

**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 LIMITED ANSWER TO REQUESTS
FOR REHEARING OF THE CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION**

Pursuant to Rules 212, 213, and 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission),¹ the California Independent System Operator Corporation (CAISO)² files this Motion for Leave to Answer and Answer to the requests for rehearing filed by CXA La Paloma, LLC, (La Paloma), NRG Energy, Inc. (NRG), and Western Power Trading Forum (WPTF) on December 19, 2018.

La Paloma, NRG, and WPTF challenge the Commission's November 19 Order denying the complaint filed by La Paloma.³ As explained in this limited answer, the rehearing requests include unsupported and conclusory statements, factual mischaracterizations, and new arguments that fail to support the relief sought by La Paloma, NRG, and WPTF. The record fully supports the

¹ 18 C.F.R. §§ 385.212, 385.213, and 385.713 (2018).

² Capitalized terms not otherwise defined herein have the meanings set forth in appendix A to the CAISO tariff.

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

Commission's findings rejecting the complaint. Accordingly, the Commission should deny the requests for rehearing.

I. MOTION FOR LEAVE TO ANSWER

Although the Commission's Rules of Practice and Procedure⁴ generally do not permit answers to requests for rehearing, the Commission has accepted such answers when they clarify issues in dispute, provide information to assist in the Commission's decision-making process, or ensure that the record is complete and accurate.⁵

The CAISO respectfully requests leave to answer the requests for rehearing filed by La Paloma, NRG, and WPTF. The CAISO will not respond to every individual argument raised in these rehearing requests, as the requestors repeat many arguments the Commission previously rejected. The CAISO comprehensively addressed and demonstrated the failure of these prior claims in its August 24, 2018 Answer to Complaint and in its September 10, 2018 Answer to Comments. The CAISO respectfully requests that the Commission again consider the relevant material contained in the CAISO's prior pleadings as a basis for rejecting these prior claims reiterated in the rehearing request. This

⁴ See 18 C.F.R. § 385.213(a)(2) (2018).

⁵ See, e.g., *Appalachian Power Co.*, 161 FERC ¶ 61,070 at P 15 (2017) (accepting an answer to a request for rehearing because it provided information that assisted the Commission in its "consideration of this matter."); *Mich. Elec. Transmission Co., LLC*, 106 FERC ¶ 61,064 at P 3 (2004) (accepting an answer to a rehearing request because "it provides information that clarifies the issues and aids us in the decisional process."); *Duke Energy Oakland, LLC*, 102 FERC ¶ 61,093 at P 10 (2003) (finding good cause to accept an otherwise impermissible answer because it assisted the Commission in understanding and resolving the issues involved in the proceeding); *Carolina Power & Light Co.*, 97 FERC ¶ 61,048 at 61,278 (2001) (finding good cause to waive Rule 213 when the pleading helped to ensure a complete and accurate record); *Morgan Stanley Capital Group, Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was "helpful in the development of the record.").

limited answer will clarify new issues and arguments raised in the rehearing requests, address inaccurate analyses and mischaracterizations, highlight some key facts the Commission should consider in rejecting the rehearing requests, and otherwise ensure the record is accurate and complete.

II. ANSWER

A. The Record Does Not Support NRG's Claims that CAISO Backstop Procurement for 2018 is Evidence of a Fundamentally Flawed Resource Adequacy Program

NRG argues that the Commission failed to adequately consider the CAISO's increased use of its Capacity Procurement Mechanism (CPM) backstop procurement for the 2018 Resource Adequacy (RA) compliance year⁶ and claims that the Commission incorrectly considered the designations to be transitional or consistent with the purposes of the CAISO's backstop procurement authority.⁷ NRG claims that the 2018 designations show that the RA program is unable to procure the necessary resources to enable the CAISO to operate the grid reliably.⁸

The two annual CPM designations do not support NRG's claim. Contrary to NRG's arguments, designating two units at Encina involved a unique and transitional set of circumstances and provides no evidence of significant flaws with the RA program. As the CAISO previously indicated, the CAISO identified

⁶ Specifically, NRG cites to (1) two annual CPM designations for local capacity – Encina Power Station (Encina) and Moss Landing, and (2) one-month CPM Significant Event designations in August and September to account for a California Energy Commission forecast change. NRG Request for Rehearing at 6-7.

⁷ *Id.* at 5-9.

⁸ *Id.* at 6.

Encina generation as necessary for 2018 until the new Carlsbad Energy Center came online later that year. This necessitated the CAISO pursuing an extension of Encina's once through cooling (OTC) compliance date of December 31, 2017, from the State Water Resources Control Board.⁹ However, a prior California Public Utilities Commission's (CPUC) decision precluded San Diego Gas & Electric Company from procuring units at Encina for the 2018 resource adequacy compliance year because Encina was an OTC facility whose date to comply with the California's OTC policy had passed (even though Encina's compliance date was subsequently extended).¹⁰ As expected, Encina has now retired from service and has been replaced by the newly operational Carlsbad Energy Center.¹¹

The CAISO issued a CPM designation to Moss Landing for 2018 primarily to fill a "collective local deficiency" under section 43A.2.2 of the CAISO tariff. A collective local deficiency occurs when load serving entities meet their local RA procurement requirements, but the specific resources they procure are not "effective" in meeting all sub-area requirements.¹² The CAISO procured Moss Landing because it needed a specific resource in a specific location to meet a residual need. The CAISO notes that it did not need to issue a CPM designation to Moss Landing for 2019. Contrary to NRG's claims, the CAISO's procurement

⁹ CAISO August 24, 2018 Answer to Complaint at 65.

¹⁰ *Id.* at 65-66; CAISO September 10, 2018 Answer to Comments at 13.

¹¹ CAISO September 10, 2018 Answer to Comments at 13.

¹² In this instance, most load-serving entities (LSEs) met their local RA capacity requirements for every month of the year (some even procuring local RA capacity in excess of their obligation) with some LSEs falling short by only a handful of MW in certain months. CAISO August 24, 2018 Answer to Complaint at 66.

of Moss Landing for 2018 was consistent with the “purposes of the CAISO’s backstop procurement authority” and does not demonstrate that the RA program is incapable of procuring the resources the CAISO needs to maintain reliability.

In the history of the RA program and CAISO backstop procurement, the 2018 RA year is the only year the CAISO ever exercised its backstop procurement authority to address a deficiency in RA showings. The CAISO’s prior pleadings in this proceeding demonstrate why this backstop procurement did not reflect a fatal flaw in the RA program or any threat to grid reliability that requires a major restructuring of the RA program or other remedies proposed by the parties seeking rehearing.¹³ The record shows that the circumstances leading to the backstop procurement NRG cites were in fact unique, transitional, and consistent with the CAISO’s backstop procurement authority.

Nor do the CPM Significant Event designations referenced by NRG support its arguments. The two sets of one-month CPM Significant Event designations to which NRG refers resulted from a California Energy Commission forecast change. This event fell within the tariff definition of CPM Significant Event,¹⁴ and CAISO tariff filings implementing the CPM Significant Event backstop procurement mechanism specifically identified this type of event as a

¹³ CAISO August 24, 2018 Answer to Complaint at 53-68; CAISO September 10, 2018 Answer to Comments at 11-18.

¹⁴ A CPM Significant Event is “a substantial event, or a combination of events, that is determined by the CAISO to either result in a material difference from what was assumed in the resource adequacy program for purposes of determining the Resource Adequacy Capacity requirements, or produce a material change in system conditions or in CAISO Controlled Grid operations, that causes or threatens to cause, a failure to meet Reliability Criteria absent the recurring use of a non-Resource Adequacy Resource(s) on a prospective basis.” See Appendix A to the CAISO tariff.

CPM Significant Event.¹⁵ In other words, a California Energy Commission forecast change was expressly included within the circumstances the Commission concluded was appropriate for the CAISO to exercise its backstop procurement authority. Thus, NRG's claims that the CPM Significant Event designations were not "consistent with the CAISO's backstop procurement authority" are wholly unfounded. In any event, actions to address a forecast change do not constitute a fundamental flaw in the RA program that requires the types of drastic changes NRG's urges.

NRG's rehearing request fundamentally is based on a claim that the RA program does not and cannot provide the CAISO with the necessary fleet of resources to maintain reliability.¹⁶ The rehearing request, however, ignores a wide range of evidence undercutting this claim, including that the CAISO did not enter into any new reliability must-run (RMR) contracts for 2019, and that the CAISO terminated the RMR agreement with the 570 MW Metcalf unit for 2019. NRG further ignores that, unlike 2018, there are no CPM backstop designations for annual RA deficiencies for 2019. In other words, the annual CPM designations for 2018 are unnecessary in 2019. Thus, there is no support for

¹⁵ See CAISO Tariff Amendment Filing Implementing Interim Transitional Capacity Procurement Mechanism, Docket No. ER08-760, p. 29, March 28, 2008 and CAISO Tariff Amendment Filing Implementing Interim Capacity Procurement Mechanism, p. 24, Docket No. ER08-556, February 8, 2008. These tariff amendment filings expressly stated that examples of CPM Significant Events included Grid Study error, forecast changes, incorrect assumptions, bad data, or modelling inaccuracies, including but not limited to ... An official change in the adopted Load forecast by the California Energy Commission after it has been used in RA showings by LSEs.

¹⁶ NRG Request for Rehearing at 4.

NRG's claims that backstop procurement for RA deficiencies is "growing" and that the RA program is unable to procure needed resources.

NRG also alleges, without providing one iota of supporting evidence, that the RA program is unable to support grid reliability, particularly because the increasing number of renewable resources creates a heightened demand for flexible resources.¹⁷ However, NRG ignores record evidence that there is significant excess flexible capacity on the system,¹⁸ and that the CAISO's 10-year forward Local Capacity Technical analysis shows no overall local area deficiencies.¹⁹

Further, recent policy developments in California further undercut NRG's claims. A recent Proposed Decision in Tack 2 of the CPUC's RA proceeding would, if adopted, require multi-year procurement of local capacity resources for CPUC jurisdictional load serving entities (100 percent in years one and two and 80 percent in year three).²⁰ Multi-year procurement, which both NRG and WPTF support, will help ensure local RA in the future. The Proposed Decision recognizes that "there may be potential benefits to expanding multi-year requirements to system and flexible RA, and will continue to monitor and

¹⁷ *Id.* at 9-10.

¹⁸ CAISO August 24, 2018 Answer to Complaint at 48

¹⁹ CAISO September 10, 2018 Answer to Comments at 16.

²⁰ *Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Local and Flexible Capacity Procurement Obligations for the 2019 and 2020 Compliance Years*, Decision Refining the Resource Adequacy Program, Nov. 21, 2018 (Proposed Decision). Available at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M243/K570/243570563.PDF>.

evaluate the multi-year local RA program to consider expansion to flexible and/or system RA in the future.”²¹

B. There Is No Basis for NRG’s Claims That The CAISO’s Backstop Provisions Are Suppressing Bilateral Capacity Levels to Below Going Forward Cost Levels

NRG claims that, in addition to the existence of excess capacity, the CAISO’s backstop provisions are “driving bilateral prices in the RA market” and “suppressing bilateral capacity prices to levels that may be below the going-forward cost of the facilities.”²² NRG argues that this concern was unaddressed in the November 19 Order.

As an initial matter, La Paloma’s complaint did not pertain to whether CAISO backstop pricing was driving down RA prices and did not request that the Commission approve specific reforms to the CAISO’s backstop pricing. Thus, NRG’s arguments go well beyond the scope of complaint and should be rejected.²³

In any event, NRG provides no specific evidence to support its claim, except a sole conclusory allegation. NRG refers to one sentence from its August 24, 2018, Comments In Support of Complaint that “the California market has

²¹ *Id.* at 57-58.

²² NRG Request for Rehearing at 7, 10-11. NRG also alleges that the November 19 Order ignores whether the CAISO’s backstop procurement mechanisms are just and reasonable. *Id.* at 14. This claim cannot be reconciled with the Commission’s express statement that “We find that CXA La Paloma has not satisfied its burden under Federal Power Act section 206 to demonstrate that the CAISO tariff is unjust, unreasonable, or unduly discriminatory or preferential.” November 19 Order at P 69.

²³ *La Paloma Generating Co., LLC v. Cal. Indep. Sys. Operator Corp.*, 157 FERC ¶ 61,002 at P 32 (2016); *Champions Energy Mktg. v. PJM Interconnection, LLC*, 153 FERC ¶ 61,059 at P 21, n. 28 (2015).

tightened considerably over the past several years and the market price for capacity has approached – and in some cases, even exceeded the cost of exercising the backstop mechanism.”²⁴ However, nowhere in its August 24, 2018, Comments did NRG, as it does in its request for rehearing, expressly claim that CAISO backstop pricing is suppressing RA prices to levels below resources’ going forward costs or driving bilateral prices in the RA market.

There is no basis for NRG’s claim that the pricing of the CAISO’s backstop provisions are helping to suppress bilateral capacity prices that “may” be below the going forward costs of such facilities. First, NRG provides no specific data or evidence to support this claim, and admits that excess capacity is contributing to the pricing of bilateral RA contracts.²⁵ Second, NRG ignores that RMR pricing allows a generating unit to recover its full cost of service (including return on and of capital), allows for recovery of capital and major maintenance expenditures, and provides a process for recovery of unexpected expenditures.²⁶ It is unclear how a last resort backstop that provides for full cost recovery can drive RA prices to levels below a unit’s going forward costs. If anything the opposite is true – if the owner of a unit truly needed for reliability is not recovering sufficient costs

²⁴ NRG Request for Rehearing at 11.

²⁵ The Commission has previously recognized that low prices arising from a capacity surplus are more indicative of a well-functioning capacity procurement construct than an unjust and unreasonable construct. *Midcontinent Indep. Sys. Operator, Inc.*, 162 FERC ¶ 61,176 at P 60 (2018); *Midwest Indep. Transmission Sys. Operator, Inc.*, 153 FERC ¶ 61,229 at P 110 (2015).

²⁶ CAISO August 24, 2018 Answer to Complaint at 25. The Commission-approved *pro forma* RMR contract is set forth in Appendix G to the CAISO tariff.

through RA offers or does not have an RA contract, it can seek an RMR agreement from the CAISO and be entitled to recover its full cost of service.

Moreover, the CPM “soft” offer cap is based on the going forward costs of a merchant-constructed, mid-cost, combined cycle unit with duct firing , plus 20 percent.²⁷ Further, a unit owner, either before if offers a resource into a CPM competitive solicitation or after having capacity designated as CPM, has the option to file with the Commission for a resource-specific cost-based rate that is based on the full cost of service of the unit (including return on and of capital) using the formula for determining the annual fixed revenue requirement of an RMR unit as set forth in Attachment F of the *pro forma* RMR Agreement in Appendix G of the CAISO tariff.²⁸ In the history of the CPM, no resource owner has ever filed a proposed resource-specific, cost-based rate for Commission approval. In addition, under the CAISO tariff CPM resources are permitted to retain all market revenues.²⁹ Under these circumstances, any claim that CPM pricing is driving bilateral RA contract costs below going forward cost levels is not credible.

The Commission has recognized that because the CPM soft offer cap “represents the high end of the range of current resource adequacy prices, it should not create incentives for load-serving entities to forego bilateral resource

²⁷ Section 43A.4.1.1.2 to the CAISO tariff; see also *Calif. Indep. Sys. Operator Corporation*, 153 FERC ¶61,001 at P 13 n.27 (2015)

²⁸ Section 43A.4.1.1.1 to the CAISO tariff.

²⁹ Section 43A.7.3 to the CAISO tariff.

adequacy contracts and, instead, rely on CPM backstop procurement.”³⁰ The facts have borne this out since the Commission approved the soft offer cap. Although there were two CPM designations for collective local deficiencies for 2018, the facts show the designations were for reasons other than LSEs seeking to avoid executing RA contracts.³¹ There are no CPM designations for annual RA deficiencies for 2019. If the CPM mechanism was inappropriately suppressing bilateral prices below going forward cost levels, one might expect to see notable increases in CPM designations for individual RA deficiencies as LSEs might elect to forego executing RA contracts and instead “lean” on backstop procurement. That has not been the case.

NRG’s claims are also inconsistent with the findings in the Commission’s April 12, 2018, order rejecting the CAISO’s risk of retirement CPM tariff amendment.³² In rejecting the CAISO’s proposal to establish a window for unit owners to seek conditional risk of retirement CPM designations prior to the deadline for annual RA showings, the Commission stressed that the compensation resources could recover from a risk of retirement CPM designation (full fixed cost of service recovery plus retaining all market revenues) likely would exceed what a resource could earn under a bilateral RA contract.³³ The

³⁰ *Cal. Indep. Sys. Operator Corp.*, 153 FERC ¶ 61,001 at P 29 (2015). The Commission also found that the CPM soft offer cap level, which includes a 20 percent adder, “should allow sufficient recovery of fixed costs plus return on capital to facilitate incremental upgrades and improvements by resources.” *Id.*

³¹ CAISO August 24, 2018 Answer to Complaint at 64-68; CAISO September 10, 2018 Answer to Comments at 13-14.

³² *Cal. Indep. Sys. Operator Corp.*, 163 FERC ¶ 61,023 (2018).

³³ *Id.* at P 44.

Commission expressed concern that resources would not offer less than this amount in the bilateral RA market, thus having deleterious effects on the competitiveness of capacity procurement under the RA program. In other words, the Commission was not concerned that risk of retirement CPM pricing would inappropriately suppress RA prices; it had the opposite concern, *i.e.*, risk of retirement CPM pricing would artificially increase RA prices if resource owners were permitted to front-run the RA process.

In its August 23, 2018, Comments in this proceeding, Pacific Gas & Electric Company (PG&E) provided a table showing recent RA prices based on a CPUC RA report. The 85th percentile RA price was \$4.19/kW-month, and the highest price was \$26.54/kW-month.³⁴ The 85th percentile price of RA contracts is well below the \$6.31/kW-month CPM soft offer cap specified in CAISO tariff section 43A.4.1.1.1, and some RA prices have far exceeded that cap. These RA prices do not reflect a situation where the CPM soft offer cap is responsible for suppressing RA prices. Moreover, this entire line of argument ignores the effects of excess capacity that NRG, La Paloma, and WPTF all acknowledge exists.³⁵

NRG claims that the Commission's decision in *Ameren* supports its position.³⁶ That decision is inapposite. *Ameren* involved a complaint alleging that the Midcontinent Independent System Operator's (MISO) System Support Resource (SSR) contract was unjust and unreasonable because it only provided

³⁴ PG&E Comments to Complaint at p. 8.

³⁵ NRG Request for Rehearing at 4, 10; WPTF Request for Rehearing at 8; La Paloma Complaint at 2, 32, 35-36, and Affidavit at P 9; La Paloma Request for Rehearing at 12.

³⁶ *AmerenEnergy Res. Gen. Company*, 153 FERC ¶ 61.062 (2015) (*Ameren*). NRG Request for Rehearing at 10.

for the recovery of a resource's going forward costs, but MISO could require a retiring resource to accept the contract even though it might be uneconomic. The Commission ruled that if MISO can force a resource to continue to operate for reliability reasons, it must provide the generator an opportunity to recover its fixed cost through a full cost of service rate.³⁷ Unlike MISO SSR agreements, RA contracts are not mandatory. The *Ameren* decision does not pertain to voluntary bilateral contracts negotiated between willing buyers and sellers and, as such, NRG's reliance on it is misplaced. In any event, the relevant CAISO tariff procurement regime complies with the requirements of *Ameren*. RMR designations, which a unit owner must accept if offered by the CAISO, provide for full cost of service recovery. On the other hand, CPM is a purely voluntary mechanism. Resources can choose to participate or not participate in a CPM competitive solicitation, and the CAISO has no authority to require a unit owner to accept a CPM designation. Moreover, even though participation in a CPM competitive solicitation is voluntary, CPM compensates resources for more than just their basic going forward costs as indicated above.

C. The Commission Correctly Found That the Undue Discrimination Claims Raised in This Proceeding Are Not Cognizable Under the Federal Power Act

La Paloma and WPTF argue that the Commission erred in finding that California's preference for procuring renewable resource does not constitute undue discrimination under the Federal Power Act (FPA) and is not a cognizable

³⁷ *Id.* at P 35.

claim under the FPA.³⁸ WPTF argues that the state's preference for renewable resources is creating excess capacity and thus producing lower prices for other resources.³⁹ Citing a recent Commission order regarding PJM's centralized capacity market, WPTF argues that the Commission must remedy the effects of this "undue discrimination."⁴⁰

The Commission's November 19 Order is consistent with extensive Commission and judicial precedent establishing that states have the authority to determine the types of resources their load serving entities procure and that state-administered procurement programs may prefer one resource type over another.⁴¹ State procurement preferences, such as Renewable Portfolio Standards, do not constitute undue discrimination under the FPA. General claims that the CAISO tariff is unjust, unreasonable, and unduly discriminatory because it allows bilateral contracting, which can reflect state procurement preferences, strains credulity. As the Commission correctly found in its November 19 Order, La Paloma and WPTF have not identified – and cannot identify – a single CAISO tariff provision that is unduly discriminatory on its face.⁴² The CAISO tariff does not specify particular procurement practices or set the prices for bilateral RA contracts. The CAISO is not a party to bilateral RA contracts. Further, the FPA regulates sellers of electricity, not buyers. That

³⁸ La Paloma Request for Rehearing at 5, 8-10; WPTF Request for Rehearing at 9.

³⁹ WPTF Request for Rehearing at 8.

⁴⁰ *Id.* at 8-10, citing *Calpine Corp., et al. v. PJM Interconnection, LLC.*, 163 FERC ¶ 61,236 (2018) (*Calpine*).

⁴¹ Relevant precedent is disused at length in the CAISO August 24, 2018 Answer to Complaint at 85-91.

⁴² November 19 Order at P 70.

buyers pay different sellers different prices under separate bilateral contracts does not constitute undue discrimination under the FPA. The Commission properly concluded that the State's procurement actions do not constitute undue discrimination under section 206 of the FPA and, as such, complaints involving state procurement actions like those referenced by La Paloma and WPTF are not legally cognizable thereunder.

Reliance on the *Calpine* decision is misplaced. *Calpine* involved the issue of subsidized resources suppressing the capacity market clearing prices paid to all resources. *Calpine* is inapt because the CAISO does not have a centralized capacity market with a clearing price. In contrast, RA procurement in California is effectuated through separate bilateral contracts between willing buyers and sellers. Unlike the situation in *Calpine*, the price paid to one seller in a bilateral contract RA procurement framework does not directly affect a clearing price that would be paid to other sellers, and it does not directly affect the price that would be paid to a different seller under a different RA bilateral contract. This is reflected by the wide range of RA prices in bilateral contracts.⁴³ Finally, there is no conflict between the *Calpine* order and the November 19 Order because *Calpine* recognizes that "states 'are free to make their own decisions regarding how to satisfy their capacity needs,'" suggests adoption of a bifurcated capacity construct whereby subsidized resources (and a corresponding amount of load) are removed from the capacity market, and continues to support the existing

⁴³ PG&E Comments to Complaint at 8.

option whereby utilities can remove all resources and load from the capacity market.⁴⁴

Finally, La Paloma takes issue with the Commission's finding that La Paloma failed to demonstrate that the CAISO's energy market rules have become unjust, unreasonable, or unduly discriminatory as a result of an increased proportion of renewable resources in the market.⁴⁵ La Paloma claims that the Commission's conclusion was unsupported by any evidence or analysis.

This claim would flip La Paloma's legal burden under section 206 of the FPA on its head. As the complainant, La Paloma bears the burden of proof, not the Commission. La Paloma failed to meet its burden. Further, although La Paloma's complaint (and its request for rehearing) mentioned the reduced usage of traditional resources and lower energy market prices resulting from excess capacity and the increasing number of renewable resources, the focus of La Paloma's complaint is on RA program reform to address purported flaws in the RA framework, not energy market reform. In that regard, La Paloma only sought remedies regarding the RA program, not the energy market. La Paloma cannot now – on rehearing – pursue a wholly different course.

Further, La Paloma admitted in its complaint that California's procurement policies had produced excess capacity on the system resulting in less use of certain other resources and lower prices.⁴⁶ This fact does not create an

⁴⁴ *Calpine* at PP 159-63.

⁴⁵ La Paloma Request for Rehearing at 9.

⁴⁶ La Paloma Complaint at 2, 32, 35-36 and accompanying Affidavit at P 9. In its rehearing request, WPTF also states that California's subsidization of certain suppliers and technologies have resulted in excess capacity and lower prices. WPTF Request for Rehearing at 8. In its

actionable claim under the FPA. La Paloma's arguments cannot be reconciled with precedent making clear that state actions that increase capacity in a region – resulting in lower prices – do not infringe on the Commission's authority.⁴⁷ Moreover, as discussed *supra*, the Commission has recognized that low prices arising from excess capacity is not indicative of an unjust and unreasonable market design. Lower energy market prices that reflect the increased availability of lower marginal energy cost resources in the region, *i.e.*, resources that essentially have no fuel cost, do not constitute a flawed market. The CAISO notes that in *Calpine*, although the Commission directed significant changes to PJM's centralized capacity market to account for the participation of state-subsidized resources, the Commission found that such resources could still participate in energy and ancillary services markets.⁴⁸

request for rehearing, La Paloma claims that Exhibit JT/JC-2 to its complaint shows that the amount of resource adequacy in excess of the CPUC's planning reserve margin have been decreasing. That exhibit does not support the drastic remedy La Paloma seeks. Indeed, this exhibit shows a 20 percent operating reserve margin for the 2017 – the latest year in the chart – which is well in excess of the CPUC's planning reserve margin.

⁴⁷ See *PPL Energyplus, LLC v. Solomon*, 766 F. 3d 241, 255 (3d Cir. 2014) and *Allco Finance Limited v. Klee*, 861 F. 3d 82 at 101 (2d Cir. 2017).

⁴⁸ *Calpine* at PP 160, 162.

III. CONCLUSION

For all the foregoing reasons, the Commission should deny the rehearing requests filed by La Paloma, NRG, and WPTF.

Respectfully submitted,

/s/ Anthony Ivancovich

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Dated: January 3, 2019

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, California this 3rd day of January, 2019.

Grace Clark
Grace Clark