

134 FERC ¶ 61,265
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Pacific Gas and Electric Company
Southern California Edison Company

Docket Nos. ER11-2592-000
ER11-2694-000
(*Not Consolidated*)

ORDER ON REQUESTS FOR TEMPORARY WAIVER

(Issued March 31, 2011)

1. On December 31, 2010, Pacific Gas and Electric Company (PG&E) filed a request for temporary waiver of the forced outage reporting requirements in section 40.9.5 of California Independent System Operator Corporation's (CAISO) tariff. Similarly, Southern California Edison Company (SoCal Edison) filed a request for temporary waiver of the same CAISO tariff provision on January 14, 2011 (jointly, Applicants). In this order, we grant a temporary waiver of CAISO tariff sections 40.9.5 and 40.9.6 for good cause until June 30, 2011, as discussed below. Further, we direct Applicants to file in both dockets a joint status report providing details on the progress of CAISO's expected stakeholder process on this matter, as well as the remedy proposed as a result of the stakeholder process, by June 30, 2011.

I. Background

2. In an order issued on June 26, 2009, the Commission accepted CAISO's Standard Capacity Product (SCP) proposal, a mechanism intended to enhance CAISO's resource adequacy (RA) program and support the reliable operation of the CAISO-controlled grid.¹ The SCP provides financial incentives for resources to meet or exceed their monthly availability standard in the form of Non-Availability Charges and Availability Incentive Payments, among other objectives. The June 26 Order approved CAISO's proposal not to apply the SCP Availability Standards to resources whose RA qualifying capacity is determined by historical output data (RA historical output resources) from the

¹ *Cal. Indep. Sys. Operator Corp.*, 127 FERC ¶ 61,298 (2009) (June 26 Order).

California Public Utilities Commission (CPUC) or a local regulatory authority that does not adjust the historical output data to prevent the double counting of outages.² However, the Commission intended for this exemption to be temporary and, thus, directed CAISO to work with stakeholders, the CPUC, and local regulatory authorities to resolve the double counting issue so that RA historical output resources could be included in the SCP.³

3. On June 25, 2010, the CPUC issued a decision that eliminated forced outages and de-rates from the qualifying capacity calculation for these RA historical output resources.⁴ Therefore, on June 22, 2010, CAISO filed revisions to implement the second phase of the SCP, proposing to delete the tariff language in section 40.9.2(4) that exempted these resources from the SCP Availability Standards and the section 40.9 reporting requirements.⁵ The Commission accepted CAISO's proposal to eliminate this exemption from the tariff in an order issued on August 20, 2010, that established the new reporting requirements, effective January 1, 2011.⁶

4. Pursuant to section 40.9.5 of CAISO's tariff, Scheduling Coordinators are required to provide CAISO with information identifying all of the forced outages and temperature-related ambient de-rates that have occurred in the past calendar month for the resources not exempt under section 40.9.2.⁷ On January 1, 2011, pursuant to the August 20 Order, the reporting exemption for non-grandfathered RA historical output resources was removed from the tariff. However, section 40.9.6 stipulates that CAISO will calculate,

² CAISO provides that currently, RA historical output resources include wind, solar, and qualifying facility (QF) resources.

³ June 26 Order, 127 FERC ¶ 61,298 at P 58.

⁴ See California Public Utilities Commission, *Decision Adopting Local Procurement Obligations for 2011 and Further Refining the Resource Adequacy Program* (Decision 10-06-036), at 34-35 (June 25, 2010).

⁵ On April 30, 2010, the Commission conditionally accepted CAISO's proposal to expand the scope of the data it receives from Eligible Intermittent Resources, subject to further compliance filings. *Cal. Indep. Sys. Operator Corp.*, 131 FERC ¶ 61,087 (2010).

⁶ *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,148 (2010) (August 20 Order).

⁷ Scheduling Coordinators must report outage information for: (1) generating units or resource-specific resources under the RA program with a maximum output of one MW or more; and (2) RA resources whose maximum output is ten MW or more.

but not apply, Non-Availability Charges and Availability Incentive Payments to RA historical output resources for the first three months that the SCP calculation is effective.

II. Waiver Request

5. In their respective filings, Applicants contend that many of the QF power purchase agreements for which they are the Scheduling Coordinators are associated with RA historical output and, thus, affected by the Commission's determination in the August 20 Order. Applicants explain that they do not have the contractual ability under their QF power purchase agreements to obtain the forced outage information necessary to comply with section 40.9.5 of CAISO's tariff. Therefore, Applicants filed the instant requests for temporary waiver from this tariff provision.

6. Applicants note that although CAISO will not apply Non-Availability Charges or Availability Incentive Payments for the first three months following the effective date of the reporting requirements, it is unlikely that California Investor-Owned Utilities will be able to gather forced outage information for their QF power purchases in the future. Therefore, as a precautionary measure, Applicants request waiver from the CAISO tariff's reporting requirements in anticipation of a stakeholder process that Applicants state CAISO indicated it will initiate in the beginning of 2011 in order to remedy this issue.⁸

7. Applicants assert that their requests for waiver of the forced outage reporting requirements are consistent with CAISO's tariff and Commission precedent. Applicants state that section 37.6.4 of CAISO's tariff provides for a temporary waiver of tariff requirements enforceable under section 37.6.1 while the Commission considers the waiver request. Applicants also contend that their waiver requests meet the Commission's applicable standard for granting waivers because they are of limited scope, lack undesirable consequences, and benefit customers.

III. Notice, Intervention and Responsive Pleadings

8. Notice of the PG&E Filing was published in the *Federal Register*, 76 Fed. Reg. 1418 (2011), with interventions, comments, and protests due on or before January 24, 2011. Timely motions to intervene were filed by CAISO, Cogeneration Association of California and Energy Producers and Users Coalition (collectively, the QF Parties), Northern California Power Agency, and San Diego Gas & Electric Company (SDG&E). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,

⁸ PG&E December 31, 2010 Filing in Docket No. ER11-2592-000 (PG&E Filing) at 4; SoCal Edison January 14, 2011 Filing in Docket No. ER11-2694-000 (SoCal Edison Filing) at 4.

18 C.F.R. § 385.214 (2010), the filing of timely, unopposed motions to intervene serve to make the movants parties to the proceeding.

9. Notice of the SoCal Edison Filing was published in the *Federal Register*, 76 Fed. Reg. 4341 (2011), with interventions, comments, and protests due on or before February 4, 2011. Timely motions to intervene were filed by CAISO and QF Parties, and a notice of intervention was filed by the CPUC. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the filing of timely, unopposed motions to intervene and a notice of intervention serve to make the movants parties to the proceeding.

Responsive Pleadings

10. In response to PG&E's request for waiver, the QF Parties, SDG&E, and CAISO submitted comments. In addition, on February 4, 2011, CAISO filed supplemental comments. The QF Parties and CAISO also submitted comments in response to SoCal Edison's request for waiver.

11. SDG&E states that it supports PG&E's request for temporary waiver. In both proceedings, the QF Parties affirm that they do not object to Applicants' requests for waiver, but note that they do not concede that there is any obligation for QFs to report forced outages in CAISO's tariff. In its initial comments, CAISO asserts that it does not object to granting Applicants' requests for temporary waiver for grandfathered contracts that were executed prior to August 22, 2010.⁹ CAISO also states that it does not object to granting the Applicants' requests for temporary waiver for all resources during the three month advisory period ending on March 31, 2011. However, CAISO argues that, for non-grandfathered resources subject to Non-Availability Charges and Availability Incentive Payments, the waivers should not extend beyond the three-month advisory period.

12. CAISO states that during the advisory period, it will not apply Non-Availability Charges and Availability Incentive Payments to QF RA historical output resources. CAISO explains that the intent of the advisory period is to allow RA resources to observe how management and reporting affect their SCP availability calculations and state that it is appropriate to extend the waiver for all resources to that point. However, CAISO states that if the Commission extends the requested waiver beyond March 31, 2011, for non-grandfathered resources, it will have to treat Applicants' resources as 100 percent available for each month because neither party will provide forced outage information. CAISO attests that calculating Availability Incentive Payments for Applicants' resources,

⁹ The August 20 Order established August 22, 2010, as the deadline for contracts to be eligible for grandfathering from the SCP Availability Standards.

regardless of their actual availability, will decrease the payments made to the remainder of eligible RA resources. CAISO argues that the financial impact on other resources is unwarranted due to the length of time Applicants have had to develop a process to comply with the tariff's reporting requirements.

13. In its supplemental comments, CAISO clarifies that it does not object to Applicants' requests for waiver of section 40.9.5 beyond March 31, 2011, as it pertains to the specific subset of non-grandfathered QF RA resources whose initial contract terms were extended by the CPUC.¹⁰ Nevertheless, CAISO conditions its support on the Commission granting a corresponding temporary waiver of CAISO tariff section 40.9.6, which assesses Non-Availability Charges and Availability Incentive Payments, for this specific subset of resources. CAISO contends that the corresponding waiver will allow the SCP to correctly allocate Availability Incentive Payments to the remainder of eligible RA resources based on actual availability, as discussed above. Regarding the remainder of the non-grandfathered QF RA resources whose initial contract terms the CPUC did not extend, CAISO states that it continues to oppose Applicants' requests for waiver of section 40.9.5 beyond March 31, 2011, and further states that there are no regulatory orders or other basis to extend waiver for those resources beyond the advisory period.¹¹

IV. Commission Determination

14. The Commission historically has granted certain waiver requests involving an emergency situation or an unintentional error.¹² Waiver, however, is not limited to those

¹⁰ On September 20, 2007, the CPUC issued a decision that extended the terms of certain QF RA contracts. As a result of this regulatory extension, the parties were unable to update contract terms related to outage reporting necessary to comply with CAISO's tariff. However, because some of these the contracts are extended until after the grandfathering period expires, those contracts are considered non-grandfathered agreements. It is only for this specific set of non-grandfathered contracts that CAISO supports waiver of sections 40.9.5 and 40.9.6 (CPUC Decision D.05-12-009 (September 20, 2007)).

¹¹ In the PG&E proceeding, CAISO made this clarification in supplemental comments. In the SoCal Edison proceeding, CAISO included this clarification in its comments.

¹² See, e.g., *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 Transmission LP.*, 102 FERC ¶ 61,331, at P 16 (2003) (granting emergency waiver involving *force majeure* event for good cause shown); *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330, at P 5 (2003) (granting waiver for good cause shown to address calculation in variance adjustment).

circumstances. For example, in several recent cases, the Commission has found good cause to grant waiver where the waiver is of limited scope, where there are no undesirable consequences, or where there are resultant benefits to customers.¹³ In the instant filings, Applicants state that they have been contractually unable to obtain the forced outage information necessary to comply with the reporting requirements under section 40.9.5 of CAISO's tariff with respect to the QF RA resources for which they serve as the Scheduling Coordinator. Applicants contend that a temporary waiver will allow them to work with CAISO to resolve these issues through a stakeholder process. We find that good cause exists to grant Applicants' requests for temporary waiver of the section 40.9.5 reporting requirements, as a temporary waiver will allow Applicants to participate in the expected CAISO stakeholder process while ensuring that they will not be in violation of CAISO's tariff. Accordingly, we grant a temporary waiver of CAISO's tariff section 40.9.5 for all QF RA resources under contract with Applicants.

15. While we find that granting temporary waiver of CAISO tariff section 40.9.5 is appropriate under the current contract circumstances, and will allow Applicants to resolve the reporting issues with CAISO during the expected stakeholder process, we also agree with CAISO that there may be potential undesirable consequences associated with Applicants' requested waiver due to the implementation of section 40.9.6 as articulated by CAISO in its comments.¹⁴ In order to address these unintended effects associated with granting waiver of section 40.9.5, the Commission will also grant a corresponding waiver of CAISO tariff section 40.9.6. By granting temporary waiver of CAISO tariff section 40.9.6, we ensure that CAISO will not apply Availability Incentive Payments and Non-Availability Charges to the resources that do not provide Applicants with forced outage information. In addition, because the Commission grants temporary waiver of the section 40.9.5 reporting requirements for all QF RA resources under contract with Applicants, we grant the corresponding temporary waiver of section 40.9.6 for all non-grandfathered QF RA resources under contract with the Applicants as well, not only those resources whose initial contract terms have been extended by the CPUC, as suggested by CAISO. Accordingly, we find good cause to grant waiver here of both sections 40.9.5 and 40.9.6 while Applicants develop procedures for reporting outage information because the waiver is of limited scope and potential undesirable consequences are forestalled. However, as we expect the parties to resolve the reporting

¹³ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,226 (2007); *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,031 (2008); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,132 (2010); *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,020 (2010); *Coso Energy Developers*, 134 FERC ¶ 61,088 (2011).

¹⁴ CAISO Supplemental Comments at 4-5, Docket No. ER11-2592; CAISO Comments at 7-8, Docket No. ER11-2694.

issues, we do not believe an indefinite waiver to be appropriate. Accordingly, these waivers are granted with a sunset date of June 30, 2011.

16. In addition, we direct Applicants to submit in both dockets a joint report to the Commission providing details on the outcome and resolution developed during CAISO's expected stakeholder process by June 30, 2011. The progress report should specify any remedy necessary to resolve any reporting issues. In their report, we expect Applicants to inform the Commission of efforts they have made with the QF RA resources to resolve the contractual issues that are the subject of the waiver requests.

17. Furthermore, if the parties cannot reach a resolution during CAISO's stakeholder process, Applicants should provide detailed information to explain why they are unable to resolve these issues.¹⁵ In this event, Applicants should also propose a remedy to address the reporting requirements beyond June 30, 2011, including adequate justification for such resolution. We note that, individually, PG&E and SoCal Edison may avail themselves of the Commission's dispute resolution services to resolve these issues.¹⁶ Accordingly, while we grant waiver for good cause, the Commission directs Applicants to provide detailed information on why they have been unable to comply with the reporting requirements, and include this information in the joint status report to be filed in both dockets no later than June 30, 2011.

The Commission orders:

(A) The Commission hereby grants temporary waiver of section 40.9.5 of CAISO's tariff for all QF RA resources under contract with the Applicants until June 30, 2011, as discussed in the body of this order.

(B) The Commission hereby grants temporary waiver of section 40.9.6 for all non-grandfathered QF RA resources under contract with the Applicants until June 30, 2011, as discussed in the body of this order.

¹⁵ Detailed information should include, but is not limited to, the capacity and quantity of the QF RA resources at issue, the date that Applicants' power purchase agreements were signed, which contract provisions in these agreements do not allow for forced outage reporting, and any costs associated with obtaining the forced outage data in the future, such as equipment costs and employee wages.

¹⁶ The Director of the Commission's Dispute Resolution Service (DRS) is Deborah Osborne, who can be contacted at (202) 502-8831. The DRS helpline may also be reached at (877) 337-2237 or at (202) 502-6651.

(C) PG&E and SoCal Edison are hereby directed to submit in both dockets a joint progress report no later than June 30, 2011, as discussed in the body of this order.

By order of the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.