

170 FERC ¶ 61,173  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

California Independent System  
Operator Corporation

Docket No. ER20-725-000

ORDER GRANTING WAIVER

(Issued February 28, 2020)

1. On December 31, 2019, the California Independent System Operator Corporation (CAISO) submitted a request, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,<sup>1</sup> for a limited waiver of Section 40.10.4.1 of its Open Access Transmission Tariff (Tariff) (Waiver Request). The requested waiver would extend an existing Commission-granted waiver<sup>2</sup> permitting CAISO to continue calculating effective flexible capacity<sup>3</sup> values for proxy demand resources (PDRs)<sup>4</sup> based on the general formula described in section 40.10.4.1(a), rather than using the testing-based approach specific to PDRs, as specified by section 40.10.4.1(c). CAISO requests that the existing waiver extend through August 1, 2020. As discussed below, we grant the Waiver Request.

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<sup>1</sup> 18 C.F.R. § 385.207 (2019).

<sup>2</sup> *See Cal. Indep. Sys. Operator Corp.*, 167 FERC ¶ 61,199 (2019) (May 2019 Order) (where the Commission granted CAISO's request for a Tariff waiver of the same provision that lasted through December 31, 2019).

<sup>3</sup> Effective flexible capacity is the number of megawatts (MW) eligible to be counted towards meeting a load-serving entity's flexible resource adequacy requirements. *See Cal. Indep. Sys. Operator Corp.*, 149 FERC ¶ 61,042, at P 16 (2014).

<sup>4</sup> PDRs are loads or an aggregation of loads that are capable of measurably and verifiably reducing their electricity demand. CAISO's PDR framework effectively allows applicable resources to bid demand response into the CAISO market. *See* CAISO Tariff, app. A, Master Definition Supplement; CAISO Tariff § 4.13.1.

## I. Background

2. Section 40.10.4.1(a) of the Tariff contains a general formula for effective flexible capacity calculations (used in CAISO's resource adequacy program), which bases effective flexible capacity values on a resource's start-up time, ramp rate, and net qualifying capacity. However, Tariff Sections 40.10.4.1(b) through (f) provide certain technology-specific effective flexible capacity methodologies for certain types of resources, including PDRs. Specifically, section 40.10.4.1(c) provides that the effective flexible capacity of a PDR shall be based on the resource's actual MWs of load modification in response to a dispatch by CAISO during a randomly administered test event. Such a methodology was designed for CAISO to use applicable baseline load to measure the actual load modification by a PDR.

3. In April 2019, CAISO requested a waiver of these requirements, stating that it had not developed the applicable test procedures for PDRs as specified in Tariff Section 40.10.4.1(c) at the time because no PDRs were registered in CAISO when this requirement was developed as part of the Flexible Resource Adequacy Criteria and Must Offer Obligations initiative.<sup>5</sup> When PDRs eventually came into the CAISO system, CAISO stated that it erroneously established the practice of calculating their effective flexible capacity using the general formula in Section 40.10.4.1(a), rather than the testing-based approach specific to PDRs in Section 40.10.4.1(c).<sup>6</sup> CAISO explained that it first identified a gap in how it had implemented its Tariff with regard to effective flexible capacity calculations in April 2019.<sup>7</sup> Therefore, CAISO submitted a request for waiver in Docket No. ER19-1690-000 to develop testing procedures and finalize them. In the May 2019 Order, the Commission granted the requested waiver of the PDR-specific testing provisions to apply through December 31, 2019, to enable CAISO to (1) continue calculating effective flexible capacity values for PDRs for the June 2019 resource adequacy month, (2) continue calculating values for the 2020 annual effective flexible capacity list, and (3) allow CAISO time to study and develop testing procedures to comply with its Tariff requirements.<sup>8</sup>

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<sup>5</sup> Waiver Request at 3, 5 (citing *Cal. Indep. Sys. Operator Corp.*, 149 FERC ¶ 61,042).

<sup>6</sup> *Id.* at 5.

<sup>7</sup> *Id.*

<sup>8</sup> May 2019 Order, 167 FERC ¶ 61,199 at PP 10-13.

## II. Waiver Request

4. In this filing, CAISO requests an extension of the existing waiver granted by the Commission in the May 2019 Order to August 1, 2020, explaining that the procedures needed for test-based effective flexible capacity cannot reasonably be implemented without costly system enhancements. CAISO explains that the necessary enhancements could not be ready by the expiration of the current waiver period on January 1, 2020. Specifically, CAISO explains that it first tried to amend its operating procedures<sup>9</sup> to align with the testing requirements reflected in its Tariff, but discovered implementation complexities and challenges. According to CAISO, its operations personnel would need to issue test instructions and enter them into its system, resulting in a distraction from more pressing operational matters. CAISO states this would make CAISO limit itself to only a handful of tests per day; and given the number of distinct PDRs, limiting the number of tests per day would imply a daily recurring task for operations personnel.<sup>10</sup>

5. In addition, regardless of timing, CAISO states that it plans to reassess the original rationale for three PDR-specific testing requirement to create better administrable rules for PDR effective flexible capacity. As noted, CAISO contends that the testing procedures would require system enhancements, which would come at a cost that may not be fully justified. CAISO explains that at the time the Tariff provisions were designed as part of the Flexible Resource Adequacy Criteria and Must Offer Obligation initiative, the requirements seemed reasonable because PDRs were a new resource type whose performance capabilities were more uncertain. However, CAISO contends that this methodology does not align with the manner in which Net Qualifying Capacity values are currently calculated for PDRs, raising the question about why flexible capacity values for PDRs should be set in a drastically different way from their net qualifying capacity values.<sup>11</sup> Therefore, using the time afforded by this waiver, CAISO states that it also intends to confer with stakeholders to explore potential alternatives and any appropriate Tariff amendments. Further, CAISO also notes that it would factor in a recent California Public Utilities Commission decision refining its demand response

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<sup>9</sup> Waiver Request at 6 (citing Operating Procedure No. 5330 (Resource Testing Guidelines)).

<sup>10</sup> *Id.* at 6-7.

<sup>11</sup> Net Qualifying Capacity helps establish how much system/local resource adequacy capacity a resource can provide, whereas effective flexible capacity establishes how much flexible capacity a resource can provide. The formula for effective flexible capacity includes net qualifying capacity values. CAISO notes that PDRs are created through local regulatory agencies including the California Public Utilities Commission-administered programs, and that CAISO defers to these local authorities in setting the Qualifying Capacity values, which lead to Net Qualifying Capacity values. *Id.* at 2, 7.

auction mechanism, which, among other things, created new minimum performance requirements backed by a penalty structure to demonstrate a resource's ability to provide its qualifying capacity. CAISO states that the new rules suggest that even if CAISO does not set effective flexible capacity through a test during the requested waiver period, there would be measures in place to help ensure that a PDR's effective capacity would reasonably reflect its capabilities.<sup>12</sup>

6. In the event that its stakeholder process results in new rules, CAISO states that it would submit a Tariff amendment with such new rules no later than June 1, 2020, which would enable CAISO to post a draft annual effective flexible capacity list for the 2021 resource adequacy year in August 2020.<sup>13</sup> CAISO explains that having longer-term certainty on the PDR effective flexible capacity rules by August 1, 2020 would be beneficial because CAISO could then post the draft 2021 resource adequacy year annual effective flexible capacity list with certainty as it related to the PDR effective flexible capacity methodology. CAISO also notes that if the stakeholder process concludes that it is more appropriate to implement the existing Tariff provisions, it will submit an appropriate filing with the Commission explaining its plans to do so.<sup>14</sup>

7. CAISO requests that the Commission grant a limited waiver of Tariff Section 40.10.4.1 to permit CAISO to calculate PDR effective flexible capacity values based on Section 40.10.4.1(a) instead of 40.10.4.1(c) through August 1, 2020. CAISO states that the extension of this waiver would allow new PDRs to come online during the waiver period and help provide certainty to PDRs supplying flexible resource adequacy for the upcoming (i.e., 2021) resource adequacy year.<sup>15</sup>

8. CAISO contends that its Waiver Request meets the Commission's standards for granting waivers. First, CAISO argues that it has acted in good faith by submitting the Waiver Request as soon as it was feasible once CAISO determined that the challenges in implementing the test-based PDR effective flexible capacity values within the term of the

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<sup>12</sup> *Id.* at 9 (citing *Decision Refining the Demand Response Auction Mechanism*, Cal. Pub. Util. Comm'n, D.19-12040 (Dec. 19, 2019)).

<sup>13</sup> *Id.* at 8.

<sup>14</sup> *Id.* n.6.

<sup>15</sup> CAISO notes that it cannot predict definitively how many new PDRs will register with CAISO during the waiver period (i.e., January-July 2020) due to their unique nature, but states that the most current annual list for 2020 reflects most months containing around 1,000 MWs of PDR effective flexible capacity, a nominal decrease compared to 2019. *Id.* at 8.

existing waiver was not practical without system enhancements (whose resultant implementation costs might not be justified).<sup>16</sup>

9. Second, CAISO asserts that the waiver is of limited scope, explaining that the waiver not only applies for a limited and defined period of time, but that the waiver would only affect a relatively small amount of capacity.<sup>17</sup> CAISO notes that the waiver only applies to flexible capacity and does not impact other aspects of the resource adequacy program. In addition, CAISO states that little of the effective flexible capacity from PDRs has been used to provide resource adequacy capacity. Furthermore, CAISO asserts that the flexible resource adequacy capacity that was provided by PDRs made a very small contribution towards overall flexible capacity requirements.

10. Third, CAISO contends that the waiver would address a concrete problem. CAISO argues that until final testing procedures are finalized, it cannot calculate new PDR effective flexible capacity values using the process described in Tariff Section 40.10.4.1(c).<sup>18</sup> CAISO explains that this scenario could cause any newly incoming PDRs during the period covered by the waiver to be ineligible to provide flexible capacity.<sup>19</sup> According to CAISO, this ineligibility could cause disruptions

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<sup>16</sup> *Id.* at 10.

<sup>17</sup> To illustrate, CAISO states that in April 2019 (the month with the highest resource adequacy flexible capacity from PDRs over a period of 16 months), the 35.5 MW of flexible capacity from PDRs was less than three percent of total eligible PDR flexible capacity and was a fraction of one percent of the total flexible capacity of 12,600 MW. *Id.* at 5.

<sup>18</sup> CAISO asserts that PDRs that have an effective flexible capacity value for 2019 are not “immediately affected” by this issue, because section 40.10.4.2(b) prohibits changes to CAISO’s final list of effective flexible capacity values once this list has been posted. *Id.* at 7.

<sup>19</sup> CAISO notes that it publishes an annual list of effective flexible capacity in mid-August of the previous year. *Id.* at 4 (citing CAISO Business Practice Manual for Reliability Requirements, Exhibit A-1). CAISO’s Tariff does not permit any changes to an annual list once it is published, except when (as relevant here) new resources achieve commercial operation after the annual list is published. *See* CAISO Tariff § 40.10.4.2 (b)(2). CAISO explains that this is relevant to PDRs because they are more likely to be created mid-year and may not have an effective flexible capacity assigned through the annual process.

to any demand response providers and load serving entities with which PDRs might have contracted for providing flexible capacity.<sup>20</sup>

11. Fourth, CAISO states that there would be no undesirable consequences from this waiver, such as harming third parties.<sup>21</sup> CAISO asserts that the waiver only would last for a brief transitional period, and that the current approach applied to PDRs is the same one the Tariff contemplates for nearly all other resource types. Moreover, CAISO states that without the waiver, the resources covered by the waiver risk the threat of being unable to meet contractual obligations, forcing the counterparties to make alternative arrangements with other capacity suppliers.

### **III. Notice and Responsive Pleadings**

12. Notice of CAISO's filing was published in the *Federal Register*, 85 Fed. Reg. 899 (2020), with interventions and protests due on or before January 21, 2020. Pacific Gas and Electric Company and the City of Santa Clara, California submitted timely motions to intervene.

### **IV. Discussion**

#### **A. Procedural Matters**

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

#### **B. Substantive Matters**

14. We grant CAISO's unopposed request for waiver of section 40.10.4.1 to extend the waiver granted in the May 2019 Order to permit CAISO to continue calculating effective flexible capacity values for PDR based on section 40.10.4.1(a), rather than section 40.10.4.1(c), through August 1, 2020. The Commission has previously 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.<sup>22</sup> We find that

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<sup>20</sup> Waiver Request at 11.

<sup>21</sup> *Id.* at 11-12.

<sup>22</sup> See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

CAISO's Waiver Request to temporarily use the general formula for calculating effective flexible capacity values for PDRs satisfies these criteria.

15. First, we find that CAISO acted in good faith by filing the Waiver Request as promptly as feasible once it determined that it had been implementing effective flexible capacity calculations erroneously, and by beginning to develop and implement required testing procedures to allow effective flexible capacity calculations for PDRs as required by Tariff Section 40.10.4.1(c). We also find that CAISO has acted in good faith by attempting to fix the gap in its Tariff implementation prior to requesting an extension of the waiver then in effect. As CAISO notes, it first explored methods to implement the existing testing requirements, including considering potential amendments to Operating Procedure 5330, evaluating the system and personnel impacts of using a PDR-specific testing method, and considering whether or not the current testing design is indeed the most appropriate method going forward.<sup>23</sup>

16. Second, we find that CAISO's request is limited in scope. The requested waiver will allow CAISO to use the general formula in Section 40.10.4.1(a) of its Tariff to calculate effective flexible capacity for PDRs while it initiates stakeholder processes to determine the best methodology for testing PDR effective flexible capacity values. Additionally, the waiver will be limited to August 1, 2020, by which time CAISO will either file new Tariff provisions with the Commission or file its implementation plan for the existing Tariff provisions for PDR effective flexible capacity. Moreover, the waiver will apply only to a specific, defined category of entities, which is limited to flexible capacity resources (and does not affect other aspects of CAISO's resource adequacy program).

17. Third, we find that CAISO's Waiver Request will resolve a concrete problem. Absent a waiver, CAISO would not be able to calculate effective flexible capacity values for PDRs for the first half of 2020 for potential new PDRs offering flexible capacity. Granting the waiver will help avoid potential disruptions to CAISO's resource adequacy program and to market participants, as well as provide certainty to PDR providers for both the waiver period and the upcoming 2021 resource adequacy year.

18. Fourth, we find that CAISO's Waiver Request will not have undesirable consequences, such as harming third parties. The waiver will maintain the status quo. Indeed, not granting the requested waiver could potentially harm load-serving entities who have contracted with PDRs for flexible resource adequacy capacity if that capacity were invalidated due to CAISO's inability to recreate an effective flexible capacity value for PDRs. The waiver will also not affect other aspects of CAISO's resource adequacy program, as noted above. Granting the waiver would also enable CAISO to reassess the best solution for calculating PDR effective flexible capacity, by allowing CAISO time to

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<sup>23</sup> Waiver Request at 6-7.

evaluate both the operational characteristics of PDRs and the practical implementation considerations of proposed methodologies.

The Commission orders:

CAISO's Waiver Request is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.