153 FERC ¶ 61,226
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Eastside Power Authority Docket No. ER15-2588-000

ORDER DENYING WAIVER

(Issued November 19, 2015)

1. On September 1, 2015, Eastside Power Authority (Eastside) submitted a Petition for Limited Waiver of the California Independent System Operator Corporation's (CAISO) tariff provisions, which impose financial penalties on late submission by load-serving entities of required information for Resource Adequacy plans. In this order, we deny Eastside's waiver request, as discussed below.

I. Background

2. Eastside, with the support of its Scheduling Coordinator, Western Area Power Administration (Western), 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. Eastside 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 Eastside, 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. Eastside 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. Eastside states that its Scheduling Coordinator is Western; therefore, Western submits Eastside's Resource Adequacy plans through the CAISO Interface for Resource Adequacy (CIRA) portal.[1]

[1] Eastside Transmittal at 2.

4. Eastside states that, when preparing its annual Resource Adequacy plan for the October 2014 submission deadline and reviewing CIRA validation reports, it noticed that its monthly Resource Adequacy plans for October, November, and December 2014 were not submitted into the CIRA portal. Eastside says that due to its size, the amounts of Resource Adequacy required to be reported by Eastside during these months – 1.01, 0.36, and 0.17 MW, respectively – were miniscule relative to the CAISO footprint. Eastside states that it immediately brought the missing plans to the attention of CAISO, and after receiving instruction from CAISO, submitted the three missing plans on October 27, 2014.[2]

5. Eastside states that, on November 3, 2014, CAISO began a review process concerning Eastside's delayed submissions, which concluded March 11, 2015. Eastside states that CAISO sanctioned Western– as Eastside's Scheduling Coordinator – $50,000 for providing the three monthly plans beyond the required deadlines. Eastside states that it promptly paid the sanction, and Western submitted a settlement statement dispute under section 37.8.10 of the CAISO tariff to toll the assessed sanction. Eastside states that Western has also entered into good faith negotiations with CAISO concerning the assessed sanction, pursuant to section 13.2 (Negotiation and Mediation) of the CAISO tariff.[3]

6. Eastside states that since there was no concurrent appeal to the Commission, the settlement statement dispute was not accepted by CAISO and the assessed sanction was not tolled. Eastside states that, notwithstanding the fact that the settlement statement dispute was not accepted by CAISO, it is still permitted to appeal the sanction to the Commission under section 37.8.10 of the CAISO tariff. Eastside states that CAISO's tariff does not specify the form of appeal, but given Eastside's circumstances and past Commission orders, a petition for waiver is appropriate.[4]

II. Request for Waiver

7. Eastside states that it was sanctioned under section 37.6.1 of the CAISO tariff. According to Eastside, section 37.6.1 provides a $500 per day penalty for each day that required information is late. Eastside 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. Eastside states that the information required by

[2] *Id.*

[3] *Id.* at 2-3.

[4] *Id.* at 3-4 (citing *3 Phases Energy Servs., LLC*, 149 FERC ¶ 61,151 (2014) (reviewing waiver request for an information submission sanction under CAISO tariff section 37)).

CAISO was the Resource Adequacy plans for the months of October, November, and December 2014. Eastside states that monthly Resource Adequacy plans are required under tariff section 40.2.2.4. Therefore, Eastside states 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.[5]

8. Eastside 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 October Resource Adequacy plan was due (i.e., August 15, 2014) until the date the monthly Resource Adequacy plans were submitted (i.e., October 28, 2014) –74 days.

9. Eastside states that the Commission has granted waiver requests in situations beyond emergency situations or unintentional error. Eastside 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. Eastside states that its situation falls within the Commission's delineated circumstances where a waiver is granted.[6]

10. Eastside states that the Commission has previously held that swift action to address an issue, once aware of it, is an indication of good faith. Eastside states that its discovery of the missing Resource Adequacy plans was diligently self-reported and expeditiously corrected. Furthermore, Eastside argues that, given the size of Eastside's Resource Adequacy plans, CAISO may not have been aware of the missing plans if not for Eastside's self-reporting. Eastside states that CAISO received the missing plans from Eastside the very same evening that it was provided instruction for the plans' submittal. Eastside 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.[7]

11. Eastside also argues that the Commission has previously granted waivers for inadvertent errors, finding them to be in good faith. For example, Eastside states that, in

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[5] *Id.* at 4.

[6] *Id.* at 4-5.

[7] *Id.* at 5.

an order issued on July 1, 2010,[8] 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. Eastside states that the erroneous submission had resulted in large financial consequences for Corona. Eastside 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."[9]

12. Eastside states that its requested waiver is limited in both time and scope, consistent with Commission orders granting requests for discrete waivers of tariff provisions.[10] Eastside states that, consistent with these cases, Eastside 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. Eastside states that this waiver would only apply to one load-serving entity – Eastside – and Eastside's Scheduling Coordinator. Eastside states that the period of time asked for in this Petition for Waiver (i.e., 74 days) is well within the time period of limited waivers that the Commission has granted in the past.[11]

13. Eastside states that granting its request for limited waiver would remedy the problem of unnecessarily imposing large financial obligations on Eastside. 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."[12] Eastside argues that though its financial obligation resulting from its error is substantially less than that imposed on Riverside and Corona from their error, the $50,000 sanction is nonetheless a large financial obligation unnecessarily imposed on a utility of Eastside's small size and administrative capacity. Eastside asserts that such a large sanction for one

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

[9] Eastside Transmittal at 5-6 (citing July 2010 Order, 132 FERC ¶ 61,004 at P 11).

[10] *Id.* at 6-7 (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)).

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

[12] *Id.* at 7 (citing July 2010 Order, 132 FERC ¶ 61,004 at P 11).

Resource Adequacy plan is unnecessary and detrimental to the proper function of CAISO tariff section 37's sanctioning process for incomplete information.[13]

14. Further, Eastside 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. Eastside states that its brief lapse in Resource Adequacy submission for the October through December plans and reported Resource Adequacy amount was so small as to miss detection by CAISO. Eastside 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. Eastside states that a larger utility may receive a $500-$1,500 sanction for 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.[14]

15. Eastside states that this requested waiver also addresses the difficulties in complying with Resource Adequacy reporting requirements. Eastside 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 Eastside, the Commission granted PG&E's and SoCal Edison's waiver for good cause.[15]

16. Lastly, Eastside states that CAISO has a comprehensive scheme for curing Resource Adequacy plan deficiencies in section 40.7 (Compliance) of CAISO's tariff. Eastside 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.[16] Eastside states that the Scheduling Coordinator then has approximately 10 days to cure the deficiency. Eastside 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. Eastside argues that this problem is compounded because the

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[13] *Id.* at 7-8.

[14] *Id*. at 8.

[15] *Id*.

[16] *Id*. at 9 (citing CAISO tariff § 40.7(a)-(c)).

sanctions assessed under section 37.6.1 of CAISO's tariff 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.[17]

17. Eastside states that a waiver must not have undesirable consequences, such as having adverse impacts on third parties. Eastside 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 Eastside. Eastside also states that it is working with CAISO during the waiver request process to ensure continued compliance with existing and forthcoming Resource Adequacy reporting requirements.[18]

III. Notice, Intervention and Responsive Pleadings

18. Notice of Eastside'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.

19. CAISO comments that it takes no position on the issue of whether Eastside 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 Eastside 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, CAISO 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 in the fact that that it applied its tariff correctly and that, per the relevant tariff provisions, Eastside faced the appropriate sanctions.[19]

20. CAISO states that also relevant to the Commission's consideration of the issues referenced by Eastside 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

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[17] *Id*.

[18] *Id*.

[19] CAISO Answer at 2-3.

capacity. CAISO states that considering resource adequacy reporting rule changes in this venue will allow CAISO and entities like Eastside, 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 Eastside's filing as raising the potential for prospective tariff changes, CAISO already has a venue to consider any appropriate amendments.[20]

IV. Discussion

A. Procedural Matters

21. 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

22. 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.[21] The Commission looks at each case on its own merits. In this case, we deny Eastside's waiver request because the facts presented by Eastside do not satisfy the Commission's criteria.

23. 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. In its attempt to demonstrate that its requests meet the Commission's waiver analysis, Eastside has cited Commission precedent that is not analogous to the instant filing.

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[20] *Id.* at 4.

[21] *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 *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).

24. Eastside 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, Eastside 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.[22] 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."[23]

25. In response to Eastside's argument, we disagree with Eastside 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 Eastside's missed deadlines and the resulting fine to be a comparable concrete problem. In addition, these cases are not analogous because the magnitude of the $30 million wheeling access charge by far eclipses the $50,000 sanction imposed on the Eastside.[24]

26. We find that Eastside'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 Eastside 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."[25] We find that, like 3 Phases, Eastside 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.

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[22] July 2010 Order, 132 FERC ¶ 61,004 at P 3.

[23] *Id*. P 11.

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

[25] *3 Phases Energy Services, LLC*, 149 FERC ¶ 61,151, at P 14 (2014).

27. Eastside argues 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.

28. Finally, in response to Eastside'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 Eastside's concerns. Given that Eastside is responsible for timely and correct submissions, we find that CAISO has applied its tariff correctly in this proceeding. However, we agree with Eastside 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 provide prompt notice to the utility, 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 capping reliability related sanctions relative to the size of the utility or developing procedures that improve its timeliness in verifying information submissions.

29. For the foregoing reasons, we deny Eastside's request for waiver.

<u>The Commission orders</u>:

Eastside'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.