

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**PacifiCorp
Nevada Power Company
Sierra Pacific Power Company**

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Docket No. ER22-____-000

**EMERGENCY PETITION
OF PACIFICORP, NEVADA POWER COMPANY, AND SIERRA PACIFIC POWER
COMPANY FOR TEMPORARY AUTHORITY TO MAKE
CERTAIN SALES AT CAISO LOCATIONAL MARGINAL PRICE**

Pursuant to 18 C.F.R. § 385.207 (2021), PacifiCorp, Nevada Power Company d/b/a NV Energy (“Nevada Power”), and Sierra Pacific Power Company d/b/a NV Energy (“Sierra Pacific”; collectively, “Filing Parties”) respectfully petition the Federal Energy Regulatory Commission (“Commission”) for a limited and partial waiver¹ of a single restriction in their respective market-based rate (“MBR”) tariffs to permit them to make short-term sales of energy between Nevada Power and Sierra Pacific on the one hand (together, “NV Energy”)² and PacifiCorp on the other hand *only during emergency conditions* using the California Independent System Operator Corp. (“CAISO”) fifteen-minute market locational marginal price (“LMP”), averaged across the hour, at the Palo Verde pricing node.³ **The Filing Parties seek this waiver beginning September 1, 2022 and continuing only for the month of September**

¹ This petition requests a prospective partial waiver of the three petitioners’ respective MBR tariffs. The Limited Waiver will have no retroactive effect. As a result, this petition fully comports with the clarifications raised by the Commission in its recent *Proposed Policy Statement on Waiver of Tariff Requirements and Petitions or Complaints for Remedial Relief* (Docket No. PL20-7-000).

² Nevada Power and Sierra Pacific each have MBR tariffs on file with the Commission but, pursuant to a Joint Dispatch Agreement on file with the Commission, act as a single seller in the wholesale market as NV Energy.

³ In particular the PALOVERDE_5_N101 CAISO pricing node.

2022; the waiver would terminate at the end of the month. The Commission has granted this exact relief twice before and this petition is similarly justified.⁴

The Filing Parties' MBR tariffs on file with the Commission prohibit them from making wholesale sales at market-based rates in certain balancing authority area ("BAA") markets, including the NV Energy BAA and both PacifiCorp's eastern and western BAAs. This requested waiver would permit PacifiCorp and NV Energy to transact at arms' length at prevailing market prices, to ensure that the selling utility's customers get the benefit of rate credits from sales at scarcity prices, and the purchasing utility's customers get the benefit of additional liquidity and reliability. Given the severity of the extreme weather conditions in the West that have created energy emergency alerts ("EEA") conditions within the last 24 hours and the expected continuing weather and associated supply concerns forecasted for the next 7-10 days, the Filing Parties respectfully urge the Commission to act with all due speed by *establishing a shortened public comment period of seven days on this petition* and *granting the Limited Waiver to be effective September 1, 2022 for a period of one calendar month (i.e., the month of September 2022) by order issued no later than Friday, September 16, 2022.*⁵

I. EXECUTIVE SUMMARY

As the Commission is aware, extreme weather events in the West are becoming far too frequent. This will be third year in a row that PacifiCorp and NV Energy have sought this relief in order to ensure that, in shortage conditions, all supply options are available to serve load and maintain reliability. Currently, the West is experiencing a prolonged, record-breaking heat wave that is expected to last through Labor Day. In fact, certain areas are expected to be 10-20

⁴ PacifiCorp, 176 FERC ¶ 61,060 (2021); PacifiCorp, 172 FERC ¶ 61,208 (2020) ("2020 Waiver Order").

⁵ To the extent the Commission denies the waiver, to the extent any sales are made between NV Energy and PacifiCorp while awaiting Commission action, they would be settled under the appropriate seller's cost-based tariff.

degrees warmer than normal, and Death Valley in Southern California is currently forecast to peak at 126 degrees, which would be *the hottest temperature ever recorded on Earth in September*. Because these excessive heat conditions drive up energy demand and tighten available power supplies, CAISO has already issued an EEA-1 alert, forecasting an energy deficiency. California's Governor Gavin Newsom has issued a Proclamation of a State of Emergency noting that the extreme heat event is West-wide, that California's load may exceed 48,000 MW on September 5, 2022, and that CAISO is forecasting supply deficiencies of over 3,000 MW during evening hours from September 4, 2022 through September 6, 2022. Similarly, NV Energy is projecting loads between 7,600 MW and 7,900 MW for the period of September 1, 2022 to September 6, 2022, which would exceed NV Energy's all-time peak load in September by approximately 300–600 MW.

Due to the geographic limitations on their MBR authority, PacifiCorp and NV Energy can only transact with each other under their respective cost-based tariffs, even at times when wholesale prices rise significantly in response to supply shortage conditions. When the market price far exceeds a seller's production costs, this limitation creates an unnecessary tension between the interests of customers of PacifiCorp and NV Energy, respectively. If for example, PacifiCorp makes wholesale supply available to NV Energy in an emergency at cost-based rates that may reflect only a fraction of the prevailing market rates, NV Energy's customers will benefit from the increased reliability but PacifiCorp's customers experience a lost opportunity cost that reduces the credit to their retail rates from PacifiCorp's off-system sales.

This concern is particularly acute in the current environment for two reasons. First, PacifiCorp's eastern service territory is NV Energy's largest neighbor to the east, and may often be in a unique position to assist NV Energy in an emergency, but the two utilities' inability to

transact at arms' length in the wholesale market creates an obstacle to efficiently matching demand with available supply. Second, in recent weeks, the enormous stress on the California grid greatly increases the likelihood of not only market awards cleared in the day-ahead market⁶ and lower priority wheel-through transactions, but also firm, high priority, wheel-through self-schedules.⁷ These factors restrict Nevada's supply from the east and the west at the worst possible times.

The temporary Limited Waiver will increase wholesale liquidity and resolve the tension between the interests of PacifiCorp's and NV Energy's customers. Each utility's customers should expect to pay scarcity prices during emergency conditions, and to the extent either utility has available supply, its customers should expect to receive scarcity prices as a credit to the retail rates. Like the 2020 Waiver and 2021 Waiver, by limiting this authority to EEA-1 conditions or higher and settling at the CAISO Palo Verde nodal price, ***the instant Limited Waiver presents zero risk of affiliate abuse or horizontal market power***. If, like in 2020 and 2021, further emergency conditions do not arise while this waiver is in place, it will have no effect and all will breathe easier. The Filing Parties urge the Commission to act quickly and grant this Limited Waiver.

⁶ Effective September 5, 2020, CAISO modified its procedures so that exports that cleared the day-ahead market are no longer treated as firm sales, but are non-recallable energy transactions if the supply is needed in-CAISO.

⁷ As approved by the Commission in June 2021, *California Independent System Operator Corp.*, 175 FERC ¶ 61,245 (2021), Desert Southwest utilities can establish a firm, high scheduling priority by registering a wheeling through transaction at least 45 days ahead of the month by (1) demonstrating a firm power supply contract to serve an external Load Serving Entity's load throughout the month, and (2) firm transmission for the month has been procured to deliver the supply to the CAISO border. Entities can wheel through the CAISO system without meeting the requirements above, but the wheeling through transactions will have a lower, non-firm scheduling priority.

II. COMMUNICATIONS

PacifiCorp and NV Energy requests that all correspondence, pleadings, and other communications concerning this filing be served upon the following individuals who should be included on the official service list in this proceeding:

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III. THE PETITIONERS

A. PacifiCorp

PacifiCorp is an Oregon corporation and an indirect, wholly owned subsidiary of Berkshire Hathaway Energy Company (“BHE”). BHE is a consolidated subsidiary of Berkshire Hathaway, Inc., a publicly traded company. PacifiCorp is a vertically-integrated public utility primarily engaged in providing retail electric service to approximately 1.9 million residential, commercial, industrial, and other customers in portions of the following states: California, Idaho, Oregon, Utah, Washington, and Wyoming. PacifiCorp provides electric transmission service in ten Western states, and owns or has interests in approximately 16,500 miles of transmission lines and 71 thermal, hydroelectric, wind-powered generating, and geothermal facilities. PacifiCorp provides open access transmission service in accordance with its Open Access Transmission

Tariff (“OATT”), which is on file with the Commission. PacifiCorp operates two BAAs, PacifiCorp East (“PACE”) and PacifiCorp West (“PACW”).

B. NV Energy

NV Energy, Inc. is an indirect, wholly owned subsidiary of BHE.⁸ NV Energy has two direct, wholly-owned subsidiary utility companies: Nevada Power and Sierra Pacific. Nevada Power is a vertically-integrated public utility offering retail and wholesale electric and transmission service in southern Nevada that is regulated by the Public Utilities Commission of Nevada (“PUCN”) and this Commission. Nevada Power’s retail service territory is located in southern Nevada, and includes the cities of Las Vegas, North Las Vegas, and Henderson. Nevada Power serves approximately 942,000 retail residential, commercial, and industrial customers. Sierra Pacific is a vertically-integrated public utility that serves retail and wholesale customers throughout northern Nevada that is regulated by the PUCN and this Commission. Sierra Pacific’s retail service territory covers portions of western, central, and northeastern Nevada, and includes the cities of Reno, Sparks, Carson City, and Elko. Sierra Pacific serves approximately 350,000 retail residential, commercial, and industrial customers. Additionally, Sierra Pacific provides retail natural gas service to approximately 169,000 customers in an 800-square mile service territory in Nevada’s Reno/Sparks area.

Nevada Power operates the NV Energy Companies’ BAA (“NEVP BAA”), a consolidated BAA in Nevada consisting of what were formerly separate Nevada Power and Sierra Pacific BAAs.⁹ Nevada Power operates both its own transmission facilities as well as those owned by Sierra Pacific and their entitlement in the 231-mile, 500 kV One Nevada Transmission Line, which

⁸ See *Silver Merger Sub, Inc. et al.*, 145 FERC ¶ 61,261 (2013) (order authorizing merger of NV Energy, Inc. and a BHE subsidiary).

⁹ On January 1, 2014, the Nevada Power and Sierra Pacific BAAs were consolidated into a single BAA.

connects the Nevada Power and Sierra Pacific systems. Nevada Power provides open access transmission service on both systems under the terms of a single joint OATT. Nevada Power and Sierra Pacific jointly dispatch their generating resources according to the terms of a Joint Dispatch Agreement (“JDA”) on file with the Commission and thus act as a single seller in the wholesale market.¹⁰ Under the JDA, Nevada Power’s and Sierra Pacific’s loads are served by the combined generating fleets of both companies, dispatched on a least cost basis to benefit both companies.

IV. BACKGROUND

A. Petitioners’ MBR Restrictions

PacifiCorp and NV Energy maintain MBR authority through their MBR tariffs on file with the Commission. Due to their corporate affiliation, PacifiCorp and NV Energy each lack MBR authority in certain markets, including the PACE, PACW, and NEVP BAAs, not merely because they are affiliates,¹¹ but because under the Commission’s regulations,¹² PacifiCorp and NV Energy (with their generation measured together) have not rebutted the presumption of horizontal market power in those respective markets.¹³ The effect of these restrictions is that

¹⁰ The JDA is on file with the Commission as Nevada Power Rate Schedule No. 139. *See Nev. Power Co.*, Docket No. ER15-2310-000, Delegated Letter Order (Sept. 3, 2015) (accepting changes to the JDA).

¹¹ The Commission’s affiliate transaction rules at 18 C.F.R. § 35.39 and 18 C.F.R. § 35.44 are not implicated by the proposed sales under the Limited Waiver because PacifiCorp and NV Energy are both franchised public utilities. *See* Order No. 707-A at P 42 (“First, we will consider whether pricing or other restrictions need to be imposed on transactions between two or more franchised public utilities on a case-by-case basis. Such transactions are not covered by this rule, which applies only to transactions between franchised public utilities and either a market-regulated power sales affiliate or a non-utility affiliate.”). Even if such rules did apply, the Commission’s regulations contain a carve-out for emergency conditions. *See* 18 C.F.R. § 35.39(c)(2)(iii) (“Notwithstanding any other restrictions in this section, in emergency circumstances affecting system reliability, a market-regulated power sales affiliate and a franchised public utility with captive customers may take steps necessary to keep the bulk power system in operation.”).

¹² *See generally* 18 C.F.R. Subpart H.

¹³ *See, e.g.*, PacifiCorp MBR tariff at section 8(a) (“Mitigated Markets: Seller does not have authority under this tariff to make sales within the Idaho Power Company, NEVP, NorthWestern Corporation, PacifiCorp-East, or PacifiCorp-West Balancing Authority Areas. *See* *Sierra Pac. Power Co.*, 95 FERC ¶ 61,193, at 61,675, *reh’g dismissed*, 96 FERC ¶ 61,050 (2001); *see also* *Sierra Pac. Power Co.*, 111 FERC ¶ 61,259, at P 21 (2005); *Nev. Power Co., et al.*, 155 FERC ¶ 61,249, at P 3 (2016). This limitation does not apply to sales made in the California

PacifiCorp may not sell power at market-based rates in the NEVP BAA and NV Energy may not sell in the PACE or PACW BAAs at market-based rates.

Under the Commission's MBR program, the Commission aggregates the generating capacity of the seller and its affiliates for purposes of conducting the market power screens and applying any geographic limitations resulting from the failure of those screens.¹⁴ Under this rule, PacifiCorp and NV Energy are already treated as a single seller for market power and MBR purposes and, consequently, they share the same geographic restrictions. This means that NV Energy's capacity is attributed to PacifiCorp and vice versa when determining where they can sell at market-based rates. Because they are one seller under the MBR program, any concern about the market power implications resulting from the aggregate market share of PacifiCorp and its affiliates (including NV Energy) should not apply to sales from PacifiCorp to NV Energy, or vice versa.

B. The 2020 Waiver Granted by the Commission

During the week of August 17, 2020, the West experienced a record-breaking heat wave that resulted in a power supply emergency in the western United States and included several instances of rolling blackouts in the CAISO. During this initial heat wave, NV Energy (and in particular its Nevada Power Company service territory in and around Las Vegas, Nevada) experienced North American Electric Reliability Corp. ("NERC") alert level EEA-1 conditions.

On September 3, 2020, PacifiCorp made a filing with the Commission in Docket No. ER20-2816 requesting a limited and partial waiver of section 8(a) of its MBR Tariff to authorize

Independent System Operator Corporation ('CAISO') Energy Imbalance Market.")). That provision exists at paragraph 9 in the MBR tariffs of Nevada Power and Sierra Pacific.

¹⁴ See *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity, and Ancillary Services by Public Utilities*, Order No. 816, 153 FERC ¶ 61,065, at n.358 (2015) ("[S]ellers must account for generation capacity owned or controlled by the seller and its affiliates for purposes of analyzing horizontal market power.").

short-term sales of energy by PacifiCorp to NV Energy at prevailing market prices during designated emergency conditions (“2020 Waiver”).¹⁵ PacifiCorp explained that record heat waves were forecasted for the upcoming weekend that would result in “an exceptional risk for heat illness and power outages” and the waiver would allow PacifiCorp and NV Energy to mitigate the risks associated with the forecasted weather event by increasing the power supply options available to NV Energy.¹⁶ The request went on to explain that, during the record-breaking heatwave conditions that occurred during the week of August 17, 2020, NV Energy experienced multiple hours when market purchase opportunities were exhausted and energy shortages led to blackouts in CAISO. While PacifiCorp had capacity available in certain hours, it was not authorized to make sales at market-based rates to NV Energy as a condition of its MBR authority.

PacifiCorp explained that during the August 2020 heatwave, PacifiCorp was able to make some sales to NV Energy pursuant to its cost-based tariff on file with the Commission, but that it has a responsibility to its retail customers to make off-system sales at prevailing market prices during periods of high demand because PacifiCorp’s off-system sales are credited back to PacifiCorp’s retail customers. Therefore, during NV Energy’s time of pressing need, PacifiCorp was not authorized to sell to NV Energy at prevailing market-based rates, but would also need to justify any sales to NV Energy at significantly lower cost-based rates to its retail customers and state regulators.

¹⁵ *PacifiCorp*, Emergency Petition of PacifiCorp for Temporary Authority to Make Certain Sales at CAISO Locational Marginal Price, Docket No. ER20-2816-000 (Sept 3, 2020).

¹⁶ *Id.* at 2.

Realizing that the forecasted weather conditions for the Summer of 2020 were likely to bring about the same dilemma, namely that system emergency conditions would again mean that NV Energy was going to need increased supply options to maintain its system reliability, PacifiCorp requested a limited waiver of section 8(a) of its MBR Tariff to permit it to make market sales to NV Energy should emergency conditions re-occur.

PacifiCorp narrowly tailored its 2020 Waiver request in several ways. First, PacifiCorp proposed that the waiver would only permit it to make short-term (hourly or daily) sales to NV Energy as a counterparty over the following 21 calendar days. Next, sales would only be permitted during NERC EEA-1 or higher conditions. Finally, sales would be priced at the published CAISO 15-minute market LMP, averaged across the hour, at the Palo Verde pricing node. PacifiCorp explained that using the CAISO LMP as a proxy would ensure that PacifiCorp would not set the market price for transactions and that NV Energy's customers would pay no more than a reasonable proxy for the market price at that location.

To ensure that the CAISO Palo Verde node was an appropriate price proxy, PacifiCorp further committed not to simultaneously bid into the CAISO market at that pricing node in any hour in which it was relying on the CAISO price to make sales to NV Energy. This commitment sought to address any concerns that PacifiCorp might impact the market price it was using as a proxy.

On September 4, 2020, the Commission issued an order granting the 2020 Waiver in part, limited to only six calendar days, but stated that PacifiCorp could file to extend the waiver as needed.¹⁷ The Commission found that that PacifiCorp acted in good faith to solve a concrete problem and held, *inter alia*, “...***that the waiver does not have undesirable consequences, such***

¹⁷ 2020 Waiver Order at P 18.

as harming third parties.”¹⁸ The Commission also found relevant that “PacifiCorp will not set the market price for transactions with NV Energy and will instead accept the CAISO nodal price at Palo Verde for any such sales.”¹⁹ The Commission also accepted PacifiCorp’s commitment not to simultaneously bid into the CAISO’s hour-ahead process at the Palo Verde pricing node in any hour in which it is relying on the CAISO hourly price at Palo Verde as a proxy for sales made pursuant to the requested waiver.²⁰ Ultimately the 2020 Waiver provided PacifiCorp flexibility to act in good faith to help a neighboring utility during emergency conditions, while fulfilling its responsibility to its own retail customers to pursue off-system sales at prevailing market prices. Emergency conditions thankfully did not materialize during the waiver period and PacifiCorp thus did not end up making any MBR sales to NV Energy pursuant to the granted waiver.²¹

C. 2021 Conditions Deteriorate Again – Commission Denies 2021 Request for Permanent Authority to Transact During Emergencies

In light of the risks of repeating the events of Summer 2020, the Filing Parties filed in Docket Nos. ER21-1772-000, *et al.* proposed amendments to their respective MBR tariffs to make permanent the authority granted to PacifiCorp in the 2020 Waiver.²² In that filing, the

¹⁸ *Id.* at P 23 (emphasis added).

¹⁹ *Id.*

²⁰ *Id.*

²¹ PacifiCorp, Informational Report in Compliance with Order on Emergency Waiver Petition, Docket No. ER20-2816-000 (Nov. 19, 2020) (“Although the Limited Waiver was not ultimately required to ensure system reliability during the severe system conditions experienced in the West during the Waiver Period, PacifiCorp appreciates the Commission’s efforts to respond to PacifiCorp’s Limited Waiver request so expeditiously given the potential concerns raised.”).

²² The Filing Parties’ 2021 MBR filing differed somewhat from the 2020 Waiver in that the 2021 filing would have permitted sales by either NV Energy or PacifiCorp, to the other. While the Filing Parties sought to expand the temporal scope of permitted sales, they offered to limit such authority to EEA-1 or higher emergencies if the Commission found that restriction necessary to ensure just and reasonable rates. 2021 MBR Filing at 11. The Commission did not reject the filing on the basis of any differences between the requested authority and that authority granted in the 2020 Waiver.

Filing Parties proposed extensive protections specifically designed to protect and benefit customers on both sides of the transactions that make it impossible that customers will pay an unjust and unreasonable rate. The Filing Parties also committed to file any reporting deemed necessary by the Commission to provide appropriate transparency.

On June 25, 2021, the Commission issued an order denying the Filing Parties' MBR tariff amendments and thus denying NV Energy and PacifiCorp the ability to transact prevailing market prices even during system emergencies.²³ While the Commission rejected the requested permanent authority, the Commission specifically reserved the ability to act on a future waiver filing like the 2020 Waiver: “[w]e note that our decision in this order does not preclude Sellers from submitting a waiver request in the future if and when emergency conditions arise.”²⁴

D. The 2021 Waiver Request

On July 9, 2021, as a result of another extreme heat event, the western system was placed again under extreme duress, with the Las Vegas area reaching 117 degrees.²⁵ In addition, the Bootleg Fire in Southern Oregon resulted in approximately 5,500 MW of forced real-time derates on the Pacific AC and Pacific DC Interties. Due to these derates, in certain critical operating hours, NV Energy had significant supply curtailments from a variety of sources. These curtailments placed the NV Energy BAA immediately into an EEA-3 shortage situation. Moreover, CAISO curtailed in real-time over 1400 MW of supply and an additional 800 MW of missing day-ahead energy from counterparties who had CAISO exports reduced to zero.

²³ PacifiCorp, 175 FERC ¶ 61,244 (2021).

²⁴ *Id.* at n.36.

²⁵ See Washington Post, July 14, 2021, *Yet another major heat wave is set to roast the western U.S. and Canada by the weekend*, available at <https://www.washingtonpost.com/weather/2021/07/14/western-heat-wave-rockies/> (visited July 14, 2021).

In addition, in late June 2021, the Pacific Northwest (normally a winter-peaking region) experienced an historic heat event that resulted in some of the highest temperatures ever recorded in the region, including “numerous all-time temperature records falling throughout Washington and Oregon”²⁶ including PacifiCorp’s service territory. This heat event is reported to have sparked numerous extensive wildfires.²⁷ During this time, the PACW BAA experienced a record summer peak load.

As a result of these conditions, PacifiCorp and NV Energy filed in June 2021 for a second waiver, with the same restriction as the 2020 waiver (“2021 Waiver”). In doing so, the Filing Parties requested waiver of their respective MBR tariffs to permit sales both from PacifiCorp to NV Energy and from NV Energy to PacifiCorp, during emergency conditions using the CAISO fifteen-minute market LMP, averaged across the hour, at the Palo Verde pricing node. In this sense, it differed from the 2020 Waiver because it also requested permission for NV Energy to make sales to PacifiCorp, subject to the restrictions discussed above. The Filing Parties sought waiver for a period of 61 days beginning August 2, 2021 and lasting through September 30, 2021.

In the 2021 Waiver Order, the Commission granted the Filing Parties’ waiver request to permit PacifiCorp and NV Energy to make short-term (hourly or daily) sales of energy during emergency system conditions marked by NERC alert level EEA-1 or higher, at the CAISO fifteen-minute LMP, averaged across the hour, at the Palo Verde price node for the time period at issue as published on the CAISO OASIS, for the full 61 days.²⁸ In the order, the Commission

²⁶ <https://www.powermag.com/rolling-blackouts-triggered-as-historic-heatwave-grips-pacific-northwest/>

²⁷ CNN, *Millions in the West are still under heat warnings as parched conditions threaten even more wildfires*, July 2, 2021, available at: <https://www.cnn.com/2021/07/02/weather/pacific-northwest-extreme-heat-friday/index.html> (visited July 16, 2021).

²⁸ 2021 Waiver Order at P 23.

found, among other things, that granting waiver “will help promote maximum available supply options to [the Filing Parties] in the event of a system emergency in the coming months.”²⁹

Furthermore, as in the 2020 Waiver Order, the Commission accepted the Filing Parties’ commitment to not simultaneously bid into the CAISO’s hour-ahead process at the Palo Verde pricing node in any hour in which PacifiCorp or NV Energy is relying on the CAISO hourly price at Palo Verde as a proxy for sales made pursuant to the waiver, and found that “the Limited Waiver does not have undesirable consequences, such as harming third parties.”³⁰

V. CURRENT WEATHER AND SHORTAGE CONDITIONS IN THE WEST

The West once again is experiencing excessive heat, leading to shortages in power supply. On August 31, 2022, CAISO issued a Flex Alert urging voluntary electric conservation, attached as Attachment A hereto. In the Flex Alert, CAISO explains that, “[w]ith excessive heat in the forecast across much of [California and the western United States], the grid operator is expecting high electricity demand, primarily from air conditioning use, and is calling for voluntary conservation steps to help balance supply and demand.” CAISO also explains that, in what is likely the most extensive heat wave so far in the West this year, temperatures in northern California are expected to be 10-20 degrees warmer than normal through Tuesday, September 6, while in Southern California temperatures are expected to be 10-18 degrees warmer than normal. Notably, CAISO stated: “***Death Valley is currently forecast to peak at 126 degrees on Saturday, which could tie the highest temperature ever recorded on Earth in the month of September.***”

Moreover, Las Vegas is projected to see a week of high temperatures around 110 degrees, with nighttime “lows” of 85 degrees or higher, both of which are more than 10 degrees above the

²⁹ *Id.* at P 26.

³⁰ *Id.* at P 27.

city's average temperature in September.³¹ In the Pacific Northwest, Portland set a record high of 100 degrees on August 30, 2022, and the excessive heat is expected to continue moving inland in the northwest.³² As stated in the CAISO Flex Alert, these prolonged excessive heat conditions increase energy demand and tighten available power supplies.

In addition to the Flex Alert, CAISO already issued an EEA-1 notice for the CAISO grid effective on August 31, 2022, attached hereto as Attachment B. The EEA-1 notice states that CAISO is “anticipating high loads and temperatures across the CAISO Grid” and is “forecasting an energy deficiency, with all available resources in use or forecasted to be in use, for the specified time period.” Furthermore, on August 31, 2022, Governor Newsom issued a Proclamation of a State of Emergency for the State of California, attached hereto as Attachment C. Among other things, the Proclamation recognizes that CAISO is forecasting a peak load for the year of over 48,000 MW on September 5, 2022, as well as supply deficiencies of over 3,000 MW during evening hours from September 4, 2022 through September 6, 2022. NV Energy also is projecting record-high loads. In particular, NV Energy is projecting loads between 7,600 MW and 7,900 MW for the period from September 1, 2022 to September 6, 2022, which would exceed NV Energy's all-time peak load in September by 300–600 MW.

VI. REQUEST FOR TEMPORARY PARTIAL WAIVER

The Filing Parties respectfully request a limited and partial waiver of the above-referenced geographic restrictions in their respective MBR tariffs only to the extent necessary to permit NV Energy and PacifiCorp to sell to each other at prevailing market rates in emergency

³¹ *A Weeklong Heat Wave in California and Other Western States Will Test the Power Grid*, NPR (Aug. 31, 2022), <https://www.npr.org/2022/08/31/1120235876/excessive-heat-warning-california-west>.

³² *Record-Threatening, Long-Duration Heat Wave to Roast Western U.S.*, WASHINGTON POST (Aug. 31, 2022), <https://www.washingtonpost.com/climate-environment/2022/08/31/western-heatwave-california-records-climate/>; *More Than 50 Million in West at Risk for Prolonged Heat Wave*, FOX WEATHER (Aug. 30, 2022), <https://www.foxweather.com/weather-news/western-heat-wave>.

conditions – *i.e.*, at EEA-1 conditions or higher, like the 2020 and 2021 Waivers. Also like the 2020 and 2021 Waivers, to protect against allegations of self-dealing or horizontal market power, the Filing Parties will not set the price for these sales; rather, all sales permitted under this Limited Waiver would be priced at the CAISO-established fifteen-minute market LMP, averaged across the hour, at the Palo Verde price node, subject to the following express limitations.

Notwithstanding that the NEVP, PACE, and PACW BAAs are mitigated markets under the MBR tariffs of the Filing Parties, if the requested waiver is granted, then for a period of thirty (30) calendar days beginning on September 1, 2022, PacifiCorp and NV Energy would be permitted to make short-term (hourly or daily) sales of energy only during emergency system conditions marked by NERC alert level EEA-1 or higher,³³ at the CAISO fifteen-minute LMP, averaged across the hour, at the Palo Verde price node for the time period at issue as published on the CAISO Open Access Same-Time Information System (“OASIS”). Also like the 2020 and 2021 Waivers, to address any concerns that the Filing Parties might somehow impact the Palo Verde LMP, they would be willing, if ordered by the Commission, to commit not to simultaneously bid into the CAISO’s hour-ahead process at the Palo Verde pricing node in any hour in which they are relying on the CAISO hourly price at Palo Verde as a proxy for sales made pursuant to this Limited Waiver. The Commission accepted this commitment in the 2021 Waiver Order and 2020 Waiver Order.³⁴

³³ NERC has established three levels of EEAs. An EEA is an Emergency procedure, not a daily operating practice, and is not intended as an alternative to compliance with NERC Reliability Standards. Under “EEA-1,” “The Balancing Authority is experiencing conditions where all available generation resources are committed to meet firm Load, firm transactions, and reserve commitments, and is concerned about sustaining its required Contingency Reserves. Non-firm wholesale energy sales (other than those that are recallable to meet reserve requirements) have been curtailed.” Under “EEA-2,” “The Balancing Authority is no longer able to provide its expected energy requirements and is an energy deficient Balancing Authority.” Under “EEA-3,” the energy deficient Balancing Authority is unable to meet minimum Contingency Reserve requirements and firm Load interruption is imminent or in progress. See EOP-011-001.

³⁴ 2021 Waiver Order at P 27; 2020 Waiver Order at P 23.

The emergency trigger and pricing terms of the waiver are exactly the same as what the Commission approved in the 2020 and 2021 Waiver Orders. The only difference in these three petitions is that the 2020 petition was focused on the power supply needs of NV Energy, but the 2021 waiver sought authority to make sales in either direction because the 2021 heat dome event in the Pacific Northwest was a stark reminder that the PacifiCorp service territory is not immune to extreme climate events that could jeopardize its ability to reliably serve its customers.³⁵ The instant filing mimics the 2021 request in that regard.

VII. ARGUMENT

A. The Commission's Standard For Wavier Is Satisfied For The Limited Waiver As It Was For The 2020 and 2021 Waivers

Good cause exists for granting the Limited Waiver. As noted above, the Limited Waiver is the same as the 2021 Waiver, and the Commission found the waiver standards were satisfied for the 2021 Waiver Order and should do so again here.

The Commission has granted limited waivers where the following criteria are met: (i) the applicant acted in good faith; (ii) the waiver is of limited scope; (iii) a concrete problem will be remedied by granting the requisite waiver; and (iv) the waiver does not have undesirable consequences, such as harming third parties.³⁶ The instant waiver request satisfies these criteria. First, the Filing Parties are acting in good faith to help each other provide reliable service to their customers during emergency circumstances, while fulfilling their responsibility to their own customers to make off-system sales at prevailing market prices. Second, the Limited Waiver is

³⁵ This waiver is limited to sales of energy in the Western bilateral market. The Filing Parties do not seek blanket MBR authority or waiver or modification of any rules pertaining to the CAISO market or the Western Energy Imbalance Market.

³⁶ See, e.g., *Pac. Gas & Electric Co.*, 172 FERC ¶ 61,130 (2020); *Aragonne Wind, LLC*, 145 FERC ¶ 61,106 (2013); *Se. Power Admin.*, 143 FERC ¶ 61,210 (2013); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069, at P 8 (2011).

limited in scope to 30 calendar days and only applies to short-term sales in certain defined emergency system conditions. After September 2022, the Limited Waiver will have no effect. Thus, the waiver is not only limited in scope by the 30-day duration, but further limited in scope as the sales will only be undertaken during emergency condition hours during the 30 days. The requested 30-day period would cover any emergency events that occur during the month of September 2022, after which heat in the West generally abates.

Third, granting the Limited Waiver will solve a concrete problem. As noted earlier, both NV Energy and PacifiCorp have experienced extreme heat events in 2022, and CAISO has already issued a Flex Alert.³⁷ The Limited Waiver will allow PacifiCorp to sell supply to NV Energy, and vice versa, at the same prices that other parties in the West will pay which in turn will help ensure NV Energy's and PacifiCorp's customers retain reliable electric service.

Fourth, like the Commission found in the 2021 and 2020 Waiver Orders, no third party will be harmed by granting this Limited Waiver because the Filing Parties will not set the market price for these transactions. Therefore, their customers will pay no more than a reasonable proxy for the prevailing market price.

B. The Limited Waiver Protects Customers of both PacifiCorp and NV Energy, and Both Companies are Answerable to their State Commissions as well as the Commission

The Limited Waiver is designed to protect and benefit customers on both sides of the transactions. The first and most pressing benefit to NV Energy's and PacifiCorp's customers is the ability access a critical source of supply that may be needed in emergency hours to ensure system reliability in extreme conditions. A second benefit is credits against the retail cost-of-

³⁷ CAISO issues a Flex Alert when the electricity grid is under stress because of generation or transmission outages, or from persistent hot temperatures.

service rates, as each utility, as described below, has a responsibility to its customers when selling into the wholesale market to pursue off-system sales at prevailing market prices because their respective customers receive the benefit of any such sales as a credit to rates. To ensure that the buyer does not pay the seller a price more than it would pay any other seller, neither PacifiCorp nor NV Energy will set the price for sales under the Limited Waiver; rather, they will be settled at the CAISO fifteen-minute LMP at the Palo Verde price node.

1. The Filing Parties' Off-System Sales Revenues are Credited to Retail Customers

Any time the Filing Parties have generating capacity in excess of their customers' needs, they have a responsibility to seek off-system sales opportunities to generate revenue from the resources funded in customers' retail rates. Those off-system sales revenues benefit PacifiCorp's and NV Energy's retail customers through credits against the retail cost-of-service rates.³⁸ This credit is relevant for two reasons. First, it means the Filing Parties have a responsibility to their retail customers to maximize their off-system sales opportunities when market prices reflect significant demand, rather than sell into a mitigated market at cost-based rates far below prevailing market prices.³⁹ Second, because the Filing Parties credit these resulting revenues to customers, the selling utility has no shareholder motive to seek above-market payments from the purchasing utility if the Commission approves the proposed Limited Waiver. The Commission

³⁸ In the case of NV Energy, the credit works through an accounting mechanism under which revenue associated with sales of energy not needed for company operations is picked up by the rates department for purposes of establishing "deferred energy" balances, which serve as a 100 percent dollar-for-dollar retail rate credit. In the case of PacifiCorp, which operates retail service areas in six states, each state commission and retail rate design is different. While the timing and mechanism of this credit varies from state to state, PacifiCorp estimates that approximately 95 percent of off-system sales revenues serves to reduce "net power costs" in retail rates across its service territory.

³⁹ As the Commission has long recognized, a mitigated MBR seller may choose to sell in non-mitigated markets. *See* Order No. 697 at P 270 ("Under the Commission's current mitigation policy, a seller that loses market-based authority in its home control area is limited to charging cost-based rates in that control area; however, there is no requirement that the seller offer its available power to customers in that home control area. Instead, the seller is free to market all of its available power to purchase outside that control area if it chooses to do so.").

has long found such retail credits mitigate the incentive to exercise market power.⁴⁰ As the Commission has explained, “the requirement to credit retail customers with revenue from wholesale sales reduces the incentive to exercise market power because the seller will not receive the benefit from the additional revenue received from manipulating market prices.”⁴¹

2. The Filing Parties Will Not Set the Market Price, but Will Rely Instead on the CAISO Nodal Price at Palo Verde

To further protect against any concern that the Limited Waiver will result in unjust and unreasonable prices for NV Energy’s or PacifiCorp’s customers, neither party will set the market price for any transactions under the Limited Waiver. Rather, each will act as a price-taker and any sales between PacifiCorp to NV Energy under the Limited Waiver will be settled at the CAISO fifteen-minute market LMP, averaged across the hour, at Palo Verde price node as published by CAISO on the OASIS. The use of CAISO-published Palo Verde nodal pricing for purposes of this Limited Waiver provides transparency and ensures that PacifiCorp cannot extract prices beyond those levels deemed competitive by the Commission.

3. NV Energy and PacifiCorp are Each Answerable to their Respective State Commissions for Their Purchases

As further evidence that the requested waiver will not harm NV Energy’s or PacifiCorp’s ratepayers, it is important to note that NV Energy and PacifiCorp must each answer to their respective state commissions for its short-term energy purchases. Both utilities would be at risk

⁴⁰ *Nevada Power Co.*, 145 FERC ¶ 61,022, at P 28 (2013) (“Second, Nevada Power is required to fully credit any profits from wholesale sales to retail customers through a fuel adjustment clause, removing any incentive for Nevada Power to raise prices. As the Commission determined in *Arizona Pub. Serv. Co.*, the requirement to credit retail customers with revenue from wholesale sales reduces the incentive to exercise market power because the seller will not receive any benefit from the additional revenue received from manipulating market prices.”) (citing *Arizona Pub. Serv. Co.*, 141 FERC ¶ 61,154 at P 33 (2012)).

⁴¹ *Id.*

for a disallowance if, for example, a state commission determined that the purchasing utility had paid an above-market price from an affiliate. In particular, NV Energy files an annual electric Deferred Energy Accounting Adjustment filing with the PUCN, through which it seeks approval of fuel and purchased power expenses for prior the 12-month period. Any purchases that NV Energy makes from PacifiCorp pursuant to the instant waiver would be subject to the review of the PUCN for the reasonableness of entering into the transaction. Thus, to ensure recovery of fuel and purchased power expenses, NV Energy will not buy at a price above market. For PacifiCorp, annual filings are made in each of the six states in which it has retail load to include power costs in its retail rates. Power costs include both purchased power expense and a credit for wholesales sales revenues. PacifiCorp's annual power cost filings are reviewed by each public utility commission.

C. The 30-Day Waiver Period is Appropriate

The request for a 30-day Limited Waiver is narrowly tailored to avoid seeking a second emergency request to extend the relief sought here. It is entirely possible that the system conditions experienced so far in both the Northwest and the Southwest, thus necessitating the instant petition, will not persist through or even re-occur during the 30-day period. Because the Limited Waiver only applies during periods of emergency system conditions marked by NERC alert level EEA-1 or higher, PacifiCorp's and NV Energy's sales in each mitigated BAA market will remain mitigated to cost-based rates during non-emergency conditions, so *the Limited Waiver will have no effect if emergency conditions do not materialize* before the Limited Waiver expires in 30 days.

D. The Filing Parties will File a Post-Waiver Report with the Commission

To further ensure transparency, to the extent any sales are made under the Limited Waiver, the Filing Parties proposes to file a special report with the Commission in this docket within thirty (30) days of the expiration of the Limited Waiver. Such a report would detail each sale between PacifiCorp and NV Energy under the Limited Waiver and will include the NERC emergency condition level, quantity, term, and settlement price as dictated by the Palo Verde nodal prices.

VIII. REQUEST FOR EMERGENCY ACTION AND SHORTENED COMMENT PERIOD

The Filing Parties respectfully urge the Commission to establish a shortened public comment period of seven days in order to grant this limited waiver request as soon as possible, but not later than the close of business on Friday, September 16, 2022. In addition to the 2021 and 2020 Waivers, the Commission has granted similar requests for emergency relief when required to reduce potential reliability risks due to extreme weather events or other unforeseen circumstances.⁴² In the wake of Hurricanes Gustav, Katrina, and Rita, the Commission granted several emergency petitions without notice periods for tariff waivers in as little as one day after filing in order to help alleviate the problems caused by “these extraordinary weather

⁴² See, e.g., *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,041 (2014) (granting expedited request for temporary waiver of the PJM Operating Agreement and Tariff “in response to unprecedented spikes in fuel costs caused by the recurring extreme cold weather events” one day after filing of the petition and with no prior notice); *Powerex Corp.*, 138 FERC ¶ 61,099, at P 6 (2012) (granting limited waiver of Section 1 of the Powerex MBR schedule because “NorthWestern’s needs constitutes an extraordinary circumstance and that to assure reliability requirements are met, immediate provision of service by Powerex is necessary.”); *Entergy Servs., Inc.*, 124 FERC ¶ 61,226, at P 7 (2008) (granting expedited request for waiver one day after filing and with no prior notice because “[t]he Commission intends to assist the Gulf Coast in recovering from damage caused by Hurricane Gustav and believes that granting the waivers is consistent with that goal.”); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,003 (2014) (granting temporary Tariff waiver with no prior notice “in light of the immediacy of the extreme weather events.”); *ISO New England, Inc.*, 142 FERC ¶ 61,058, at P 19 (2013) (accepting Tariff revisions on an interim basis in order to “address immediate reliability-related concerns for this winter, while providing further opportunity for review of the Information Policy . . . accepted on a temporary basis.”); *Cal. Indep. Sys. Operator Corp.*, 93 FERC ¶ 61,239 (2000).

conditions.”⁴³ Likewise, in the PJM Interconnection, L.L.C. (“PJM”) region, the Commission granted temporary waiver of the PJM OATT’s cost-based offer rules one day after filing “to address the reliability concerns posed by the sustained extreme weather currently being experienced in the PJM region and maintain confidence in market operations.”⁴⁴ Similar treatment has been afforded with respect to limited waiver requests following unanticipated equipment failure or emergency shut downs.⁴⁵ In all such circumstances, the Commission determined that issuing the order without, or with very limited, prior notice was appropriate “because of the need to respond quickly to the emergency situation” and the opportunity for the Commission to evaluate additional evidence and arguments on rehearing.⁴⁶

This approach has been reaffirmed by the U.S. Court of Appeals for the Ninth Circuit. Specifically, in *State of Cal. ex. rel. Lockyer v. FERC*, the court upheld the Commission’s expedited approval of a Federal Power Act section 203 application for a corporate reorganization in the midst of the California energy crisis, finding that the Commission “had a strong interest in reaching a conclusion at the earliest practicable time.”⁴⁷ Moreover, the court explained that, even if the Commission’s action had been found to be procedurally unsound, “the Commission

⁴³ See, e.g., *Entergy Services, Inc.*, 124 FERC ¶ 61,226 (2008) (granting petition for temporary and limited waiver of Service Schedule MSS-4 of the Entergy System Agreement due to the risk of significant loss of load and other emergency conditions resulting from Hurricane Gustav two days after filing of the petition); *S. Natural Gas Co.*, 113 FERC ¶ 61,218 (2005) (granting petition for tariff waiver on expedited basis “to help alleviate the problems caused by Hurricane Katrina and Rita.”).

⁴⁴ *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,041, at P 5 (2014) (“In light of the immediacy of the extreme weather conditions, the Commission finds good cause for expeditiously granting the requested waiver. . . . We find that the waiver is necessary to address the reliability concerns posed by the sustained extreme weather currently being experienced in the PJM region and maintain confidence in market operations.”).

⁴⁵ See, e.g., *Powerex Corp.*, 138 FERC ¶ 61,099 (2012) (granting limited waiver of Section 1 of the Powerex MBR schedule one day after the filing of the petition because of “NorthWestern’s immediate need to obtain Regulating Reserve Service” after “NorthWestern was unexpectedly required to completely shut down the Dave Gates Generating Station . . . due to significant equipment damage.”)

⁴⁶ See, e.g., *Entergy Servs., Inc.*, 124 FERC ¶ 61,226 at P 9 & n.4 (“Because of the need to respond quickly to the emergency situation, we are issuing this order without prior notice, but it will be subject to rehearing.”).

⁴⁷ 329 F.3d 700, 710–11 (9th Cir. 2003).

cured any procedural defect by carefully considering all evidence and argument the petitioners offered in their petitions for rehearing.”⁴⁸

The Filing Parties respectfully maintain that expedited Commission action on this petition for the Limited Waiver is appropriate. As a result, PacifiCorp requests that the Commission issue an order granting the Limited Waiver to be effective September 1, 2022 by order issued no later than September 16, 2022.⁴⁹

IX. DOCUMENTS SUBMITTED WITH THIS PETITION

The following documents are included as attachments to this petition:

Attachment A – Copy of CAISO Flex Alert

Attachment B – Copy of CAISO EEA-1 Notice

Attachment C – Copy of Governor Newsom’s Proclamation of a State of Emergency

⁴⁸ *Id.* at 704.

⁴⁹ To the extent necessary, PacifiCorp also requests waiver of the Commission’s 60-day notice period and any other requirements of 18 C.F.R. Part 35 that may be required to allow this filing to go into effect as of September 1, 2022. The Commission will grant such waivers upon good cause shown. *See, e.g., Mirant Am. Energy Mktg., L.P. v. ISO New England Inc.*, 112 FERC ¶ 61,056, at P 17 & n.25. (2005), *aff’d sub nom. NSTAR Elec. & Gas Corp. v. FERC*, 481 F.3d 794 (D.C. Cir. 2007), *order on remand, Mirant Am. Energy Mktg., L.P. v. ISO New England Inc.*, 120 FERC ¶ 61,264 (2007). Given the emergency conditions described herein, the good cause standard is easily satisfied here.

X. SERVICE

The Filing Parties will serve this petition on their respective state commissions and on the service list for their MBR tariff dockets in which triennial updates and change in status filings are made.

XI. CONCLUSION

WHEREFORE, for the reasons discussed herein, the Filing Parties respectfully urges the Commission to grant the Limited Waiver to be effective September 1, 2022. The Filing Parties also ask the Commission to establish a shortened seven-day comment period, and grant the Limited Waiver as quickly as possible thereafter, but by no later than Friday, September 16, 2022.

Respectfully submitted,

/s/ Christopher R. Jones

Christopher R. Jones

Russell E. Kooistra

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(202) 662-2181

Counsel to PacifiCorp and NV Energy

Dated: September 1, 2022
Washington, D.C.

ATTACHMENT A
CAISO August 31, 2022 Flex Alert



Aug. 31, 2022

Contact: ISOMedia@caiso.com

California ISO issues Flex Alert for today, Aug. 31

Extreme heat triggers urgent need to conserve electricity from 4 to 9 p.m.

FOLSOM, Calif. – The California Independent System Operator (ISO) has issued a statewide Flex Alert, a call for voluntary electricity conservation, for today, Aug. 31 from 4 p.m. to 9 p.m., due to high temperatures pushing up energy demand and tightening available power supplies.

With excessive heat in the forecast across much of the state and Western U.S., the grid operator is expecting high electricity demand, primarily from air conditioning use, and is calling for voluntary conservation steps to help balance supply and demand.

Additional Flex Alerts are also possible through the Labor Day weekend as record-setting temperatures are forecast across much of the West.

In what's likely to be the most extensive heat wave so far in the West this year, temperatures in Northern California are expected to be 10-20 degrees warmer than normal through Tuesday, Sept. 6. In Southern California, temperatures are expected to be 10-18 degrees warmer than normal. Death Valley is currently forecast to peak at 126 degrees on Saturday, which would tie the highest temperature ever recorded on Earth in the month of September.

Today's Flex Alert is scheduled between 4 p.m. and 9 p.m., when the grid is most stressed from higher demand and less solar energy. During that time, consumers are urged to conserve power by setting thermostats to 78 degrees or higher, if health permits, avoiding use of major appliances and turning off unnecessary lights. They should also avoid charging electric vehicles while the Flex Alert is in effect.

To minimize discomfort and help with grid stability, consumers are also encouraged to pre-cool their homes and use major appliances and charge electric vehicles and electronic devices before 4 p.m., when conservation begins to become most critical.

Reducing energy use during a Flex Alert can help stabilize the power grid during tight supply conditions and prevent further emergency measures, including rotating power outages.

For information on Flex Alerts, and to find more electricity conservation tips, visit FlexAlert.org.

Flex Alert Conservation Actions

Before 4 p.m.:

- Pre-cool home by setting the thermostat to as low as 72 degrees
- Use major appliances, including:
 - Washer and dryer
 - Dishwasher
 - Oven and stove for pre-cooking and preparing meals
- Charge electric vehicles
- Adjust blinds and drapes to cover windows

From 4 p.m. to 9 p.m.:

- Set thermostat to 78 degrees or higher, if health permits
 - Avoid using major appliances and charging electric vehicles
 - Turn off all unnecessary lights
-

About Flex Alerts

A Flex Alert is issued by the ISO when the electricity grid is under stress because of generation or transmission outages, or from persistent hot temperatures.

View the fact sheet on [Emergency Notifications](#) on our [News webpage](#).

Follow grid conditions in real time at [ISO's Today's Outlook](#), download the free ISO Today mobile app, and follow us on Twitter at @California_ISO.

#

California ISO | 250 Outcropping Way | Folsom, CA 95630 | www.caiso.com



The California Independent System Operator (ISO) is a nonprofit public benefit corporation dedicated, with its partners, to continuous improvement and secure operation of a reliable grid operated for the benefit of consumers. It provides comprehensive grid planning, open and nondiscriminatory access to one of the largest networks of high-voltage transmission power lines in the world, and operates a \$9 billion competitive electricity market. Recognizing the importance of the global climate challenge, the ISO is at the forefront of integrating renewable power and advanced technologies that will help provide a sustainable energy future efficiently and cleanly.

The Western Energy Imbalance Market (WEIM) is a real-time wholesale energy trading market that enables participants anywhere in the West to buy and sell energy when needed. The WEIM Governing Body is the governing

authority designed by regional stakeholders and has shared authority with the ISO Board of Governors to resolve rules specific to participation in the WEIM.

ATTACHMENT B
CAISO August 31, 2022 EEA-1 Notice

NOTICE: 202202647 POSTED: 2022-08-31 15:10:00

CAISO EEA 1 NOTICE [202202647]

The California ISO has issued an Energy Emergency Alert (EEA) 1 Notice for the CAISO Grid, effective 08/31/2022 17:00 through 08/31/2022 20:00.

Reason:

The ISO is anticipating high loads and temperatures across the |CAISO Grid.

CAISO is forecasting an energy deficiency, with all available resources in use or forecasted to be in use, for the specified time period.

Conservation efforts are encouraged during this time, and energy market participants are encouraged to offer additional supplemental energy and ancillary service bids. During this time, participating customers may be directed by utilities to use generators approved for emergencies, or to reduce load following the protocols of each utility's programs.

For more information, view the CAISO System Emergency fact sheet (<http://www.aiso.com/Documents/Emergency-Notifications-Fact-Sheet.pdf>).

Monitor system conditions on Today's Outlook (<http://www.aiso.com/TodaysOutlook/Pages/default.aspx>) and contact local electric utilities for details about their respective load reduction programs.

Notice issued at: 08/31/2022 15:10

----- DISCLAIMER -----

This CAISO notice is based on the current conditions of the transmission grid system. While this CAISO notice reflects the most current information available to the CAISO, because transmission grid system conditions are subject to sudden and rapid change without warning, the accuracy of this notice cannot be assured. This CAISO notice is provided solely for informational purposes. Reliance by any party on the contents of this CAISO notice, regardless of any errors, omissions, inaccuracies, and/or subsequent changed conditions shall not be made the basis for any claim, demand or cause for action against the CAISO. Any recipient's decisions or actions that may be based in any way whatsoever on the contents of this CAISO notice shall be the sole responsibility of the recipient.

ATTACHMENT C
Governor Newsom's August 31, 2022 Proclamation of a State of Emergency

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

PROCLAMATION OF A STATE OF EMERGENCY

WHEREAS beginning on August 31, 2022, a significant heat wave is hitting California, bringing temperatures in excess of 100 degrees throughout the State and is forecast to bring record temperatures 10-20 degrees above normal throughout the State, exceeding 110 degrees in some areas (the "Extreme Heat Event"); and

WHEREAS as a result of the Extreme Heat Event, on August 30, 2022, the National Weather Service issued Excessive Heat Warnings and Excessive Heat Watches within the State in effect beginning on August 31, 2022, through September 6, 2022; and

WHEREAS the Extreme Heat Event is putting and will continue to put significant demand and strain on California's energy grid; and

WHEREAS the Extreme Heat Event is forecast to be a West-wide event, meaning that energy demand will be high across the region and California will have limited ability to import energy from out-of-state; and

WHEREAS on August 30, 2022, the California Independent System Operator (CAISO) issued a Heat Bulletin forecasting high electric demand during the Extreme Heat Event that will stress the energy grid, with peak load for electricity projected to reach its highest level of the year, exceeding 48,000 megawatts on September 5, 2022; and

WHEREAS on August 31, 2022, the CAISO issued a Flex Alert for August 31, 2022, from 4:00 p.m. to 9:00 p.m., and urged Californians to conserve electricity to avoid power disruptions; and

WHEREAS on August 31, 2022, the CAISO issued an Energy Emergency Alert Watch Notice for August 31, 2022, from 5:00 p.m. to 8:00 p.m., because it is forecasting an energy deficiency, with all available resources in use or forecasted to be in use; and

WHEREAS on August 31, 2022, the CAISO advised that it is forecasting supply deficiencies of over 3,000 megawatts during evening hours from September 4, 2022, through September 6, 2022; advised that further emergency alerts may follow; and advised that emergency interventions would allow energy customers to make contingency plans ahead of the Labor Day holiday weekend; and

WHEREAS it is necessary to take action to reduce the strain on the energy infrastructure and increase energy capacity during the Extreme Heat Event, and to take action immediately to respond to the Extreme Heat Event given its forecasted severity and duration; and

WHEREAS despite significant expansion of the State's renewable and zero-carbon energy generation and storage capacity, those gains slowed in 2022 because of supply chain disruptions and have been outpaced by increasing energy demands because of the climate crisis; and

WHEREAS it is critical that power plants in the State generate as much power as possible to satisfy the increased demand created by the Extreme Heat Event; and

WHEREAS, during emergency conditions, the CAISO, in its role as Reliability Coordinator, may issue an Energy Emergency Alert Level 2 or Energy Emergency Alert Level 3 for its balancing authority or other California balancing authorities as conditions warrant; and

WHEREAS under the provisions of Government Code section 8558, subd. (b), I find that conditions of extreme peril to the safety of persons and property exist due to the Extreme Heat Event throughout California; and

WHEREAS under the provisions of Government Code section 8625, subd. (c), I find that local authority is inadequate to cope with the magnitude and impacts of the Extreme Heat Event; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Proclamation would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the Extreme Heat Event.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California due to the Extreme Heat Event.

IT IS HEREBY ORDERED THAT:

1. In preparing for and responding to the Extreme Heat Event, all agencies of state government utilize and employ state personnel, equipment, and facilities for the performance of any and all activities consistent with the direction of the Governor's Office of Emergency Services and the State Emergency Plan. Also, all residents are to obey the direction of emergency officials with regard to this emergency in order to protect their safety.
2. In preparing for and responding to the Extreme Heat Event, each political subdivision of the State shall render all possible assistance consistent with the Extreme Temperature Response Plan by, among other proactive actions, assessing the Extreme Heat Event in its respective jurisdiction, determine whether to open cooling centers, engage in public outreach on how to conserve energy, and how Californians within that jurisdiction can stay safe.
3. From August 31, 2022, through September 7, 2022, inclusive, the provisions of Water Code section 13385, subd. (i)(1)(A) as they pertain to daily average and instantaneous temperature limitations in waste discharge requirements for thermal power plants are suspended for any thermal power plant that maintains

operations to abate the effects of the Extreme Heat Event. Any exceedance of the daily average or instantaneous temperature limitations resulting from maintaining operations during this time shall not constitute a violation for purposes of calculating mandatory minimum penalties under Water Code section 13385, subd. (i).

4. Permitting requirements or conditions of certification adopted by the Energy Commission pursuant to Public Resources Code, sections 25216.5, subd. (a) and 25500 et seq., as well as related permitting requirements adopted by local air quality management districts, that restrict the amount of power that a facility may generate, restrict the amount of fuel that a facility may use, or impose air quality requirements that prevent the facility from generating additional power during peak demand hours, from 2:00 p.m. to 10:00 p.m. on August 31, 2022 through September 7, 2022, inclusive, or as otherwise needed to respond to the Extreme Heat Event, are suspended.
5. For purposes of regulations concerning stationary generators, use of stationary generators from 2:00 p.m. to 10:00 p.m. on any day on which the CAISO has declared an Energy Emergency Alert 2 or 3 condition shall be deemed an "emergency use" under California Code of Regulations (CCR), title 17, section 93115.4, subd. (a)(30)(A)(2).
6. For purposes of regulations concerning portable generators, the period from 2:00 p.m. to 10:00 p.m. on any day on which the CAISO has declared an Energy Emergency Alert 2 or 3 condition shall be deemed an "emergency event" under CCR, title 17, section 93116.1, subd. (b)(14), and a loss of electrical service shall be deemed "beyond the reasonable control of the owner or operator" under CCR, title 17, section 93116.2, subd. (a)(12)(A)(2). In addition, the period from 2:00 p.m. to 10:00 p.m. on any day on which the CAISO has declared an Energy Emergency Alert 2 or 3 condition, shall be deemed an "emergency event" under CCR, title 13, section 2452, subd. (j), and interruptions caused by the Extreme Heat Event shall be deemed an "unforeseen interruption of electrical power from the serving utility" under CCR, title 13, section 2453, subd. (m)(4)(E)(1).
7. In regulations concerning the use of auxiliary engines by oceangoing vessels berthed in California ports, any day on which the CAISO has declared an Energy Emergency Alert 2 or 3 condition shall be deemed an "emergency event" under CCR, title 17, section 93118.3, subd. (c)(14) as it pertains to ocean-going vessels equipped to operate on shore power.
8. A declaration by the CAISO of an Energy Emergency Alert 2 or 3 condition shall be deemed to provide notice to reduce use of grid-based electrical power under CCR, title 17, section 93118.3, subd. (c)(14)(C), and notice under that same section that reduction is no longer necessary at 11:59 p.m. on the third full day after such an Alert condition ends. Ocean-going vessels that

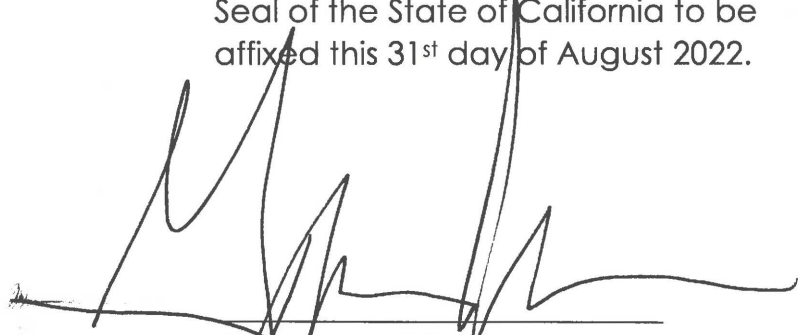
are berthed at California ports on any day on which the CAISO has declared an Energy Emergency Alert 2 or 3 condition shall not be required to use shore power until after 11:59 pm on the third full day following the termination of that Alert condition.

9. An ocean-going vessel operating on auxiliary engines pursuant to an "emergency event" under Paragraph 7 of this Proclamation shall be deemed to qualify for an exemption under CCR, title 17, section 93118.3, subd. (d)(1)(E)(1)(a), and any visit occurring during the period described in Paragraph 8 of this Proclamation shall be counted towards compliance under CCR, title 17, section 93118.3, subd. (d)(1)(F)(1).
10. Any permit, regulation or law prohibiting, restricting or penalizing the use of stationary or portable generators or other conduct allowed by this Proclamation, during the time periods allowed under other paragraphs of this Proclamation, is suspended.
11. Any facility that operates in violation of permitting requirements or conditions of a certificate suspended by Paragraph 4 shall:
 - (i) notify the relevant local air quality management district, the Energy Commission, and the Air Resources Board of its actions within 48 hours; and
 - (ii) report additional fuel use, additional hours of operation, and energy produced by that additional use and operation to the relevant local air quality management district, the Energy Commission, and the Air Resources Board within 30 days of this Proclamation.
12. To help address any exceedances in emissions permitted under federal law and other federal obligations that result from acts taken under this Proclamation, and to avoid jeopardizing public health or safety as a result of those acts, the Air Resources Board shall implement its State-funded Climate Heat Impact Response Program (CHIRP) to mitigate emissions from any operation pursuant to this Proclamation. The Energy Commission is directed, and the Public Utilities Commission is requested, to provide information requested by the Air Resources Board to assist with its implementation of this paragraph. To the extent it would otherwise apply to actions under this Paragraph, Chapter 3.5 (commencing with section 11340) of Part I of Division 3 of Title 2 of the Government Code, is suspended.
13. The provisions in Paragraphs 3-10 of this Proclamation shall expire at 11:59 p.m. on September 7, 2022, with the exception that, as provided in Paragraph 8, ocean-going vessels that are berthed at California ports on any day on which the CAISO has declared an Energy Emergency Alert 2 or 3 condition shall not be required to use shore power until after 11:59 pm on the third full day following the termination of that Alert condition, up to 11:59 pm on September 10, 2022.

I FURTHER DIRECT that as soon as hereafter possible, this Proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Proclamation.

This Proclamation is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 31st day of August 2022.

A handwritten signature in black ink, appearing to read 'Gavin Newsom', is written over a horizontal line.

GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY WEBER, PH.D.
Secretary of State