

156 FERC ¶ 61,153
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

California Independent System
Operator Corporation

Docket No. ER16-2327-000

ORDER GRANTING PETITION FOR LIMITED WAIVER

(Issued September 1, 2016)

1. On July 29, 2016, the California Independent System Operator Corporation (CAISO) filed a petition for limited waiver (Waiver Request) to treat the Bay Area Rapid Transit District (BART) as a load-serving entity for the purposes of eligibility for congestion revenue rights (CRRs) and resource adequacy responsibilities under CAISO's Open Access Transmission Tariff. CAISO also requests expedited consideration of its Waiver Request so that the waiver can become effective September 2, 2016, to allow BART the opportunity to participate in the 2017 CRR and resource adequacy processes, which begin in September 2016. In this order, we grant CAISO's Waiver Request, as discussed herein.

I. Background

2. BART is a special purpose transit district that operates a public transportation system in the San Francisco Bay Area. BART is an end-use customer that consumes power to meet its mandated service obligations and has special status under California state law not to rely on a utility to serve its load. BART holds existing transmission contract rights (ETCs) with Pacific Gas and Electric Company that expire at the end of 2016.¹ As of January 1, 2017, BART will no longer be able to use its ETCs to hedge against congestion in the CAISO day-ahead market and has inquired with CAISO about converting its expiring ETCs to CRRs under CAISO's tariff.

¹ Waiver Request at 7.

3. Under CAISO's tariff, only load-serving entities are eligible to participate in the CRR allocation process.² CAISO's tariff defines a load-serving entity as any entity that: (1) serves end users within the CAISO balancing authority area, or is required by California state or local law to sell electricity to end users within the CAISO balancing authority area; (2) is a federal power marketing authority that serves end users; or (3) is the State Water Project of the California Department of Water Resources (State Water Project).³ The Commission previously granted CAISO's proposal to include the State Water Project in its tariff definition of a load-serving entity because, even though the State Water Project does not serve end users, it pays CAISO's transmission access charge and is exposed to congestion costs.⁴ BART does not serve end users of electricity nor is it a federal power marketer and, therefore, does not qualify under the current definition as a load serving entity. However, upon expiration of its ETCs, BART, like the State Water Project, will pay transmission access charges and face exposure to congestion costs for the power it takes from the CAISO grid to serve its own load.⁵ CAISO argues that because BART is similarly situated to the State Water Project, it should be allowed to participate in the CRR allocation process.

4. Without waiver, CAISO asserts that BART will not be able to convert its ETCs to CRRs because it is not a load-serving entity. Therefore, according to CAISO, BART will either be exposed to congestion costs or incur the cost of purchasing CRRs in the monthly auction to cover its exposure to congestion.⁶ CAISO explains that not allowing BART to participate in the annual allocation process, which begins in September 2016, is problematic because the transmission capacity freed up by the expiration of BART's ETCs could be used to allocate CRRs to other load-serving entities, making it less likely or more expensive for BART to obtain the CRRs it needs in the monthly auctions. Further, if BART is not allowed to participate in this year's CRR allocation, CAISO

² CAISO Tariff, § 4.10.1.5.2 (an entity that "intends to obtain CRRs through the CRR allocation process must certify that it qualifies as a Load Serving Entity as defined in the CAISO Tariff."), and § 36.8.2 ("Any entity that wishes to participate in the CRR Allocation process must provide information that demonstrates that it has an obligation to serve load.").

³ CAISO Tariff, Appendix A, Load-Serving Entity.

⁴ Waiver Request at 5 (citing *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006)).

⁵ *Id.* at 7.

⁶ *Id.* at 12.

argues that BART would not receive tier 1 CRRs, which are used for allocating CRRs in the subsequent years to ensure that load receives adequate protection against congestion volatility in the long term.⁷

5. Going forward, CAISO states that it plans to begin a stakeholder initiative to explore amending its tariff definition of a load-serving entity to capture entities like BART that are permitted by state or local law to purchase their own power at wholesale, rather than rely on a retail service provider, and that pay CAISO's transmission access and congestion charges.⁸ CAISO asserts that it plans to submit a tariff amendment to the Commission that would become effective January 1, 2017.

6. CAISO states that if BART becomes a load serving entity in 2017, it will be subject to the resource adequacy provisions of CAISO's tariff. For example, under tariff section 40.2.2, non-California Public Utilities Commission load-serving entities must procure capacity to meet their forecasted load plus a reserve margin, local area capacity needs, and flexible resource adequacy requirements, and demonstrate that they have procured sufficient capacity in their annual and monthly resource adequacy plans submitted to CAISO.⁹ CAISO explains that the annual resource adequacy plan for 2017 is due in October 2016, and the monthly plans for January and February 2017 are due mid-November and mid-December 2016, respectively. CAISO contends that, because BART is not currently a load-serving entity, BART will not be able to procure resource adequacy capacity and submit annual and monthly resource adequacy plans according to CAISO's timeline without a waiver.¹⁰

II. Waiver Request

7. To ensure that BART can participate in the CRR and resource adequacy processes throughout the fall of 2016, and in anticipation of BART becoming a load-serving entity in 2017, CAISO requests waiver of the following sections of its tariff: (1) the tariff definition of "load-serving entity" as it applies to BART in section 4.10.1.5.2, including incidental references to "load-serving entity" or an obligation to serve load in section 36 concerning CRRs; and (2) the tariff definition of "load-serving entity" as it applies to BART in section 40.2.2.4, including incidental references to "load-serving entity" in

⁷ *Id.* at 8.

⁸ *Id.* at 7.

⁹ *Id.* at 9.

¹⁰ *Id.* at 10.

section 40 concerning the submission of resource adequacy plans. CAISO requests that the Commission grant its Waiver Request, effective September 2, 2016, through December 31, 2016.¹¹

8. CAISO argues that its request satisfies the Commission's criteria for granting waiver of tariff provisions. First, CAISO argues that its Waiver Request is of limited scope because it will apply to one market participant, BART, for a limited amount of time—the balance of 2016, pending CAISO's planned tariff amendment.¹² CAISO explains that the waiver will also provide sufficient time to conduct a stakeholder process and submit tariff amendments to the Commission that provide a long-term solution to this problem. Second, CAISO contends that its Waiver Request remedies a concrete problem by allowing BART to participate in the first CRR allocation process that begins in mid-September 2016 so that it does not incur congestion charges when its ETCs expire at the end of the year. CAISO adds that it is important for BART to participate in the initial CRR allocation process so that it can request capacity to cover its load in subsequent CRR processes.¹³ Moreover, CAISO argues that requiring BART to submit the 2017 annual and monthly resource adequacy plans when they are due in 2016 will ensure that BART's load is covered by sufficient capacity.¹⁴ Third, CAISO asserts that its Waiver Request will not result in undesirable consequences, such as harming third parties, because it essentially maintains the status quo, as BART will obtain CRRs in place of its expiring ETCs, which the CRR modeling process already accounts for.¹⁵

9. Finally, CAISO requests that the Commission act on and grant an effective date of September 2, 2016 for its Waiver Request so that it can move forward with its annual CRR and resource adequacy processes in September and October on schedule. CAISO asserts that its request for expedited action is analogous to a request for a waiver of the

¹¹ *Id.* at 3.

¹² *Id.* at 11-12.

¹³ *Id.* at 13.

¹⁴ *Id.* at 10, 13.

¹⁵ *Id.* at 13.

Commission's 60-day notice requirements¹⁶ and satisfies the expedited tariff revision procedures stated in the *Guidance Order*.¹⁷

III. Notice and Interventions

10. Notice of CAISO's filing was published in the *Federal Register*, 81 Fed. Reg. 52,675-76 (2016), with interventions and protests due on or before August 8, 2016. A timely motion to intervene was filed by Powerex Corp.

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

B. Commission Determination

12. We grant CAISO's petition for waiver, effective September 2, 2016, through December 31, 2016, as requested. 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.¹⁸ We find that CAISO's unopposed petition to waive its tariff definition of a load-serving entity as it applies to BART for the remainder of 2016, so that BART may participate in the CRR allocation and resource adequacy processes, satisfies the foregoing criteria, as discussed below.

¹⁶ *Id.* at 14 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,310 (2009)).

¹⁷ *Id.* at 14-15 (citing *Guidance Order on Expedited Tariff Revisions for Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,009 (2005) (*Guidance Order*)).

¹⁸ *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).

13. First, we find that CAISO has acted in good faith to ensure that the expiration of BART's ETCs does not adversely affect BART's ability to participate in the 2017 CRR allocation and resource adequacy processes. We also note that CAISO has stated its intention to submit tariff revisions to amend its tariff definition of a load-serving entity to include BART and other similarly situated entities effective at the start of 2017, which should result in a long-term solution to this issue.¹⁹ Second, CAISO's Waiver Request is limited in scope because it is for a duration of four months, and is limited to the definition of load-serving entity solely as it relates to BART and BART's participation in the CRR allocation and resource adequacy processes.²⁰ Third, we find that CAISO's Waiver Request addresses the concrete problem that CAISO cannot implement tariff revisions in time for BART to participate in the 2017 CRR allocation process, which begins in September 2016, or the 2017 resource adequacy process, which begins in October 2016.²¹ Absent a waiver, BART would be exposed to congestion charge risk when its ETCs expire at the end of the year. Additionally, granting the waiver ensures that BART's load is covered by sufficient resource adequacy capacity and that BART is subject to the resource adequacy rules that apply to other load-serving entities. Finally, we find that granting the waiver will not have undesirable consequences, as it effectively maintains the status quo because CAISO already includes BART's ETCs in its modeling process for CRRs; thus, no other party will be harmed by granting CAISO's request.²²

14. For these reasons, we grant CAISO's request for waiver of the definition of "load-serving entity" as it applies to BART in tariff section 4.10.1.5.2., including incidental references to "load-serving entity" or an obligation to serve load in section 36 regarding CRRs; and the definition of "load-serving entity" as it applies to BART in tariff section 40.2.2.4, including incidental references to "load-serving entity" in tariff section 40, regarding the submission of resource adequacy plans, effective September 2, 2016, through December 31, 2016.

¹⁹ Waiver Request at 1-2.

²⁰ *Id.* at 12.

²¹ *Id.*

²² We also note that no party has objected to the Waiver Request and BART has represented to CAISO that it concurs with the Waiver Request. *Id.* at 13.

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The Commission orders:

We grant CAISO's request for waiver to treat BART as a load-serving entity for the purposes of eligibility for CRRs and resource adequacy responsibilities, effective September 2, 2016, until December 31, 2016, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)

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