

**STAKEHOLDER BRIEF OF THE NORTHERN
CALIFORNIA POWER AGENCY IN SUPPORT OF
APPELLANTS ON APPEAL OF PROPOSED REVISION
REQUEST 1122**

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Submitting a forced outage request that is substantially similar to a previously rejected planned outage request (a “planned-to-forced” outage) is not, without more, a violation of the CAISO Tariff or FERC’s market rules. While some market participants may use planned-to-forced outages to circumvent the rules, there is also a wide range of scenarios when planned-to-forced outages are legitimate and necessary actions compliant with the tariff, FERC’s rules and good utility practice. PRR 1122 creates a presumption that the mere act of submitting a planned-to-forced outage is an indication of gaming that must be referred to FERC Enforcement. According to CAISO, because *some* planned-to-forced outages are unlawful, *all* planned-to-forced outages amount to false statements, even if a market participant is fully forthcoming and truthful about why it needs the forced outage. PRR 1122 was intended to discourage actions that unlawfully harm reliability, but by casting its net too widely, it also discourages market participants from actions that would improve reliability. NCPA urges the BPM Appeals Committee to reject PRR 1122 and encourage CAISO staff to address the problems in a more appropriate and comprehensive way through a new or existing stakeholder process.

A) Many planned-to-forced outages are legitimate and necessary actions under the CAISO Tariff and FERC's rules.

Submitting a planned-to-forced outage is not inherently a violation of the CAISO Tariff.¹ In fact, the tariff and BPM specifically contemplate re-submitting outages as forced after a planned outage has been denied, in certain circumstances.² PRR 1122 concedes many circumstances where a planned-to-forced outage may be appropriate, and CAISO admits that even more un contemplated circumstances exist.³

¹ Six Cities Opening Brief, at 3; Six Cities Reply Brief, at 1-2.

² Outage Management BPM, § 8.2.2; CAISO Tariff § 9.3.6.4.1(d).

³ CAISO Answering Brief, at 6-7.

Practical examples confirm that many planned-to-forced outages are not only compliant with the CAISO Tariff but also enhance reliability. Consider a CT generator experiencing an oil seal failure from its atomizing air blower (essentially a leaking seal) that will cause a forced outage if not repaired in the near future. Plant operators determine, based on the rate of the leak, that the repair can be conducted sometime in the next three weeks, and so request a planned outage accordingly. If CAISO denies the outage a week before it is scheduled, the market participant may and should, submit a forced outage to repair the leak.

Consider also an approved planned maintenance outage for a unit that requires specialized technical assistance from an expert based in Europe. A week before the maintenance is scheduled, the European vendor informs the market participant that the expert is delayed by two days, necessitating a request that the planned outage be moved, which CAISO denies. If the next available opportunity to schedule the European expert is the following month, and the plant operators determine that the maintenance cannot be delayed by a month, the market participant should be permitted to submit a forced outage to maintain the unit.

In the real world, these planned-to-forced outages are not hypothetical gaming opportunities, but rather actions—based on engineering judgement and reflective of good utility practice—to prevent longer and more serious outages in the future.

B) Unnecessary referrals to FERC Enforcement create a chilling effect on legitimate and proper behavior.

PRR 1122 creates a presumption that the mere act of submitting a planned-to-forced outage is an indication of gaming warranting referral to FERC Enforcement. The tariff identifies planned-to-forced outages as *one factor among many* in determining whether a market participant is violating FERC's market behavior rules, but PRR 1122 goes much further and declares a planned-to-forced outage the *single determinative factor* for triggering a FERC

referral. Even when there are no other indicia of gaming, PRR 1122 assumes that a market participant has violated the market rules. Indeed, even when a market participant is completely truthful and transparent in its outage reporting, CAISO claims that the report constitutes submitting false information.

The entire thesis of PRR 1122 is that because *some* planned-to-forced outages are unlawful, *all* planned-to-forced outages merit a FERC referral. That approach to law enforcement has been widely discredited, because it indiscriminately targets good actors engaged in legitimate behavior for increased investigation and examination, wasting their time and resources and those of the Commission.

CAISO argues that market participants are not harmed by a mere FERC referral because FERC makes the final determination of a market rule violation. CAISO ignores the significant cost—in time and money—of being investigated by FERC. Upon referral, FERC Enforcement typically issues a data request to the market participant, which for NCPA (and presumably most market participants) triggers an extensive internal investigation and the engagement of outside counsel to respond. The process involves voluminous data gathering, interviews with plant staff, analysis by compliance officers and legal counsel, and review by senior executives. Even when a market participant has done *nothing wrong*, CAISO's referral to FERC is itself a punishment.

The result is a significant chilling effect on submitting planned-to-forced outages, even when doing so would be consistent with the tariff and would benefit reliability. Faced with the risk of investigation for every planned-to-forced outage, a prudent market participant would create internal policies to have such outages reviewed by legal counsel. That is costly, delays decision making about important maintenance activities, and may cause plant operators to

hesitate to propose legitimate and necessary outages when lawyers might second-guess their engineering judgment.

CAISO, of course, has the duty to enforce its tariff and make referrals to FERC, but only if it has credible evidence that a market participant may be engaged in gaming or the submission of false information. The submission of a planned-to-forced outage, combined with some other indicia of gaming, should be reported to FERC. But the CAISO Tariff does not support PRR 1122's default presumption that submission of a planned-to-forced outage, without any other corroborating evidence, merits referral.

C) PRR 1122 casts an unnecessarily broad dragnet that may harm, rather than promote, reliability.

NCPA supports the reporting of actual gaming behavior. And NCPA supports a comprehensive evaluation of outage management through a stakeholder process to distinguish between legitimate actions and gaming. But PRR 1122 is a poor interim solution to the problem because it is likely to harm—rather than promote—reliability.

As discussed above, there are countless legitimate, reliability-promoting scenarios in which a market participant might submit a planned-to-forced outage. PRR 1122 discourages market participants from taking those actions even when good utility practice, safety and prudent operation of the resource require one. Fear of referral, no matter the reason, has the perverse effect of discouraging market participants from taking otherwise appropriate forced outages, delaying necessary maintenance activities and risking a prolonged future outage.

Targeting a single practice, without considering circumstances or other evidence, is unwarranted and does more harm than good. The BPM Appeals Committee should reject PRR 1122 and encourage CAISO Staff to convene a new or existing stakeholder process to develop a better rule.