

154 FERC ¶ 61,200
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. ER15-1825-001

ORDER ON REHEARING

(Issued March 17, 2016)

I. Background

1. In an October 1, 2015 order,¹ the Commission conditionally accepted the California Independent System Operator Corporation’s (CAISO) tariff amendments to implement Phase 1A of its two-phase reliability services initiative, to enhance CAISO’s resource adequacy rules and processes. Among other things, the October 1 Order accepted CAISO’s proposal to replace an existing tariff provision,² which stated that resource adequacy substitutions are allowed “prior to the close of the day-ahead market” for the next trading day, with a tariff provision stating that such substitutions are allowed in accordance with the timeline specified in the business practice manual.³ The Commission accepted this change because it found that the detailed timeline for substitution of resource adequacy capacity was analogous to other timelines currently in the business practice manuals, such as the election of metered-subsystem status,⁴ in that it did not significantly affect the terms and conditions of service, and was therefore better

¹ *Cal. Indep. Sys. Operator Corp.*, 153 FERC ¶ 61,002 (2015) (October 1 Order).

² CAISO Tariff, § 40.9.4.2.1 (c)-(f).

³ October 1 Order, 153 FERC ¶ 61,002 at P 92. Section 8.7.2 of the Reliability Requirements business practice manual directs market participants to CAISO’s Market Participant User Guide Resource Adequacy Availability Management Tool (Availability Management Tool) for specifics on submitting substitution requests. Section 6.2.4 of the Availability Management Tool provides that substitution requests must be made no later than 6:00 AM on the day before the substitution.

⁴ *Id.* P 92 (citing CAISO Tariff § 4.9.13).

classified as an implementation detail. The Commission also agreed with CAISO that the existing tariff provision was vague, and that CAISO's modification would clarify the substitution process, which was already contained in greater detail in the business practice manual.⁵

2. On October 30, 2015, the NRG Companies⁶ (NRG) filed a request for rehearing of the October 1 Order. On rehearing, NRG argues that the Commission acted arbitrarily and capriciously by: (1) allowing CAISO to include the substitution deadline in a business practice manual rather than in the tariff; (2) finding the tariff provision ambiguous in the first place; and (3) failing to address the consequences of the substitution timeline change.⁷ NRG asserts that the Commission did not fully explain why the timeline of substitutions is an implementation detail rather than a material change. NRG claims that the substitution timeline significantly affects the terms and conditions of service under CAISO's tariff and, therefore, the change should be in the tariff and not the business practice manual.⁸ On November 16, 2015, CAISO submitted an answer to NRG's request for rehearing. As discussed below, we deny NRG's request for rehearing.

II. Procedural Matters

3. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2015), prohibits an answer to a request for rehearing. Accordingly, we will reject the answer filed by CAISO.

III. Commission Determination

4. We deny NRG's request for rehearing. NRG's first basis for rehearing is that the "Commission erred in allowing CAISO to include the substitution deadline in a [business practice manual] rather than in the tariff."⁹ Decisions on whether to place an item in CAISO's tariff or the business practice manual are shaped by the Commission's "rule of

⁵ October 1 Order, 153 FERC ¶ 61,002 at P 92.

⁶ The NRG Companies are NRG Power Marketing LLC and GenOn Energy Management, LLC.

⁷ NRG Request for Rehearing at 3-6.

⁸ *Id.* at 3-4.

⁹ *Id.* at 3.

reason”¹⁰ policy, which dictates that provisions that “significantly affect rates, terms, and conditions” of service must be included in the tariff, while items better classified as implementation details may be included only in the business practice manual.¹¹ As we found in the October 1 Order, the timeline for submitting substitute capacity is better classified as an implementation detail.

5. NRG argues that the change in deadline times is a “critical rate, term, and condition that should be scrutinized under section 205¹² of the Federal Power Act.”¹³ NRG contends that the deadline is significant because the operator of a generator that incurs a forced outage after the deadline would have no opportunity to substitute capacity and it would thus be counted as unavailable. However, we find that the details of the timeline would have only a marginal impact on the ability of an operator to acquire and submit substitution capacity, and this impact would be limited to forced outages that occur within a relatively short window of time. Thus, we do not find that the effects of the timeline on rates, terms, and conditions of service would be significant.

6. Moreover, as the Commission found in the October 1 Order, the substitution timeline has been included in detail in the business practice manual, while the tariff provision was ambiguous prior to CAISO’s revisions. Thus, CAISO’s revisions do not move the timeline for substitution requests from the tariff to the business practice manual, but clarify where a market participant can find the detailed timeline for substitution

¹⁰ See, e.g., *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (finding that utilities must file “only those practices that affect rates and service significantly, that are reasonably susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous”); *Public Serv. Comm’n of N.Y. v. FERC*, 813 F.2d 448, 454 (D.C. Cir. 1987) (holding that the Commission properly excused utilities from filing policies or practices that dealt with only matters of “practical insignificance” to serving customers); *Midwest Indep. Trans. Sys. Operator, Inc.*, 98 FERC ¶ 61,137, at 61,401 (2002), *clarification granted*, 100 FERC ¶ 61,262 (2002) (“It appears that the proposed Operating Protocols could significantly affect certain rates and services and as such are required to be filed pursuant to Section 205.”).

¹¹ *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076, at P 656 (2007) (citing *ANP Funding I, LLC v. ISO New England, Inc.*, 110 FERC ¶ 61,040, at P 22 (2005); *Prior Notice and Filing Requirements under Part II of the FPA*, 64 FERC ¶ 61,139, at 61,986-61,989 (1993), *order on reh’g*, 65 FERC ¶ 61,081 (1993)).

¹² 16 U.S.C. § 824(d) (2012).

¹³ NRG Request for Rehearing at 4.

requests. NRG claims that the Commission was incorrect in finding that CAISO's existing tariff provision was ambiguous.¹⁴ NRG states that CAISO's tariff provided for a clear deadline of 10:00 AM. However, as CAISO noted, its practice had been to enforce a 6:00 AM deadline,¹⁵ and in CAISO's tariff prior to its revisions in this docket, the relevant section only stated that substitution requests must be made "prior to the close of the day-ahead market for the next trading day."¹⁶ The Commission continues to agree with CAISO's assessment in its July 7, 2015 Answer where it acknowledged that the language "prior to the close of the day-ahead market for the next trading day" could be interpreted to mean "prior to the initiation of the day-ahead market run, prior to the close of the day-ahead market, or prior to the close of any final day-ahead market if it has to be rerun."¹⁷ These potential alternative interpretations illustrate the ambiguity of the underlying tariff provision. It was not clear from the language in the tariff that the deadline was 10:00 AM, as claimed by NRG.

7. NRG also argues that the Commission "erred in concluding that [the substitution deadline] was analogous to other timelines in the [business practice manuals], such as the election of metered subsystem status."¹⁸ NRG attempts to distinguish the substitution deadline from the election of metered subsystem status. NRG argues that the election of metered subsystem status is a strategic decision that can be planned in advance, while the need to substitute units is driven by real-time events. We do not find this to be a meaningful distinction. Like the timeline for the election of metered subsystem status, the timeline for the submission of requests for substitution is an administrative timeline with little, if any, impact on rates, terms, and conditions of service.

¹⁴ *Id.* at 5.

¹⁵ CAISO Filing, Docket No, ER15-1825-000, Attachment C, p. 8.

¹⁶ CAISO Tariff, § 40.9.4.2.1 (c)-(f).

¹⁷ CAISO July 7, 2015 Answer, Docket No. ER15-1825-000 at n. 37. This Answer, accepted by the Commission in the underlying docket, responded to numerous protests, including one by NRG.

¹⁸ NRG Request for Rehearing at 6.

The Commission orders:

The request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.