

153 FERC ¶ 61,225
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Rancho Cucamonga Municipal Utility

Docket No. ER15-2550-000

ORDER DENYING WAIVER

(Issued November 19, 2015)

1. On August 27, 2015, as amended on September 2, 2015, Rancho Cucamonga Municipal Utility (RCMU) submitted a Petition for Limited Waiver of the California Independent System Operator Corporation's (CAISO) tariff provisions, which impose financial penalties on late submission of required information for Resource Adequacy plans. In this order, we deny RCMU's waiver request, as discussed below.

I. Background

2. RCMU submitted a request for waiver of the CAISO tariff provisions under section 40.2 (Information Requirements For Resource Adequacy Programs) which provides Resource Adequacy reporting requirements, and section 37.6.1 (Required Information Generally) which provides a \$500 per day penalty for each day that information required by the CAISO tariff is late.

3. RCMU states that this waiver relates to CAISO's requirement that the Scheduling Coordinator for a load-serving entity provide annual and monthly Resource Adequacy plans. According to RCMU, Resource Adequacy plans are used to demonstrate sufficient Resource Adequacy for the specified annual and monthly time interval, as required to meet the expected Resource Adequacy need in California. RCMU states that annual Resource Adequacy plans are to be submitted in October, and monthly Resource Adequacy plans are to be submitted at least 45 days in advance of the first day of the month covered by the plan. Resource Adequacy plans are submitted through a load-serving entity's Scheduling Coordinator. RCMU is both a load-serving entity and its own Scheduling Coordinator; therefore, RCMU submits the Resource Adequacy plans through the CAISO Interface for Resource Adequacy (CIRA) portal.¹

¹ RCMU Transmittal at 2.

4. RCMU states that, on April 16, 2015, CAISO sent RCMU a notice that its May 2014 Resource Adequacy plan was missing and that RCMU had an opportunity to respond with information concerning the May 2014 Resource Adequacy plan. RCMU states that since monthly Resource Adequacy plans are due 45 days in advance of the month, CAISO's notice of the missing plan arrived over one year and two months after the plan's due date.²

5. RCMU asserts that it submitted the May 2014 Resource Adequacy plan through the CIRA portal, though the plan may not have been delivered to or received by CAISO given technical issues between RCMU and CAISO. RCMU does not know for certain where the server error or other technical error occurred. RCMU believes that the May 2014 Resource Adequacy plan was sent through the CIRA portal based on the evidence and records that RCMU provided CAISO during its investigation process.³ RCMU states that it provided CAISO with: (1) RCMU's server records which indicate that RCMU had accessed CAISO's submission portal during RCMU's normal timeframe for Resource Adequacy plan submission; and (2) spreadsheet records that indicate the May 2014 Resource Adequacy plan spreadsheet was last modified during that server activity.⁴

6. RCMU states that, on July 23, 2015, after reviewing the provided information, CAISO concluded its investigation process and issued a \$22,000 sanction for the missing May 2014 Resource Adequacy plan – a sanction of \$500 per day for each day that the plan is considered late. RCMU states that the sanction arrived on the August 8, 2015 publication of RCMU's recalculation settlement statement and was promptly paid by RCMU.⁵

7. RCMU states that it intends to submit a settlement statement dispute by the August 27, 2015 deadline provided under sections 11.29.8 and 37.8.10 of the CAISO tariff. RCMU states that CAISO tariff section 37.8.10 also requires that RCMU appeal the sanction to the Commission along with the settlement statement dispute for the assessed sanction to toll until the Commission's determination is reached. Thus, RCMU explains while the settlement statement dispute is to be submitted at CAISO, the original petition was also needed by the August 27, 2015 deadline to toll the assessed sanction.⁶

² *Id.*

³ *Id.* at 2-3.

⁴ *Id.* at 3.

⁵ *Id.*

⁶ *Id.*

RCMU states that CAISO's tariff does not specify the form of appeal, but given RCMU's circumstances and past Commission orders, a petition for waiver is appropriate.⁷

II. Request for Waiver

8. RCMU states that it was sanctioned under section 37.6.1 of the CAISO tariff. According to RCMU, section 37.6.1 provides a \$500 per day penalty for each day that required information is late. RCMU states that sanctions assessed under section 37.6.1 are non-discretionary, and are not limited by a cost cap, the severity of the violation, or other accommodation of an entity's size. RCMU states that the information required by CAISO was the May 2014 Resource Adequacy plan. RCMU states that monthly Resource Adequacy plans are required under tariff section 40.2.2.4. RCMU explains that the relevant provisions of the CAISO tariff implicated by this limited waiver are section 37.6.1, as related to the Resource Adequacy reporting requirements in tariff section 40.2, and its various subsections.⁸

9. RCMU requests that the Commission grant a limited waiver of the aforementioned tariff sections for the period of time related to the CAISO sanction, which is from the date the May Resource Adequacy plan was due (i.e., March 17, 2014) until the date that the May Resource Adequacy plan is no longer subject to a per day penalty by CAISO (i.e., May 1, 2014) – approximately 45 days.

10. RCMU states that the Commission has granted waiver requests in situations beyond emergency situations or unintentional error. RCMU states that such situations have included, but are not limited to, where: (1) the entity seeking the waiver acted in good faith, (2) the waiver is of limited scope, (3) a concrete problem needed to be remedied, and (4) the waiver does not have undesirable consequences, such as harming third parties. RCMU states that its situation falls within the Commission's delineated circumstances where a waiver is granted.⁹

11. RCMU states that the Commission has previously held that swift action to address an issue, once aware of it, is an indication of good faith. RCMU states that upon RCMU's notice of the missing Resource Adequacy plan, RCMU invested time and administrative resources in assessing why CAISO did not receive the plan, and produced

⁷ *Id.* at 3 (citing *3 Phases Energy Servs., LLC*, 149 FERC ¶ 61,151 (2014) (reviewing waiver request for an information submission sanction under CAISO tariff section 37)).

⁸ *Id.* at 4.

⁹ *Id.* at 4-5.

evidence that RCMU accessed CAISO's submission portal and revised the May 2014 Resource Adequacy plan during that portal access. RCMU states that it timely responded to CAISO's notice of review during the investigation process and has provided CAISO with an additional copy of the May 2014 Resource Adequacy plan, to ensure that CAISO has the plan while the settlement statement dispute is being resolved. RCMU states that its monthly Resource Adequacy plans for the months prior and subsequent to May 2014, as well as the annual Resource Adequacy plan for 2014, have also been submitted in a timely fashion. RCMU asserts that the above are all good faith efforts to comply with CAISO's Resource Adequacy reporting requirements and ensure that CAISO has the required information.¹⁰

12. RCMU cites to past Commission waivers for inadvertent errors, finding them to be in good faith. For example, RCMU states that, in an order issued on July 1, 2010,¹¹ the Commission granted a joint waiver to CAISO and the City of Riverside related to Riverside's erroneous submission of data to CAISO for the City of Corona. RCMU states that the erroneous submission had resulted in large financial consequences for Corona. RCMU states that, in the July 2010 Order, the Commission noted that, "here, Riverside's error in submitting Corona's data to CAISO for the month of April 2010, without having converted the data from kWh to MWh, was made in good faith."¹²

13. RCMU believes that some technical error prevented CAISO's receipt of the 2014 May Resource Adequacy plan, given that RCMU's server information indicates activity on CAISO's Resource Adequacy plan submission portal. RCMU argues that, similar to Riverside's data submission error, RCMU's technical submission error should be found to be in good faith. Thus, RCMU states, it has acted in good faith while, and in the events prior to, seeking this limited waiver.¹³

14. RCMU states that its requested waiver is limited in both time and scope, consistent with Commission orders granting requests for discrete waivers of tariff provisions.¹⁴

¹⁰ *Id.* at 5.

¹¹ *California Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004 (2010) (July 2010 Order).

¹² RCMU Transmittal at 5-6 (citing July 2010 Order, 132 FERC ¶ 61,004 at P 11).

¹³ *Id.* at 6.

¹⁴ *Id.* (citing *California Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,184 (2014); *ISO New England Inc.*, 134 FERC ¶ 61,182 (2011); *S. Indiana Gas & Elec. Co.*, 143 FERC ¶ 61,091 (2013)).

RCMU states that, consistent with these cases, RCMU seeks a limited, one-time waiver of a discrete provision of the CAISO tariff – tariff section 37.6.1, as related to the Resource Adequacy reporting requirements in section 40.2. RCMU states that this waiver would only apply to one load-serving entity and Scheduling Coordinator – namely, RCMU. RCMU also states that the period of time asked for in this Petition for Waiver (i.e., 45 days) is well within the time period of limited waivers that the Commission has granted in the past.¹⁵

15. RCMU states that granting its request for limited waiver would remedy the problem of unnecessarily imposing large financial obligations on RCMU. As previously noted, in the July 2010 Order, the Commission granted Riverside a waiver from CAISO tariff provisions in part because the requested waiver will “remedy the problem of unnecessarily imposing large financial obligations on both Riverside and Corona.”¹⁶ RCMU states that though RCMU’s financial obligation resulting from its error is substantially less than that imposed on Riverside and Corona from their error, the \$22,000 sanction is nonetheless a large financial obligation unnecessarily imposed on a utility of RCMU’s small size and administrative capacity. RCMU asserts that such a large sanction for one Resource Adequacy plan is unnecessary and detrimental to the proper function of CAISO tariff section 37’s sanctioning process for incomplete information.¹⁷

16. Further, RCMU argues that by granting this waiver the Commission would address the problem of disparate treatment among differently sized utilities related to the review of Resource Adequacy plans. RCMU states that its May 2014 Resource Adequacy plan was not declared missing until over one year and two months after the plan’s due date. RCMU states that the reported amount of Resource Adequacy was so small as to miss detection from CAISO for a substantial period of time. RCMU asserts that had CAISO not received a large utility’s Resource Adequacy plan in their system, CAISO would likely have contacted the large utility promptly, due to the noticeable impact of the larger utility’s Resource Adequacy on the cumulative Resource Adequacy data. RCMU states that a larger utility may receive a \$500-\$1,500 sanction for

¹⁵ *Id.* at 6-7 (citing *New York Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,147 (2013) (granting waiver request for a 119-day period).

¹⁶ *Id.* (citing July 2010 Order, 132 FERC ¶ 61,004 at P 11).

¹⁷ *Id.* at 7-8.

submitting their filing several days late, but a missed filing would not go unnoticed by CAISO for months, likely preventing a sanction from rising to tens of thousands of dollars.¹⁸

17. RCMU states that this requested waiver also addresses the difficulties in complying with Resource Adequacy reporting requirements. RCMU states that in *Pac. Gas & Elec. Co.*, 134 FERC ¶ 61,265 (2011) (March 2011 Order), Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SoCal Edison) jointly filed a request for temporary waiver of (at the time) new forced outage Resource Adequacy reporting requirements in section 40.9.5 (Outage Reporting) of the CAISO tariff, as PG&E and SoCal Edison had been contractually unable to obtain the forced outage information necessary to comply with the reporting requirements. According to RCMU, the Commission granted PG&E's and SoCal Edison's waiver request for good cause.¹⁹

18. Lastly, RCMU states that CAISO has a comprehensive scheme for curing Resource Adequacy plan deficiencies in section 40.7 (Compliance) of CAISO's tariff. RCMU claims that if a submitted Resource Adequacy plan is deficient, CAISO will notify the load-serving entity's scheduling coordinator "in an attempt to resolve any deficiency" within at least 25 days in advance of the month covered by the plan.²⁰ RCMU states that the scheduling coordinator then has approximately 10 days to cure the deficiency. RCMU claims that the notice requirements for deficient plans within section 40.7 do not explicitly extend to plans that are not submitted at all, thus it is a concrete problem. RCMU argues that this problem is compounded because the sanctions assessed under section 37.6.1 for missing reports are non-discretionary and not limited by a cost cap or other accommodation of a load-serving entity's size, which can cause disproportionately harmful impacts on smaller entities.²¹

19. RCMU states that a waiver must not have undesirable consequences, such as having adverse impacts on third parties. RCMU argues that the requested waiver will not produce undesirable consequences for any market participant, CAISO, or any other third parties, as the waiver is temporary and specific to RCMU. Further, RCMU states that it

¹⁸ *Id.* at 8.

¹⁹ *Id.*

²⁰ *Id.* at 9 (citing CAISO tariff § 40.7(a)-(c)).

²¹ *Id.*

is working with CAISO during the waiver request process to ensure continued compliance with existing and forthcoming Resource Adequacy reporting requirements.²²

III. Notice, Intervention and Responsive Pleadings

20. Notice of RCMU's September 2, 2015 filing was published in the *Federal Register*, 80 Fed. Reg. 55,108 (2015), with interventions and protests due on or before September 23, 2015. On September 22, 2015, CAISO filed comments and a motion to intervene.

21. CAISO comments that it takes no position on the issue of whether RCMU merits a tariff waiver in these circumstances, but instead seeks to clarify the process for submission and verification of supply plans to address issues referenced by RCMU in its request. CAISO maintains that the processes and procedures underlying the Resource Adequacy program are an important element of that program. CAISO states that, without timely reports from load-serving entities, it cannot know whether the load-serving entities within its footprint have secured sufficient capacity with adequate notice to take corrective action, such as issuing a capacity procurement mechanism designation under section 43 (Capacity Procurement Mechanism) of the CAISO tariff, in the event that there are deficiencies. CAISO asserts that it is important that all parties meet their resource adequacy reporting obligations. Further, CAISO expresses confidence that it applied its tariff correctly and that, per the relevant tariff provisions, RCMU faced the appropriate sanctions.²³

22. CAISO addresses RCMU's assertion that it submitted the plan in question and that some form of server error prevented CAISO from processing the plan. CAISO seeks to provide clarity as to what information participants should have received with regard to status of successful uploads and the process participants can follow to verify whether or not their plans were loaded successfully. CAISO states that to ensure market participants upload their plans successfully it has provided market participants with training, market simulation opportunities, and user documentation for the CIRA portal, and client service representatives are also available to help them navigate these issues.

23. CAISO states that CIRA is designed to issue an error notice when the supply plans are not successfully loaded. CAISO states that the primary user documentation informs market participants of the eleven separate error messages they may encounter. CAISO states that the documentation also provides direction regarding how they can verify if their resource adequacy plan was loaded successfully. Further CAISO adds that

²² *Id.*

²³ CAISO Answer at 2-3.

market participants can contact CAISO through the general resource adequacy e-mail address or their client service representative to confirm their plans are successfully loaded.²⁴

24. CAISO states that also relevant to the Commission's consideration of the issues referenced by RCMU is that the second phase of CAISO's ongoing reliability services initiative potentially will explore ways to ease the Resource Adequacy reporting burden for load-serving entities, particularly small utilities that are reporting small amounts of capacity. CAISO states that considering Resource Adequacy reporting rule changes in this venue will allow CAISO and entities like RCMU, along with all other interested stakeholders, the opportunity to consider changes in reporting obligations in the context of more comprehensive Resource Adequacy rule changes. CAISO states that, to the degree the Commission views RCMU's filing as raising the potential for prospective tariff changes, CAISO already has a venue to consider any appropriate amendments.²⁵

IV. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motion to intervene serves to make CAISO a party to this proceeding.

B. Commission Determination

26. The Commission has at times granted one-time waivers of tariff provisions where: (1) the waiver was of limited scope; (2) the underlying error was made in good faith; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.²⁶ The Commission looks at

²⁴ *Id.* at 3-4.

²⁵ *Id.* at 4.

²⁶ *See, e.g., Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,132, at P 15 (2014); *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,058, at P 16 (2014); *accord Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010); *ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21 (2006) (granting limited and temporary change to tariff to correct an error); *Great Lakes Gas Transmission LP.*, 102 FERC ¶ 61,331, at P 16 (2003) (granting emergency waiver involving *force majeure* event for good cause shown); and

(continued ...)

each case on its own merits. In this case, we deny RCMU's waiver request because the facts presented by RCMU do not satisfy the Commission's criteria.

27. We agree with CAISO that the Resource Adequacy program is a critical element to meeting grid reliability, and that it is important for load-serving entities to adhere to the Resource Adequacy procedures in place to meet their reporting obligations in a timely fashion. While RCMU explains that it had believed it had submitted the Resource Adequacy Plan through the CIRA portal, it does not appear that RCMU made any effort to confirm receipt of the plan in light of the facts that RCMU was experiencing server and technical errors with the submission. In its attempt to demonstrate that its request meets the Commission's waiver analysis, RCMU has cited Commission precedent that is not analogous to the instant filing.

28. RCMU explains that it inadvertently erred by submitting untimely Resource Adequacy plans to CAISO and is thus subject to penalties under the relevant CAISO tariff provisions. In support of its request for waiver, RCMU cites, for example, the July 2010 Order, stating that the Commission has granted waivers for inadvertent errors. In the July 2010 Order, Riverside submitted its load data to CAISO for the City of Corona, but failed to convert kWh to MWh, and was charged \$30 million for a \$30,000 wheeling access charge.²⁷ The Commission granted Riverside's request for a waiver, finding that granting waiver will "remedy the [concrete] problem of unnecessarily imposing large financial obligations on both Riverside and Corona."²⁸

29. In response to RCMU's argument, we disagree with RCMU that its missed deadlines are akin to the inadvertent error by Riverside addressed in the July 2010 Order, because in that case the information was submitted in a timely manner despite the erroneous data. In the July 2010 Order, the Commission concluded that the financial penalties imposed were a concrete problem and unnecessary because of the nature of Riverside's mistake – a calculation error which caused a nearly \$30 million overcharge. We do not find RCMU's missed deadline and the resulting fine to be a comparable concrete problem. In addition, these cases are not analogous because the magnitude of

TransColorado Gas Transmission Co., 102 FERC ¶ 61,330, at P 5 (2003) (granting waiver for good cause shown to address the inclusion of certain data in the variance adjustment calculation).

²⁷ July 2010 Order, 132 FERC ¶ 61,004 at P 3.

²⁸ *Id.* P 11.

the \$30 million wheeling access charge by far eclipses the \$22,000 sanction imposed on the RCMU.²⁹

30. We find that RCMU's failure to submit timely Resource Adequacy plans to CAISO is more analogous to a recent waiver request filed by 3 Phases Energy Services (3 Phases) than the orders cited by RCMU in its filing. In *3 Phases Energy Services*, 3 Phases was assessed an \$83,000 penalty under CAISO's tariff for failing to provide timely meter data. The Commission denied 3 Phases' request for waiver of CAISO's tariff, finding that "it is important to note that scheduling coordinators, such as 3 Phases, are obligated by the scheduling coordinator agreement to comply with CAISO's tariff, which places ultimate responsibility for the accurate and timely submission of meter data on scheduling coordinators."³⁰ We find that, like 3 Phases, RCMU had a clear responsibility to provide CAISO with timely Resource Adequacy plans and failed to do so. Accordingly, we find that CAISO's imposition of penalties for untimely submissions of Resource Adequacy plans was appropriate, just as the Commission found that the imposition of penalties on 3 Phases under CAISO's tariff was appropriate.

31. RCMU states that the Commission has previously found that quick corrective action may indicate that waiver applicants have acted in good faith. However, swift corrective action by itself does not warrant a waiver. The Commission determines whether to grant a waiver request based on the specific facts and circumstances presented by the waiver applicants. As discussed above, we conclude that a tariff waiver is not warranted under the facts and circumstances here.

32. Finally, in response to RCMU's characterization of the March 2011 Order and of the provisions of CAISO tariff section 40.7 as highlighting concrete problems with the reporting requirements of CAISO's Resource Adequacy program, we agree with CAISO that its reliability services initiative is the better forum to address RCMU's concerns. However, while CAISO has applied its tariff correctly in this proceeding, the Commission acknowledges that CAISO had taken more than 13 months to identify the missing plan and notify RCMU. While we find that RCMU is responsible for timely and correct submissions, we agree with RCMU that if a larger utility had not submitted its Resource Adequacy plan, CAISO may have been more likely to notice the impact on the cumulative Resource Adequacy data and thus may have notified the utility more quickly, thereby decreasing the sanction amount. Therefore, we encourage CAISO, in its reliability services initiative, to consider mechanisms to address the potential for disparate treatment for different sized utilities. For example, CAISO may consider

²⁹ Also, of note, CAISO joined Riverside's request for waiver in that proceeding.

³⁰ *3 Phases Energy Services*, 149 FERC ¶ 61,151, at P 14 (2014).

capping reliability related sanctions relative to the size of the utility or developing procedures that improve its timeliness in verifying information submissions.

33. For the foregoing reasons, we deny RCMU's request for waiver.

The Commission orders:

RCMU's request for waiver of CAISO tariff sections 37.6.1 and 40.2.2.4 is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.