

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**California Independent System
Operator Corporation**

ER17-2263-000

**ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (CAISO) submits this answer to the August 29, 2017 protest of Pacific Gas & Electric Company (PG&E) filed in response to the CAISO's Petition for Limited Tariff Waiver filed on August 8, 2017 (Waiver).¹ This answer also addresses arguments made by EnerNOC, Inc. (EnerNOC) regarding the CAISO's tariff authority and obligation to set Availability Assessment Hours² based on coincident peak load hours. The CAISO requested a limited waiver of section 40.9.3.1(a)(2)(B) of its tariff so the CAISO can continue to assess the availability of resources providing local and/or system resource adequacy capacity using the same Availability Assessment Hours for 2018 as it does for 2017. PG&E's protest provides no basis for denying the requested waiver.

¹ The CAISO files this answer pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213. Rule 213(a)(2) prohibits answers to protests absent permission of the Commission and the CAISO hereby moves for leave to make the answer to the protest. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in the case. See, e.g., *Equitrans, L.P.*, 134 FERC ¶ 61,250, P 6 (2011); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,023, P 16 (2010); *Xcel Energy Services, Inc.*, 124 FERC ¶ 61,011, P 20 (2008).

² Capitalized terms not otherwise defined herein are used as defined in the CAISO Tariff.

I. Answer to PG&E Protest

PG&E is the only stakeholder that protested the Waiver. The California Public Utilities Commission (CPUC), EnerNOC, and the California Efficiency + Demand Management Council submitted comments supporting the Waiver. The Commission should grant the proposed limited waiver because it will prevent difficulties for many resource owners and operators who have already committed to provide resource adequacy capacity in 2018.

PG&E argues that the Commission should reject the Waiver because (1) it may compromise grid reliability and increase costs, (2) the CPUC's concerns do not justify the Waiver, and (3) the Waiver benefits a small subset of resources. PG&E notes that it "supports the CAISO's efforts and agrees with the conclusion of the CAISO's analysis, that during the months of April through October the peak hours have shifted later, running from 4:00 p.m. to 9:00 p.m. rather than from 1:00 p.m. to 6:00 p.m."³ PG&E asserts that the hours should be modified for the 2018 Resource Adequacy Compliance Year because it agrees with the CAISO's analysis regarding the shift in summer coincident peak load hours. PG&E argues that to do otherwise would result in Availability Assessment Hours "cover[ing] the wrong period" and thereby decreasing the amount of local and system RA capacity made available during the peak hours.

The CAISO acknowledges that the Waiver will result in Availability Assessment Hours that will not perfectly align with observed coincident peak load hours, but any impact of this will be effectively mitigated by the limited nature of

³ PG&E Protest, p. 5.

the waiver request and the fact that it will ensure that certain resources will be available that otherwise might terminate their contracts and not be available at all for Resource Adequacy purposes for 2018.

If these resources terminate their contracts because of a change in the assessment hours, the resources will no longer be providing service and, thus, will be completely unavailable to the CAISO. Maintaining the current assessment hours for another year will ensure that these resources remain available to the CAISO. Further, the CAISO's waiver request is limited in time to the months of April-October 2018.

Finally, the CAISO stresses that the CPUC supports the waiver request.⁴ For the 2018 Resource Adequacy Year, the CPUC did not have adequate opportunity to modify its "resource adequacy measurement hours," which it uses to establish Qualifying Capacity for Resource Adequacy Resources. As a result, CPUC Staff noted that modifying the Availability Assessment Hours for 2018 "could result in DRAM bidders needing to terminate or not accept offers" made through the DRAM process.⁵

In summary, the CAISO continues to believe that a limited waiver is appropriate under the present circumstances.

II. Answer to EnerNOC Comments

EnerNOC submitted comments supporting the Waiver, but then claims

⁴ CPUC Intervention and Comments, p. 2.

⁵ CPUC Staff Comments on PRR 986.
<https://bpmcm.aiso.com/Pages/ViewPRR.aspx?PRRID=986&IsDlg=0>.

that the CAISO cannot modify its Availability Assessment Hours unless the CPUC approves those hours. EnerNOC's comments are beyond the scope of the requested waiver, and thus the Commission should reject them.⁶ The CAISO's waiver request is limited solely to waiving tariff language that would otherwise require the CAISO to establish different assessment hours for 2018. The CAISO is not modifying or requesting waiver of any tariff provisions regarding its basic authority to establish Availability Assessment Hours in the first instance without the need for CPUC approval. As discussed below, the tariff does not require that the CAISO obtain CPUC approval to establish or change the assessment hours.

A. Establishing Availability Assessment Hours Based on Coincident Peak Load Hours is required by the Tariff.

EnerNOC asserts that the CAISO cannot modify its Availability Assessment Hours "without regulatory approval or scrutiny" because it would "violate the principles of cooperative federalism embodied in the CAISO Tariff and state law." As support for this position, EnerNOC points to CAISO tariff section 40.4.1, which requires the CAISO to "use the criteria provided by the CPUC or Local Regulatory Authority to determine and verify, if necessary, the Qualifying Capacity of all Resource Adequacy Resources."⁷ The CAISO does not dispute that the CPUC has the authority to set Qualifying Capacity values for

⁶ See, e.g., *ISO New England Inc.*, 158 FERC P 61033 (2017) ("CPower's waiver request raised a number of factual issues, which were noted in the August 8 Order, and it is within the Commission's discretion to determine that such issues place the request beyond the scope of this proceeding. CPower has not shown that the Commission is required to address its waiver request in this proceeding, and as a result it has not shown that the Commission erred in not doing so.")

⁷ CAISO Tariff Section 40.4.1.

Resource Adequacy Resources, but that authority is completely unrelated to, and does not affect in any way, the tariff provision for which the CAISO seeks a waiver.

The CAISO's tariff requirements under Section 40.9.3.1 are quite specific:

(a) Availability Assessment Hours

(1) Prior to the start of each Resource Adequacy Compliance Year, the CAISO shall establish and publish in the Business Practice Manual the Availability Assessment Hours applicable for resources providing local and/or system Resource Adequacy Capacity for each month of that year.

(2) The Availability Assessment Hours shall be a pre-defined set of five consecutive hours for each month that –

(A) 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;

(B) 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

(C) apply to each Trading Day that is a weekday and not a federal holiday.

No provision of the tariff—including the Qualifying Capacity provision—exempts the CAISO from establishing Availability Assessment hours based on the specific requirements listed in subsections (A) through (C).

Furthermore, the CAISO's requirement to establish and publish Availability

Assessment Hours does not affect the Qualifying Capacity values set by the CPUC for the purpose of establishing resource adequacy. Tariff Section 40.4.1 requires the CAISO to use criteria provided by the CPUC to determine the Qualifying Capacity of Resource Adequacy Resources. The Qualifying Capacity figures set by the CPUC are not modified based on the CAISO's Availability Assessment Hours. Resources that meet the CPUC's Qualifying Capacity requirements will count fully toward Resource Adequacy Requirements, regardless of the Availability Assessment Hours established by the CAISO. In other words, the CAISO will not identify a resource adequacy deficiency because the CPUC's "resource adequacy measurement hours"⁸ used to set Qualifying Capacity differ from the CAISO's Availability Assessment Hours. The CAISO will accept the Qualifying Capacity values set by the CPUC, but those resources will be incentivized to submit bids when availability is "most critical to maintaining system reliability."⁹

B. The CAISO Process for Establishing Updated Availability Assessment Hours is Consistent with Due Process Requirements.

EnerNOC claims that the CAISO's process for establishing updated Availability Assessment Hours "would raise serious due process concerns because parties would be denied the procedural protections built into the Federal Power Act and Commission procedures and California law and CPUC

⁸ The CPUC uses its "resource adequacy measurement hours" to establish the Qualifying Capacity for demand response resources.

⁹ CAISO Tariff Section 40.9.3.1(a)(2)(A).

procedures.”¹⁰ From the outset, the CAISO notes that EnerNOC has not clearly identified any deprivation of life, liberty, or property that would occur if the CAISO implemented updated Availability Assessment Hours.¹¹ The CAISO’s authority to establish the Availability Assessment Hours each year resides in its Commission-approved tariff, which received the full scope of due process afforded under the Federal Power Act. Again, EnerNOC’s request is outside of the scope of the requested waiver and the Commission should reject any claim to the contrary.

Despite EnerNOC’s failure to describe its due process claim, it is clear that in this case, there is no lack of due process based on state law and the CPUC’s processes. As explained in Section A above, the Availability Assessment Hours are established by the CAISO and published in the Business Practice Manual per the CAISO tariff. There is no requirement in the tariff for the CPUC to review or approve the Availability Assessment Hours established by the CAISO. In addition, the Availability Assessment Hours have no direct impact on the Qualifying Capacity values set by the CPUC. As a result, there is no procedural due process claim under state law.

EnerNOC seems to claim that modifying the Availability Assessment Hours would require a Federal Power Act Section 205 filing “in the absence of due process before the CPUC.”¹² Such a position is inconsistent with the express tariff language approved by this Commission. The tariff does not

¹⁰ EnerNOC Comments, p. 10.

¹¹ See, U.S. Const. Amend. XIV. The Fourteenth Amendment provides that “No State shall ... deprive any person of life, liberty, or property, without due process of law.”

¹² EnerNOC Comments, p. 10-11.

contemplate an annual Section 205 filing, nor does it establish any specific process requirements for adopting updated Availability Assessment Hours. Taking EnerNOC's argument to the extreme, the CAISO, and every other regional transmission organization, would be unable to revise their business practice manuals without making a Section 205 filing. That is inconsistent with a long line of clear precedent to the contrary.

As a matter of best practices, the CAISO agrees that the Availability Assessment Hours should be established after presenting preliminary results to stakeholders and giving stakeholders an opportunity to comment on those preliminary results. The CAISO conducted such outreach in this case and plans to expand the scope of the outreach in 2018 to include presentation in the scope of the CPUC's annual resource adequacy proceeding. These best practices are not based on due process requirements, nor do they establish due process requirements.

III. Conclusion

For the reasons stated above, the Commission should grant a limited waiver of section 40.9.3.1(a)(2)(B) of the CAISO tariff so it can continue to assess the availability of resources providing local and/or system resource adequacy capacity using the same Availability Assessment Hours for 2018 as it does for 2017. The Waiver will allow the CAISO and the CPUC to harmonize the CAISO's Availability Assessment Hours and the CPUC's "resource adequacy measurement hours" for 2019, thereby limiting any negative impacts to demand responses resources participating CPUC's DRAM process.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service lists in the above-referenced proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 13th day of September 2017.

Anna Pascuzzo

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