

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

**California Independent System) Docket No. ER12-897-000
Operator Corporation)**

**ANSWER TO MOTIONS TO INTERVENE AND COMMENTS,
MOTION TO FILE ANSWER, AND ANSWER TO PROTESTS, OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (ISO)¹ files this answer to the motions to intervene and comments submitted in this proceeding in response to the ISO's submittal on January 26, 2012 of a petition for a limited, one-time waiver of a single requirement in Section 43.2.6 of the ISO tariff to prevent the retirement of the Sutter Energy Center (Sutter plant) in 2012.²

¹ The ISO is also sometimes referred to as the CAISO. Capitalized terms not otherwise defined herein have the meanings set forth in Appendix A to the ISO tariff. Except where otherwise specified, references to section numbers are references to sections of the ISO tariff.

² The following entities filed motions to intervene and/or comments in this proceeding: the Alliance for Retail Energy Markets, Direct Access Customer Coalition, Energy Users Forum, Marin Energy Authority, Retail Energy Supply Association, and Shell Energy North America (US), L.P. (collectively, AReM, *et al.*); American Wind Energy Association; California Department of Water Resources State Water Project (SWP); California Municipal Utilities Association (CMUA) and The Utility Reform Network (together, CMUA/TURN); Calpine Corporation (Calpine); Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, Six Cities); City and County of San Francisco, Public Utilities Commission; City of Santa Clara, California (d/b/a Silicon Valley Power) and the M-S-R Public Power Agency (together, SVP/M-S-R); Edison Mission Energy; Exelon Corporation (Exelon); GenOn Energy Management, LLC, GenOn Delta, LLC, and GenOn West, LP; Independent Energy Producers Association; J.P. Morgan Ventures Energy Corporation and BE CA LLC; Modesto Irrigation District (MID); Northern California Power Agency (NCPA); NRG Power Marketing LLC, Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Power, LLC, Long Beach Generation LLC, NRG Solar Blythe LLC, Avenal Solar Holdings LLC, NRG Solar Roadrunner, LLC, Dynegy Marketing and Trade, LLC, Dynegy Moss Landing, LLC, Dynegy Morro Bay, LLC, Dynegy Power Marketing, LLC, and Dynegy Oakland, LLC (collectively, NRG/Dynegy); Pacific Gas and Electric Company (PG&E); Pattern Renewables LP; Powerex Corp.; Sacramento Municipal Utility District; San Diego Gas & Electric Company (SDG&E); Southern California Edison Company (SCE); and Western Power Trading Forum. The California Public Utilities Commission (CPUC) filed a notice of intervention.

The ISO also submits a motion to file an answer and its answer to the protests submitted in this proceeding.³ Most of the issues discussed in comments and protests have already been addressed by the ISO in the January 26 petition and the materials submitted in support of that petition. In the following answer, the ISO addresses certain developments that have occurred since January 26 and provides additional information that will assist the Commission in acting on the ISO's request.

I. Introduction

The ISO tariff has a Commission-approved mechanism – the Capacity Procurement Mechanism (CPM) – the purpose of which is to allow the ISO to take steps to address the imminent retirement of a resource needed for reliability. In the January 26 petition, the ISO requested a one-time waiver of the requirement in Section 43.2.6 that a CPM designation for capacity at risk of retirement must be based on a projection that the resource will be needed for reliability purposes “by the end of the calendar year following the current RA [Resource Adequacy] Compliance Year.” This waiver will allow the ISO to prevent the retirement in 2012 of the Sutter plant, a flexible resource needed to support the reliable operation of the ISO grid in 2017 and beyond.

³ AReM, *et al.*, CMUA/TURN, MID, NCPA, NRG/Dynegy, PG&E, SCE, SDG&E, Six Cities, and SVP/M-S-R filed protests. The ISO submits this answer pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213. The ISO requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to make an answer to the protests. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in the case. *See, e.g., Xcel Energy Services, Inc.*, 124 FERC ¶ 61,011, at P 20 (2008); *California Independent System Operator Corp.*, 132 FERC ¶ 61,023, at P 16 (2010); *Equitrans, L.P.*, 134 FERC ¶ 61,250, at P 6 (2011).

The comments and protests in this proceeding do not change the fundamental consideration supporting the January 26 petition: failure to grant the requested waiver could result in significant adverse consequences for electric reliability in California.

Some commenters oppose the ISO's petition because they support a more comprehensive approach to addressing capacity procurement for longer-term system needs. The ISO recently has launched a flexible capacity forward procurement stakeholder process which, among other things, will develop rules for the procurement of resources at risk for retirement in the current year but needed in future years.⁴ The new tariff provisions resulting from this stakeholder process, however, cannot be developed, finalized, filed with the Commission, and implemented in time to address the imminent retirement of the Sutter plant, as supported by the sworn statements of the owners of that plant.

Other commenters question whether the ISO's analyses support the need for the Sutter plant. For the reasons explained below, these commenters do not provide credible evidence to rebut the ISO's specific assumptions underlying those analyses – they simply seek to substitute their own judgment in place of the ISO's prudent approach to operations and reliability planning. These comments disregard the ISO's obligation to take appropriate steps to maintain the reliability of the ISO balancing authority area. Failure to rely on the ISO's analyses as part of its prudent operations planning measures could lead to electricity outages caused by a shortage of the flexible resources needed to

⁴ Materials relating to the stakeholder process are available on the ISO website at <http://www.caiso.com/informed/Pages/StakeholderProcesses/FlexibleCapacityProcurement.aspx>.

operate the system reliably. Granting the ISO's petition will allow a needed resource to remain available through the end of 2012 as the ISO refines its assessment of the long-term reliability needs of its balancing authority area.

II. Answer

A. The Commission Should Act on the Petition by March 29

The Commission should act by the end of March to provide the ISO sufficient authority to provide the Sutter plant with a CPM designation. As noted in the ISO's petition, on January 17, 2012, the CPUC established a proceeding regarding the potential shutdown of the Sutter plant in which the CPUC staff issued a draft resolution for public comment that would order the three investor-owned utilities (IOUs) – PG&E, SCE, and SDG&E – to negotiate a contract to procure the Sutter plant for a time period to end no later than December 31, 2012.⁵ In its comments in this proceeding, the CPUC asks that the Commission refrain from acting on the ISO's waiver request until the CPUC makes a determination as to whether to adopt the draft resolution. The CPUC suggests that, because CPM is intended to be a backstop to the CPUC's procurement regime, it is appropriate to ensure that all avenues of state-authorized procurement are exhausted before the ISO designates Sutter.⁶ Given the uncertainties, however, with both the outcome and timing of the CPUC proceeding, the Commission should grant the ISO the requested waiver by the end of March.

⁵ See Draft Resolution E-4471, available on the CPUC's website at http://docs.cpuc.ca.gov/word_pdf/COMMENT_RESOLUTION/157581.pdf.

⁶ CPUC at 3; see also SDG&E at 6.

The CPUC has not resolved any of the uncertainty that existed since the ISO filed its petition. The CPUC's decision at its February 16, 2012 meeting to defer action on the draft resolution essentially prolongs resolution of the proposed CPUC procurement mandate to at least the end of May. In that regard, at its February 16, 2012 meeting, the CPUC deferred its decision to March 9, 2012. Indeed, during its February 16 business meeting, the CPUC provided no assurance that it will even adopt the draft resolution on March 9, 2012. Under the CPUC's practices and procedures, the CPUC may adopt all or part of the Draft Resolution as written, amend it, modify it, or set it aside and prepare a different resolution. The CPUC could also defer consideration of the draft resolution until a subsequent business meeting.

The CPUC draft resolution still requires the utilities to file a Tier 3 advice letter to seek approval of a negotiated power purchase agreement and tariff sheets to establish a non-bypassable charge to ratepayers. This category of advice letter requires the CPUC to issue another resolution before the power purchase agreement or tariff sheets become effective. The draft resolution also holds open the possibility that the advice letter would consist of reasons why negotiations failed and there could be no agreement by the end of the month.⁷

Even assuming *arguendo* that the CPUC adopts the draft resolution on March 9, 2012 and the parties negotiate a contract and file an advice letter agreement by April 9, the CPUC would still need to prepare a draft resolution. Under California law, parties have a right to a thirty-day public review of the draft

⁷ See CPUC Draft Resolution p. 9, filed with the Commission in the CPUC comments, as amended on February 17, 2012.

resolution.⁸ After this public comment and review period, the CPUC could consider the draft resolution at an upcoming CPUC business meeting. The CPUC votes on its decisions and resolutions in open meetings pursuant to California Government code Section 11120 *et seq.* By the ISO's best count, it is unlikely that this matter will be considered by the CPUC before its May 24, 2012 meeting. Therefore, the outcome of the CPUC process is still uncertain and is likely to remain so until the end of May.

There is no good reason for the Commission to defer its action in this proceeding until the CPUC proceeding has been resolved. The ISO tariff already provides that the ISO shall rescind a CPM risk of retirement designation for any month during which a resource is under contract to provide resource adequacy capacity.⁹ If the resource is ultimately procured under the CPUC process, the ISO will simply not issue its CPM risk of retirement designation or rescind the designation as appropriate. On the other hand, if by that time the parties have failed to negotiate a contract, the ISO must be prepared to provide Calpine with the necessary compensation to keep the resource on-line until the end of 2012.

In practical terms, this means that if the Commission does not grant the ISO's requested waiver by the end of March, it may leave the ISO with no ability to prevent the Sutter plant from shutting down in 2012. The ISO must provide a thirty-day period prior to finalizing a CPM designation during which parties can procure the Sutter plant.¹⁰ The Sutter plant is scheduled to undergo certain

⁸ See California Public Utilities Code section 311(g)(1).

⁹ ISO tariff Section 43.3.7.

¹⁰ ISO tariff Section 43.2.6.

maintenance if the resource is expected to operate for any part of 2012 and Calpine has indicated that it will not undertake this maintenance unless it is certain to have the requisite stream of revenue to cover the costs.¹¹ The ISO understands Calpine requires sufficient lead time to schedule the necessary outage for the required maintenance in the spring 2012 time frame. If the Commission does not act by the end of March, and the CPUC process does not result in an approved contract for the Sutter plant by mid-April (which procedurally appears impossible), Calpine may not be available for the rest of 2012.

There is no harm in the Commission granting the requested waiver by the end of March. If by the end of May, even after the ISO issues its notice of intent to designate the Sutter plant under the CPM, the CPUC approves a contract by the IOUs to procure the Sutter plant, the ISO must and will announce its withdrawal of the intended CPM designation. Therefore, the more prudent course of action is to grant the requested waiver so that the ISO can commence the CPM designation process and Calpine can schedule the required maintenance to be available for the rest of 2012. To do otherwise would leave a large gap in the ISO's ability to prevent the loss of a facility the ISO will need in the future to serve load reliably.

B. The Narrowly Tailored Relief Requested by the ISO Is Appropriate for a Tariff Waiver

The purpose of the ISO's petition is to obtain waiver of a single requirement in Section 43.2.6 of the ISO tariff in order to prevent the planned

¹¹ See January 26 petition at 41-43.

retirement of the Sutter plant in 2012.¹² Some commenters argue that the petition is not the correct vehicle for obtaining the relief requested by the ISO and that the ISO should instead have filed a tariff amendment pursuant to Section 205 of the Federal Power Act (FPA).¹³ These arguments are without merit. This one-time waiver will allow the ISO to address the imminent retirement of a resource the ISO's analyses show will be needed for long-term reliability. Granting the waiver will address the immediate issues related to the Sutter plant while the ISO conducts its stakeholder process to develop a capacity procurement mechanism that addresses longer-term needs. The ISO expects that continued operation of the Sutter plant beyond 2012 as well as the proper treatment of any other comparable resources at risk of retirement in the future will be assessed under this longer-term capacity procurement mechanism after it is approved by the Commission.

The Commission has granted a number of tariff waivers that are more expansive in scope than the ISO's requested one-time waiver of one tariff requirement, which applies only to the proposed designation of the Sutter plant under Section 43.2.6 for a maximum of six months of 2012. The Commission has approved more sweeping tariff waivers without any suggestion that those requests for tariff waivers should have been filed as tariff amendments.¹⁴ For

¹² January 26 petition at 1. The waiver, if granted, will provide the ISO the authority to designate CPM capacity to keep the Sutter plant, a resource at risk of retirement during the current resource adequacy compliance year (2012), which is shown to be needed for reliability by the end of the 2017, five years beyond current resource compliance year.

¹³ CMUA/TURN at 9-12; NRG/Dynegy at 16-17; Six Cities at 4-5.

¹⁴ See, e.g., *California Independent System Operator Corp.*, 124 FERC ¶ 61,031, at P 20 (2008) (granting waiver of provisions in six tariff sections to permit the creation of three generator interconnection study groups); *Southwest Power Pool, Inc.*, 126 FERC ¶ 61,012, at PP 37, 39

example, the Commission approved tariff waivers for defined periods that affected dozens of interconnection customers in order to allow independent system operators and regional transmission organizations time to develop and implement reformed procedures for generator interconnection.

Some commenters suggest that, because the CPM designation of the Sutter plant would result in costs to be allocated to market participants, the ISO's request, by definition, has undesirable consequences.¹⁵ The Commission's test is not that a waiver can impose no costs or consequences on parties, but instead that the waiver must not cause *undesirable* consequences. Comments filed in Docket Nos. ER08-960 and ER09-262 in response to requests for generator interconnection waivers make it clear that individual interconnection customers believed they would face adverse financial consequences as a result of the requested waivers. The Commission nonetheless approved the tariff waivers requested by the ISO and the Southwest Power Pool in those proceedings because it furthered the overall goal of improving the generator interconnection process.¹⁶ Similarly, the waiver requested by the ISO in this proceeding will have

(2009) (granting waiver of four tariff provisions to enable the Southwest Power Pool to manage and respond to a backlog of pending generator interconnection requests in two transitional clusters of approximately 15,000 MW each); *Pacific Gas and Electric Co.*, 136 FERC ¶ 61,131, at PP 12-15 (2011) (granting waiver of provisions in 44 generator interconnection agreements to relieve 23 interconnection customers of the obligation to post security for the income tax component of contribution); and *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,119, at P 17 (2008) (granting waiver of four tariff provisions to relieve the New York ISO of any obligation it might otherwise have under its tariff to re-determine locational marginal prices or guarantee payments to generators for time periods from 1999 to 2008).

¹⁵ See, e.g., CMUA/TURN at 13.

¹⁶ See also *New York Independent System Operator, Inc.*, 115 FERC ¶ 61,026, at P 55 (2006) (Approving a tariff waiver to allow the New York ISO to correct the calculation of certain guarantees but not to correct related locational-based marginal prices because "We find that doing so would have a ripple effect with far-ranging, and unintended, consequences that outweigh any putative benefits.").

operational, reliability and other benefits that ensure that the costs of a CPM designation for the Sutter plant will not result in undesirable consequences.

Some commenters claim that consumers will not benefit from a 2012 CPM designation for the Sutter plant.¹⁷ These commenters fail to acknowledge the reliability benefits of preventing the permanent retirement in 2012 of a flexible resource that will be needed to address projected system needs in future years. Moreover, as explained in the January 26 petition, the Sutter plant is a 525 MW resource that has operated at a 60-80 percent capacity factor during the summer and peak months and has provided significant energy and ancillary services to the ISO. A CPM designation for this resource keeps the unit operational in 2012 and enables the ISO markets to benefit from this valuable resource.¹⁸ To quantify the market benefits described in the January 26 petition and to address comments about the benefits in 2012 of a CPM designation for Sutter, the ISO has run a production simulation with and without the Sutter plant for July through December of 2012. While the ISO observed a production cost reduction of approximately \$1 million, this production simulation shows that the total market cost reduction of energy and ancillary services costs to load due to having Sutter available in July through December 2012 is approximately \$44 million. The ISO notes that the total cost of load may be offset by reduced revenue to supply that is under the control of load-serving entities. A summary of the results of this production simulation is provided in the following table:

¹⁷ See, e.g., CMUA/TURN at 14.

¹⁸ January 26 petition at 9.

Summary of Simulation Results With and Without Sutter Plant

1. Change of WECC-Wide Production Cost (\$000)

	With Sutter	Without Sutter	Change
Production Cost	14,856,147	14,857,230	1,082

2. Change of MCP based Load and AS/LF Cost in CAISO (\$000)

	With Sutter	Without Sutter	Change
Load	10,454,739	10,498,276	43,537
AS & LF	379,393	389,149	9,756
Total			53,293

3. Change of CAISO generation (GWh)

	With Sutter	Without Sutter	Change
CAISO Generation	107,684	108,622	938

4. Summary of Sutter Generation and AS/LF Provision

	With Sutter	Without Sutter	Change
Generation (GWh)	1,736	0	-1,736
Capacity Factor (%)	36.55	0	-36.55
LFD (GWh)	383	0	-383
LFU (GWh)	179	0	-179
Non-spinning (GWh)	75	0	-75
RegDown (GWh)	57	0	-57
RegUp (GWh)	7	0	-7
Spinning (GWh)	140	0	-140

Change of MCP-Based Load and AS/LF Cost in CAISO (\$000)

	With Sutter	Jul-Dec Without Sutter	Change
Load	5,975,827	6,013,327	37,500
AS & LF	182,857	189,629	6,772
Total			44,272

Contrary to the claims of NRG/Dynegy, the Commission's 2011 *Midwest ISO* order does not require a tariff amendment to allow the ISO to address the 2012 retirement of the Sutter plant.¹⁹ In that case, the Commission rejected a request for tariff waiver submitted by the Midwest ISO on the grounds that it proposed to alter the Midwest ISO's existing cost allocation methodology.²⁰ The Commission further found that the Midwest ISO's tariff waiver request lacked specificity, potentially involved significant portions of the Midwest ISO tariff, was not clear as to exactly which tariff provisions would be waived.²¹ The Commission also noted that the Midwest ISO's waiver request did not provide adequate notice to affected parties because it would apply for an indefinite period between five and ten years and there was no specificity as to what cost allocation rules would apply during that interval.²² Further MISO's waiver request failed to provide sufficient explanation of the problem being remedied. None of these deficiencies apply to the ISO's waiver request in this proceeding. The ISO will apply the existing Commission-approved rates and cost allocation provisions for the proposed CPM designation of the Sutter plant. The ISO has also identified the specific tariff requirement to be waived and stated that the waiver request will apply for a limited period – no more than six months in 2012.²³ Finally, the ISO

¹⁹ See NRG/Dynegy at 16, citing *Midwest Independent Transmission System Operator, Inc.*, 136 FERC ¶ 61,212 (2011).

²⁰ *Midwest Independent Transmission System Operator, Inc.*, 136 FERC ¶ 61,212, at P 28.

²¹ *Id.* at P 29.

²² *Id.*

²³ Some commenters suggest that the ISO is also implicitly seeking the waiver of other tariff provisions. As explained in Section II.I of this Answer, these arguments are incorrect.

has fully explained why this waiver is needed and has provided detailed analysis to support its proposal.

SCE and SWP argue that the costs of a CPM designation for the Sutter plant will not be allocated based on cost causation principles because the CPM costs will be allocated to load but not to future renewable resources that purportedly create the need for the Sutter plant capacity.²⁴ This argument is erroneous for two reasons.

First, the petition for tariff waiver proposes to allocate the costs of the CPM designation for the Sutter plant using the existing cost allocation methodology set forth in Section 43.8.7 of the ISO tariff.²⁵ Unlike the *Midwest ISO* case, the ISO is not proposing modifications to approved cost allocation provisions of its tariff. In the 2011 order accepting the CPM tariff provisions, the Commission found that the existing cost allocation methodology “will spread the cost responsibility for the CPM designation to those entities that benefit most from CAISO’s backstop procurement, akin to the cost allocation for significant event or exceptional dispatch designations.”²⁶ The Commission also explained that the cost allocation methodology is “just and reasonable and consistent with cost causation principles.”²⁷ Like the resources addressed in the Commission’s

²⁴ SCE at 11-12; SWP at 16-17. Similarly, SDG&E (at 8-9) argues that it should not be allocated any costs because it bears no responsibility for causing them to be incurred.

²⁵ January 26 petition at 48 n.88. Specifically, because the need for the Sutter plant is based on operational needs in all Transmission Access Charge (TAC) Areas, the costs of the CPM designation for the Sutter plant will be allocated to all scheduling coordinators for load-serving entities that serve load in all ISO TAC Areas. *Id.*

²⁶ *California Independent System Operator Corp.*, 134 FERC ¶ 61,211, at P 141 (2011) (CPM order).

²⁷ *Id.*

2011 CPM order, the Sutter plant is a resource at risk of retirement needed for reliability due to its operational characteristics. Nothing has changed since 2011 to render the Commission-approved cost allocation rules unjust and unreasonable. Thus, there is no legitimate basis to adopt a different cost allocation methodology for a risk of retirement cost CPM designation of Sutter than the risk of retirement cost allocation methodology previously approved by the Commission. The ISO is not changing the reasons why a resource is needed for reliability.

Second, the impact of future renewable resources is not the sole reason that the Sutter plant's capacity will be needed. Instead, the ISO's analysis shows that the Sutter plant capacity will address system-wide reliability needs based on the totality of circumstances anticipated in the future, including the addition of resources to meet California's renewable portfolio standard (RPS) requirements, the expected retirement of once-through cooling resources, the lack of other existing or planned resources that can address the need for the Sutter plant within the identified time frame, and projected load levels in the future.²⁸ As such, there is no basis for the allocating the costs of a CPM designation for the Sutter plant as proposed by SCE and SWP.

NRG/Dynegy argue that the petition for tariff waiver constitutes a collateral attack on the 2011 CPM order because the ISO purportedly requests a multi-year forward CPM designation for the Sutter plant.²⁹ As an initial matter, the ISO notes that the Commission could never approve a tariff waiver request if a waiver

²⁸ January 26 petition at 13-32

²⁹ NRG/Dynegy at 25.

is not permitted because it conflicts with an order approving the tariff provision to be waived. Moreover, in the petition for tariff waiver, the ISO only requested waiver of Section 43.2.6 to permit a CPM designation for the Sutter plant for a maximum of six months of the current year, 2012, not for multiple years. The ISO's waiver does not result in any multi-year procurement of the Sutter plant. For all these reasons, the Commission should reject NRG/Dynegy's argument.

C. No Commenter Demonstrates that the Sutter Plant Is Not Needed to Satisfy Future Reliability Needs on the California Grid

While several parties assert that the ISO's determination of need is deficient, no party provides specific evidence showing that the Sutter plant is not needed for reliability and operational requirements by the end of 2017. The only party that challenges any of the assumptions contained in the ISO's studies, is SCE.³⁰ However, SCE's challenges are not credible and therefore the Commission should disregard them.

SCE disagrees with the ISO's assumption that generating facilities using once-through cooling technology will retire under the compliance schedule set forth in the State Water Resources Control Board's (SWRCB) statewide policy addressing the use of once-through cooling (OTC policy).³¹ Under the OTC policy, power plants must achieve compliance by reducing their intake flow rate at each unit, at a minimum, to a level commensurate with that which can be

³⁰ SCE at 5-6.

³¹ SCE at 5-6. See *also* SWP at 8-9.

attained by a closed-cycle cooling.³² If the owner or operator of the power plant demonstrates that this compliance option is infeasible, the facility may achieve compliance by reducing impingement mortality and entrainment of marine life for the facility, on a unit-by-unit basis, to a comparable level to that which would be achieved under the first compliance option, using operational or structural controls, or both. Either compliance option requires significant infrastructure and/or operational changes that place this capacity at risk. SCE is essentially asking the ISO to assume that California will amend its OTC policy or that necessary infrastructure development will be complete before the end of 2017. The ISO can do neither.

In its protest, SCE argues that the SWRCB is reviewing a proposed amendment to its OTC policy dated July 19, 2011, that generally requires compliance by 2020. This is incorrect. The SWRCB adopted an amendment to its OTC policy for power plants in the Los Angeles Department of Water and Power (LADWP) balancing authority area on July 19, 2011, that imposes additional requirements on LADWP generating units with final compliance dates that extend beyond 2020. The SWRCB has not noticed any subsequent proposed amendment to its OTC policy that would apply to power plants in the ISO's balancing authority area.

SCE also argues that an advisory body to the SWRCB – the Statewide Advisory Committee on Cooling Water Intake Structures – is expected to issue a

³² Statewide Water Quality Control Policy on the use of Coastal and Estuarine Waters for Power Plant Cooling as last amended July 19, 2011 at Section 2(a). This document is available at http://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2011/rs2011_0033att.pdf.

report in March 2012 on the need to make recommendations to revise the OTC policy's compliance schedule. The ISO is part of this advisory body and intends to inform the SWRCB of projected capacity needs that may support an extension of the OTC policy's compliance schedule. The decision to amend the OTC policy, however, ultimately rests with the SWRCB. Good utility practice does not permit the ISO to plan to operate its system based on assumptions that the SWRCB will extend the OTC policy's compliance schedule for an unspecified number of years.

In addition, SCE asserts that local capacity requirements in the Los Angeles Basin are likely to require replacement of a portion of generating units subject to the OTC policy should they retire. Here, the ISO agrees with SCE's assertion and has in fact included in its analysis of the need for the Sutter plant all projects in construction to repower facilities using once-through cooling technology. However, without a demonstrated repowering project such as the Marsh Landing Generation Station that will replace units 6 and 7 at the Contra Costa Power Plant, the ISO cannot assume generation capacity using once-through cooling technology will be repowered before the end of 2017. SCE provides no evidence of such necessary action, and none exists.

For these reasons, all of SCE's challenges to the assumptions contained in the ISO's studies are without merit.

D. The ISO Has Determined that There Is No Appropriate Alternative to CPM Designation for the Sutter Plant

Some commenters argue that the ISO should take alternative actions to granting a CPM designation for the Sutter plant. Commenters claim the ISO

should have explored the development of new tariff provisions to pay the owner of Sutter for “mothballing” the unit.³³ In the alternative, commenters suggest that the ISO should have offered a modified reliability must-run (RMR) contract for the Sutter plant.³⁴ These arguments are without merit. Either of these suggested alternatives would represent a far more dramatic departure from the existing ISO tariff provisions than the ISO’s request for waiver of a single requirement in Section 43.2.6, would be more costly, and would require substantially more time to address through proposed tariff revisions.³⁵

The ISO requests waiver in order to grant the Sutter plant a CPM risk-of-retirement designation pursuant to tariff provisions that the Commission determined to be just and reasonable in the CPM order. In contrast, the ISO tariff currently contains no authority for a mothballing option, and the ISO has no working model for such an option. The ISO would have had to determine the terms and conditions that would apply to such a mothballing option, the proper level of payment for a mothballed unit, and the manner in which the costs of such mothballing payments would be allocated to market participants. Such a wholly new product would doubtlessly be subject to administrative litigation. The owner of the Sutter plant informed the ISO in November that it intends to retire the plant as early as May 2012, absent a capacity contract or a CPM designation. It

³³ See, e.g., SCE at 8-9; CMUA/TURN at 23.

³⁴ See, e.g., SDG&E at 11; SCE at 9.

³⁵ Although commenters criticize the use of a CPM risk-of-retirement designation for the Sutter plant, there is no reason to believe that commenters would not have opposed the more dramatic, costly, and time-consuming mothballing or RMR alternatives, if the ISO had proposed these options as a means for procuring the Sutter plant.

strains credulity to suggest that the ISO could have developed all the details needed to implement a mothballing option in time to address the imminent retirement of the Sutter plant. Further, there is no guarantee that intervenors would have even accepted any specific ISO mothball proposal and not litigated the issue. As the ISO has indicated herein and in its waiver petition, this matter needs to be resolved forthwith and with sufficient certainty to ensure that Sutter will remain available.

Moreover, as discussed above, the ISO has conducted a market simulation which shows that the total estimated market benefit of keeping the Sutter plant operational from July through December of 2012 is approximately \$44 million. Employing a mothballing option, however, would result in payments to the Sutter plant without this significant market benefit of keeping the plant operational in 2012.

Lastly, the owner of the Sutter plant has stated in a sworn affidavit that it is unlikely that the resource feasibly could be mothballed and then returned to service by the end of 2017 due to environmental permitting requirements.

Although the ISO does have a *pro forma* RMR contract and tariff provisions governing the allocation of RMR costs, both the contract and the cost allocation provisions are designed to address locational capacity needs and not for system-wide operational needs.³⁶ The need for the Sutter plant by the end of 2017 and beyond is based on a system-wide operational need and not a locational need. Proposing a new RMR contract for system-wide needs and

³⁶ See ISO tariff Section 41.7 and Appendix G (setting forth RMR cost allocation provisions).

corresponding changes to the RMR cost allocation provisions of the ISO tariff would be a substantial and time-consuming departure from the ISO's current RMR model and would also establish a precedent going forward, in contrast to the ISO's request in this proceeding for a one-time limited waiver.

The Commission has previously recognized that the CPM risk-of-retirement designation addresses situations that cannot be addressed by the existing RMR provisions of the ISO tariff and that the risk of retirement CPM designation provides more flexibility to address reliability needs beyond local constraints.³⁷ Indeed, the CPM tariff provisions address both the price and the proper cost allocation for procuring a resource that will be needed in future years for reliability purposes for the resource's operational characteristics. The ISO's waiver addresses only how many years in the future the ISO can consider in identifying the reliability need.

Commenters are also incorrect in concluding that a CPM payment scheme for the Sutter plant necessarily is more than an RMR payment would be. An RMR designation provides for the recovery of capital and a return on equity. In contrast, as explained in the affidavit provided in the November 22 Calpine request, the revenue requirement data provided in support of Calpine's request shows that the Sutter plant would not "obtain a return of or on invested capital during 2012 and subsequent years."³⁸ Calpine states that its revenue requirement data shows a potential \$19.7 million revenue shortfall in 2012 when

³⁷ CPM order at P 125.

³⁸ November 22 Calpine request, Attachment A to January 26 petition, Affidavit of Alexandre B. Makler at 2.

anticipated market revenues are considered.³⁹ The ISO's proposal is based on these numbers and does not account for return on or of capital based on the numbers provided by Calpine. Taking Calpine's resource-specific cost numbers for Sutter, and adding an amount for the return on and of capital (as is permitted under the RMR contract), can only serve to increase the amount to be paid to Calpine; it cannot reduce that amount. The ISO's proposal to designate Sutter for a period of no longer than six months ensures that Calpine will not receive capacity payments equal to the full RMR cost of service for the Sutter plant based on information provided by Calpine. Indeed, the ISO proposes a CPM designation for the Sutter plant of no more than six months, which would result in capacity payments of approximately \$17.4 million. Thus, intervenor claims that using RMR is a lower cost option than the ISO's payment scheme are misplaced.

E. The CPM Capacity Payment for the Sutter Plant Is Just and Reasonable

SWP argues that paying the Sutter plant the CPM capacity payment of \$67.50/kW-year in the CPM settlement recently approved by the Commission is not just and reasonable.⁴⁰ That argument is without merit. The ISO proposes to provide payment for the Sutter plant for 2012 at the Commission-approved fixed CPM capacity price, which provides a reasonable opportunity for recovery of Sutter's going-forward costs.⁴¹ The existing CPM tariff provisions allow the ISO

³⁹ Supplemental Affidavit of Alex Makler, Attachment C to January 26 petition, at 5.

⁴⁰ SWP at 14-15.

⁴¹ The fixed CPM capacity price is set forth in Section 43.7.1 of the ISO tariff. The current fixed CPM capacity price stated in the tariff is \$55/kW-year. On December 23, 2011, the ISO filed a settlement agreement in Docket No. ER11-2256 that included a proposal to modify the fixed CPM capacity price to \$67.50/kW-year for the two years following issuance of a Commission

to pay a resource at the fixed CPM capacity rate in 2012 for capacity that will not be needed until a later year – 2013. If it is just and reasonable to pay a resource the CPM capacity price in 2012 for capacity that will not be needed until a future year such as 2013, there is no reason the same payment will not be just and reasonable to compensate a resource that will not be needed until the end of 2017 in the case on the Sutter plant.

In addition, the ISO would go beyond the limited scope of its waiver request if it were to propose a price for the Sutter plant that is different from the fixed CPM capacity price approved by the Commission. Nor does the ISO believe such an expansion of its waiver request would be justified. The Sutter plant should receive the same CPM price as any other resource that is at risk of retirement and that is designated because is needed for reliability due to its operational characteristics.

SWP suggests that compensation of the Sutter plant at the CPM rate will translate to a monthly payment of over \$2.9 million/month, or more than four times the payment that would be made to this resource at the median resource adequacy price.⁴² SDG&E suggests that the CPM payment for the Sutter plant would exceed the current market price for resource adequacy capacity.⁴³ These arguments are erroneous. As an initial matter, the Commission recognized in the CPM order that the CPM price may be different from the resource adequacy

order accepting the settlement. The Commission accepted that uncontested settlement on February 16, 2012. *California Independent System Operator Corp.*, 138 FERC ¶ 61,112 (2012).

⁴² SCE at 10-11.

⁴³ SDG&E at 9.

price.⁴⁴ Further, the ISO notes that it proposes to designate the Sutter plant as CPM capacity for no more than six months in 2012, which would result in CPM capacity payments of only approximately \$17.4 million, or approximately \$1.45 million a month when spread over 12 months. Moreover, because resource adequacy capacity is procured through non-public bilateral agreements, the ISO does not have information on the current costs of resource adequacy capacity or the terms of those contracts.

CMUA/TURN argue that evidentiary proceedings should examine the applicability of the CPM pricing provisions to the Sutter plant under the circumstances described in the ISO's petition.⁴⁵ These commenters not only fail to raise any legitimate issues of material fact that would require a formal hearing, they ignore the fact that CPM designations are voluntary. If any Commission decision on the ISO's request does not authorize the ISO to provide Calpine with the assurance that it will have a reasonable opportunity to recover the costs of the Sutter plant, then it is uncertain whether Calpine would defer the planned retirement of that unit. Stated differently, to the extent the Commission's order in this proceeding creates uncertainty for Calpine, that could affect its decision whether to accept any CPM designation.

F. The ISO's Proposal Does Not Infringe on the Jurisdiction of the CPUC or Other Local Regulatory Authorities

Several commenters claim that the ISO's proposal infringes on the CPUC's responsibility for and jurisdiction over resource adequacy and long-term

⁴⁴ CPM order at P 16 (noting CPM price of \$55/kW-year), P 34 (noting party's argument that \$41/kW-year is in the upper range of resource adequacy prices).

⁴⁵ CMUA/TURN at 21-22.

planning which is the subject of the ongoing Long-Term Procurement Plan (LTPP) proceeding.⁴⁶ They argue that the ISO's January 26 petition prejudices the outcome of the LTPP proceeding and that the LTPP proceeding should be allowed to continue to final adjudication. Certain commenters also allege that the ISO's proposal to secure Sutter is inconsistent with the August 3, 2011 settlement that was filed in the LTPP proceeding.⁴⁷ All of these allegations are groundless.

In approving the ISO's risk of retirement CPM designation provisions, the Commission expressly found that such authority "will not duplicate or interfere with the CPUC's or other local regulatory agencies' jurisdiction."⁴⁸ The Commission stated that the purpose of the risk of retirement category is to allow the ISO to procure needed capacity, as a last resort, in the event that state or local procurement plans do not meet the ISO's operational and reliability needs.⁴⁹ The Commission found that the ISO's proposal to issue CPM designations to resources at risk of retirement will address system resource adequacy concerns that arise when other processes do not provide the resources the ISO needs to maintain reliable operations.⁵⁰ The Commission concluded that "the risk of

⁴⁶ PG&E at 5-6; SDG&E at 3-6; AReM, *et al.* at 7-8; CMUA/TURN at 15-17; Six Cities at 5-6; NCPA at 3-4.

⁴⁷ AReM, *et al.* at 9; Six Cities at 6; CMUA/TURN at 17.

⁴⁸ CPM order at P 126.

⁴⁹ *Id.*

⁵⁰ *Id.*

retirement feature of CPM is an appropriate extension of the CAISO's existing and past backstop procurement authority."⁵¹

The same logic applies to the ISO's proposal to designate Sutter as CPM capacity. Given that the ISO will designate Sutter only as a last resort in the event that state procurement does not result in the procurement of Sutter in a timely manner, there is no basis to find that the ISO's proposal inappropriately infringes on state jurisdiction. CPUC proceedings regarding potential procurement of the Sutter plant are discussed above in Section II.A.

The ISO notes that on February 21, 2012, Administrative Law Judge Peter V. Allen issued in the LTPP proceeding a Proposed Decision on System Track I and Rules Track III of the Long-Term Procurement Plan Proceeding and Approving Settlement (Proposed Decision).⁵² The Proposed Decision rejected Calpine's proposal that the CPUC direct the utilities to engage in intermediate-term solicitations aimed at existing power plants that do not currently have contracts with the utilities.⁵³ The Proposed Decision noted that both the ISO and the CPUC have separate mechanisms to address the risk of power plants shutting down, and that no evidence was submitted in the LTPP proceeding showing that a specific unit was facing a risk of economic shutdown.⁵⁴ The Proposed Decision expressly recognized that the CPUC is addressing the specific issue of Calpine's retirement of the Sutter plant in the CPUC proceeding

⁵¹ *Id.* at P 127.

⁵² The Proposed Decision is available on the CPUC's website at https://www.pge.com/regulation/LongTermProcure2010-OIR/Draft-Decisions/CPUC/2012/LongTermProcure2010-OIR_Draft-Dec_CPUC_20121221_228980.pdf.

⁵³ Proposed Decision at 12-16.

⁵⁴ *Id.* at 15.

on Draft Resolution E-4471.⁵⁵ Thus, if the CPUC adopts the Proposed Decision, the Sutter plant will not be procured through the LTPP process.

Given Sutter's imminent risk of retirement and the ISO's technical studies which show a need for the unit by the end of 2017, the ISO cannot bury its head in the sand and fail to give a CPM designation to Sutter as a last resort in the event that state or local procurement plans do not meet the ISO's operational and reliability needs. The ISO recognizes that the CPUC is seeking to direct jurisdictional utilities to procure Sutter pursuant to Draft Resolution E-4471 and not through the LTPP proceeding. As indicated above and in the January 26 petition, to the extent Sutter is procured in a timely manner pursuant to Draft Resolution E-4471 (or some other procurement mechanism), the ISO will not give the resource a CPM designation. Similarly, in the event the ISO designates Sutter pursuant to the CPM risk of retirement tariff provisions and the resource subsequently is procured pursuant to a CPUC procurement mechanism, the ISO will rescind the CPM designation.⁵⁶ Accordingly, as the Commission found in the CPM order, there is "no conflict or overlap of jurisdiction."⁵⁷

Nor is there any merit to arguments that the ISO is acting in a manner inconsistent with the August 3, 2011 Settlement in the LTPP proceeding (August 3 Settlement). For example, AReM, *et al.* state that all parties to the August 3 Settlement, including the ISO, agreed that there is no scenario that requires new generation authorization for renewable resources for the planning period 2012-

⁵⁵ *Id.* at 15 n.10.

⁵⁶ See January 26 petition at 43-44.

⁵⁷ CPM order at P 126.

20.⁵⁸ Not only is this statement incorrect, it misses the point with respect to Sutter. Section II.B of the August 3 Settlement states that the “results show no need to add capacity for renewable integration purposes above the capacity available in the four scenarios for the planning period addressed in the LTPP cycle (2012-20)” but that the “additional scenario studied by the CAISO did show need.” Thus, the August 3 Settlement expressly recognized that the ISO’s study showed a need for new capacity. Accordingly, the claim of AReM, *et al.* that the ISO agreed there was no scenario that required new generation is incorrect.

In any event, the point raised by AReM, *et al.* is irrelevant with respect to Sutter. Sutter is an existing resource; it is not new generation. Thus, the August 3 Settlement does not on its face support a finding that the Sutter plant is not needed. Indeed, all of the scenarios in the LTPP proceeding assumed that the Sutter plant would continue to be available to meet operational and reliability needs in 2020.⁵⁹ No commenter disputes this fact.

G. There Is No Basis for the Commission to Direct the ISO to Immediately Implement Major Market Reforms

NRG/Dynegy argue that if the Commission grants the waiver, it should condition such acceptance on the ISO implementing reforms to its market that would accomplish objectives comparable to those which the Commission

⁵⁸ AReM, *et al.* at 9. See *also* SWP at 5-6; CMUA/TURN at 15-16 and Attachment A (Declaration of Barbara Barkovich) at 3-6; and SCE at 4-5. The August 3 Settlement is provided as Attachment 3 to Mr. Rothleder’s declaration (Attachment E to the January 26 petition) and is available on the CPUC website at <http://docs.cpuc.ca.gov/efile/MOTION/140823.pdf>. The August 3 Settlement will not become effective until it is approved by the CPUC.

⁵⁹ January 26 petition at 25; Rothleder declaration, Attachment E to January 26 petition, at 20, 23, 39.

imposed on ISO New England.⁶⁰ NRG/Dynegy claim that, in order to avoid a long series of RMR contracts to address potential plant retirements in ISO New England and to avoid the harms that result from *ad hoc* procurement, the Commission ordered ISO New England to implement specific market design and local market power mitigation enhancements, as well as a locational forward capacity market.⁶¹ Specifically, NRG/Dynegy request that the Commission impose the following reforms in California: (1) allow units dispatched at minimum load to set the clearing price; (2) eliminate certain unpriced constraints in the market; and (3) implement a capacity market.⁶²

The requests of NRG/Dynegy – in particular, the request that the Commission order the ISO to implement certain changes to its market power mitigation provisions – go far beyond the scope of this limited waiver filing and, as such, should be rejected by the Commission. The Commission has previously found the specific ISO market design and market power mitigation features to which NRG/Dynegy object to be just and reasonable and has rejected arguments opposing such measures.⁶³ NRG/Dynegy offer no specific evidence that these market design provisions are no longer just and reasonable, and, even if NRG/Dynegy had such evidence, the proper forum to raise the issue would be in a separately filed complaint pursuant to Section 206 of the FPA, not in a protest of an ISO petition for a limited tariff waiver.

⁶⁰ NRG/Dynegy at 4-5.

⁶¹ *Id.* at 4.

⁶² *Id.* at 28.

⁶³ See, e.g., *California Independent System Operator Corp.*, 116 FERC ¶ 61,274 (2006) (conditionally accepting current ISO market design), *order on clarification and reh'g*, 119 FERC ¶ 61,076 (2007).

Further, to the extent NRG/Dynegy are requesting that the Commission unilaterally impose a capacity market in California other than pursuant to a tariff amendment filed by the ISO under Section 205 of the FPA, such a directive would be inconsistent with Commission precedent. In that regard, in approving the Midwest ISO's bilateral contract resource adequacy scheme, the Commission denied requests that it instead direct the Midwest ISO to establish a centralized capacity market such as those adopted in PJM and ISO New England.⁶⁴ The Commission also rejected a one-size-fits-all approach to resource adequacy⁶⁵ as well as arguments that a centralized capacity market is necessary to ensure resource adequacy.⁶⁶

Although the Commission should not mandate major market reforms in this proceeding, the ISO is prepared to consider these types of issues in its stakeholder process if appropriate. As discussed above, the ISO has launched a flexible capacity forward procurement stakeholder process. Stakeholders are free to voice their opinions about a centralized capacity market in that stakeholder process. The ISO is vigilantly monitoring the capacity situation in California to ensure that we will have sufficient capacity in the future to reliably integrate renewable resources and satisfy the ISO's operational and reliability needs generally. The ISO reserves the right to develop and file any appropriate tariff provisions to address system capacity needs in the future.

⁶⁴ *Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,283, at P 376 (2008).

⁶⁵ *Midwest Independent Transmission System Operator, Inc.*, 127 FERC ¶ 61,054, at P 30 (2009).

⁶⁶ *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,060, at P 39 (2008).

In any event, NRG/Dynegy fail to provide any legitimate factual or legal basis for their request. Their claim that there will be a stampede of early retirements is entirely speculative, and they provide no evidence regarding circumstances of specific resources to support their assertion.

Further, NRG/Dynegy's reliance on cost data contained in the 2010 Market Issues and Performance Annual Report (DMM Annual Report) is misplaced. The DMM Annual Report compares the full cost of service (including return on and of capital) of a *brand-new, undepreciated*, hypothetical generating resource to the revenues that such a resource would earn in the ISO markets. NRG and Dynegy ignore the fact that their resources, and the overwhelming majority of the existing fleet of conventional resources, are existing resources that have been around for many years and have undergone depreciation; they are not brand-new, undepreciated resources. All things being equal, the full cost of service of a brand-new resource will be significantly higher than the full cost of service of a comparable existing resource. The appropriate apples-to-apples comparison would be to compare the cost of an existing resource to the revenues that such existing resource is earning through the ISO markets and through resource adequacy contracts. NRG/Dynegy do not (1) provide any financial records for specific existing resources, or (2) show that for existing resources, the combination of a resource adequacy contract along with revenues earned in the ISO markets is insufficient to keep them operational.⁶⁷

⁶⁷ New resources will not be built unless they have a resource adequacy contract that covers their costs.

NRG/Dynegy also fail to support their claim that the revenues that resources such as Sutter can make in the CPUC's resource adequacy market are insufficient to bridge the gap between their costs and the revenues they can earn in the ISO's market is misplaced. Sutter is a low heat rate, economic unit. The owner of Sutter has declared that it is not earning sufficient revenues through the markets to cover its costs. However, when Sutter had a resource adequacy contract, Calpine was not seeking to retire the unit. It is only now, when Sutter does not have a resource adequacy contract, that it is not economically viable for Sutter to remain operational.

Moreover, the circumstances that existed previously in ISO New England are not comparable to those in California, and the cases cited by NRG/Dynegy are not on point. There, the Commission was concerned about the proliferation of RMR agreements with resources located in chronically constrained areas, *i.e.*, load pockets (referred to as Designated Congestion Areas). The Commission found that such RMR agreements adversely affected other market participants because they suppressed market clearing prices, increased uplift payments, and made it difficult for new generators to profitably enter the market because RMR generators were required to offer power under a stipulated cost bid that included stipulated start-up and no-load costs.⁶⁸ To remedy the situation, the Commission directed ISO New England to (1) permit recovery only of going-forward costs in RMR contracts, (2) modify certain aspects of its market power mitigation

⁶⁸ *Devon Power LLC, et al.*, 115 FERC ¶ 61,340, at P 7 (2006); *Devon Power LLC, et al.*, 103 FERC ¶ 61,082, at P 29 (2003).

measures in Designated Congestion Areas, and (3) implement a location-specific capacity requirement in the ICAP or resource adequacy market.⁶⁹

Unlike the situation that existed in ISO New England at the time the aforementioned *Devon Power* orders were issued, the ISO already has a location-specific resource adequacy requirement, and, to the extent load-serving entities do not procure sufficient, effective local capacity resources, the ISO can procure the necessary capacity through its backstop CPM authority. Also, unlike the RMR contracts in ISO New England, resources designated under the CPM mechanism are not required to offer into the market under a Stipulated Bid Cost that includes stipulated start-up and no-load costs. CPM capacity is treated identically to resource adequacy capacity, and there are no cost-based limitations placed on their bids that would act to suppress market prices in constrained areas.

Further, the RMR contracts at issue in ISO New England were intended to address identified reliability problems in constrained local areas. On the other hand, the CPM risk of retirement designation encompasses a much broader scope because it enables the ISO to procure any capacity at risk of retirement that is needed for locational or system-wide operational reliability purposes. The ISO's proposed procurement of Sutter is consistent with the Commission's directives in the *Devon Power* orders because the ISO will be designating Sutter only for a period of time that will provide it with a reasonable opportunity to recover its going-forward costs. On the other hand, ISO New England was

⁶⁹ *Devon Power LLC, et al.*, 103 FERC ¶ 61,082, at PP 31-32.

paying generators their full cost of service under RMR contracts, and the Commission rejected continuation of that practice. Finally, unlike the situation in ISO New England, there is no proliferation of CPM designations.

H. The Proposed Procurement of the Sutter Plant Is Not Unduly Discriminatory

NRG/Dynegy contend that the proposed CPM designation of the Sutter plant due to its risk of retirement is unduly discriminatory. This argument rests first on a factual error. NRG/Dynegy claim that “the CAISO itself identified at least 1,200 additional megawatts with comparable operational characteristics that remain un-contracted through the [resource adequacy] program.”⁷⁰ A review of the cited portion of the January 26 petition, however, proves this to be false. The ISO identified 1,256 MW of flexible resources, including the 525 MW of the Sutter plant, that have not been included in resource adequacy showings in 2012.⁷¹ In addition, the ISO explained that approximately another 500 MW of the 1,256 MW of flexible resources not making a showing in the annual showing are expected to make a showing in monthly resource adequacy showings and a further 188 MW of capacity is the subject of a contract for capacity expansion and is expected to be available over the applicable time frame. This leaves less than 50 MW of flexible, dispatchable capacity that has characteristics comparable to the Sutter plant and which is not under contract.

NRG/Dynegy suggest that the ISO is not justified in treating the Sutter plant as unique because other generators are virtually certain to seek a risk-of-

⁷⁰ NRG/Dynegy at 3.

⁷¹ January 26 petition at 44-45.

retirement CPM designation. Nonetheless, in the nearly three months since the ISO first announced its intent to seek the instant tariff waiver, no other generator has formally declared that it is at risk of retirement in 2012 or followed the requirements for requesting a risk-of-retirement CPM designation set forth in Section 43.2.6 of the ISO tariff. Specifically, Section 43.2.6(5) requires the resource owner to submit to the ISO and the Department of Market Monitoring:

. . . at least 180 days prior to terminating the resource's [Participating Generator Agreement] or removing the resource from PGA Schedule 1, a request for a CPM designation under this Section 43.2.6 and the affidavit of an executive officer of the company who has the legal authority to bind such entity, with the supporting financial information and documentation discussed in the [Business Practice Manual] for Reliability Requirements, that attests that it will be uneconomic for the resource to remain in service in the current RA Compliance Year and that the decision to retire is definite unless CPM procurement occurs

The Commission has made it clear that submission of a false claim that a resource is truly at risk of retirement will subject a resource owner to potential sanctions:

Based on the fact that a market participant is prohibited from submitting false or misleading information to CAISO, the affidavit should be sufficient to establish that a resource cannot continue to operate economically. If the [ISO's] Department of Market Monitoring has reason to suspect that a resource submitted false, inaccurate, or otherwise misleading information in its affidavit, the CAISO tariff requires such a suspected violation to be referred to the Commission for appropriate sanction.⁷²

Thus, the decision to request a risk-of-retirement CPM designation has substantial consequences, and the ISO does not expect any resource owner to make such a request without being prepared to withstand heavy scrutiny that the

⁷² *Id.* at P 132.

decision to retire the resource is “definite.” Calpine, the owner of the Sutter plant, is the only resource owner that has made such a request and subjected itself to such scrutiny. As such, the ISO is justified in treating the Sutter plant as unique and in concluding that there are no similarly situated generating plants that are likely to be the subject of a CPM risk-of-retirement designation request in the near future.

I. The ISO’s Proposed Procurement of the Sutter Plant Is Not Inconsistent with Other Provisions of the ISO Tariff

Several parties argue that the waiver requested in this proceeding contravenes or is inconsistent with other parts of the ISO tariff and should therefore be rejected. CMUA/TURN suggest that the requirements of the resource adequacy related provisions of the tariff should also apply to the ISO’s determination of need under the risk of retirement category.⁷³ Six Cities also assert that the requested waiver contravenes the resource adequacy tariff provisions that dictate the determination of need for future resources based on forecasts that are more limited in time.⁷⁴ SDG&E asserts the waiver would far exceed the expectations set under the resource adequacy requirements.⁷⁵ All three parties point to Section 42.1.6 of the ISO tariff specifically, claiming that it prohibits use of long-term forecasts of demand and generation in determining need for future resources.

These parties erroneously conflate other parts of the ISO tariff with the CPM risk of retirement category in an attempt to inappropriately restrict

⁷³ CMUA/TURN at 9-10.

⁷⁴ Six Cities at 4-5.

⁷⁵ SDG&E at 13-14.

application of the backstop features of the risk of retirement CPM category.

These parties ignore that the Commission has already found that CPM includes protective measures above and beyond those provided through the resource adequacy requirements.

The CPM provisions of the tariff are wholly distinct and separate from the resource adequacy provisions in Section 40 and the separate procurement provisions contemplated in Section 42 of the ISO Tariff. The CPM provisions represent a separate and distinct procurement mechanism, which is intended to serve as a backstop measure to the procurement effectuated through the local regulatory authority resource adequacy requirements. While the CPM was and is intended to work as a complement to the resource adequacy program, it was not intended to function as part of the resource adequacy program. Nor was CPM intended to be one of the steps described in Section 42.1.6 or subject to any limitations in that tariff section. There is no indication anywhere in the ISO tariff or elsewhere -- nor do intervenors cite to any -- that the provisions in Section 42 of the ISO tariff govern CPM designations. Indeed, the CPM mechanism has its own separate triggers as to when resources can be designated as CPM resources. For this reason, the ISO and stakeholders painstakingly developed separate provisions for the risk of retirement CPM designation as set forth in Section 43.

For the same reason, the Commission rejected similar arguments made by intervening parties in the 2010 CPM filing in which the ISO introduced the risk of retirement designation. There, parties opposed the adoption of the risk of

retirement category because it purportedly duplicated or interfered with the existing CPUC resource adequacy program and long-term procurement process; the parties argued that the ISO's backstop authority should be limited to curing short-term deficiencies in meeting resource adequacy requirements or to address major unforeseen events.⁷⁶ The Commission rejected this opposition to the risk of retirement CPM category, stating specifically that:

We conditionally accept, subject to modification, CAISO's proposal to add a new CPM category to procure resources at risk of retirement. Because CAISO is responsible for ensuring the reliable operation of the transmission system under its control, it must have adequate resources available to do so, which we find includes resources that may be needed subject to a risk of retirement CPM designation. While the resource adequacy program provides the primary means for CAISO to ensure that needed resources are available, we believe that the risk of retirement category will provide CAISO with an additional, last resort tool to address reliability needs, particularly as the makeup of generation resources changes over time.

An important element of the risk of retirement CPM category, which is already part of the ISO tariff, is that the ISO's assessment of need can extend beyond the twelve-month period restrictions contained in other parts of the ISO tariff addressing determination of need under the resource adequacy programs or procurement to meet the applicable reliability criteria. Indeed, under the risk of retirement category, in any given year, the ISO can designate a resource under the CPM if the ISO has determined a need not only for the next twelve months but also for the twelve months in the next compliance year. Section 43.2.6 specifically states that the ISO can "designate CPM Capacity to keep a resource in operation that is at risk of retirement during the current RA Compliance Year

⁷⁶ CPM order at PP 87-91.

and that will be needed for reliability by the end of the calendar year following the current RA Compliance Year.” Consequently, the ISO can use a forecast of system need for a time period beyond the next twelve months. As an example, if the ISO receives a risk of retirement notice in January 2012 that fully complies with the requirements of Section 43.2.6, the ISO can conduct a technical of assessment of need as far out as December 2013. That will require the use of a forecast of need that goes well beyond the next-twelve-month restrictions mentioned in Sections 40 and 42 of the tariff and noted by the protesting parties.

It is unreasonable to apply the same restrictions contained in Section 42.1.6 to the provisions in Section 43.2.6 because the risk of retirement CPM category was approved to provide the ISO with additional measures to procure resources to meet its reliability and operational requirements, and not just the Applicable Reliability Criteria in the next year.⁷⁷ But if the ISO had intended to apply such an unreasonable restriction to the authority it sought in Section 43.2.6, it would have stated so in its tariff.⁷⁸ It did not. If SDG&E, CMUA/TURN, and Six Cities had wanted that restriction to apply to Section 43.2.6, they should have requested that the ISO tariff explicitly state that this restriction be applied to Section 43.2.6 in the proceeding accepting that part of the tariff. They did not. Further, if Section 42.1.6 applied to CPM, then the Commission would not have

⁷⁷ CPM order at PP 124-25.

⁷⁸ Section 42.1.6 of the tariff is a subsection of Section 42, which provides for the ISO’s authority to determine whether there adequate facilities in the ISO market to meet the ISO operating & planning reserve criteria. Section 42.1.6 states that in addition to the required annual forecast, the ISO may publish a forecast of the peak demands and generation resources for two or more additional years but that this “forecast would be for information purposes to allow Market Participants to take appropriate steps to satisfy the Applicable Reliability Criteria, and would not be used by the CAISO to determine whether additional resources are necessary.”

been able to approve the existing risk of retirement tariff provisions. There is no basis now for the Commission to force the ISO to apply that restriction to the CPM risk of retirement category.

In any case, neither the restriction in Section 42.1.6 nor any restrictions in the resource adequacy provisions of the tariff can apply to Section 43.2.6 because these restrictions would essentially eliminate the purpose and effectiveness of the backstop measures. Applying the same rules for determination of need in the resource adequacy provisions to the determination of need in the risk of retirement CPM category would render the risk of retirement backstop measure ineffective. There are other tariff provisions regarding the CPM category that provide the ability to backstop for deficiencies in the resource adequacy programs over the same time period contemplated in that context. For example, Sections 43.2.1 and 43.2.2 permit the ISO to designate resources under CPM for deficiencies in meeting the resource adequacy requirements by either specific scheduling coordinators or collectively on the system. These assessments are made on the basis of the same rules applied under the resource adequacy programs. But if the same rules that apply in determining need under the resource adequacy requirements applied in risk of retirement, the ISO would be prohibited from ever backstopping the loss of a resource, because the ISO could never find a deficiency in a criterion shown to be proven already. Sections 43.2.1 and 43.2.2 already test whether the resource adequacy criteria have been met. The very reason for adding the new risk of retirement CPM category was to provide the ISO with the authority to backstop for capacity

deficiencies not met by the resource adequacy and applicable reliability criteria requirements but still needed for the ISO to operate the system reliably. This purpose would not be met if the restriction in Section 42.1.6 were to apply to Section 43.2.6.

Furthermore, the ISO is not seeking to act under Section 42 of the tariff and therefore it did not seek to establish the need for the Sutter plant based on its finding that additional resources are necessary to meet the Applicable Reliability Criteria. Rather, the ISO's determination of need was based on a production study assessment of future reliability and operational needs. Again, this type of assessment of need is already contemplated under Section 43.2.6, which states that the ISO can conduct "technical assessments" to project that the resource will be needed for reliability purposes, either for its locational or operational characteristics. That assessment is not restricted to the limited determination of a gap in meeting the Applicable Reliability Criteria. Indeed, the ISO defined further in the Business Practice Manual for Reliability Requirements the types of studies it may conduct to make this determination of need. As described in the ISO's December 6, 2011 report on the need for Sutter, the ISO's production studies fall squarely within the scope of studies contemplated to determine need for risk of retirement.⁷⁹

Separately, NRG/Dynegy claim that the ISO lacks the authority to designate Sutter because the designation fails to meet the requirements of ISO tariff Section 43.2.6(4), which requires that for a risk of retirement designation "no

⁷⁹ December 6 ISO report, Attachment D to January 26 petition, at 5-6; Rothleder declaration, Attachment E to January 26 petition, at 7-8, 16-17, 29.

new generation is projected by the ISO to be in operation by the start of the subsequent RA Compliance Year that will meet the identified reliability need.”⁸⁰ NRG/Dynegy assert that not only does the ISO’s analysis fail to support a need for the Sutter plant by 2013, it is possible that new generation can be brought on-line prior to the 2017/2018 period which could displace the need for Sutter.⁸¹

Contrary to this claim, the ISO does not need a waiver of Section 43.2.6(4) to designate Sutter. As discussed in the January 26 petition and in Mr. Rothleder’s declaration,⁸² the ISO’s analysis identifying the need for Sutter took into account new generation that is expected to come on-line between 2013 and 2018. Thus, the ISO’s study not only satisfied – but went beyond – the literal requirements of Section 43.2.6(4). The ISO’s study shows a need for more than 3,500 MW of capacity, in addition to Sutter, as early as the end of 2017..⁸³ NRG/Dynegy do not acknowledge that the ISO’s analysis in fact took into account whether new generation might eliminate the need for Sutter, nor do NRG/Dynegy attempt to rebut any of the ISO’s study assumptions regarding new capacity additions in the 2013-2018 timeframe.

J. The ISO Is Prepared to Provide the Commission with Status Reports on Its Stakeholder Process for Long-Term Capacity Procurement

Exelon requests that the ISO provide monthly status reports to the Commission regarding the ISO’s stakeholder process for long-term flexible

⁸⁰ NRG/Dynegy at 25-26.

⁸¹ CPM order at 26.

⁸² January 26 petition at 28-32; Rothleder declaration, Attachment E to January 26 petition, at 22-26, 31-39.

⁸³ Waiver Petition at 3.

capacity procurement as well as on the LTPP and resource adequacy proceedings pending before the CPUC.⁸⁴ The ISO does not believe it is appropriate to require the ISO to provide regular updates to stakeholders regarding the status of ongoing CPUC proceedings, in particular the CPUC's LTPP and resource adequacy proceedings. The ISO is only one of numerous participants in the CPUC proceedings and thus is not in a unique position to provide information regarding them. Indeed, Exelon is able to intervene or monitor those proceedings if it desires. In addition, these proceedings may involve some issues which are not within the jurisdiction of the Commission or which the ISO is not actively engaged.

However, the ISO is willing to provide status reports to the Commission on the stakeholder process for long-term flexible capacity procurement. The ISO is in a unique position to provide information on this stakeholder process. The ISO believes, however, that monthly status reports would be overly burdensome without providing the Commission with useful additional information. Therefore, the ISO proposes to file quarterly status reports on the stakeholder process for long-term flexible capacity procurement with the Commission for informational purposes, with the ISO filing its initial status report in the quarter that follows the date on which the Commission issues an order in this proceeding on the January 26 petition.

⁸⁴ Exelon at 5-6.

III. Conclusion

For the reasons explained above, the Commission should grant the ISO's January 26 petition for tariff waiver as filed in this proceeding. Failure to grant this waiver request could result in the loss of a resource that the ISO projects is needed for operations planning purposes and could result in significant adverse consequences for electric reliability in California.

Respectfully submitted,

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Dated: February 24, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the above-referenced proceeding, 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 24th day of February, 2012.

Is/ Anna Pascuzzo

Anna Pascuzzo