

161 FERC ¶ 61,243  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur and Robert F. Powelson.

Lathrop Irrigation District

Docket No. ER17-2528-000

ORDER DENYING WAIVER REQUEST

(Issued November 30, 2017)

1. On September 20, 2017, Lathrop Irrigation District (Lathrop) submitted a Petition for Limited Waiver of the California Independent System Operator Corporation's (CAISO) tariff provisions that impose financial penalties for late submission of required information for Resource Adequacy plans. In this order, we deny Lathrop's waiver request, as discussed below.

**I. Background**

2. Lathrop states that it is a small, publicly-owned irrigation district that serves residential and commercial customers in Lathrop, California.<sup>1</sup> Lathrop is within the CAISO Balancing Area Authority.<sup>2</sup> Lathrop states that its monthly peak load for 2016 and 2017 ranged from 0.1 to 2 megawatts, and only exceeds 1 megawatt a few months of the year.<sup>3</sup> Lathrop states that because it is a load serving entity, the CAISO tariff requires its scheduling coordinator to submit a monthly Resource Adequacy plan at least 45 days in advance of the first day of the month covered by the plan.<sup>4</sup> Section 40.2.2.4(b) of CAISO's tariff requires the monthly Resource Adequacy plans to identify the resources the load serving entity will rely on to meet its monthly peak demand plus the applicable reserve margin.

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<sup>1</sup> Lathrop Petition at 1.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 1-2.

<sup>4</sup> *Id.* at 2.

3. Lathrop states that it provided a Resource Adequacy plan to CAISO via email on January 3, 2017, but had no Resource Adequacy to report.<sup>5</sup> Lathrop states that the next day CAISO requested that it provide Resource Adequacy plans through CAISO's Customer Interface for Resource Adequacy (CIRA), which is CAISO's web-based portal for Resource Adequacy plan submissions.<sup>6</sup> Lathrop states it provided its plan via e-mail because CIRA is not configured to accept blank Resource Adequacy plans. Lathrop states that CAISO confirmed CIRA's inability to accept blank plans as late as June 26, 2017.<sup>7</sup>

4. According to Lathrop, on March 23, 2017, CAISO contacted Lathrop requesting information on its Resource Adequacy submissions. Lathrop states it responded on March 24, noting access and submission issues. Lathrop states that CAISO investigated Lathrop's Resource Adequacy plan submissions beginning with an April 12, 2017 letter. Lathrop asserts that CAISO concluded its investigation on August 14, 2017, which resulted in a sanction of \$66,500 for failure to submit three monthly Resource Adequacy plans, calculated based on \$500 a day for late submissions.

5. Lathrop states the sanction arrived with its August 30, 2017 recalculation settlement statement and it intends to submit a timely settlement statement dispute. Lathrop states it intends this petition to toll the assessed sanction until the Commission reaches a determination.

6. Lathrop included three attachments with its filing. The first is a June 26, 2017 email from CAISO to Lathrop indicating receipt of a blank plan for August 2017 submitted by Lathrop on June 26, 2017. Lathrop's second attachment is CAISO's Notice of Review of potential violations to Calpine Energy Solutions (Calpine), Lathrop's scheduling coordinator, concerning late Resource Adequacy plans for January, February, and March 2017. This notice gave Lathrop an opportunity to respond. Lathrop's final attachment is CAISO's findings and conclusions regarding the violation.

## **II. Request for Waiver**

7. Lathrop states that section 40.2.2.4 of CAISO's tariff requires submission of monthly Resource Adequacy plans. Lathrop further states that Calpine, Lathrop's scheduling coordinator, was sanctioned under section 37.6.1 of the CAISO tariff a

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<sup>5</sup> *Id.* Lathrop did not specify the month for which it provided this plan.

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

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

\$500 penalty for each day that Lathrop's monthly Resource Adequacy plan was late. Lathrop requests waiver of CAISO tariff section 37.6.1 as it relates to Resource Adequacy requirements of tariff section 40.2. Lathrop's waiver request is "for the period of time related to the CAISO sanction. This period would run from the date the January 2017 Resource Adequacy plan was due (November 17, 2016) until the CAISO's sanction (August 14, 2017)."<sup>8</sup> Lathrop states that Calpine supports its request.<sup>9</sup>

8. Lathrop asserts that the concrete problem forming the basis of its waiver claim is that small load serving entities receive disparate treatment for Resource Adequacy planning requirements.<sup>10</sup> Lathrop cites two orders issued by the Commission in 2015: *Rancho Cucamonga Municipal Utility* and *Eastside Power Authority*.<sup>11</sup> Lathrop notes that the circumstances in those cases involved larger load serving entities that were assigned large penalties for late Resource Adequacy plans. Lathrop states that although the Commission denied the waivers, it found that had a larger utility not submitted the plans, CAISO would have been more likely to notice the impact and notified the utility more quickly, decreasing the sanction amount.<sup>12</sup> Lathrop states the Commission encouraged CAISO to consider the disparate treatment for different size utilities.<sup>13</sup>

9. Lathrop claims that its situation is a special case of disparate treatment persisting after the prior Commission orders. Lathrop states that CAISO declined to recognize load serving entity size, but installed a reporting tool in CIRA and a process to notify a load serving entity who has not submitted a Resource Adequacy plan.<sup>14</sup> Lathrop states that CAISO stated this system is in place as of July 7, 2016, but did not have such a system in place during the period for which it was sanctioned.<sup>15</sup> Lathrop states its first plan subject

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<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* at 1.

<sup>10</sup> *Id.* at 5-6.

<sup>11</sup> *Id.* at 5 (citing *Rancho Cucamonga Municipal Utility*, 153 FERC ¶ 61,225 (2015) (*Rancho Cucamonga*) and *Eastside Power Authority*, 153 FERC ¶ 61,226 (2015) (*Eastside Power*)).

<sup>12</sup> *Id.* at 5-6.

<sup>13</sup> *Id.* at 6.

<sup>14</sup> *Id.* at 6-7.

<sup>15</sup> *Id.* at 7.

to sanction was due November 17, 2016, which is several months after CAISO stated its system was in place.<sup>16</sup> Lathrop states that it received communication from CAISO on January 4, 2017, which was 48 days after the November 17, 2016 deadline for its January plan—the first plan that was the basis for sanctions.<sup>17</sup> Lathrop states that a notice of specific missing Resource Adequacy plans and sanctions did not arrive until April 12, 2017, which was 146 days later. Lathrop claims it must submit blank Resource Adequacy plans to CAISO directly because the reporting system is not capable of dealing with entities of Lathrop's size, which is disparate treatment.<sup>18</sup>

10. Lathrop differentiates itself from the load serving entities in *Rancho Cucamonga* and *Eastside Power*, arguing that its impact on cumulative Resource Adequacy was zero due to its inability to procure Resource Adequacy in such small quantities.<sup>19</sup> Lathrop suggests this lack of impact may have contributed to CAISO's notification delay.<sup>20</sup> Lathrop states it was not notified in January of Resource Adequacy plans due in November and December, which allowed penalties to further accumulate.<sup>21</sup>

11. Lathrop asserts that it responded in good faith to CAISO's requests and it worked in good faith to give the plans to CAISO through alternate means.<sup>22</sup> Lathrop states it has continued to comply with the tariff and coordinated with CAISO staff on its ongoing monthly submissions. Lathrop states its waiver request is limited in time and scope because it is a one-time waiver of a discrete tariff provision that applies to one load serving entity.<sup>23</sup> Lathrop states the waiver is temporary and specific to Lathrop and has no undesirable consequences.<sup>24</sup> Finally, Lathrop states it is working with CAISO to

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

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 7-8.

<sup>19</sup> *Id.* at 8.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 8-9.

<sup>23</sup> *Id.* at 10.

<sup>24</sup> *Id.*

ensure continued compliance with current and future Resource Adequacy reporting requirements.<sup>25</sup>

### III. Notice, Intervention and Responsive Pleadings

12. Notice of Lathrop's September 20, 2017 filing was published in the Federal Register, 82 Fed. Reg. 45,014 (2017), with interventions and protests due on or before October 11, 2017. On October 11, 2017, CAISO filed a timely motion to intervene and comments.

13. CAISO comments that it does not oppose Lathrop's request and takes no position on whether Lathrop meets the standards for waiver.<sup>26</sup> However, CAISO states that the Resource Adequacy program is critical to meeting grid reliability within the CAISO footprint and the underlying processes and procedures are an important element of the program. Further, CAISO states that without timely Resource Adequacy reports, it will not have adequate notice to take corrective action.<sup>27</sup> CAISO asserts it applied its tariff correctly and Lathrop faced the appropriate sanctions under the tariff.<sup>28</sup>

14. CAISO states that in its comments in the *Rancho Cucamonga* and *Eastside Power* waiver dockets, it indicated its belief that the second phase of the reliability services initiative was the correct forum for rule changes concerning the application of Resource Adequacy penalties to smaller load serving entities.<sup>29</sup> CAISO states that it filed tariff amendments on September 29, 2017 pursuant to section 205 of the Federal Power Act (FPA),<sup>30</sup> to implement Phase 1b and Phase 2 of its reliability services initiative, and that these filings include prospective changes to address the Commission's concerns in *Eastside Power* and *Rancho Cucamonga*. Thus, CAISO argues the question of whether

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<sup>25</sup> *Id.*

<sup>26</sup> CAISO Comments at 1.

<sup>27</sup> *Id.* at 2.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 3.

<sup>30</sup> 16 U.S.C. § 824d (2012).

these tariff amendments are just and reasonable should be addressed in the FPA section 205 proceeding.<sup>31</sup>

15. CAISO explains that there are two aspects to its improved notification procedures discussed in the reliability services initiative.<sup>32</sup> First, CAISO publishes a market notice a few days before the plans are due to remind load serving entities of the upcoming deadline.<sup>33</sup> CAISO states it published the first reminder April 12, 2017, which was in advance of the April 17, 2017 deadline for the June 2017 monthly Resource Adequacy process.<sup>34</sup> Second, CAISO evaluates whether load serving entities required to submit a plan failed to do so and contacts the entity to minimize its penalty exposure. CAISO states it implemented this reminder in April 2017 for the June 2017 monthly Resource Adequacy plans.<sup>35</sup> CAISO states that it implemented these processes after the time of Lathrop's late Resource Adequacy submissions that are the subject of its waiver petition.<sup>36</sup>

16. CAISO acknowledges that blank Resource Adequacy plans cannot, as a practical matter, be submitted through CIRA,<sup>37</sup> but explains that Lathrop's obligation to procure capacity in those months was greater than zero.<sup>38</sup> CAISO asserts that Lathrop's failure to procure resources has continued to the present, but Lathrop has avoided penalties by submitting blank plans through e-mail.<sup>39</sup> Finally, CAISO notes that its only recourse when an entity fails to demonstrate Resource Adequacy procurement is to notify the

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<sup>31</sup> *Id.* at 3-4. Those tariff amendments are under consideration in Docket Nos. ER18-1-000 and ER18-1-001.

<sup>32</sup> *Id.* at 4.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 5.

<sup>38</sup> *Id.* CAISO further notes that "Lathrop's [Resource Adequacy] obligation across the months of 2017 ranges between slightly above 1 MW to slightly above 2 MW."

<sup>39</sup> *Id.*

entity's local regulatory authority, and Lathrop, as a publicly owned utility, is its own local regulatory authority.<sup>40</sup>

#### IV. Discussion

##### A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), CAISO's timely, unopposed motion to intervene serves to make it a party to this proceeding.

##### B. Commission Determination

18. The Commission has 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>41</sup> In this case, we deny Lathrop's waiver request because the facts Lathrop presents do not satisfy the foregoing criteria.

19. First, Lathrop has not sufficiently demonstrated that it acted in good faith. The record contains no evidence that Lathrop attempted to submit a plan for January or February 2017. Furthermore, because it is not clear which month Lathrop's January 3, 2017 submission covered and Attachments B and C to Lathrop's petition suggest that Lathrop did not submit a March 2017 plan, we cannot conclude that Lathrop submitted a Resource Adequacy plan for March 2017 either.

20. Although the Commission examines each request for waiver on its own merits,<sup>42</sup> we note that in similar cases, the Commission has declined to grant waiver. In *Rancho Cucamonga*, the Commission found that Rancho Cucamonga Municipal Utility had a clear responsibility to provide Resource Adequacy plans and failed to do so.<sup>43</sup> Therefore,

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<sup>40</sup> *Id.*

<sup>41</sup> See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Serv., Inc.*, 154 FERC ¶ 61,082, at P 12 (2016); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

<sup>42</sup> *Rancho Cucamonga*, 153 FERC ¶ 61,225 at P 26.

<sup>43</sup> *Id.* at P 30.

the Commission reasoned, imposition of penalties was appropriate.<sup>44</sup> Lathrop's failure to submit Resource Adequacy plans is also analogous to *3 Phases Energy Services*. There, 3 Phases Energy Services was assessed an \$83,000 penalty under CAISO's tariff for failing to provide timely meter data. The Commission denied 3 Phases Energy Services' 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."<sup>45</sup> In this case, Lathrop has a tariff-defined responsibility to provide Resource Adequacy plans and the record indicates that it failed to do so.<sup>46</sup> Finally, Lathrop's argument that it could not submit blank plans through CIRA is unpersuasive, because as CAISO points out, Lathrop's Resource Adequacy capacity obligation was greater than zero for the months at issue and therefore Lathrop could have submitted its plans through CIRA if it had procured any resource adequacy to meet its obligation.<sup>47</sup>

21. Second, we are unpersuaded that the waiver addresses a concrete problem. Lathrop argues that the penalty structure is unfair for smaller load serving entities, which constitutes a concrete problem that must be addressed by a waiver. Lathrop notes that in *Rancho Cucamonga*, the Commission agreed with Rancho Cucamonga Municipal Utility "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." In that order, the Commission encouraged CAISO to consider mechanisms to address the potential for disparate treatment for different sized utilities in its reliability services initiative, but did not consider the penalty incurred from Rancho Cucamonga Municipal Utility's missed deadline to constitute a concrete problem.<sup>48</sup> On September 29, 2017, CAISO filed tariff revisions resulting from that stakeholder process. As such, the

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<sup>44</sup> *Id.*

<sup>45</sup> *3 Phases Energy Services*, 149 FERC ¶ 61,151, at P 14 (2014).

<sup>46</sup> CAISO Comments at 5. See CAISO Tariff, Non-CPUC Load Serving Entities, § 40.2.2.4 (6.0.0).

<sup>47</sup> See CAISO Comments at 5.

<sup>48</sup> *Rancho Cucamonga*, 153 FERC ¶ 61,225 at P 29.

appropriate forum for the Commission to consider the tariff revisions is in that separate proceeding.<sup>49</sup>

22. Finally, we disagree with Lathrop that its waiver request has no undesirable consequences. The Commission found in *Rancho Cucamonga* 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.”<sup>50</sup> We continue to find that the submittal of timely and accurate tariff-required Resource Adequacy plans is necessary to provide CAISO with adequate notice to impose corrective actions if necessary.

23. As discussed above, we find that a tariff waiver is not warranted under the facts and circumstances of this case.

The Commission orders:

Lathrop’s request for waiver of CAISO tariff sections 37.6.1 as it relates to section 40.2 is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Glick is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>49</sup> We note that even if the proposed tariff revisions were already in place, there would be no change in the penalties at issue here.

<sup>50</sup> *Id.* at P 27.