

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

CXA La Paloma, LLC)	
)	
v.)	Docket No. EL18-177-001
)	
California Independent System Operator Corporation)	
)	

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE CALIFORNIA
INDEPENDENT SYSTEM OPERATOR CORPORATION TO SUPPLEMENT IN
SUPPORT OF REQUEST FOR REHEARING**

The California Independent System Operator Corporation (CAISO)¹ files this motion for leave to answer and answer to the “Supplement in Support of Request for Rehearing” submitted by CXA La Paloma, LLC (La Paloma) in the captioned proceeding on July 18, 2019 (Supplement to Rehearing Request).² As explained below, the Commission should find the Supplement to La Paloma’s rehearing request is impermissible procedurally and has no substantive merit. Long-standing Commission precedent disallows a supplement to a request for rehearing where the supplement is submitted after the 30-day deadline for filing such requests mandated by the Federal Power Act (FPA). Even if the

¹ Capitalized terms not otherwise defined herein have the meanings set forth in Appendix A to the CAISO tariff.

² The CAISO submits this filing pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R., §§ 385.212, 385.213. The Commission’s Rules do not contemplate supplements to rehearing requests. To the extent the Commission finds that its authorization is required to permit the CAISO to answer La Paloma’s Supplement to Rehearing Request, the CAISO respectfully requests such authorization pursuant to Rule 212. The Commission should accept the answer because it provides information to assist the Commission in its consideration of this matter, clarifies the issues involved, and ensures a complete and accurate record. See, e.g., *Appalachian Power Co.*, 161 FERC ¶ 61,070, at P 15 (2017); *Mich. Elec. Transmission Co., LLC*, 106 FERC ¶ 61,064, at P 3 (2004); *Duke Energy Oakland, LLC*, 102 FERC ¶ 61,093, at P 10 (2003); *Carolina Power & Light Co.*, 97 FERC ¶ 61,048, at 61,278 (2001). Therefore, good cause exists for the Commission to accept the answer.

Commission were to accept the Supplement to Rehearing Request – which it should not – the Commission should find that La Paloma’s supplemental arguments are without merit and provide no support for reversing the Commission’s denial of La Paloma’s complaint. La Paloma argues that the CAISO agrees that “inadequate revenue” for resources is “causing CAISO to increase reliance on short-term, non-competitive capacity procurement mechanisms such as RMR contracts and backstop procurement through CPM.” This is not correct. The evidence shows that the CAISO’s use of Reliability Must Run (RMR) contracts and its Capacity Procurement Mechanism (CPM) has significantly decreased in 2019, contrary to the claims of La Paloma.

I. Background

On June 20, 2018, La Paloma filed an FPA section 206 complaint against the CAISO in this proceeding in which it claimed that the resource adequacy regime in the region based on bilateral procurement by load-serving entities is unjust, reasonable, and unduly discriminatory. La Paloma argued that the Commission should direct the CAISO to replace the existing resource adequacy provisions of the CAISO tariff with a centralized capacity market and to implement a transitional payment mechanism to funnel additional revenues to resources that had not been found to be needed for reliability. The CAISO submitted an answer to this complaint on August 24, 2018 (August 24 Answer).

The Commission issued an order denying La Paloma's complaint on November 19, 2018.³ On December 19, 2018, La Paloma filed a request for rehearing of the November 19 Order. La Paloma filed the Supplement to Rehearing Request on July 18, 2019, almost seven months after the deadline for requests for rehearing of the November 19 Order.

II. Answer

A. The Commission Should Reject the Supplement Because La Paloma Submitted It After the 30-Day Deadline for Filing Requests for Rehearing of the November 19 Order

Section 313(a) of the FPA requires that any requests for rehearing must be filed within 30 days after the issuance of the subject order, and the Commission has recognized that this statutory limitation prevents it from considering requests for rehearing filed more than 30 days after issuance of a Commission order.⁴

Long-standing Commission precedent further provides that, "Any subsequent filing supplementing or revising [a request for rehearing] is in essence a new request for rehearing and thereby precluded under Section 313(a) of the Act."⁵ The Commission has explained that it "simply ha[s] no

³ *CXA La Paloma, LLC v. Cal. Indep. Sys. Operator Corp.*, 165 FERC ¶ 61,148 (2018) (November 19 Order).

⁴ 16 U.S.C. § 825l(a) (permitting any party "aggrieved by an order issued by the Commission in a proceeding under this Act . . . [to] apply for a rehearing within thirty days after the issuance of such order"); *San Diego Gas & Elec. Co., et al.*, 138 FERC ¶ 61,091, at P 9 (2012) ("The courts have repeatedly recognized that the time period within which a party may file a petition for rehearing of a Commission order is statutorily established at 30 days by section 313(a) of the FPA and that the Commission has no discretion to extend that deadline. Accordingly, the Commission has long held that it lacks the authority to consider requests for rehearing filed more than 30 days after issuance of a Commission order." (citations omitted)).

⁵ *Borough of Weatherly, Pa.*, 32 FERC ¶ 61,398, at 61,892 (1985).

statutory authority to accept such late submissions, even when filed in support of timely filed requests for rehearing.”⁶

Orders on more recent attempts to supplement rehearing requests reaffirm this principle, holding that “Commission precedent is clear that untimely supplements to timely filed requests for rehearing, *i.e.*, supplements filed after the expiration of the statutory 30-day period, will be rejected.”⁷ For these reasons, the Commission consistently has rejected untimely supplements to requests for rehearing.⁸

La Paloma submitted its Supplement to Rehearing Request more than half a year after the 30-day deadline for requests for rehearing of the November 19 Order. Therefore, in accordance with the precedent discussed above, the Commission should reject the Supplement.

La Paloma does not even acknowledge this adverse precedent much less attempt to reconcile it with its request that the Commission accept the Supplement to Rehearing Request for filing. The only precedent La Paloma references to support its filing are two Commission orders accepting answers to

⁶ *CMS Midland, Inc.*, 56 FERC ¶ 61,177, at 61,623 (1991). See also *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at P 9 & n.15 (2018) (providing same rationale for not accepting late-filed supplement to request for rehearing).

⁷ *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,173, at P 13 (2018) (quoting *Tres Palacios Gas Storage LLC*, 162 FERC ¶ 61,255, at P 8 (2018), and *Tex.-N.M. Power Co. v. El Paso Elec. Co.*, 107 FERC ¶ 61,316, at P 22 (2004)).

⁸ See, e.g., *Old Dominion Elec. Coop.*, 154 FERC ¶ 61,155, at P 8 (2016) (“We reject ODEC’s supplemental rehearing request because it was filed more than 30 days after the issuance of the June Order”); *La. Pub. Serv. Comm’n v. Entergy Services, Inc.*, 112 FERC ¶ 61,184, at P 7 (2005) (“Because parties seeking rehearing are not permitted to file later, supplemental pleadings to their requests for rehearing, we will reject the Retail Regulators’ notice and the Louisiana Commission’s response.”).

protests.⁹ These orders are not on point. Commission precedent allowing answers to protests for good cause is irrelevant to the issue of whether to accept the Supplement to Rehearing Request long after the 30-day statutory deadline for rehearing requests. The Commission must reject La Paloma's untimely Supplement to Rehearing Request.

B. The Claims in La Paloma's Supplement to Rehearing Request Lack Merit and Do Not Support Granting La Paloma's Complaint

Even assuming, solely for the sake of argument, that the Commission were to accept the time-barred Supplement to Rehearing Request, La Paloma's claims are inaccurate and do not support reversal of the Commission's decision to reject La Paloma's complaint.

The Commission properly rejected the complaint because La Paloma did not satisfy its burden under FPA section 206 to demonstrate that the CAISO tariff is unjust, unreasonable, or unduly discriminatory or preferential. The Commission found that the complaint had numerous legal and factual deficiencies, which the Commission discussed at length in the November 19 Order.¹⁰ Even if the claims made by La Paloma in its Supplement to Rehearing Request were accurate, they would not cure the numerous deficiencies in the complaint and support a reversal of the Commission's November 19 Order.

⁹ Supplement to Rehearing Request at 2 n.5 (citing *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,165, at P 24 (2014), and *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,031, at P 10 (2003)).

¹⁰ November 19 Order at PP 69-78.

Moreover, the claims made by La Paloma in its Supplement are not accurate. La Paloma mischaracterizes selected statements in a tariff amendment the CAISO filed on April 22, 2019 to enhance the reliability must-run (RMR) process and RMR Contract (April 22 Tariff Amendment).¹¹ The heart of La Paloma's argument is that statements in the April 22 Tariff Amendment show that the CAISO now agrees that "inadequate revenue" is "causing CAISO to increase reliance on short-term, non-competitive capacity procurement mechanisms such as RMR contracts and backstop procurement through CPM."¹² This is not correct. In fact, the evidence shows that the CAISO's use of RMR and CPM has significantly decreased in 2019, contrary to the claims of La Paloma. In the April 22 Tariff Amendment, the CAISO explained that the current 260.2 MW under RMR contracts is far less than when La Paloma filed its complaint:

In recent years, the CAISO has used the RMR authority and customized the *pro forma* RMR Contract to obtain voltage support service from AES Huntington Beach synchronous condensers during the 2013-2017 period. More recently, the CAISO designated three Calpine resources (Metcalf, Feather River and Yuba City) for reliability service beginning in 2018 to ensure their continued availability to meet local reliability needs, with two of the three Calpine resources still under an RMR contract. Today, the CAISO has only 260.2 MW of capacity under RMR contracts. The CAISO has identified infrastructure solutions in its annual transmission planning process that will allow the CAISO to terminate all of these RMR contracts once the solutions are placed in service. The CAISO did not enter into RMR contracts with any new units for

¹¹ The CAISO filed the April 22 Tariff Amendment in Docket No. ER19-1641-000.

¹² Supplement to Rehearing Request at 6.

2019 and terminated its RMR Contract with Metcalf following the end of the 2018 Contract Year.¹³

The CAISO also notes that in its complaint La Paloma stressed the CAISO had over 1,000 MW of CPM capacity.¹⁴ The CAISO notes that it has not procured any annual CPM capacity in 2019. Thus, La Paloma's claims that the CAISO is increasing its reliance on backstop procurement because units are purportedly receiving insufficient revenues is unsustainable. The significant decrease in backstop procurement confirms the CAISO's prior statements that the RMR and CPM designations for 2018 were "unique and transitional in nature" just as the Commission found them to be.¹⁵

La Paloma points to a CAISO statement about the potential future use of its RMR authority to address flexibility and resilience needs as somehow undercutting the CAISO's explanation of how its existing tariff allows it to maintain reliability.¹⁶ La Paloma mischaracterizes the CAISO's April 22 Tariff Amendment by claiming that "one purpose of the proposed amendments is to increase use of non-competitive capacity procurement."¹⁷ In the April 22 Tariff Amendment, the CAISO sought clarification that the CAISO's RMR provisions

¹³ April 22 Tariff Amendment transmittal letter at 24. In its complaint, La Paloma noted that the CAISO entered into RMR contracts for approximately 700 MW of capacity in November 2017 and had indicated its intent to enter into RMR contracts for approximately an additional 800 MW. La Paloma Complaint at 33-34. In this proceeding, the CAISO indicated that the total RMR procured by the CAISO for 2018 was 853.36 MW. CAISO Motion for Leave to File Answer and Answer, Docket No. EL18-177 at 12 (Sept. 10, 2018). For 2019, it is only 260.2 MW.

¹⁴ La Paloma Complaint, Exhibit JT/JC-9. The exhibit noted that the CAISO had issued 1,055 MW of annual CPM designations for 2018.

¹⁵ November 19 Order at P 75.

¹⁶ Supplement to Rehearing Request at 6-8.

¹⁷ *Id.* at 6.

and the *pro forma* RMR Contract is not limited solely to meeting local reliability needs but can be used to meet all reliability needs. This is consistent with the CAISO's existing RMR tariff provisions, which state that "[i]n addition to the Local Capacity Technical Study under 40.3.1, the CAISO may perform additional technical studies, as necessary, to ensure compliance with Reliability Criteria."¹⁸ The CAISO simply sought clarification that "the CAISO tariff authorizes the CAISO to enter into RMR contracts to meet any NERC, WECC, or CAISO established reliability requirements that otherwise cannot be met without the designated resources."¹⁹ This was merely an effort to ensure that the CAISO has a diverse range of tools to address grid reliability needs should they arise. As the CAISO explained, "RMR must be available and fully effective as a 'last resort' mechanism to address all types of reliability needs that arise, not just local needs."²⁰

Thus, the contradiction alleged by La Paloma between the CAISO's August 24 Answer and the April 22 Tariff Amendment does not exist. La Paloma reads far too much into the CAISO's statements, and the Commission should reject La Paloma's skewed, misinterpretation of the CAISO's filing.

III. Conclusion

For the foregoing reasons, the Commission should find that the Supplement to Rehearing Request is precluded by long-standing Commission precedent. If the

¹⁸ April 22 Tariff Amendment at 97. As defined in Appendix A of the CAISO tariff, Reliability Criteria are "Pre-established criteria that are to be followed in order to maintain desired performance of the CAISO Controlled Grid under Contingency or steady state conditions."

¹⁹ *Id.* Neither the existing nor proposed tariff language explicitly mentions using RMR to meet system or flexible capacity needs.

²⁰ *Id.* at 99.

Commission accepts the Supplement to Rehearing Request, the Commission should find that La Paloma's supplemental arguments have no substantive merit and do not support reversal of the Commission's order denying La Paloma's complaint.

Respectfully submitted,

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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, pursuant to the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, CA this 2nd day of August, 2019.

/s/ Martha Sedgley
Martha Sedgley

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