

Procedure,⁴ the CAISO respectfully requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to answer the new evidence La Paloma has submitted in this proceeding. Good cause for the waiver exists because this answer will help to ensure a complete and accurate record in the case.⁵ The CAISO recognizes the Commission's intention to end briefing with responsive briefs due on March 15.⁶ However, La Paloma failed to file an initial brief, therefore depriving the CAISO of the opportunity to respond to any evidence or arguments La Paloma intended to put forth to support its claim. The Commission should not accept the new evidence La Paloma submitted in its response because the Commission's December 15 Order clearly directed it to file an initial brief. As the CAISO explained previously, rejecting new evidence submitted after parties can respond is consistent with the basic tenets of administrative procedure, reasoned decisionmaking, and Commission precedent to maintain equity within the paper hearing process. In several cases the Commission has prohibited reply briefs when a party failed to file an initial brief. Commission Administrative Law Judges also have prohibited parties from raising new arguments in reply.⁷

⁴ 18 C.F.R. §§ 385.212, 385.213.

⁵ See, e.g., *Equitrans, L.P.*, 134 FERC ¶ 61,250 at P 6 (2011); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,023 at P 16 (2010); *Xcel Energy Servs., Inc.*, 124 FERC ¶ 61,011 at P 20 (2008).

⁶ The Commission's *Order Lifting Abeyance and Establishing Paper Hearing Briefing Schedule* ("December 15 Order") states that no responses will be permitted.

⁷ *Response of the Cal. Indep. Sys. Op. Corp.*, ER21-2592 (filed Mar. 15, 2023) citing, *El Paso Natural Gas Co.*, 46 FERC ¶ 63,029 at 65,104 (1989) (ignoring reply brief of party who did not file initial brief because all parties wishing to address issues must set forth their position in an initial brief so that other participants could respond in their reply briefs); *Confederated Salish and Kootenai Tribes and Energy Keepers Incorporated*, 156 FERC § 63,036 (2016) (noting that

There is no question La Paloma submitted new evidence in its recent Filing because the Filing was La Paloma's only response to the Commission's December 15 Order to provide evidence, and not a reply, as directed. In addition, La Paloma has failed to serve its confidential filing on the CAISO notwithstanding the fact that the Commission has adopted a protective order and the CAISO has executed nondisclosure certificates in this proceeding.⁸ This fact alone warrants striking any new evidence La Paloma seeks to inject into the record. To the extent the Commission intends to consider this new evidence and not reject it outright, the Commission should grant the CAISO a limited opportunity to respond, because this evidence was presented for the first time as part of La Paloma's response brief in this proceeding.

II. Answer

La Paloma's response brief offers new evidence to claim that La Paloma constructed a generating facility that exceeds 1,062 MW. However, La Paloma's new evidence does not support its claim.

A. La Paloma's Evidence Does Not Support Its Nameplate Capacity Claim

La Paloma includes four photographs in Attachment A as its primary evidence that it constructed a generating facility with capacity of 1,160 MW.

submitting new arguments and new evidence on reply "deprives opposing participants of any opportunity to respond, thus depriving them due process."); *see also Texas Eastern Transmission Corp.*, 39 FERC ¶ 63,036 at 65,204 (1987) (motion to strike granted because "to hold otherwise would deny [the] opponents a chance to... refute late evidence....").

⁸ *Order of Chief Judge Adopting Protective Order* issued in this proceeding on March 16, 2022.

First, the CAISO reiterates that nameplate is not determinative of interconnection service capacity and in fact, nameplate always exceeds interconnection capacity.⁹ Interconnection service values *always* are at the actual point of interconnection because interconnection service capacity represents the capacity a generator will actually deliver to the grid. This is the point at which the CAISO and all transmission service providers model facilities. It is the only capacity value relevant to surplus interconnection capacity.¹⁰

However, even disregarding that nameplate is not determinative of the dispute here, the photographs La Paloma includes do not support what La Paloma claims. The first nameplate photograph includes a “Leistung” (performance rating) of 290,000 KVA.¹¹ La Paloma misrepresents this single photograph of one unit in its Filing, stating that each of the generating units is rated at 340 MVA.¹² Using La Paloma’s own math with a 0.85 Power Factor, a 290 MVA rating would result in a nameplate capacity of that unit at 246.5 MW. Even assuming *arguendo* the other three units have a 340 MVA rating as La Paloma claims, this would result in a total facility rating of 1,113.5 MW, much less than La Paloma now claims.

⁹ The CAISO’s interconnection request process limits interconnection service capacity to the Generating Facility Capacity. Generating Facility Capacity is defined as the “net capacity,” and therefore nameplate would always be higher than interconnection service capacity. See Appendix 1 of Appendix DD of the CAISO Tariff, at (h); Appendix A of the CAISO Tariff.

¹⁰ See Appendix DD of the CAISO Tariff, Section 3.4. Surplus interconnection capacity may not exceed the constructed Generating Facility Capacity. As defined in footnote 9, Generating Facility Capacity is a “net” capacity.

¹¹ The CAISO notes that the nameplate appears entirely in German, and the thousands separator on the photograph is a period not comma as included here.

¹² Filing at 33.

Perhaps more problematically, the second and third nameplate photographs are the same photograph, not separate photographs of two different units. La Paloma includes them as different photographs of different nameplates, but they are actually one photograph of the same nameplate, copied. This is clear from the angle of the photograph, cropping, paint chipping, and identical reflections in the nameplate. Without four distinct nameplate photographs, at least one unit is not represented by these photographs. More than offering supporting evidence, these photographs call into question the credibility of any La Paloma claim related to nameplate. Again, the CAISO does not agree that nameplate is determinative, but even if it did, La Paloma's photographs do not support its claimed capacity.

B. La Paloma's Operational and Test Data Only Supports its Own Prior Modeling Submissions to the CAISO

The CAISO provided ample evidence as attachments to its Initial Brief¹³ that La Paloma's facility cannot generate close to what it now claims. This includes data submitted to the CAISO for the purposes of modeling the facility. La Paloma claims it inadvertently submitted lower capacity numbers to the CAISO as "descriptive terms" related to its participation in the "energy market."¹⁴

La Paloma further states that "any description of 'nameplate' capacity in [prior representations] is easily corrected now by the information and data that

¹³ See *Initial Brief of the Cal. Indep. Sys. Op. Corp.*, ER21-2592 (filed Feb. 13, 2023) ("CAISO's Initial Brief").

¹⁴ La Paloma Filing at 11, 32.

CXA La Paloma has provided about the generating units.”¹⁵ This argument ignores nearly twenty years of modeling submissions to the CAISO. The CAISO’s tariff,¹⁶ North American Electric Reliability Corporation (NERC) standards,¹⁷ and the Commission¹⁸ are all clear: generators must submit accurate information about their facility’s capabilities.

Beyond the modeling data La Paloma has provided the CAISO, PMax test data provides the clearest indication of the physical capability of a unit or facility operating at maximum capacity. La Paloma dismisses the use of PMax data, implying somehow that PMax is related to operations in the market and not the capability of the units.¹⁹ This is inaccurate. PMax data is expressly related to the maximum capability of the unit and is rightfully tied to the appropriate interconnection service capacity. The CAISO’s tariff defines PMax as “The maximum normal capability of the Generating Unit, as measured at the Point of Interconnection or Point of Delivery, as applicable. PMax may not exceed the Interconnection Service Capacity, as documented in the Interconnection Study or Generator Interconnection Agreement.”²⁰ Further, PMax testing is typically

¹⁵ La Paloma Filing at 23.

¹⁶ Section 4.6.4 of the CAISO tariff.

¹⁷ NERC Implementation Plan *available at* https://www.nerc.com/pa/Stand/MOD0252DL/Project_2007-09_GV_MOD-025_Imp_Plan-clean_2012Dec05.pdf.

¹⁸ For example, the Commission’s market behavior rules require that “a Seller must provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences.” 18 C.F.R. § 35.41(b).

¹⁹ La Paloma Filing at 25.

²⁰ Appendix A to the CAISO’s Tariff.

performed at the request of the generator owner, which allows the generator owner the benefit of determining the optimal conditions for such test in order to maximize the results. The CAISO included La Paloma's most recent PMax test documentation as Attachment 9 to its Initial Brief in this proceeding, all of which were performed at the request of La Paloma. As explained in the CAISO's Initial Brief, the results showed 267.59 MW, 266.23 MW, 266.14 MW, and 267.00 MW, for each of the four units, respectively (1,066.96 MW total). In order for the generating facility to have a total capacity close to the 1,160 MW La Paloma claims, each unit would need to generate approximate 290 MW. La Paloma's units have never tested that high, with no CAISO PMax record dating back to 2004 ever exceeding approximately 266 MW for any unit at the facility.

C. La Paloma's Analogies are Not Equivalent with Facts in this Case or Consistent with Commission Precedent

La Paloma continues to argue that nameplate capacity alone is determinative of interconnection service capacity. It provides an analogy to a car performing below its designed top speed because it is following the rules of the road.²¹ La Paloma is describing the right test but it is using the wrong inputs. The top speed is analogous to PMax or net generating capacity (nameplate minus auxiliary load), not nameplate. A generator would have surplus interconnection capacity only if it frequently operates below that PMax or net generating capacity. The Commission has already evaluated the CAISO's use of "net generating capacity" when challenged that a converting GIA should instead

²¹ La Paloma Filing at 4, 21.

use “existing interconnection service capacity;” and the Commission found that the using net generating capacity is just and reasonable.²² As demonstrated above, La Paloma’s facility has never produced the amount it now claims under the optimal testing conditions and its net generating capacity is closer to the 1,062 MW capacity determined by the CAISO. Even if La Paloma’s nameplate photographs could support its capacity claim, which they do not, this nameplate amount would still be reduced by auxiliary load and losses to the point of interconnection.²³

La Paloma makes a similar analogy through a hypothetical of a wind farm built for 100 MW but, due to the lack of wind on site, it only operates at 80 MW in the energy market.²⁴ Wind is clearly inapposite to La Paloma’s gas-fired plant; although all the same rules apply to wind. The CAISO only models the net maximum output at point of interconnection, and surplus interconnection capacity is determined based off of that value. In the case of wind, an intermittent resource dissimilar from a combined-cycle turbine facility, NERC’s Standard MOD-025-2 recognizes that testing conditions may differ based on speed and

²² *CalWind Resources Inc. v. California Independent System Operator Corp.*, 146 FERC ¶ 61,121, at PP 33 *et seq.* (2014).

²³ La Paloma recognizes this concept of auxiliary load and line losses. In its most recent generating modeling data submitted to the CAISO, it indicates a “Maximum Total Generating Facility Gross Output” of 255 MW for each unit, a “Generating Facility Auxiliary Load” of between 5 MW and 6 MW, “Anticipated Losses between the Generating Facility and POI” of 0.02 to 0.09 MW, and a “Maximum Net Output at POI” of 248.91 MW to 249.61 MW. See Attachment 7 of the CAISO’s Initial Brief. Pages 6, 19, 32, and 45 include the relevant information for each unit, respectively.

²⁴ La Paloma Filing at 28.

direction of wind.²⁵ A wind facility is modeled at its net MW at the point of interconnection, or the nameplate minus auxiliary load and losses, and testing is done to verify this capacity. Specifically, NERC standards allow for wind farms to utilize 90% of its units to earn a passing mark on its verification.²⁶ There is also a requirement to test a wind farm again six months later.²⁷ Again, the CAISO utilizes the same rules for wind: surplus interconnection capacity is based on net generating capability and not nameplate.

D. La Paloma’s Consolidated Reply Deprives the CAISO the Opportunity to Review Evidence Under the Commission’s Protective Order

Finally, La Paloma additionally submitted “Technical Data and Diagrams for La Paloma,” but redacts these documents as privileged. On March 16, 2022, the Chief Judge issued an *Order of Chief Judge Adopting Protective Order* in this proceeding. The CAISO’s counsel, subject matter expert, and administrative staff executed non-disclosure certificates as Reviewing Representatives and served them on La Paloma on March 22, 2022. Pursuant to this Protective Order, the CAISO should have the ability to review and respond to any such attachments, just as La Paloma had the opportunity for with the CAISO’s Initial Brief and attachments. By filing its response brief as a consolidated filing with a

²⁵ As explained in the CAISO’s Initial Brief, the CAISO utilizes a facility’s own MOD-025 data for purposes of modeling. CAISO Initial Brief at 24, 28-29.

²⁶ *Standard MOD-025-2 — Verification and Data Reporting of Generator Real and Reactive Power Capability and Synchronous Condenser Reactive Power Capability*, Attachment 1, Section 2.1.2.

²⁷ *Id.*

motion to answer and supplement to a separate complaint²⁸ and therefore not serving a privileged version on the CAISO, La Paloma inappropriately deprives the CAISO the opportunity to review and respond to its apparent new evidence. The Commission should not countenance these actions that are contrary to fundamental fairness and basic rules of transparent litigation. The Commission should require La Paloma to provide this information to the CAISO immediately and allow the CAISO with a reasonable opportunity to respond, or else the Commission should reject the newly submitted information.

III. Conclusion

In contrast to La Paloma's four problematic nameplate photographs, the CAISO has provided multiple pieces of evidence demonstrating the correct interconnection service capacity rightsized to the facility's constructed capacity at 1,062 MW: representations made by La Paloma to the CAISO for modeling purposes, data submitted pursuant to NERC standards, and PMax testing data. La Paloma never constructed a facility capable of generating the capacity it now claims. La Paloma's photographs do not and cannot change these facts. The

²⁸ Though requested by La Paloma, the Commission has not issued a protective order in EL23-24.

Commission should accept the unexecuted generator interconnection agreement at issue in this proceeding with the appropriate interconnection service capacity of 1,062 MW.

/s/ Sarah E Kozal

Roger E. Collanton

General Counsel

Anthony Ivancovich

Deputy General Counsel

William H. Weaver

Assistant General Counsel

Sarah E. Kozal

Counsel

California Independent System

Operator Corporation

250 Outcropping Way

Folsom, CA 95630

Counsel for the California Independent
System Operator

Dated: March 30, 2023

CERTIFICATE OF SERVICE

I certify that I have served the foregoing document upon the parties listed on the official service list in the captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 30th day of March, 2023.

/s/ Jacqueline Meredith

Jacqueline Meredith

An employee of the California ISO