *Id.* at 6.

²⁶ *Id.* at 7.

²⁷ CAISO Answer at 2-3.

19. CAISO also notes that CPUC supports its waiver request. CAISO argues that a delay until 2019 will allow for additional consideration of unresolved issues including a determination of the correct assessment hours for future years, alignment of the CPUC qualifying capacity measurement hours with the CAISO availability assessment hours, and how to avoid negative impacts to existing contracts.²⁸

20. In reply to EnerNOC, CAISO asserts that EnerNOC's comments are beyond the scope of this proceeding and that the Commission should reject them. CAISO contends that its waiver request is limited solely to waiving tariff language that would otherwise require CAISO to establish different assessment hours for 2018. CAISO argues that it is not modifying or requesting waiver of any tariff provisions regarding its basic authority to establish availability assessment hours without the need for CPUC approval.²⁹

21. CAISO rejects EnerNOC's assertion that its tariff requires it to work with CPUC to establish availability assessment hours. CAISO states that it does not dispute that CPUC has the authority to set qualifying capacity values for resource adequacy resources, but asserts that this authority is unrelated to CAISO's authority to set availability assessment hours for resource adequacy resources. Moreover, CAISO argues that there is nothing in the tariff that would allow CAISO to delay a change in availability assessment hours to better coordinate with the CPUC.³⁰

22. Further, CAISO argues that tariff section 40.4.1, which grants CPUC deference in setting qualifying capacity values, does not conflict with CAISO's tariff section 40.9.3, which grants CAISO full control over setting availability assessment hours. A resource adequacy resource's qualifying capacity is the maximum capacity that can be counted toward resource adequacy requirements. CAISO's RAIM, of which availability assessment hours are a part, is meant to incent those resources to be available during the hours of greatest need. CAISO states that CPUC's qualifying capacity values are not modified based on availability assessment hours. According to CAISO, it will not identify a deficiency if the resource adequacy measurement hours for setting qualifying capacity differ from CAISO's availability assessment hours. CAISO states that the availability assessment hours have the separate function of incenting resources to submit bids when availability is most critical to maintaining system reliability.³¹

²⁸ *Id.* at 3.

²⁹ *Id.* at 4.

³⁰ *Id.* at 4-5.

³¹ *Id.* at 4-6.

23. CAISO also disputes EnerNOC's claim that CAISO's setting of availability assessment hours raises due process concerns. CAISO states that EnerNOC fails to identify how setting new availability assessment hours would deprive EnerNOC of "life, liberty, or property." Further, CAISO argues that there was no lack of procedural due process because the tariff does not require CASIO to submit new availability assessment hours to CPUC for review or approval, nor does it require CAISO to submit a section 205 filing with the Commission.³²

24. CAISO states that, as a matter of best practices, it agrees that stakeholders should have a chance to review and comment on availability assessment hours. CAISO argues that these best practices are not based on due process requirements, nor do they establish due process requirements.³³

25. In a limited answer to CAISO, EnerNOC states that, if the waiver is granted, there is no need to address the concerns raised in its comments. However, EnerNOC asserts that there would be no way for the Commission to avoid these issues if it denies the waiver.³⁴

26. EnerNOC states that it agrees that CAISO has the authority in the tariff to change the availability assessment hours in the BPM. However, EnerNOC asserts that availability assessment hours and qualifying capacity are inseparable. EnerNOC states that, if CAISO sets availability assessment hours without approval from the CPUC, there would be zero regulatory scrutiny or opportunity to adduce and test evidence over a significant market rule change, thus depriving market participants of due process.³⁵

IV. Discussion

A. Procedural Issues

27. 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. We grant NRG PML's, GenOn's, AEMA's, and California Efficiency + Demand Management

³² *Id.* at 6-7.

³³ *Id.* at 8.

³⁴ EnerNOC Answer at 1-2.

³⁵ *Id.* at 3.

Council's late motions to intervene given the early stage of the proceeding, their interest in the proceeding, and the absence of undue prejudice or delay.

28. 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 accept CAISO's and EnerNOC's answers because they provide information that assisted us in our decision-making process.

B. Commission Determination

29. 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.³⁶ As discussed below, we find that CAISO has not satisfied the criteria for granting waiver, and we, therefore, deny CAISO's request for waiver of section 40.9.3.1(a)(2)(B) of its tariff.

30. First, we find that CAISO has not demonstrated that its request for waiver is limited in scope. Even though CAISO indicates that the waiver would only apply to a single tariff provision for a one-year period, we note that it affects the availability assessment hours applied to all non-exempt³⁷ resource adequacy resources providing system and local capacity and not solely the demand response providers that require relief. CAISO does not provide a precise accounting of the demand response resources that require relief through this waiver request; however, the number appears to be relatively small compared with the total number of resource adequacy resources subject to the availability assessment hours. In sum, CAISO has not shown that the small amount of resources requiring relief justifies or requires the proposed scope of the waiver CAISO requests. As noted above, the vast majority of resources that would be affected by CAISO's waiver request do not require any relief from the tariff provision that CAISO seeks to waive. As a result of granting the waiver request, these resources would have their availability assessed during hours that do not conform to the approved criteria. The

³⁶ 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).

³⁷ Variable energy resources such as wind and solar generation; combined heat and power resources; certain resources providing capacity as qualifying facilities; and resources providing capacity to load-following metered subsystems are exempt from RAIM. See CAISO Tariff § 40.9.2.

Commission therefore finds that CAISO has not demonstrated that its request for waiver to change the availability assessment hours, which applies to all resources, is limited in scope.

31. Second, the Commission finds that CAISO has not shown that there will be no undesirable consequences as a result of granting the proposed waiver request given its current scope. The rationale behind the Commission's acceptance of RAAIM was to incent the availability of resource adequacy resources when they are most needed to reliably and efficiently operate the grid.³⁸ 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. This could potentially cause undesirable consequences in the form of decreased reliability and increased costs.³⁹

32. CAISO argues that its request for waiver will not have undesirable consequences, however, because it will maintain the same availability assessment hours in 2018 as it had for 2017. However, this ignores the study methodology and related data supporting new availability assessment hours in its original proposal in PRR No. 986; namely, that the coincident peak during the April to October period is changing due to the introduction of large amounts of behind-the-meter solar generation.⁴⁰ CAISO cannot solely rely on the fact that these availability assessment hours were in place in 2017 as evidence that there will not be undesirable consequences.

33. CAISO and EnerNOC both argue that a countervailing undesirable consequence from denying CAISO's request for waiver would be that demand response resources may be unavailable to CAISO markets. However, CAISO has not presented evidence that the loss of these resources would undermine reliability or the efficient operation of the grid. Moreover, the demand response resources that require the relief provided by the requested waiver in order to participate in the resource adequacy program would be available for the 1pm to 6pm hours, but it is uncertain whether they would be able to participate from 6pm to 9pm. Accordingly, the Commission finds that the value lost through the unavailability of those resources to be limited compared with the negative impacts discussed above.

³⁸ See *California Indep. Sys. Operator Corp.*, 153 FERC ¶ 61,002 (2015).

³⁹ RAAIM offers incentive payments and assesses non-availability charges to certain resource adequacy resources based on the hours that they are most needed.

⁴⁰ See CAISO Waiver Request at 5 (citing CAISO presentation, *2018 Annual Review of Availability Assessment Hours* (June 6, 2017), available at <http://www.aiso.com/rules/Pages/BusinessPracticeManuals/Default.aspx>, under the "Stakeholder Meetings – 2017" tab).

34. EnerNOC argues that CAISO is required to coordinate with the CPUC in setting availability assessment hours. However, CAISO's tariff only requires it to defer to the CPUC's determinations for the purpose of setting qualifying capacity, but CAISO's RAAIM is a separate tariff provision aimed at measuring the availability of resource adequacy resources based on the time of greatest need, and thus the tariff provisions are not overlapping.

35. While we deny this waiver request, we recognize that CAISO has potentially identified a problem. 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. Therefore, while we deny waiver, we do so without prejudice to CAISO presenting the Commission with a limited waiver request that directly addresses the problem of demand response participation without creating undesirable consequences for the resource adequacy program. Should CAISO decide to request a limited waiver, it should clearly identify the problem to be remedied by the waiver, including the scope of the resources that would be denied participation in CAISO markets without a waiver and how the waiver request is narrowly tailored to address this problem.

The Commission orders:

CAISO's waiver request is hereby denied without prejudice, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.