

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

**California Independent System) Docket No. ER18-641-000
Operator Corporation)**

**MOTION FOR LEAVE TO SUBMIT ANSWER TO PROTESTS AND ANSWER
TO PROTESTS AND COMMENTS OF THE CALIFORNIA INDEPENDENT
SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (CAISO) respectfully submits this motion for leave to answer and answers¹ the protests and comments submitted in this proceeding.²

I. SUMMARY OF TARIFF FILING

On January 12, 2018, the CAISO filed tariff revisions to incrementally improve the risk of retirement (ROR) provisions of its capacity procurement mechanism (CPM) so it can more efficiently and effectively procure resources at risk of retirement that are needed to sustain grid reliability and resiliency (ROR CPM Tariff Amendment). While retaining the basic structure of the existing ROR CPM process, the CAISO sought to address the problems created by the inability of resource owners to learn whether they are eligible to receive ROR CPM designations for the upcoming resource adequacy (RA) compliance year until the

¹ 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 and 385.213. Capitalized terms not otherwise defined herein have the meanings set forth in appendix A to the CAISO tariff. References to section numbers are references to sections of the CAISO tariff as revised by the tariff amendment filed in this proceeding, unless otherwise specified.

² Calpine Corporation (Calpine) filed comments. The following parties filed protests: Southern California Edison Company (SCE); the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, Six Cities); the CAISO Department of Market Monitoring (DMM); the California Public Utilities Commission (CPUC); San Diego Gas & Electric Company (SDG&E); and Pacific Gas & Electric Company (PG&E).

end of the current year, at the earliest. The current schedule not only prevents resource owners from making timely and informed planning, maintenance, capital expenditure, and potential decommissioning decisions, it can force resource owners requesting an ROR CPM designation for resources that ultimately are not needed for reliability to operate such units uneconomically for a longer period of time than is necessary before they can begin taking the steps retire their units.

To address this and other issues, the CAISO proposed to establish two annual windows in which resource owners may request ROR CPM designations. The first request window would allow the CAISO to indicate earlier in the year its intent to designate a resource for the upcoming RA compliance year if it meets certain requirements. In addition to facilitating improved and financially justifiable planning and decision-making by resource owners, earlier notification of resource needs can also help prevent unnecessary over-procurement by load serving entities (LSEs), obviate the need for CAISO backstop procurement, and promote more orderly retirement for resources that are not needed to maintain reliability.

The CAISO also proposed to eliminate one of the two existing tariff-based compensation options for ROR CPM resources – compensation up to the CPM soft offer cap without requiring cost justification. The CAISO retained, without modification, the second compensation method specified in the CAISO tariff, which calculates a CPM resource's price based on the longstanding formula for determining the annual fixed revenue requirement of a reliability must-run (RMR) unit as set forth in Schedule F of the *pro forma* RMR Agreement in Appendix G of the tariff.

II. SUMMARY OF RESPONSE TO COMMENTS AND PROTESTS

A number of commenters and protesters state that they support or do not oppose the tariff revisions in part.³ Even in cases where these parties request that the tariff revisions be modified or rejected, their comments and protests raise no issues that would justify such action.

The comments and protests revolve around three main themes: (1) some parties urge the Commission to do nothing to alleviate the problems resources at risk of retirement are facing, or to delay doing anything at this time and wait for the uncertain outcome of processes ongoing in other forums; (2) parties, which did not raise the specific arguments during the underlying stakeholder process, now urge the Commission to change the existing, Commission-approved fixed cost compensation methodology for CPM resources – which the CAISO does not propose to change – to pay them less compensation than they are entitled to receive under the existing tariff and deny them a reasonable opportunity to recover their prudently incurred costs; and (3) some parties rehash arguments that the CAISO rebutted in its transmittal letter that the first request window would unduly disrupt bilateral procurement under the RA program, or that resources will seek RMR designations rather than ROR CPM designations. None of the three arguments justify rejecting the proposed tariff revisions.

First, in its transmittal letter for the ROR CPM Tariff Amendment, the CAISO clearly articulated some of the specific problems facing resources that are at risk of retirement and potentially seeking ROR CPM designations and provided

³ See Calpine at 3; DMM at 1, 16-17; SCE at 2; Six Cities at 1.

real-life examples.⁴ The CAISO explained why action to address these problems is needed now. In its comments on the CAISO's draft final proposal DMM stated:

The Proposal allows resources to know earlier in the year whether the [sic] will receive a risk-of-retirement CPM. The proposed earlier designations makes the risk-of-retirement CPM a more viable option for resources considering retirement. This is an improvement over the current risk-of-retirement process which occurs too late in the year to be of practical use.⁵

Some of the commenters and protesters acknowledge these problems, either explicitly or implicitly, and do not oppose some of the specific measures the CAISO proposes to address them.⁶

The remaining protesters do not even acknowledge the discussion in the transmittal letter regarding the need for the revised ROR CPM framework, let alone attempt to rebut it. Further, they mischaracterize the CAISO's proposal,⁷ exaggerate its impacts, ignore clear tariff language that disproves their specific claims, and gloss over arguments in the CAISO's transmittal letter that debunk their claims that the proposal will unduly interfere with bilateral procurement,

⁴ Transmittal letter for ROR CPM Tariff Amendment at 12-15.

⁵ Comments on the Capacity Procurement Mechanism Risk of Retirement Process Enhancements—Draft Final Proposal, Department of Market Monitoring, October 4, 2017, Attachment E to the ROR CPM Tariff Amendment.

⁶ Calpine states that “[t]he CAISO Filing and its proposed modifications of the ROR CPM provisions address a real and growing structural problem with capacity procurement in California, that is contributing to premature retirements of existing conventional generation resources and that is presenting reliability challenges to the CAISO. Calpine at 11. SCE “agrees with the CAISO that there is a need for the Capacity Procurement Mechanism Risk-of-Retirement vehicle and the schedule timing, resource vetting, and cost justification components, as proposed, are appropriate given the need.” SCE at 2. DMM “supports expanding the CAISO's authority to issue ROR CPMs on the earlier timeline under the process established in the CAISO's filing.” DMM at 1. Six Cities “generally do not oppose most elements of the CAISO's filing.” Six Cities at 1.

⁷ For example, PG&E states that to be eligible for a Type 2 designation, a resource must demonstrate that its costs are above the CPM soft-offer cap. PG&E at 10. There is no such requirement. Proposed tariff sections 43A.2.6 (g) and (h).

result in increased payments to other resources, and not encourage resource owners to seek ROR CPM designations instead of RMR designations. Some protesters also object to a purportedly “piecemeal” solution to the risk of retirement problem, claiming that no remedy short of a complete re-examination of the structure of the RA program and the risk of retirement problem should be considered.⁸

The CAISO has demonstrated, however, that its targeted improvements to the ROR CPM program strike a reasonable balance between the diverse considerations raised by stakeholders. These balanced, incremental tariff revisions will help address an identified need and are structured to avoid undue interference with RA programs. The CAISO does not disagree with protesters that broader RA reforms to address the risk-of-retirement problem are necessary. However, the CAISO never intended for the underlying stakeholder process or the proposed tariff revisions to be a complete solution to the entire risk of retirement problem or a substitute for perceived deficiencies in the RA program. The carefully tailored tariff amendments were simply intended to improve the

⁸ In joint comments filed on October 30, 2017 regarding the CPUC’s *Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Local and Flexible Procurement Obligations for the 2019 and 2020 Compliance Years* (Joint IOU Comments), PG&E, SCE, and SDG&E stated that “[t]he recent increase in proposed reliability must-run (“RMR”) contracts for gas-fired generators demonstrates the structure of the current RA program is failing to secure the operation of resources the California Independent System Operator Corporation (“CAISO”) deems necessary for reliability during this transition to a cleaner resource fleet. For these reasons, the joint IOUs believe it is appropriate to begin discussions in this proceeding on the future of RA in which the CAISO market structure, the RA design, and the state’s policy objectives can then be considered simultaneously to arrive at an appropriate outcome.” Joint IOU Comments at 3, available at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M198/K355/198355179.PDF>. However, they stressed that “[t]his is a significant undertaking and will take time to accomplish.” *Id.*

existing ROR CPM process and add a potential option for resources at risk of retirement.

Some protesters suggest that it is inappropriate to address a symptom and that the sole focus should be on resolving the root cause(s) of the problem.⁹ The CAISO respectfully disagrees. As many protesters themselves admit, any fundamental examination of RA reform and a long-term solution to the risk of retirement problem will require a significant amount of time, proceedings at the CPUC and at the CAISO, and extensive vetting with all stakeholders. On the other hand, the problem the CAISO seeks to address in this filing exists now and arises from the design of the current ROR CPM framework. The CAISO can mitigate this problem now by simply amending its tariff and improving the ROR CPM process without the need for extensive reforms and further proceedings. Any such further measures are beyond the scope of this targeted proceeding.

It would be unreasonable and callous for the CAISO to bury its head in the sand and ignore a clearly demonstrated problem it can help address with targeted tariff amendments. Resources at risk of retirement should not be required to operate uneconomically, defer needed major maintenance, or incur major maintenance costs they cannot recover because market prices are low, while awaiting the uncertain outcome of complex and highly contested proceedings and stakeholder processes in which parties statewide will debate the future structure of the RA program and the CAISO's backstop procurement mechanisms. The CAISO's proposal does not delay or prevent broader reforms,

⁹ SDG&E at 5.

and it addresses an existing problem to the extent practicable without having significant adverse effects on the existing RA program.

Second, protesters ignore that the CAISO does not propose to change the existing fixed cost-based CPM compensation methodology that the Commission approved in 2015, which utilizes the formula in Schedule F of the *pro forma* RMR Agreement and is based on net plant in service, does not contain specific provisions providing for the separate recovery of planned and unplanned capital costs and repair costs that occur during the term of the designation, and does not credit back net revenues earned in the CAISO markets.¹⁰ Thus, their arguments are beyond the scope of this proceeding. Any changes to the existing methodology can only be pursued under section 206 of the Federal Power Act (FPA), not in protests to the CAISO's FPA Section 205 proposal regarding unrelated changes to the ROR CPM process.

The preference of some protesters for ROR CPM compensation based on resources' going-forward fixed costs ignores the Commission's findings in prior CPM orders that CPM pricing based on going-forward costs can deny resources a reasonable opportunity to recover their fixed costs, including costs associated with long-term maintenance and necessary capital improvements and repairs to address reliability needs.¹¹ They also ignore Commission precedent that compensation for any mandatory backstop designation – which, under the

¹⁰ See *Cal. Indep. Sys. Operator Corp.*, 153 FERC ¶ 61,001, at PP 14, 29 (2015) (October 2015 Order); Transmittal letter for ROR CPM Tariff Amendment at 10-11, 33-34.

¹¹ *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,211 at PP 57-59 (2011) (March 2011 Order).

CAISO's proposal, would include ROR CPM designations – must be based on a resource's full fixed costs, not its going-forward fixed costs.¹²

Similarly, protesters' demands to change the existing CPM compensation methodology to "claw back" net market revenues, as is done under the *pro forma* RMR Agreement (but not in Schedule F, *i.e.*, the only RMR provision that applies to CPM), ignore key differences between RMR and CPM. Unlike ROR CPM resources, RMR units, under provisions of the RMR Agreement outside of Schedule F, can recover costs associated with planned and unplanned capital expenditures and repairs that arise during the term of the agreement. There are no similar provisions specifically allowing ROR CPM (or other CPM) resources to recover such costs that they incur during the term of their designation. Requiring ROR CPM resources to credit back net market revenues without permitting them to recover similar costs would not afford them parity of treatment with RMR resources, nor would it provide them with any opportunity to recover planned and unplanned capital costs (including major maintenance capital costs) and repair costs they incur during the term of their ROR CPM designation because such costs are not included in and recoverable through Schedule F.¹³ Retaining net market revenues, if any, is the only avenue CPM resources receiving Schedule F fixed cost-of-service compensation have to cover such costs.

¹² See discussion *infra* at section IV.B of this answer.

¹³ See *id.* The CAISO notes that it has commenced a new stakeholder initiative to review RMR and CPM, including considering ways to better align or merge the two and, in particular, to adopt separate provisions similar to those in the RMR Agreement to allow CPM resources to recover planned and unplanned capital costs and repair costs that they incur during the term of their designation. See http://www.aiso.com/informed/Pages/StakeholderProcesses/ReviewReliabilityMust-Run_CapacityProcurementMechanism.aspx. Stakeholders have also raised the aforementioned CPM pricing issues in that forum, and the CAISO can consider them there.

Third, in the transmittal letter the CAISO addressed protesters' claims that the CAISO's proposal will inappropriately front-run the RA process or that suppliers will seek RMR agreements instead of ROR CPM designations because ROR CPM purportedly presents a bigger hurdle. As discussed below, protesters offer little, if any, new information or arguments to support their claims.

Although Calpine does not object to the proposed tariff changes, it asserts that the measures the CAISO proposes to address front-running are so exacting that they may discourage resources from participating in the first request window.¹⁴ The CPUC, PG&E, and SDG&E, on the other hand, contend that the measures are so ineffectual that they will fail to mitigate the risks posed by front-running.¹⁵ In making these extreme arguments, these parties fail to recognize that the CAISO's proposal strikes a reasonable balance between their positions and were amply justified in the ROR CPM Tariff Amendment.

Further, PG&E's claim that bidders in LSEs' solicitations of RA resources will adjust their bids in light of a competitor's "conditional" ROR CPM designation¹⁶ ignores the safeguards the CAISO has included in its proposal. Under the proposed tariff provisions, the CAISO will not publish the compensation requested by a conditionally designated ROR CPM resource.¹⁷ Further, for a resource to receive a conditional ROR CPM designation in the first request window, it must be the only resource in existence by the start of the

¹⁴ Calpine at 3, 7-9.

¹⁵ CPUC at 7-9; PG&E at 8-9; SDG&E at 3-4.

¹⁶ PG&E at 8-9.

¹⁷ Also, a resource cannot propose to the Commission and will not be compensated at a price higher than its offer price in the request window. Proposed tariff section 43A.2.6(i).

designation term that can meet the reliability need, which means that other resources are not competing with it. In fact, a conditional designation before RA procurement commences will allow LSEs to procure the resource in lieu of other resources that do not meet specific reliability needs, thus avoiding unnecessary over-procurement, eliminating the need for CAISO backstop procurement, and reducing total procurement costs.

PG&E states that even if an LSE is given the opportunity to procure a resource, the LSE is likely to focus on minimizing procurement costs instead.¹⁸ If PG&E is correct that LSEs are unlikely to procure a resource, it follows that the CAISO's proposal does not result in any front-running of the bilateral procurement process. Further, any concerns that the resource may have market power are mitigated because the resource will be compensated based on the fixed cost-of-service formula that the Commission has found to be just and reasonable.

The CPUC objects to the proposed changes to the attestation requirement, hypothesizing that resources can sell token amounts of RA for a partial year to avoid the requirement to retire while gaining a risk-free opportunity to front-run the RA bilateral process.¹⁹ However, as explained below, the machinations that concern the CPUC would violate the attestation requirement the CAISO has proposed in several respects, potentially subjecting the resource owner to penalties for submitting false information. The CPUC's argument also

¹⁸ PG&E at 9.

¹⁹ CPUC at 9.

illogically assumes that a resource that is earning insufficient revenues to remain operational and that is not needed for reliability will nevertheless seek out every loophole it can to remain in service and continue earning insufficient revenues.²⁰ In short, the circumstances that concern the CPUC are not only unrealistic, they are adequately addressed by the CAISO's proposal.

The claims by PG&E and SDG&E that suppliers are likely to seek RMR designations rather than ROR CPM designations²¹ ignores the differences between RMR and ROR CPM procurement, which the Commission has recognized and which the ROR CPM Tariff Amendment does not change. RMR applies to reliability needs in the current or upcoming RA compliance year, while ROR CPM applies to reliability needs in the following year and serves as a “bridge” to the year a resource is needed.²² Because the two are not interchangeable, resource owners cannot pick and choose between RMR and ROR CPM.

For these reasons and as explained below, the Commission should reject the protests and accept the ROR CPM Tariff Amendment as filed.

²⁰ DMM explained in its most recent Annual Report on Market Issues & Performance that its analysis indicated that “net revenues earned through the market fell significantly below expected fixed costs. This underscores the need for new resources necessary for reliability to recover additional costs from long-term bilateral contracts.” DMM Annual Report on Market Issues & Performance for 2016, at 52 (issued May 8, 2017), available at <http://www.caiso.com/Documents/2016AnnualReportonMarketIssuesandPerformance.pdf>. DMM further noted that the “[n]et operating revenues for many – if not most – older existing gas-fired generators are likely to be lower than their going-forward costs.” *Id.* at 16.

²¹ PG&E at 7-8; SDG&E at 3-5.

²² March 2011 Order at P 128 (also recognizing that ROR CPM provides more flexibility than RMR authority to address reliability needs beyond local constraints); transmittal letter for ROR CPM Tariff Amendment at 7, n.59, 35. The Commission also recognized that ROR CPM provides more flexibility than RMR authority to address reliability needs beyond local constraints. March 2011 Order at P 128.

III. MOTION FOR LEAVE TO ANSWER PROTESTS

The CAISO respectfully requests authorization to respond to the protests filed in this proceeding.²³ Notwithstanding Rule 213(a)(2),²⁴ the Commission has accepted answers to protests that assist the Commission's understanding and resolution of the issues raised in the protest,²⁵ clarify matters under consideration,²⁶ or materially aid the Commission's disposition of a matter.²⁷ The CAISO's answer will clarify matters under consideration, aid the Commission's understanding and resolution of the issues, and help the Commission to achieve a more accurate and complete record.²⁸ The CAISO's answer will also point out protesters' statements that mischaracterize the CAISO's proposal and ignore tariff provisions that undermine their claims.

IV. ANSWER

A. The Commission Should Accept the ROR CPM Tariff Amendment as a Balanced Solution to Improve the ROR CPM Mechanism and Should Leave Any More Comprehensive Changes to Other Proceedings

The CAISO explained in the ROR CPM Tariff Amendment that the existing ROR CPM tariff provisions need to be improved to address the challenges to

²³ No authorization is required to respond to the comments filed in this proceeding, because Rule 213 (18 C.F.R. § 385.213) "permits answers to comments and other types of pleadings not specifically prohibited" by the rule. *Gulf S. Pipeline Co.*, 155 FERC ¶ 61,287, at P 41 n.43 (2016).

²⁴ 18 C.F.R. § 385.213(a)(2).

²⁵ *Sw. Power Pool, Inc.*, 89 FERC ¶ 61,284, at 61,888 (1999).

²⁶ *Ariz. Pub. Serv. Co.*, 82 FERC ¶ 61,132 (1998); *Tenn. Gas Pipeline Co.*, 82 FERC ¶ 61,045 (1998).

²⁷ *El Paso Natural Gas Co.*, 82 FERC ¶ 61,052 (1998).

²⁸ *N. Border Pipeline Co.*, 81 FERC ¶ 61,402 (1997); *Hopkinton LNG Corp.*, 81 FERC ¶ 61,291 (1997).

reliability and resilience in California posed by the risk that needed resources may retire.²⁹ A number of commenters expressly recognize that need.³⁰

To better support reliability and resiliency, the CAISO has proposed incremental improvements that strike a reasonable balance between the diverse considerations of stakeholders to produce a more effective, efficient, and workable ROR CPM process. The CAISO warned that attempting to implement, for example, only the tariff revisions that resource owners favor, or alternatively, only the tariff revisions that LSEs may favor, would fundamentally upset that balance and produce a less harmonious and less optimal result.³¹

Now Calpine, although it does not object to the proposal, expresses displeasure with some aspects of it because it does not go far enough. On the other hand, the CPUC, PG&E, and SDG&E are displeased with other aspects.³² These commenters fail to consider the proposal in its totality, as the Commission has done in a number of other proceedings and should do likewise here.³³

In lieu of the targeted enhancements to the ROR CPM process that the CAISO proposes, several commenters support more comprehensive

²⁹ Transmittal letter for ROR CPM Tariff Amendment at 1-5, 12-16.

³⁰ Calpine at 11; SCE at 2; DMM at 1; PG&E at 5.

³¹ Transmittal letter for ROR CPM Tariff Amendment at 4-5.

³² See Calpine at 3-10; PG&E at 3-12; SDG&E at 3-5.

³³ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 145 FERC ¶ 61,082, at P 23 (2013) (finding that CAISO tariff revisions strike “a reasonable balance between preventing the exercise of market power and enabling the recovery of costs.”); *Cal. Indep. Sys. Operator Corp.*, 127 FERC ¶ 61,178, at P 27 (2009) (explaining that CAISO tariff revisions “strike a reasonable balance that addresses the barriers to development of location-constrained resources, while providing appropriate ratepayer protections to ensure that rates remain just and reasonable.”); *ISO New Eng. Inc. and New Eng. Power Pool Participants Comm.*, 155 FERC ¶ 61,023, at P 36 (2016) (find that tariff revisions “struck an appropriate balance of competing interests.”).

improvements to a range of RA and CPM mechanisms.³⁴ Although the CAISO agrees that such improvements can and should be made, they are far beyond the scope of this proceeding. The Commission routinely accepts incremental improvements to tariff provisions while leaving more fundamental tariff changes to separate proceedings.³⁵

In the ROR CPM Tariff Amendment, the CAISO explained that it proposed the tariff revisions “[p]ending any large-scale reforms in the resource adequacy program” that would “likely take years to implement” pursuant to a CPUC proceeding.³⁶ The CAISO is committed to working with regulatory agencies and stakeholders in such proceedings to develop comprehensive measures to ensure the availability of generation needed to maintain system reliability.³⁷ Further, the CAISO has initiated a two-phased policy initiative to review and consider with stakeholders potential measures to refine the CPM and RMR processes and align those processes under a single procurement framework.³⁸ The commenters requesting more comprehensive improvements to the ROR CPM process should raise their concerns in the separate CPUC and CAISO proceedings.

³⁴ Calpine at 3, 11; DMM at 16-17; PG&E at 5-6, 9-10; SDG&E at 5.

³⁵ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 149 FERC ¶ 61,284, at PP 31-32 (2014) (accepting tariff revisions as “an improvement over the existing commitment cost recovery mechanism in CAISO’s tariff” while also stating that the Commission expect[s] CAISO to abide by its commitment to consider longer-term market design changes for commitment cost bids in conjunction with” a separate CAISO stakeholder initiative).

³⁶ Transmittal letter for ROR CPM Tariff Amendment at 5.

³⁷ *Id.* at 15-16.

³⁸ *Id.* at 16 n.48. Materials related to that stakeholder initiative are available at http://www.aiso.com/informed/Pages/StakeholderProcesses/Review_ReliabilityMust-Run_Capacity_ProcurementMechanism.aspx.

Commission acceptance of the tariff revisions proposed in the instant proceeding will not delay or prevent those broader reforms. However, it would be unjust and unreasonable to ignore the clearly demonstrated problem these tariff revisions are designed to address. Resources at risk of retirement should not be required to operate uneconomically, defer needed major maintenance, or incur major maintenance costs that they cannot recover because of low market prices, while awaiting the uncertain outcome of lengthy, complex, and highly contested proceedings and stakeholder processes. The proposed tariff revisions are targeted to prevent those problems from occurring now.

B. Protesters' Requests to Change the Existing, Commission-Approved CPM Fixed-Cost Compensation Methodology Can Only Be Effectuated Under FPA Section 206

Under the existing tariff, there are two methods for determining the price paid to CPM capacity: (1) a resource can submit price offers up to the CPM soft offer cap without having to cost justify its offers; or (2) a resource can receive a resource-specific, cost-based price, if it supports its costs in a filing with the Commission. Under the latter scenario, the Commission will determine the cost-based price in accordance with the methodology for determining the annual fixed revenue requirement of an RMR unit, as set forth in Schedule F to the *pro forma* RMR Agreement in Appendix G of the CAISO tariff.³⁹ The Schedule F methodology pays a resource its full fixed cost of service based on the net plant in service on the date the designation begins. Neither of the Commission-approved CPM pricing formulas provide for any “claw back” of net market

³⁹ Existing tariff sections 43A.4.1.1 and 43A.4.1.1.1.

revenues earned by the CPM resource. The two pricing options currently apply to all types of CPM designations, including ROR CPM designations. Under the existing tariff, there is no competitive solicitation for ROR CPM resources.

The only change in the pricing of ROR CPM capacity the CAISO seeks in this tariff amendment filing is to eliminate the first pricing option described above, which permits non-cost justified prices for ROR CPM resources up to the CPM soft offer cap. The CAISO is retaining, and does not propose to modify, the RMR Schedule F fixed cost methodology previously approved by the Commission.⁴⁰

Protesters, however, request that Commission modify the existing CPM fixed-cost pricing methodology that the CAISO does not propose to change. DMM and PG&E request that the Commission modify the methodology to base it on resources' going-forward fixed costs, not their full fixed costs as provided for under Schedule F of the RMR Agreement and the existing tariff.⁴¹ DMM also argues that Schedule F pricing, which has been in place for approximately 17 years, is inappropriate for RMR units. SCE, SDG&E, Six Cities, and the CPUC request that the Commission change the existing pricing methodology to require ROR CPM resources to credit against their annual fixed revenue requirements any amounts by which revenues earned in the energy and ancillary services markets exceed the costs of such transactions.⁴²

These protesters request tariff changes that are beyond the scope of this FPA section 205 proceeding. Any change(s) they seek to the existing,

⁴⁰ See transmittal letter for ROR CPM Tariff Amendment at 33-35.

⁴¹ PG&E at 3-4; DMM at 5-15.

⁴² Six Cities at 2-3; SCE at 4-5; SDG&E at 4; CPUC at 4-5.

unchanged, Commission-approved CPM fixed-cost pricing methodology can only be made pursuant to a new proceeding established under FPA section 206, and would only apply prospectively to new designations.⁴³

None of the parties who urge the Commission to change the existing CPM fixed cost compensation methodology to base it on going-forward costs instead of full fixed costs, or to credit net market revenues against a designated resource's fixed cost recovery, raised such issues in the stakeholder process underlying this filing.⁴⁴ Indeed, in its comments regarding the revised straw proposal, the Energy Division Staff of the California Public Utilities Commission stated:

The Revised Straw Proposal states that:

“The pricing formula cost are being determined using the Annual Fixed Revenue Requirement for a RMR unit as set forth in Schedule F to the pro forma RMR Agreement in Appendix G of the CAIOS's tariff.”

It is ED Staff's understanding that Schedule F to the pro forma RMR Agreement in Appendix G does not include major maintenance capital additions. If this understanding is accurate, then Staff is fine with using Schedule F to the pro forma RMR agreement to determine costs.

If major maintenance is allowed under Schedule F to the pro forma RMR agreement, then Staff objects to the inclusion of major maintenance in the cost.⁴⁵

⁴³ See, e.g., *Sw. Power Pool, Inc.*, 161 FERC ¶ 61,289, at P 22 (2017); *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,212, at P 22 (2007); *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,263, at P 17 (2006).

⁴⁴ Stakeholder comments and other materials provided in the stakeholder process for the ROR CPM Tariff Amendment are available at <http://www.caiso.com/informed/Pages/StakeholderProcesses/CapacityProcurementMechanismRisk-of-RetirementProcessEnhancements.aspx>.

⁴⁵ Energy Division Staff Comments, August 28, 2017, available at <http://www.caiso.com/Documents/CPUCComments-CapacityProcurementMechanismRisk-of-RetirementProcessEnhancementsRevisedStrawProposal.pdf>.

As discussed herein, Schedule F does not contain a mechanism for recovering major maintenance costs during the term of the designation. Those costs are recovered through other provisions of the *pro forma* RMR Agreement and are not part of the Commission-approved CPM pricing formula.⁴⁶

Because no stakeholders raised the two aforementioned CPM pricing issues in their written comments during the stakeholder process, the CAISO did not discuss such issues in its transmittal letter. Although parties are not precluded from raising such issues here, they should first have raised and vetted such proposals in the stakeholder process, in which the CAISO provided multiple opportunities for comment on an issue paper and several straw proposals.

It is particularly important to vet these significant issues in a stakeholder process given the Commission's prior guidance regarding CPM pricing. Protesters urging the Commission to compensate CPM (and RMR) resources based on going-forward costs ignore the Commission's prior pronouncements on this subject. In its March 2011 Order accepting the CAISO's initial CPM proposal, the Commission stated:

The Commission is concerned that CAISO's proposal to pay going forward costs may create the potential for distorted pricing signals and deny resources a reasonable opportunity to recover fixed costs. CAISO, in this filing has not explained how the use of going-forward costs for CPM compensation will provide incentives or revenue sufficiency for resources to perform long-term maintenance or make improvements that may be necessary to

⁴⁶ Because Schedule F does not provide for the recovery of planned and unplanned capital costs (including major maintenance) and repair costs adopting the CPUC's proposal to "claw back" all net market revenues from ROR CPM resources, would effectively deny such resources any opportunity to recover prudently incurred costs associated with major maintenance or repairs during the term of their designation. That is *per se* unjust and unreasonable.

satisfy new environmental requirements or address reliability needs associated with renewable integration.⁴⁷

The Commission ordered a technical conference to seek additional information on CPM compensation methodologies “that would provide, at a minimum a meaningful opportunity for CPM resources to recover additional fixed costs.”⁴⁸

The Commission added that the technical conference should consider methodologies “establishing a CPM pricing methodology that supports incremental investment by existing resources; and providing appropriate compensation to resources to ensure that CAISO has the resources it needs to reliably operate the grid.”⁴⁹

In 2015, the CAISO made an FPA section 205 filing to, *inter alia*, implement a competitive solicitation process for all categories of CPM except ROR CPM⁵⁰ and to modify CPM pricing to (1) allow resources to submit price

⁴⁷ March 2011 Order at P 57.

⁴⁸ *Id.* at P 59.

⁴⁹ *Id.* The parties ultimately reached a settlement of the issues in the proceeding, and the Commission approved it. *Cal. Indep. Sys. Operator Corp.*, 138 FERC ¶ 61,112 (2012).

⁵⁰ The CAISO did not propose holding a competitive solicitation for ROR CPM because:

[u]nlike the other six CPM categories, a Risk-of-Retirement designation is inherently resource-specific and thus not amenable to a competitive solicitation process. The risk-of-retirement process requires that the specific resource at risk of retirement be needed to reliability purposes by the end of the calendar year following the current resource adequacy compliance year. In other words, the CAISO cannot meet the identified reliability need without that specific resource.

Transmittal letter for tariff amendment and offer of settlement regarding CPM revisions and request for waiver of notice requirement, Docket No. ER15-1783, at 11 (May 26, 2015). Thus, under the tariff provisions the Commission approved, there is no competitive solicitation for ROR CPM designations. If PG&E is requesting that the Commission require some regularly scheduled competitive solicitation for ROR CPM designations, such request is unnecessary, goes far beyond the scope of the existing tariff provisions and the CAISO’s proposal, and ignores the resource-specific, case-by-case nature of risk of retirement issues and ROR CPM requests and designations. As the CAISO has

offers up to a soft offer cap without cost justification, or (2) cost justify their full fixed costs in accordance with formula in Schedule F of the RMR Agreement.⁵¹

The Commission expressly recognized the opportunity for resources to cost-justify a higher rate than allowed under the soft offer cap and that “unlike the compensation methodology proposed in the 2011 CPM proposal [*i.e.*, going-forward costs] we find that the methodology CAISO has proposed in the instant filing should facilitate adequate cost recovery.”⁵²

Thus, in its two prior substantive orders regarding CPM, the Commission has recognized the shortcomings of CPM pricing based on resource-specific going-forward costs. DMM and PG&E ignore these decisions. In addition, they ignore the Commission’s prior findings that where, as in this case (and in the case of RMR), an ISO or RTO seeks to make acceptance of a reliability designation, mandatory, full fixed cost-of-service pricing is appropriate, not going-forward-cost pricing.⁵³

indicated, it expects competition between resources at risk-of-retirement to be uncommon because, like RMR need determinations, there typically will be only one resource that can meet the identified reliability need. In the rare event that multiple resources request an ROR CPM designation and not all are required to meet an identified reliability need, the resource selection/tie-breaker tariff provisions allow the CAISO to select the least cost resource that can meet the specific reliability need. See proposed tariff section 43A.2.6 (j) and revised tariff section 43A.4.2.3 (referencing existing tariff sections 43A.4.2.2 and 43A.2.2.3). Thus, a formal competitive solicitation process is unnecessary. PG&E’s request for a competitive solicitation is also contrary to DMM’s statements that ROR CPM (and RMR) resources are needed for reliability and have market power. DMM at 6-8. PG&E’s real objection appears to be that ROR (and other) CPM resources are not compensated based on their going forward costs.

⁵¹ At the time of the CAISO’s tariff amendment filing, the applicable formula for any cost justification filing was a resource’s going-forward fixed costs plus 10 percent. See former tariff section 43.7.1.2.

⁵² October 2015 Order at P 29.

⁵³ The Commission has previously found that where an independent system operator had an exclusively mandatory RMR regime that required a unit needed for reliability to remain in

Protesters point out that unlike the pricing formulas under the *pro forma* RMR Agreement, the existing Commission-approved CPM pricing options do not require that net market revenues be credited against fixed-cost payments.⁵⁴ They urge the Commission to impose this new requirement for ROR CPM designations. Protesters ignore a key difference between the RMR and CPM mechanisms. The *pro forma* RMR Agreement has separate provisions (outside of Schedule F) that allow for the recovery of needed capital additions, including costs for major maintenance. In other words, an RMR unit not only is entitled to recover its full fixed cost of service based on net plant in existence at the start of each contract year, it can also include a surcharge for planned capital expenditures that occur during the contract year.⁵⁵ For example, under the recently filed RMR Agreement for Metcalf Energy Center, LLC (Metcalf), the unit owner is seeking a surcharge of more than \$20 million under this provision for intra-year capital expenditures (in addition to recovery of its Schedule F fixed costs).⁵⁶ Any unrecovered costs are eligible for recovery through a termination fee if the RMR Agreement is terminated.⁵⁷ The RMR Agreement also contains a

service, the independent system operator should “provide for compensation at a full cost-of-service.” *N.Y. Indep. Sys. Operator Corp.*, 150 FERC ¶ 61,116, at P 17 (2015); *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,057, at P 84 (2014) (finding it unjust and unreasonable to not allow system support resources (*i.e.*, RMR resources) to receive compensation for the fixed costs of existing plant given MISO’s authority to unilaterally require a generator that seeks to retire or suspend operations to remain online to address reliability concerns).

⁵⁴ Such a crediting mechanism is not in Schedule F of the *pro forma* RMR Agreement.

⁵⁵ *Pro forma* RMR Agreement, section 7.4

⁵⁶ See *Metcalf Energy Center, LLC*, 161 FERC ¶ 61,310, at PP 3, 7-8 (2017) (order accepting and suspending Metcalf RMR Agreement and establishing hearing and settlement judge procedures).

⁵⁷ *Pro forma* RMR Agreement, section 2.5.

provision that allows the RMR unit owner to recover from the CAISO a lump sum payment for certain unplanned repair costs.⁵⁸ Finally, the RMR Agreement also includes an Unplanned Capital Items provision that permits the resource owner to recover from the CAISO via a surcharge payment any agreed-to unplanned capital costs necessary to remedy or prevent impair the unit's ability to deliver energy or ancillary services.⁵⁹ Schedule L-1 of the pro forma RMR Agreement contains the form for requesting approval of capital items and repairs.

The existing CPM contains no similar provisions. Thus, unlike an RMR unit, an ROR CPM resource with planned or unplanned capital expenditures or unplanned repair costs during the term of its designation has no established mechanism to separately recover such costs. At this time, the only means an ROR CPM resource has to recover such costs is through net market revenues it receives. An ROR CPM resource must apply any net market revenues it earns in the CAISO markets to cover such costs. Clawing-back net market revenues without a separate provision that allows for the recovery of planned and unplanned capital and repair costs that occur during the term of the designation would be unjust and unreasonable and deny ROR CPM resources any opportunity to recover the prudent costs they incur during the term of the designation.⁶⁰

⁵⁸ *Pro forma* RMR Agreement, section 7.5.

⁵⁹ *Pro forma* RMR Agreement, section 7.6.

⁶⁰ Further, unlike RMR units, ROR CPM resources are subject to (1) the must offer obligation, and as proposed by the CAISO the flexible capacity must offer obligation, if applicable; and (2) the Resource Adequacy Availability Incentive Mechanism (RAAIM). See existing tariff section 40.9.2 (a) (4) exempting RMR units from RAAIM.

The CAISO notes that in the issue paper it recently posted in the stakeholder initiative it has commenced to review the RMR and CPM mechanisms one topic the CAISO has identified for consideration is better aligning the CPM and RMR rules by adopting a CPM provision that allows the separate recovery of costs associated with needed capital additions, including capital maintenance, during the term of the designation.⁶¹ Until such time as this matter (and other matters) proceed through the stakeholder process and can be approved by the CAISO Governing Board and the Commission, retaining net market revenues serve as the sole mechanism to offset such capital expenditure costs for CPM resources being compensated pursuant to the Schedule F fixed cost-of-service formula.

Further, at the January 30, 2018 stakeholder meeting, stakeholders identified the two pricing issues protestors raise herein as issues that should be addressed in the stakeholder process. The CAISO notes that in two recent orders where parties requested the Commission to revise provisions of the *pro forma* RMR Agreement, the Commission found that such issues were beyond the scope of the FPA section 205 proceeding and specifically encouraged stakeholders to participate in the new stakeholder process the CAISO was initiating, *i.e.*, the ongoing stakeholder process referenced above.⁶² The CAISO can address the identified pricing issues in the stakeholder initiative, but that

⁶¹ The CAISO posted the issue paper on January 23, 2018 and held its first stakeholder meeting on January 30, 2018. Materials provided in the stakeholder process are available at http://www.aiso.com/informed/Pages/StakeholderProcesses/Review_ReliabilityMust-Run_CapacityProcurementMechanism.aspx.

⁶² *Cal. Indep. Sys. Operator Corp.*, 161 FERC ¶ 61,311, at P 31 (2017); *Cal. Indep. Sys. Operator Corp.*, 161 FERC ¶ 61,310, at P 30 (2017).

should not prevent the Commission from approving the targeted tariff revisions proposed herein to address issues with the existing ROR CPM framework.

C. The Proposed Tariff Revisions Will Address the Risk of Undue Front-Running through Targeted Measures

The ROR CPM Tariff Amendment included several measures to mitigate the risk that the Type 2 designation process would unduly interfere with the resource adequacy program by inappropriately affecting procurement and prices in the resource adequacy market.

First, after the deadline for resources to submit their annual RA plans, the resource owner must attest that it made a reasonable effort to participate in all applicable LSE procurement efforts for that year.⁶³ Second, the proposed measures require the CAISO to determine that a resource is uniquely situated as the only one that can meet the identified reliability need as a condition for issuing the requested designation.⁶⁴ Further, resource owners would not be entitled to compensation that is not cost justified; Rather, every resource receiving an ROR CPM designation would have to seek, in a filing submitted to the Commission, cost-based compensation determined in accordance with the methodology for

⁶³ Proposed CAISO tariff section 43A.2.6 (h)(1). The CPUC claims that the CAISO's proposal only requires resources receiving Type 2 designations to participate in LSE procurement solicitations before April. CPUC at 7. That is incorrect. Proposed tariff section 43A.2.6 (h)(1) requires a resource to make a good-faith effort to participate in **all** applicable resource adequacy solicitations conducted by LSEs for the upcoming RA compliance year. Further, resource owners must submit a separate attestation stating their satisfaction of this requirement "after the deadline for LSEs to submit annual Resource Adequacy Plans to the CAISO," which currently is the end of October. *Id.* This is a different attestation than the one's resource owners are required to submit with their request for a Type 2 designation in the first window. Thus, resource owners seeking Type 2 ROR CPM designations are not submitting the attestation regarding their participation in LSE solicitations in the April timeframe as the CPUC implies.

⁶⁴ Proposed CAISO tariff section 43A.2.6 (h)(2).

calculating the annual fixed revenue requirement of an RMR unit as set forth in Attachment F of the *pro forma* RMR Agreement.⁶⁵

Calpine suggests the measures to address front-running are too stringent and may discourage resources from participating in the first request window.⁶⁶ In

⁶⁵ Transmittal letter for ROR CPM Tariff Amendment at 3-4, 25-29, 33-35. SDG&E states that if a resource has a “high confidence” that it will qualify for an ROR CPM designation, the resource owner will have an advantage in any bilateral RA contract negotiations, and the ROR CPM price will become the price floor. SDG&E at 3. To the extent SDG&E is concerned about market power, any market power is mitigated by the fact that under any ROR CPM designation the resource can only receive a cost-of-service rate based on a fixed cost pricing formula that the Commission has found to be just and reasonable and has been used for RMR units for approximately 17 years. In any event, resources will be unable to command an RA price above their purported cost-based “price floor” because LSEs will know that any needed resource will not be entitled to receive from the CAISO a higher, non-cost justified price for any ROR CPM designation. Further, as discussed in the transmittal letter, CPUC-jurisdictional LSEs can obtain a waiver from the CPUC and avoid having to procure a resource whose price exceeds \$40/kW-year. Transmittal Letter for ROR CPM Tariff Amendment at 28. This price is more than \$25/kW-year less than the CPM soft offer cap. SDG&E ignores other factors might influence the price a potential ROR CPM resource might bid in any RA solicitation process. First, a resource’s offer price submitted with its ROR CPM request is not necessarily the price it will be paid. The Commission will determine the price an ROR CPM resource will ultimately be paid, and a resource owner cannot know that price with certainty ahead of time. On the other hand, a resource owner can obtain price certainty by entering into an RA contract rather than litigating an ROR CPM price in a Commission proceeding. Resource owners may not desire to make public their costs and go through the considerable time and effort to prepare and prosecute a potentially contested rate case at the Commission. Also, resource owners may be able to obtain multi-year contracts or sell a portfolio of resources in any bilateral arrangement; these are not options under ROR CPM.

⁶⁶ Calpine at 7-9. Calpine states that any Type 2 designations in the first request window are provisional in nature and subject to reliability need determinations by the CAISO and that the CAISO can change its mind later in the year and revoke the provisional ROR CPM designation. Calpine at 5-6. Calpine’s concern is belied by the provisions of the tariff, as discussed in the CAISO’s transmittal letter. Contrary to Calpine’s claim, the reliability studies the CAISO conducts to determine the need for the resource occur before the CAISO issues its study report and conditionally designates the resource, not afterwards. Proposed Tariff section 43A.2.6 (c). Thus, under the proposed tariff revisions, the CAISO is not conducting subsequent reliability studies later in the year to determine if any conditional designation is still appropriate. The only conditions that must be satisfied after the CAISO issues a “conditional” Type 2 designation in the study report are (1) no LSE procures the resource to keep it in operation during the term of the ROR CPM designation, and (2) the resource owner must attest that it made a good faith effort to participate in all applicable LSE requests for offers for the upcoming year. These hardly constitute conditions that would allow the CAISO to “pull the rug out from under” the conditionally designated resource. Indeed, in the transmittal letter, the CAISO expressly stated there was no “off-ramp” provision that would allow the CAISO to revoke a Type 2 conditional designation, and that any such off-ramp would create undue uncertainty for the resource and defeat the fundamental purpose for the tariff amendment. Transmittal Letter for ROR CPM Tariff Amendment at 21-22. The CAISO also emphasized that there should never be any changed

contrast, the CPUC, PG&E, and SDG&E argue that the measures will fail to mitigate the risks posed by front-running.⁶⁷ Neither of these extreme positions has merit. Again, the measures strike a reasonable balance between the diverse considerations of the stakeholders. Resource owners will benefit from the longer “runway” embodied in the first request window to rationally plan for potential resource retirement or continued resource operation.⁶⁸ But that opportunity will not be so open ended as to constitute an unmitigated front-running of the RA program. Resource owners’ ability to obtain earlier notice of their need and eligibility for ROR CPM designations in limited, well-defined circumstances improves upon the existing ROR CPM tariff provisions where they have no such opportunity.

Protesters fail to undermine the CAISO’s showing that the front-running measures it has proposed are just and reasonable. As the CAISO explained, the requirement to make a reasonable effort to participate in the specified procurement processes is consistent with the longstanding principle that CPM is a backstop mechanism and the actual designation of a resource should only

circumstances that would render unnecessary in December a conditional Type 2 designation the CAISO makes in May. No party disputed this.

⁶⁷ CPUC at 7-9; PG&E at 8-9; SDG&E at 3-4.

⁶⁸ Calpine acknowledges that adding the first request window will be “perhaps [] helpful in some instances” to address the existing situation that, “under the current procedures, when ROR CPM designations may not be made until December of year 1, resources are afforded no ‘runway’ for advance planning.” Calpine at 4-5. Even though Calpine recognizes that adding the first request window will improve upon the existing tariff to an extent, Calpine also argues that the first request window “will not provide many resource owners with the certainty they need to make investment commitments and operational decisions.” *Id.* at 5-6. Calpine does not – and cannot – make any reasoned guess as to how many resource owners will be helped and how many not helped by the incremental improvement it concedes the first request window will provide.

occur after LSEs have had the opportunity to procure the resource.⁶⁹ The requirement that the resource be the only one that can meet the identified reliability need⁷⁰ prevents the possibility that Type 2 designations may create a situation where the CAISO might select a higher-cost resource following the first request window even though a lower-cost resource might become available in the second request window to meet the same reliability need. This requirement also ensures that in the Type 2 study process that occurs in the first half of the year, the CAISO will not conditionally designate a resource if there are multiple resources that can meet the same reliability need (whether or not all such resources are seeking Type 2 ROR CPM designations). Rather, the CAISO will defer such decisions to LSEs in the first instance through the resource adequacy procurement process. Thus, LSEs will first have the opportunity to procure the resource(s). Only if LSEs do not procure a resource that is needed for reliability, or there is only one resource that can meet the reliability need, *i.e.*, there is no competition, will the CAISO then actually procure the resource as a last resort.

⁶⁹ March 2011 Order at PP 126-30.

⁷⁰ Calpine suggests that this requirement has no precedent and will thus create uncertainty for the resource. Calpine ignores that the reliability studies the CAISO undertook to grant Calpine three RMR designations for 2018 utilized the same standard. In that regard, the memos to the CAISO Board supporting the RMR designations for Calpine's Yuba City Energy Center, Feather River Energy Center, and the Metcalf Energy Center stated that CAISO studies found these resources to be necessary for the reliable operation of the transmission system and that "[t]he ISO's reliability needs cannot be addressed with other alternatives within the 2018 calendar year." Board Memorandum, Decision on reliability must-run designations for the Yuba City Energy Center and the Feather River Energy Center, March 8, 2017, available at <http://www.caiso.com/Documents/Decision-RequestforReliabilityMust-RunDesignations-Memo-Mar2017.pdf>, and Board Memorandum, Decision on reliability must-run designation for Metcalf Energy Center, October 25, 2017, available at http://www.caiso.com/Documents/Decision_ReliabilityMust-RunDesignation_MetcalfEnergyCenter-Memo-Nov2017.pdf.

The requirement regarding cost-based compensation is just and reasonable for the reasons explained above.⁷¹

PG&E asserts that bidders in an LSE's request for offers (RFO) regarding RA resources will adjust their bids based on a competitor's "conditional" ROR CPM designation.⁷² However, PG&E fails to recognize the safeguards the CAISO has included in its proposal. First, PG&E ignores that under proposed tariff section 43A.2.6(c), the CAISO's study report conditionally designating the resource "will not specify the offer price of such resource." Thus, other resources submitting bids into an RFO will not know the price offer of the resource that has been conditionally designated. Second, there is no CAISO-guaranteed compensation for a conditionally designated resource. The resource owner must cost-justify its price in a filing with the Commission, and the Commission will determine the appropriate price, after hearing and settlement judge procedures, just as it does with RMR resources.⁷³ Third, for a resource to receive a conditional ROR CPM designation in the first request window, it must be the only resource in existence by the start of the designation term that can meet the reliability need. Thus, other resources are not competing with the conditionally designated resource to meet that specific reliability need. A conditional designation before RA procurement commences will allow LSEs to procure the

⁷¹ See *supra* section IV.B of this answer.

⁷² PG&E at 8-9.

⁷³ A resource owner cannot propose to the Commission and will not be compensated at a price higher than its offer price in the request window. Proposed tariff section 43A.2.6(i). As with RMR rate filings, any ROR CPM cost justification filings are likely to occur in the fourth quarter of the year. Under the proposed tariff provisions, the price paid to ROR CPM resources is subject to refund pending the outcome of any FERC determination. Proposed tariff section 43A.2.6 (i).

resource in lieu of other resources that do not meet specific reliability needs, thus avoiding unnecessary over-procurement, eliminating the need for CAISO backstop procurement, and reducing total procurement costs.

PG&E also contradicts its own assertion that front-running is likely to be a serious problem. It states that even if an LSE is given the opportunity to procure a resource, the LSE is:

likely to focus on minimizing its procurement costs. There is no incentive for any single LSE to solely take on high-cost contracts, especially when a CPM designation would more equitably distribute those costs.⁷⁴

If LSEs are not likely to procure a needed resource, as PG&E claims, then the CAISO's proposal does not result in any front-running of the bilateral procurement process.

PG&E also repeats an argument made during the stakeholder process that the CAISO anticipated and addressed in its transmittal letter. PG&E neither acknowledges that the CAISO addressed its argument, nor attempts to rebut the CAISO's response. PG&E contends that the tariff revisions do not fully consider the interplay between Type 2 and Type 3 designations. PG&E asserts that the CAISO might deny an ROR CPM designation request for a lower-cost resource with better reliability characteristics seeking a Type 2 designation because there is another resource that could meet the same reliability need and that had not sought a Type 2 designation. The higher-cost, less effective resource would then supposedly have to be procured to maintain reliability. PG&E recommends that if

⁷⁴ PG&E at 9.

the Commission does not reject the CAISO's proposal, then the Commission should modify it so the resources with the lowest cost or best reliability characteristics are designated regardless of when the resource applied for the designation.⁷⁵

PG&E ignores that the situation it describes already can occur under the existing, Commission-approved ROR CPM tariff provisions; the CAISO's proposed revised framework does not create it.⁷⁶ Under the existing ROR CPM tariff provisions, resource owners can request an ROR CPM designation at any time during the year. Hypothetically speaking, the CAISO can deny a resource's request for an ROR CPM designation one day because another resource exists that can meet the need, and that other resource could then seek an ROR designation the very next day. The CAISO's revised framework better addresses this situation than the existing framework because it allows for only two windows during the year for a resource owner to request a risk-of-retirement designation.

PG&E also ignores that LSEs have resource adequacy obligations, and they in the first instance determine which resources to procure and which resources not to procure. The CAISO only steps in to provide a last-resort backstop when LSEs' resource procurement is insufficient to maintain reliability. Thus, in the example PG&E provides, LSEs would first have the opportunity to procure the lower-cost/best-attributes resource in the course of their resource adequacy procurement before the CAISO could even engage in backstop

⁷⁵ PG&E at 10-11.

⁷⁶ Transmittal letter for ROR CPM Tariff Amendment at 27, n.95.

procurement. The CAISO's revised ROR CPM framework accommodates such LSE procurement because the lower-cost resource denied a Type 2 designation would not be required to retire if an LSE procures it. If LSEs are not procuring the lowest cost/best-attribute resources to meet identified reliability needs, that suggests a shortcoming in their RA procurement, not in the revised ROR CPM framework.⁷⁷

PG&E further ignores the CAISO's lack of control over a resource's retirement decisions. Under existing Section 3.2.1 of the *pro forma* Participating Generator Agreement contained in Appendix B.2 to the CAISO tariff, a resource can retire upon 90 days' notice to the CAISO. If the resource is not currently needed for reliability such that the CAISO can require it to accept an RMR contract, the CAISO has no other means to require it to remain in service. In particular, the CAISO cannot require a resource to remain in service simply because it is more economic than other resources that meet the same reliability

⁷⁷ Adopting PG&E's recommended solution would essentially put the CAISO in the position of making procurement decisions in the first request window that should be made by LSEs in the first instance through their RA procurement. Also, PG&E's proposal would force the CAISO to select between a resource that has sought an ROR CPM designation and one that has not. The CAISO would not even have an offer price for the latter resource. On the other hand, if PG&E is suggesting that there be only one request window conducted at the end of each RA compliance year or that the CAISO be able to renege on a prior conditional designation arising from the first request window if a lower-cost resource that meets the same reliability need subsequently requests an ROR CPM designation in the second request window, then PG&E's suggestion fails to address the basic problem facing resources at risk of retirement that the CAISO is trying to address in this filing. In any event, the matter before the Commission is to determine if the CAISO's proposal – and not any alternative proposal that might be suggested – is just and reasonable. “Pursuant to section 205 of the [Federal Power Act], the Commission limits its evaluation of a utility's proposed tariff revisions to an inquiry into ‘whether the rates proposed by a utility are reasonable – and not to extend to determining whether a proposed rate schedule is more or less reasonable to alternative rate designs.’” *Cal. Indep. Sys. Operator Corp.*, 141 FERC ¶ 61,135, at P 44 n.43 (2012), quoting *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. 1984). Therefore, “[u]pon finding that CAISO's proposal is just and reasonable, [the Commission] need not consider the merits of alternative proposals.” *Cal. Indep. Sys. Operator Corp.*, 141 FERC ¶ 61,135, at P 44. That is the case here.

need, nor can the CAISO require a resource to seek an ROR CPM designation. Therefore, the Commission should reject PG&E's argument.

Finally, the CPUC objects to the proposed changes to the attestation requirement because it imagines a loophole whereby a generator could "in theory" obtain an RA contract from an affiliated or unaffiliated entity for a small portion of its capacity for a fraction of the year, thus avoiding the requirement to retire and gaining a risk-free opportunity to front-run the RA bilateral process.⁷⁸ This argument not only ignores the tariff language proposed by the CAISO, it assumes that resource owners will act irrationally.

The CAISO proposal requires a resource owner to attest that "it will be uneconomic for the resource to remain in service for the upcoming Resource Adequacy Compliance Year, and that the decision to retire is definite unless an annual CPM or some other type of annual CAISO procurement occurs, the resource is sold to a non-affiliated entity, or the resource enters into an annual RA contract for the next Resource Adequacy Compliance Year."⁷⁹ Thus, a partial-year contract would not undo the commitment to retire the resource, and the resource owner could be subject to penalties for submitting false information. If a resource remains in service because it sold a token amount of RA capacity, the resource owner's prior attestation that it is uneconomic for the resource to remain in service for the upcoming year likely also constitutes false information.

⁷⁸ CPUC at 7.

⁷⁹ Proposed tariff section 43A.2.6(g)(2).

Further, for the circumstances the CPUC describes to occur, the CAISO would have to determine that the resource is not needed to meet a specific reliability need and thus is ineligible for an ROR CPM designation. The CPUC's argument is based on the illogical premise (and bad business model) that a resource that is at risk of retirement because it is earning insufficient revenues to remain operational and that is not needed for reliability will seek out every loophole it can to remain in service and continue earning insufficient revenues. Alternatively, an LSE may wish to procure capacity from the resource and obtain such capacity at a reasonable price compared with offers from other similarly situated resources, in which case the resource may remain in service. Such mutually beneficial transactions should not be precluded, as bilateral procurement by LSEs is the primary means of capacity procurement in the CAISO footprint.

D. The Tariff Revisions Will Maintain the Existing Complementary Relationship between the ROR CPM and RMR Mechanisms

PG&E and SDG&E argue that the current RMR provisions in the tariff have advantages over the ROR CPM tariff provisions as revised by the ROR CPM Tariff Amendment.⁸⁰ They argue that resource owners will find the RMR process preferable to the CPM process and will seek RMR designations, not ROR CPM designations. Accordingly, they claim the proposed tariff revisions are of questionable utility.

⁸⁰ PG&E at 7-8; SDG&E at 3-5.

These protesters ignore that the CAISO proposes only incremental changes to the existing ROR CPM framework approved by the Commission and that RMR and ROR are not interchangeable. In the March 2011 Order establishing that framework, the Commission found that the “CAISO has demonstrated a need for the risk of retirement category that is not met by CAISO’s reliability must-run procurement authority.”⁸¹ The Commission recognized that “[t]he risk of retirement CPM designation provides more flexibility [than RMR] to address reliability needs beyond local constraints” and that “reliability must-run contracts only apply for the current year, whereas CAISO proposes to use the risk of retirement category to designate resources needed in the following year.”⁸²

The incremental improvements the CAISO proposed in the ROR CPM Tariff Amendment will not alter that complementary relationship with the existing RMR provisions. A resource needed for reliability in the current year or the upcoming year will continue to be eligible for RMR or an RA deficiency CPM designation, but it will not be eligible for an ROR CPM designation. A resource that is not needed for reliability until the following year will continue to be eligible only for an ROR CPM designation, not an RMR designation. Thus, contrary to PG&E’s and SDG&E’s suggestion, it will continue to be the case that resource owners cannot pick and choose between RMR and ROR CPM.⁸³

⁸¹ March 2011 Order at P 128.

⁸² *Id.*

⁸³ This distinction between RMR and ROR CPM also demonstrates why any claims that the proposed ROR CPM revisions will result in extensive front-running of the RA program are

E. It Is Reasonable to Require a Resource Owner to Accept an ROR CPM Designation It Requests

The CAISO proposed to revise the tariff to require a resource owner that requests an ROR CPM designation to accept that designation if granted, unless the resource becomes a resource adequacy resource for the same term as the ROR CPM designation or a longer period.⁸⁴ Calpine argues that “[s]ome resource owners might be willing to accept the mandatory nature of a request for ROR CPM designation, but many resource owners would be hesitant” to do so.⁸⁵

This is sheer speculation. Calpine has no way of knowing whether resource owners would “hesitate” or decline to request ROR CPM designations rather than be required to follow through on their decisions. Further, Calpine fails even to address the CAISO’s explanation that obligating a resource owner to accept a requested ROR CPM designation parallels the existing obligation of an owner to accept an RMR unit designation and is comparable to the obligations of all other types of resources with CPM designations that submitted bids into the CPM competitive solicitation. As in those situations, it is reasonable to obligate a resource owner to accept an ROR CPM designation it requests.

Calpine states that resource owners will be reluctant to seek ROR CPM designations because they must cost justify their price with the Commission

overblown. The resources that would be eligible for ROR CPM designations are only those that would be needed in year 2, but not in year 1. Also, as the CAISO indicated in the transmittal letter, and DMM emphasized, the CAISO can make, and has, made conditional RMR designations for the upcoming year prior to deadline for annual RA showings. Transmittal Letter for ROR CPM Tariff Amendment at 28-29. There is no rational basis for precluding a similar practice for Type 2 ROR CPM designations, particularly when they face more requirements than RMR designations.

⁸⁴ Transmittal letter for ROR CPM Tariff Amendment at 29-30.

⁸⁵ Calpine at 9-10.

based on the formula in Schedule F of the *pro forma* RMR agreement. Calpine states that this will place a substantial burden on the resource and likely subject it to litigation at FERC. Calpine also states that resources will be required to accept ROR CPM designations before they know the level of compensation they will receive from the Commission.⁸⁶ Calpine claims this lack of rate certainty will discourage resource owners from seeking ROR CPM designations.

Coming from Calpine, these arguments are not sustainable. In 2017 Calpine requested five RMR designations from the CAISO, and the CAISO designated three Calpine units as RMR for 2018. On November 2, 2017, Calpine filed unexecuted RMR Agreements for the three units setting forth the proposed Schedule F compensation levels for the units for which it was seeking Commission approval. Several parties protested the filings, and the Commission set the unexecuted agreements for hearing and settlement judge procedures.⁸⁷ Calpine is currently providing RMR service under the agreements, while awaiting a final determination regarding compensation for the units in the pending Commission proceedings. The same process that applies to the RMR designations Calpine sought and received would apply to ROR CPM designations. Although Calpine objects to the “cost risk” associated with ROR CPM designations, it actively pursued the same “cost risk” in formally requesting RMR designations from the CAISO. Calpine accepted the RMR obligations even though it had no knowledge of the final rate the Commission would approve for

⁸⁶ Calpine at 6 8.

⁸⁷ See, e.g., *Gilroy Energy Center, LLC*, 161 FERC ¶61,311 (2017). *Metcalf Energy Center, LLC*, 161 FERC ¶61,310 (2017).

its resources. The same Schedule F formula and Commission-approval process that applies to RMR units applies to ROR CPM resources, and the Commission has found that such formula, which sets forth the specific costs elements that the resource is entitled to recover, is just and reasonable.⁸⁸

Importantly, no other resource owner has raised any of the complaints raised by Calpine.

F. The Minor Changes Suggested by PG&E Are Unnecessary or Properly Belong in the Business Practice Manual, not in the Tariff

On page 12 of its protest, PG&E recommends that the Commission direct the CAISO to make several minor revisions to the ROR CPM tariff language.

The minor changes are either unnecessary, or they are implementation details that more properly belong in a business practice manual, not in the tariff.⁸⁹

First, PG&E requests that FERC require the CAISO to state in proposed tariff section 43A.2.6 (b) how many days after a resource owner requests a risk of retirement designation the CAISO will post the resource's name. This is a very

⁸⁸ Calpine also ignores that under the Commission-approved CPM cost recovery scheme, CPM resources retain their net market revenues. As indicated above, this essentially serves as a proxy for the separate capital maintenance provisions of the *pro forma* RMR Agreement.

⁸⁹ PG&E also states that if the Commission approves the proposed tariff revisions, it should require the CAISO to work with the CPUC to clarify RA crediting before implementing the tariff amendment. The CAISO notes that existing tariff section 43A.9(f) -- which the CAISO is retaining -- provides that “[f]or each Scheduling Coordinator that is provided credit pursuant to this Section, the CAISO shall provide information, including the quantity of capacity procured in MW, necessary to allow the CPUC, other Local Regulatory Authority, or federal agency with jurisdiction over the LSE on whose behalf the credit was provided to determine whether the LSE should receive credit toward its resource adequacy requirements adopted by such agencies or authorities.” The CAISO is committed to working with the appropriate regulatory authorities to effectuate any RA crediting of ROR CPM designations. The CAISO notes that it recently has used the crediting mechanism to allocate RA credits to LSEs for the December 2017 CPM designations of the Encina and Moss Landing units to address deficiencies in LSEs’ showings of annual local RA capacity and collective deficiencies of local capacity.

minor implementation detail that can be included in the business practice manual.⁹⁰

Second, PG&E complains that tariff section 43A.2.6 (b) does not state the exact dates when each ROR CPM request window will open. The CAISO discussed this matter in the transmittal letter and indicated why these dates best belong in the business practice manual.⁹¹ The CAISO will not repeat that discussion here. PG&E fails to acknowledge or address such discussion.

Third, PG&E states that the CAISO should be required to state in tariff section 43A.2.6(e) the specific information a resource owner must provide in the retirement report it is required to submit if the CAISO denies its request for an ROR CPM designation. These are implementation details, not terms and conditions of service that belong in the tariff. For example, the existing ROR CPM tariff provisions provide that the resource owners seeking ROR CPM designations must provide the supporting financial information and

⁹⁰ PG&E also claims the tariff amendments do not state whether resources with RA contracts for only a portion of their capacity or for a portion of the year are eligible for ROR CPM designations. PG&E at 10. PG&E again ignores the proposed tariff language and the discussion in the transmittal letter. If a resource has an RA contract, it is ineligible for an ROR CPM designation during the period it has such RA contract. See Proposed tariff sections 43A.2.6(f)(1) and 43A.2.6 (g)(1). The tariff does not require the entire capacity of the resource to be under contract to render the resource ineligible for an ROR CPM designation. Similarly, the tariff provisions expressly address how to handle situations where resources have partial year RA contracts – they are eligible to request a designation in the applicable window(s), but the designation cannot commence until the term of the RA contract is completely over. The CAISO discussed this very issue and provided examples in its transmittal letter, but PG&E ignores the discussion. See Transmittal letter for ROR CPM Tariff Amendment at 17-18 n.54, citing proposed tariff section 43A.2.6(a), revised tariff section 43A.3.7, existing tariff section 43A.2.5.2.4, and the Appendix A definition of Eligible Capacity. The CAISO will not repeat that discussion here.

⁹¹ Transmittal Letter for ROR CPM Tariff Amendment at 17-18, n.55.

documentation described in the business practice manual for Reliability Requirements.⁹²

Finally, PG&E suggests two tariff revisions regarding tariff section 40.9. PG&E states that resources should be required to be available in the way described in tariff section 40.9, and suggests that tariff section 43A.5.1 be revised to subject CPM capacity to the availability standards of tariff section 40.9. These changes are unnecessary. In tariff section 43A.5.1, the CAISO sets forth the availability obligations of ROR CPM capacity (and all other types of CPM capacity). Specifically, ROR CPM capacity must meet the availability requirements of existing tariff sections 40.6 (the day-ahead and real time availability requirements for system and local capacity) and 40.10 (the day-ahead and real-time availability requirements for flexible capacity). There are no other applicable availability requirements (under the CAISO tariff). Tariff section 40.9 does not impose separate or different availability requirements on CPM resources than those specified in sections 40.6 and 40.10. Rather, section 40.9 contains the RAAIM provisions that determines the availability of resources for purposes of calculating availability incentive charges and payments for resources. To the extent PG&E desires a cross-reference to section 40.9 in tariff section 43A.5.1 to show that RAAIM applies to CPM resources, such a requirement is unnecessary. Section 40.9 already contains provisions showing how calculate RAAM availability incentive charges and payments for CPM units. Also, existing tariff section 43A.5.1, which applies to all CPM resources, does not

⁹² Existing CAISO tariff section 43A.2.6 (5).

reference section 40.9 even though the RAIM provisions of Section 40.9 expressly apply to all CPM resources. Only referring to section 40.9 in the context of ROR CPM resources could create confusion regarding RAIM's applicability to other categories of CPM capacity.

V. CONCLUSION

For the reasons set forth herein and in the transmittal letter for the ROR CPM Tariff Amendment, the Commission should accept the CAISO's proposed tariff revisions without modification.

Respectfully submitted,

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Dated: February 20, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party listed on the official service list for this proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010 (2013)).

Dated at Folsom on this 20th day of February, 2018.

/s/ Grace Clark
Grace Clark