

169 FERC ¶ 61,045  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

CXA La Paloma, LLC

Docket No. EL18-177-001

v.

California Independent System  
Operator Corporation

ORDER DENYING REHEARING

(Issued October 17, 2019)

1. On November 19, 2018, the Commission issued an order denying a complaint (Complaint) filed by CXA La Paloma, LLC (CXA La Paloma) pursuant to section 206 of the Federal Power Act (FPA)<sup>1</sup> against the California Independent System Operator Corporation (CAISO) alleging that the resource adequacy regime in California is unjust, unreasonable, and unduly discriminatory, and requesting that the Commission direct CAISO to implement centralized resource adequacy procurement and a transitional payment mechanism.<sup>2</sup> CXA La Paloma, the NRG Companies (NRG), and Western Power Trading Forum (WPTF) filed timely requests for rehearing of the Complaint Order.<sup>3</sup> In this order, we deny those requests.

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<sup>1</sup> 16 U.S.C. § 824e (2012).

<sup>2</sup> *CXA La Paloma, LLC v. Cal. Indep. Sys. Operator Corp.*, 165 FERC ¶ 61,148 (2018) (Complaint Order).

<sup>3</sup> CXA La Paloma December 19, 2018 Request for Rehearing (CXA La Paloma Rehearing Request); NRG Companies December 19, 2018 Request for Rehearing (NRG Rehearing Request); Western Power Trading Forum December 19, 2018 Request for Rehearing (WPTF Rehearing Request).

## I. Background

2. In the Complaint, CXA La Paloma alleged that regulation of the wholesale power market in California is fragmented and compartmentalized, and that in failing to develop centralized capacity procurement, CAISO has facilitated an unduly discriminatory, unjust and unreasonable market design that is harmful to both market participants and ratepayers.<sup>4</sup> First, CXA La Paloma argued that the current resource adequacy regime is unduly discriminatory and unjust and unreasonable because the California Public Utilities Commission (CPUC) excludes existing units from the Integrated Resource Planning (IRP) process<sup>5</sup> which addresses longer-term resource adequacy needs, by prioritizing the procurement of new renewable resources over thermal resources, even though those existing renewable resources and thermal resources can provide the same capacity services as new and renewable generation.<sup>6</sup> Second, according to CXA La Paloma, the current resource adequacy regime among CPUC and CAISO does not provide a revenue stream for capacity that can attract and retain resources that are needed for reliability. Third, CXA La Paloma argued that the current resource adequacy regime does not provide accurate price signals for suppliers to incent appropriate investment in existing resources and efficient entry and exit of supply. CXA La Paloma asserted that, rather than satisfying these requirements, the current capacity procurement mechanisms result in inadequate revenue for generation resources.<sup>7</sup> CXA La Paloma claimed that the problem of inadequate revenue is exacerbated by the participation of renewable resources that receive out-of-market subsidies through federal tax credits, which allows them to offer into the CAISO markets at zero or negative prices, thereby depressing locational marginal prices for electricity.<sup>8</sup>

3. In the Complaint Order, the Commission found that CXA La Paloma had not satisfied its burden under FPA section 206 to demonstrate that the CAISO tariff is unjust, unreasonable, unduly discriminatory or preferential.<sup>9</sup> The Complaint Order stated that CXA La Paloma failed to identify any specific CAISO tariff provisions that have

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<sup>4</sup> Complaint at 28-29.

<sup>5</sup> The IRP modeling process superseded the CPUC's prior Long-Term Procurement Planning (LTPP) process.

<sup>6</sup> Complaint at 14-15, 28-29.

<sup>7</sup> *Id.* at 30.

<sup>8</sup> *Id.* at 32-33.

<sup>9</sup> Complaint Order, 165 FERC ¶ 61,148 at P 69.

become unjust and unreasonable. Rather, the Commission noted that CXA La Paloma complained generally about low prices for capacity transactions and posited that these low prices will lead to a shortage of generation resources with the needed flexibility attributes to maintain reliability.<sup>10</sup>

4. The Commission found that CXA La Paloma did not demonstrate that the existing resource adequacy construct in California systematically denied it or other resources a meaningful opportunity to recover their costs.<sup>11</sup> The Commission also stated that CXA La Paloma did not support its claims that the perceived insufficiency of revenues under the current resource adequacy paradigm will lead to the premature retirement of needed gas-fired resources. Further, the Commission found that CXA La Paloma failed to identify any reliability violation resulting from the purported inadequacies of the resource adequacy paradigm, nor did it provide credible evidence that any such reliability violations are likely in the foreseeable future.<sup>12</sup> Finally, the Commission found that CXA La Paloma's undue discrimination argument and its claim that the CPUC's LTPP/IRP gives undue preference to renewable resources is not legally cognizable under FPA section 206. The Commission stated that CXA La Paloma focused its claims of undue discrimination on state-administered programs and not on CAISO's tariff or on CAISO's implementation of its resource adequacy authority.<sup>13</sup>

5. On December 19, 2018, CXA La Paloma, NRG, and WPTF filed requests for rehearing of the Complaint Order.

## II. Discussion

### A. Procedural Matters

6. On January 3, 2019, CAISO filed a motion for leave to answer and answer to the requests for rehearing. On January 18, 2019, CXA La Paloma filed an answer to CAISO's motion for leave to answer and answer. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure<sup>14</sup> prohibits answers to a request for rehearing. Accordingly, we deny the motion for leave to answer and reject the answers.

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<sup>10</sup> *Id.* P 70.

<sup>11</sup> *Id.* P 71.

<sup>12</sup> *Id.* P 73.

<sup>13</sup> *Id.* P 77.

<sup>14</sup> 18 C.F.R. § 385.713(d)(1) (2018).

7. On July 18, 2019, CXA La Paloma filed a supplement in support of its request for rehearing.<sup>15</sup> On August 2, 2019, CAISO filed a motion for leave to answer and answer the supplement.<sup>16</sup> Section 313(a) of the FPA<sup>17</sup> and Rule 713(b) of the Commission's Rules of Practice and Procedure<sup>18</sup> require parties to file a request for rehearing not later than 30 days after issuance of any final decision or other final order in a proceeding. In this case, that date was no later than December 19, 2018. Both the Commission and the courts have consistently held that the 30-day requirement in section 313(a) is a jurisdictional requirement that the Commission does not have discretion to waive.<sup>19</sup> Further, the Commission has interpreted this jurisdictional limitation as precluding it from considering a late-filed supplement or amendment to a timely filed request for rehearing.<sup>20</sup> Thus, we reject CXA La Paloma's supplement in support of its request for rehearing, and we likewise reject CAISO's answer to the supplement.

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<sup>15</sup> CXA La Paloma July 18, 2019 Supplement in Support of Request for Rehearing.

<sup>16</sup> CAISO August 2, 2019 Motion for Leave to Answer and Answer Supplement in Support of Request for Rehearing.

<sup>17</sup> 16 U.S.C. §8251(a) (2012).

<sup>18</sup> 18 C.F.R. § 385.713(b) (2018).

<sup>19</sup> See, e.g., *City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985) (holding that the 30-day time requirement to file a request for rehearing in the FPA “is as much a part of the jurisdictional threshold as the mandate to file for a rehearing.”); *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,160, at P 3 (2012); *Louisiana Energy and Power Authority*, 117 FERC ¶ 61,258, at 62,301 (2006); *Midwest Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶ 61,211, at P 10 (2005); *Texas-New Mexico Power Company v. El Paso Electric Company*, 107 FERC ¶ 61,316, at P 22 (2004); *California Indep. Sys. Operator Corp.*, 105 FERC ¶ 61,322, at P 9 (2003).

<sup>20</sup> See *Old Dominion Elec. Coop.*, 154 FERC ¶ 61,155, at P 8 (2016) (citing *CMS Midland, Inc.*, 56 FERC ¶ 61,177, at 61,623 (1991) (“any subsequent filing supplementing or revising the request for rehearing is in essence a new request for rehearing and thereby precluded under section 313(a) of the [Federal Power] Act.”); *Pub. Serv. Co. of New Hampshire*, 56 FERC ¶ 61,105, at 61,403 (1991) (“Commission precedent is clear that supplements to timely filed requests for rehearing, when filed after the expiration of the statutory [30]-day period, will be rejected.”)).

## **B. Substantive Matters**

### **1. Inadequate Market Revenues**

8. In the Complaint, CXA La Paloma argued that the “patchwork approach” to resource adequacy in the California wholesale power market has resulted in insufficient revenues for relatively new and efficient generators, plunging resources into bankruptcy or forcing resources to exit the market altogether.<sup>21</sup> CXA La Paloma argued that this has created an increased need for flexible resources that can quickly ramp up when intermittent resources are not available. Further, CXA La Paloma argued that the entry of so many new renewable resources at subsidized rates exerts downward pressure on prices, contributing to the premature exit of existing flexible resources from the market. CXA La Paloma asserted that to keep flexible resources (and other resources needed for reliability) in the market, CAISO will be forced to rely more and more on short-term out-of-market procurement (e.g., Reliability Must Run (RMR) and Capacity Procurement Mechanism (CPM)). CXA La Paloma claimed that the currently effective resource adequacy and capacity procurement regime does not generate revenue sufficient to compensate existing suppliers and incent new entry.<sup>22</sup> The just and reasonable, non-discriminatory solution to this problem, according to CXA La Paloma, is centralized resource adequacy procurement administered by CAISO.<sup>23</sup>

9. In the Complaint Order, the Commission disagreed with CXA La Paloma’s claims. The Commission found unpersuasive CXA La Paloma’s argument that low prices for capacity transactions will lead to a shortage of generation resources with the needed flexibility attributes to maintain reliability.<sup>24</sup> The Commission found that CXA La Paloma had not demonstrated that the existing resource adequacy construct in California systemically denied it or other resources a meaningful opportunity to recover their costs, that CXA La Paloma had not identified any reliability violation from the purported inadequacies of the resource adequacy paradigm, or that the perceived insufficiency of revenues under the current resource adequacy paradigm would lead to the premature retirement of needed gas-fired resources.<sup>25</sup> The Commission cited its prior finding that low capacity prices are “not necessarily indicative of an unjust and

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<sup>21</sup> Complaint at 2.

<sup>22</sup> *Id.* at 29.

<sup>23</sup> *Id.* at 2.

<sup>24</sup> Complaint Order, 165 FERC ¶ 61,148 at PP 70-73.

<sup>25</sup> *Id.* PP 71-73.

unreasonable construct,”<sup>26</sup> and noted that CXA La Paloma made only broad and generalized claims about revenue insufficiency. Thus, the Commission disagreed with CXA La Paloma’s assertions that the California resource adequacy procurement regime is unjust and unreasonable because it exacerbates an “inadequate revenue problem.”<sup>27</sup>

10. On rehearing, WPTF asserts that the Complaint Order ignored evidence that the existing resource adequacy framework fails to provide resources with a reasonable opportunity to recover their costs or to ensure that sufficient resources are committed on a forward basis to allow CAISO to maintain reliability.<sup>28</sup> Specifically, WPTF argues that it demonstrated that reliance on out-of-market procurement mechanisms that purportedly discriminate against existing generation resources and the rapid proliferation of state-subsidized resources are suppressing wholesale market prices below just and reasonable levels and resulting in premature retirement of resources needed for reliability.<sup>29</sup> WPTF also asserts that the Complaint Order did not address its claim that the resource adequacy framework fails to send price signals for the efficient entry and exit of supply in the market.<sup>30</sup>

11. Similarly, CXA La Paloma argues that the Commission ignored its argument and evidence that inadequate revenue will lead to premature retirement of needed flexible resources, and that this would create a reliability issue that CAISO would need to address through out-of-market tools like RMR contracts.<sup>31</sup> CXA La Paloma also asserts that the Commission inaccurately claimed that the only evidence CXA La Paloma presented regarding inadequate revenues leading to premature retirement was the CAISO Department of Market Monitoring’s (DMM) report, and in fact, CXA La Paloma provided evidence that showed the trend of continued downward pressure on prices, the trend of increased need for flexible resources, and the trend toward continued exit from

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<sup>26</sup> *Id.* P 72 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 153 FERC ¶ 61,229, at P 110 (2015)).

<sup>27</sup> Complaint Order, 165 FERC ¶ 61,148 at PP 71-72; *see also* Complaint at 29.

<sup>28</sup> WPTF Rehearing Request at 4.

<sup>29</sup> *Id.* at 4-5, 8-9.

<sup>30</sup> *Id.* at 4.

<sup>31</sup> CXA La Paloma Rehearing Request at 13-14.

the market/decreasing production for thermal generation.<sup>32</sup> CXA La Paloma also argues that the Commission failed to consider that the lack of adequate revenue or “missing money” poses a substantial threat.<sup>33</sup>

12. Contrary to WPTF’s and CXA La Paloma’s arguments, we find that the Commission did not disregard relevant evidence in denying CXA La Paloma’s Complaint. Rather, the Commission reviewed the record evidence presented and determined that it did not substantiate the claims made by CXA La Paloma. As noted in its rehearing request, CXA La Paloma relies on the nine graphs that comprise Exhibit Nos. JT/JC-1 through JT/JC-9 of its Complaint to demonstrate that the existing resource adequacy construct is resulting in inadequate revenue, which it claims will lead to the premature retirement of resources needed for reliability.<sup>34</sup> We disagree with CXA La Paloma regarding the persuasiveness of this evidence. Taken separately, these exhibits are merely different data points concerning different prices, different programs, and/or different markets. CXA La Paloma failed to explain how it derived its conclusions about the resource adequacy program as a whole from these disparate graphs. Even when considered together, these exhibits show, at most, market trends such as the increased penetration of renewable resources and low prices in the energy market,<sup>35</sup> all of which

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<sup>32</sup> *Id.* at 15 (citing Exhibit Nos. JT/JC-1 through JT/JC-9). CXA La Paloma also argues that the Commission falsely equates low prices with inadequate revenue; decreasing prices, together with the lack of a meaningful opportunity to compete to provide resources adequacy in a nondiscriminatory auction or market, contribute to inadequacy of revenues. *Id.* at 16.

<sup>33</sup> *Id.* at 18 (citing Complaint at 30). In the Complaint, CXA La Paloma referred to testimony by Dr. Roy Shanker in a 2003 proceeding which stated, “[a]bsent some mechanism to capture the missing money, the entire electric market is going to be doomed to lack of entry, shortage, and the recurring need for regulatory intervention.” Complaint at 30 (citing Docket No. RM01-12-000, *Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design*, Comments of Roy J. Shanker, Ph.D., ¶¶ 5, 13 (filed Jan. 10, 2003)).

<sup>34</sup> CXA La Paloma Rehearing Request at 12-13.

<sup>35</sup> Exhibit No. JT/JC-1 compares newly contracted thermal capacity resource prices with resource adequacy capacity resource prices from 2011-2016. Exhibit No. JT/JC-2 compares the CAISO reported system operating reserve margins with the CPUC resource adequacy planning reserve margin. Exhibit No. JT/JC-3 shows the impact of recent and projected growth in renewable resources on CAISO thermal generation annual production. Exhibit No. JT/JC-4 shows the estimated net energy market revenue for CAISO combined cycle generating plants from 2012-2017. Exhibit No. JT/JC-5 shows

create new economic pressure for conventional resources, but do not necessarily demonstrate an unjust and unreasonable resource adequacy paradigm. It is not evident from the exhibits themselves, and CXA La Paloma does not explain, how these graphs support CXA La Paloma's allegation that "inadequate revenues will lead to the early retirement of needed flexible resources."<sup>36</sup>

13. Specifically, Exhibit Nos. JT/JC-1 through JT/JC-3 provide information about contract price differentials from different procurement programs, reserve margin differentials, and a decrease in annual production from thermal generation as production from renewable resources increases. CXA La Paloma fails to explain how these data points demonstrate, as it claims, that the resource adequacy framework is resulting in unjust and unreasonable rates. Exhibit No. JT/JC-4 shows declining energy market revenues, but the resource adequacy framework in California pertains to capacity prices, and not energy market prices. In pointing to Exhibit No. JT/JC-4, CXA La Paloma does not analyze or explain why the declining trend in energy market revenues represented in Exhibit No. JT/JC-4 renders the resource adequacy construct unjust and unreasonable. In addition, CXA La Paloma does not explain how Exhibit No. JT/JC-4 provides any insight into the myriad of factors that may be influencing energy market price trends. Accordingly, CXA La Paloma fails to establish that its evidence purporting to show declining energy market prices demonstrates that the capacity procurement framework is unjust and unreasonable. Similarly, Exhibit Nos. JT/JC-5 and JT/JC-6 show negative prices in the CAISO energy markets, but again do not demonstrate any inherent problem with the resource adequacy framework. Exhibit No. JT/JC-7 indicates an increased need for ramping capability, which says nothing about the adequacy of revenues. Further, as the Commission noted in the Complaint Order, suppliers in competitive wholesale electricity markets are not guaranteed full cost recovery, but only the opportunity to recover their costs.<sup>37</sup> Exhibit Nos. JT/JC-8 and JT/JC-9 show an increase in CAISO's use of its backstop procurement authority. CXA La Paloma has not convinced us, on the record in this proceeding, to revisit the current RMR and CPM tariff

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the frequency of negatively priced hours at CAISO hubs from 2012-2017. Exhibit No. JT/JC-6 shows the frequency of negative prices at CAISO hubs throughout the day in 2017. Exhibit No. JT/JC-7 shows CAISO's maximum 3-hour upward flexibility requirement from 2015-2019. Exhibit No. JT/JC-8 shows CAISO's capacity from RMR contracts from 2007-2018. Exhibit No. JT/JC-9 presents CAISO's capacity from exceptional dispatch CPM designation from February 2013 to February 2018.

<sup>36</sup> CXA La Paloma Rehearing Request at 15.

<sup>37</sup> Complaint Order, 165 FERC ¶ 61,148 at P 71 (citing *Bridgeport Energy, LLC*, 113 FERC ¶ 61,311, at P 29 (2005)).

provisions.<sup>38</sup> Moreover, as discussed below, we disagree with the arguments raised in this proceeding that CAISO's use of CPM and RMR indicates a failure of the existing resource adequacy construct.

14. Based on its analysis of these exhibits, the Commission in the Complaint Order found that "CXA La Paloma offers no other support for its argument that resource adequacy prices are not adequate to keep system, local, and flexible capacity resources in the market."<sup>39</sup> We continue to find that CXA La Paloma has neither provided adequate support for its allegations, nor sufficiently described how the supporting documents it did include support the allegations made.<sup>40</sup>

15. We also affirm the Commission's finding that CXA La Paloma's reliance on the CAISO DMM's 2017 Annual Report to support its inadequate revenue claims or arguments regarding premature retirements is misplaced.<sup>41</sup> As noted in the Complaint Order, this report focused solely on the performance of the CAISO-administered markets and did not analyze prices for resource adequacy contracts or evaluate how revenue from bilateral resource adequacy contracts affected the financial viability of these generators.<sup>42</sup> Because WPTF expressly relies on the evidence presented by CXA La Paloma,<sup>43</sup> we likewise find WPTF's arguments on this issue to be equally unsupported. Thus, we affirm that the Commission correctly found that CXA La Paloma failed to provide sufficient evidence to support its arguments regarding inadequate market revenues.

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<sup>38</sup> We note that CAISO has initiated a stakeholder process to address CPM compensation issues. *See, e.g.*, <http://www.caiso.com/informed/Pages/StakeholderProcesses/CapacityProcurementMechanismSoftOfferCap.aspx>. In addition, CAISO filed tariff revisions to eliminate its risk of retirement CPM and update its RMR program in Docket No. ER19-1641. The Commission issued an order on September 27, 2019 accepting those revisions. *Cal. Indep. Sys. Operator Corp.*, 168 FERC ¶ 61,199 (2019).

<sup>39</sup> Complaint Order, 165 FERC ¶ 61,148 at P 72.

<sup>40</sup> *See Joint Cal. Complainants v. Pac. Gas & Elec. Co.*, 163 FERC ¶ 61,112, at PP 7-8 (2018) (citing 18 C.F.R. § 385.206 (b)(1)-(2), (8) (2018) and explaining the requirement for a complainant to provide evidentiary documents to support the facts in the complaint).

<sup>41</sup> Complaint Order, 165 FERC ¶ 61,148 at P 72.

<sup>42</sup> *Id.*

<sup>43</sup> WPTF August 24, 2018 Comments at n.6.

16. We do not find persuasive WPTF's assertion that the Complaint Order did not address its claim that the resource adequacy framework fails to send price signals for the efficient entry and exit of supply in the market.<sup>44</sup> WPTF has not supported its allegations regarding inefficient price signals with any data or analysis that would persuade us to modify our findings in the Complaint Order. Rather, record evidence supports the Complaint Order's finding that the current resource adequacy paradigm is ensuring reliability for the reasons discussed in the Complaint Order and reiterated below.<sup>45</sup>

17. CXA La Paloma also argues that the Complaint Order failed to consider other substantive arguments pertaining to inadequate revenue, including (1) that resource adequacy pricing does not adequately compensate suppliers for capacity because of the vertical demand curve and the lack of a clearing price, and (2) that the current CAISO market design is inconsistent with the Commission's objective of promoting competitive outcomes.<sup>46</sup> We disagree. First, in response to CXA La Paloma's objection to what it characterizes as the "vertical demand curve," the Commission pointed out that it has "consistently rejected a one-size-fits all approach to resource adequacy" in different regions,<sup>47</sup> and specifically emphasized the Commission's recent rejection of requests to impose a sloped demand curve in the market operated by the Midcontinent Independent System Operator, Inc.<sup>48</sup> The fact that CAISO's market design differs from other Regional Transmission Organizations and Independent System Operators does not make it unjust and unreasonable.<sup>49</sup> Moreover, CXA La Paloma provides no evidence to persuade us that CAISO's market design does not promote competitive outcomes. CXA La Paloma points to Exhibit Nos. JT/JC-8 and JT/JC-9, which demonstrate

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<sup>44</sup> WPTF Rehearing Request at 4.

<sup>45</sup> See Complaint Order, 165 FERC ¶ 61,148 at PP 73-74.

<sup>46</sup> CXA La Paloma Rehearing Request at 5, 18.

<sup>47</sup> Complaint Order, 165 FERC ¶ 61,148 at P 76.

<sup>48</sup> *Id.* (citing *Midcontinent Indep. Sys. Operator, Inc.*, 162 FERC ¶ 61,176, at P 57 (2018)).

<sup>49</sup> *Southwest Power Pool, Inc.*, 158 FERC ¶ 61,063, at P 13 (2017) ("market rules need not be identical among the regions to be just and reasonable, and there can be more than one just and reasonable rate."); *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,063, at P 39 (2007) ("The Commission has permitted different just and reasonable rate designs reflective of particular system characteristics and stakeholder input.").

CAISO's use of its backstop procurement authority, to support this argument.<sup>50</sup> However, CXA La Paloma does not explain how these exhibits relate to the competitiveness of CAISO's market design. In any case, the mere use of the CPM provisions in CAISO's tariff does not necessarily indicate that the resource adequacy framework is unjust and unreasonable.<sup>51</sup>

18. We also disagree with NRG's assertion that the Commission failed to take into account the role that CAISO's backstop authority plays in unduly suppressing resource adequacy prices. Specifically, NRG asserts that resource adequacy prices are not suppressed solely by excess capacity, but also because CAISO backstop provisions are being used to bypass needed reliability procurement that should happen through the CPUC-jurisdictional resource adequacy program, thereby suppressing bilateral capacity prices to levels that may be below the going-forward costs of the facilities.<sup>52</sup> However, NRG provides no evidence to support these claims other than repeating a generalized assertion that "the California market has 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."<sup>53</sup> We also find NRG's claims that this situation creates a "lure for utility buyers . . . to bypass the bilateral negotiation process,"<sup>54</sup> or that CPUC knowingly uses CAISO CPM as the *de facto* source of primary procurement to be speculative and unsupported. We continue to find that neither NRG nor any other party to this proceeding has offered anything beyond generalized claims of price suppression to support their arguments on this issue. We do not find these unsupported allegations to be sufficient to demonstrate that CAISO's backstop provisions are suppressing bilateral capacity prices to unjust and unreasonable levels.

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<sup>50</sup> CXA La Paloma Rehearing Request at 18 (citing Complaint at 40-41 which references Exhibit Nos. JT/JC-8 and JT/JC-9).

<sup>51</sup> *See infra* PP 30-33.

<sup>52</sup> NRG Rehearing Request at 10. NRG asserts that CPUC has begun strategically taking advantage of the CAISO's emergency backstop rules by excusing utilities from contracting with needed reliability resources in two key situations: first, when the bilateral resource adequacy contract price exceeds the CPM backstop price (\$6.31/kW-month); and second, in local sub-areas where CPUC excused utilities from their obligation to meet local reliability needs because of concerns over price or the exercise of market power in sub-areas where there is only a limited pool of suppliers. *Id.* at 11.

<sup>53</sup> *Id.* (citing NRG Comments at 4).

<sup>54</sup> *Id.*

19. Finally, we disagree with NRG's characterization of the Commission's determination in the Complaint Order as finding that "prices are not relevant to just and reasonable rates."<sup>55</sup> Rather, in the Complaint Order, the Commission found CXA La Paloma's showing on the issue of prices to be insufficient to satisfy its burden under FPA section 206.<sup>56</sup>

## 2. Reliability Concerns

20. In the Complaint, CXA La Paloma characterized the current resource adequacy framework as a "fragmented, short-term"<sup>57</sup> procurement regime that does not adequately value capacity or incentivize investment or efficient entry into or exit from the market. As such, CXA La Paloma hypothesized that conventional generators that are needed for reliability will retire prematurely and CAISO will be forced to rely more heavily on its backstop procurement authority to keep existing generation needed for flexibility from exiting the market.<sup>58</sup>

21. In the Complaint Order, the Commission disagreed with CXA La Paloma's assertion that the current resource adequacy construct is not providing CAISO the resources necessary to operate the grid reliably. The Commission found that CXA La Paloma had failed to identify any reliability violations resulting from the alleged inadequacies of the current framework, and also did not "provide credible evidence that any such violations are likely in the foreseeable future."<sup>59</sup> The Commission cited several reports and studies that refuted CXA La Paloma's claims and indicated that the resource adequacy framework can indeed ensure reliability.<sup>60</sup>

22. On rehearing, CXA La Paloma takes issue with the Commission's finding that CXA La Paloma "fail[ed] to identify any reliability violation resulting from the purported inadequacies of the resource adequacy paradigm, nor does it provide credible evidence

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<sup>55</sup> *Id.* at 14.

<sup>56</sup> Complaint Order, 165 FERC ¶ 61,148 at PP 69-72.

<sup>57</sup> Complaint at 29.

<sup>58</sup> *Id.*

<sup>59</sup> Complaint Order, 165 FERC ¶ 61,148 at P 73.

<sup>60</sup> *Id.* PP 73, 74.

that any such reliability violations are likely in the foreseeable future.”<sup>61</sup> Specifically, CXA La Paloma argues that the Commission dismissed evidence regarding trends toward a future reliability issue and the need for out-of-market tools to address them.<sup>62</sup> CXA La Paloma asserts that the Commission ignored both the possibility that enough flexible resources could retire within three years to create a reliability issue, and the suspension of the main stakeholder process addressing flexibility issues.<sup>63</sup>

23. The Commission did not ignore any evidence in this regard. Instead, the Commission considered the evidence in the record and reached a different conclusion than La Paloma reached from the same evidence. Among other evidence, the Commission referenced CAISO studies that confirm that an additional 4,000 to 6,000 MW of capacity, beyond the 4,900 MW of capacity already accounted for in the CAISO and CPUC planning processes, would need to retire before any flexible capacity insufficiency would emerge.<sup>64</sup> We find that the evidence on which the Commission based its determination is more persuasive than CXA La Paloma’s generalized claims. Moreover, the fact that a stakeholder process addressing flexibility issues was suspended does not change our determination.<sup>65</sup> As discussed above, we continue to find that the data points presented in CXA La Paloma’s exhibits do not substantiate claims that the existing resource adequacy structure cannot continue to support reliable operation of the CAISO grid.

24. We also do not find persuasive NRG’s claims that requiring CXA La Paloma to prove that a reliability crisis has occurred or is imminent is inconsistent with Commission precedent that evaluates tariffs according to the just and reasonable and not unduly

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<sup>61</sup> CXA La Paloma Rehearing Request at 17 (citing Complaint Order, 165 FERC ¶ 61,148 at P 73).

<sup>62</sup> *Id.* (citing Complaint at 34-40).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* P 74.

<sup>65</sup> CAISO stated in a market notice issued July 30, 2018 that it needed to delay the Flexible Resource Adequacy Criteria and Must-Offer Obligation – Phase 2 stakeholder initiative in order to align it with its Day-Ahead Market Enhancements initiative to ensure that forward procurement of flexible resource attributes support CAISO’s operational needs.  
<http://www.caiso.com/Documents/FlexibleResourceAdequacyCriteriaandMustOfferObligationsPhase2InitiativeDelayed.html>.

discriminatory and preferential standard established by the FPA.<sup>66</sup> In contrast to NRG's claims, the Commission did not require that CXA La Paloma prove that a reliability crisis has occurred or is imminent. Rather, the Commission denied CXA La Paloma's arguments that the existing resource adequacy framework is unjust and unreasonable on the basis of its alleged inability to support reliable operation of the grid.<sup>67</sup> In disagreeing with CXA La Paloma's reliability-related arguments, the Commission required, consistent with the statutory standards articulated by NRG, that CXA La Paloma meet its burden under section 206 of the FPA to demonstrate that the CAISO tariff is unjust, unreasonable, unduly discriminatory or preferential. We find CXA La Paloma failed to do so in this proceeding.

25. Further, we disagree with NRG that the Commission failed to address substantive record evidence presented by the Electric Power Supply Association (EPSA) that lower compensation and misaligned incentives for unsubsidized conventional resources pose a risk to the reliable operation of the grid.<sup>68</sup> We likewise disagree with WPTF that the Commission ignored evidence that the resource adequacy program overestimates the potential capacity contributions of resource adequacy resources.<sup>69</sup> As an initial matter, we again note that the complainant bears the burden of demonstrating that the existing rate is unjust, unreasonable, unduly discriminatory or preferential.<sup>70</sup> The party with the burden of proof must initially provide sufficient evidence to establish a *prima facie* case.<sup>71</sup> CXA La Paloma failed to do so. Nevertheless, with regard to arguments concerning methods for assessing the capacity contributions of resources and related

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<sup>66</sup> NRG Rehearing Request at 14-15.

<sup>67</sup> See Complaint Order, 165 FERC ¶ 61,148 at P 73.

<sup>68</sup> NRG Rehearing Request at 17.

<sup>69</sup> WPTF Rehearing Request at 5.

<sup>70</sup> 16 U.S.C. § 824e(b) (2012); *FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 353 (D.C. Cir. 2014). The complainant must meet this burden before the Commission determines the just and reasonable rate to be thereafter observed. See, e.g., *Emera Maine v. FERC*, 854 F.3d 9, 25 (D.C. Cir. 2017) (“Without a showing that the existing rate is unlawful, FERC has no authority to impose a new rate.”) (*Emera*).

<sup>71</sup> See, e.g., *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs. Into Markets Operated by Cal. Indep. Sys. Operator Corp. and Cal. Power Exchange*, 149 FERC ¶ 61,116, at P 45 (2014) (“The party with the burden of proof bears the burden of production, or the need to provide sufficient evidence to establish a *prima facie* case.”).

matters, the Complaint Order rejected the comments presented by these parties, finding that CAISO and CPUC are undertaking appropriate initiatives to address these issues.<sup>72</sup>

### 3. CAISO Backstop Designations

26. In the Complaint, CXA La Paloma cited recent RMR designations by CAISO, as well as an increased use of CPM and exceptional dispatch, as an indication that the current resource adequacy framework is flawed.<sup>73</sup> CXA La Paloma also argued that compensation under CAISO's backstop procurement authority is too low to address the alleged inadequate revenue problem.<sup>74</sup>

27. In the Complaint Order, the Commission disagreed with arguments that CAISO's use of its backstop procurement authority signals a failure of the current resource adequacy framework. Rather, the Commission reviewed each of the RMR and CPM designations discussed by CXA La Paloma and other parties and found that "each recent issuance of a CPM or RMR designation has been unique and transitional in nature."<sup>75</sup>

28. On rehearing, CXA La Paloma argues that the Complaint Order's finding on this issue disregards relevant evidence and acts against reasoned decision-making. CXA La Paloma asserts that there is no evidence in the record to contradict its claims that the uptick in CAISO's backstop procurement indicates a failure of the current resource adequacy paradigm to attract and retain flexible capacity. CXA La Paloma maintains that these backstop designations represent "a pattern of out-of-market procurement, revealing an inefficient, unjust and unreasonable market structure."<sup>76</sup>

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<sup>72</sup> Complaint Order, 165 FERC ¶ 61,148 at P 80. For instance, the CPUC has instituted a Resource Adequacy Refinement Proceeding and CAISO has initiated a stakeholder process to address CPM compensation issues. See CPUC, R. 17-08-020, *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* (Oct. 4, 2017) and <http://www.caiso.com/informed/Pages/StakeholderProcesses/CapacityProcurementMechanismSoftOfferCap.aspx>.

<sup>73</sup> Complaint at 33-34.

<sup>74</sup> *Id.* at 38.

<sup>75</sup> Complaint Order, 165 FERC ¶ 61,148 at P 75.

<sup>76</sup> CXA La Paloma Rehearing Request at 16.

29. NRG claims that the Complaint Order did not adequately consider evidence, including testimony of NRG witness Mr. Stoddard, of increasing use and reasons underlying CAISO's backstop procurement authority.<sup>77</sup> NRG argues that in the 2018 delivery year, the majority of backstop designations were caused by the failure of CPUC's resource adequacy program to secure the capacity required for CAISO to reliably operate the California grid.<sup>78</sup> NRG points to the following designations in support of its point: (1) CPM issued to the Encina and Moss Landing facilities; (2) 624 MW of CPM issued to multiple units in August 2018; (3) 2,579 MW of CPM issued to multiple units in September 2018; and (4) RMR contracts issued to Metcalf, Yuba City and Feather River facilities. NRG argues that the Commission mischaracterizes these events as unique and transitional when they are growing in scale and importance and shifting from responding to unexpected physical events to addressing failures of the resource adequacy program in advance of the need.<sup>79</sup>

30. Similarly, WPTF and NRG contend that the Complaint Order failed to address evidence that the existing methodology to calculate resource adequacy requirements results in procurement below actual needs, resulting in a need for CAISO to use CPM to compensate for the shortfall between resource adequacy requirements and peak demand.<sup>80</sup>

31. We disagree and find that the Commission considered and correctly found unpersuasive arguments that CAISO's recent use of its backstop procurement authority demonstrates that the current resource adequacy paradigm is unjust and unreasonable. As noted, the fact that CAISO is using the CPM and RMR authority in its tariff does not necessarily indicate that the tariff is unjust and unreasonable. Among other things, the Commission found in the underlying order that CAISO's use of its CPM and RMR authority was largely to address "unique and transitional" events.<sup>81</sup> As to the Encina designation in December 2017, CAISO identified Encina generation as necessary for 2018 until the new Carlsbad Energy Center, a 500 MW natural-gas fired facility, came

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<sup>77</sup> NRG Rehearing Request at 5-10, 16.

<sup>78</sup> *Id.* at 6-7.

<sup>79</sup> *Id.* at 7.

<sup>80</sup> WPTF Rehearing Request at 4-5; NRG Rehearing Request at 17-18.

<sup>81</sup> Complaint Order, 165 FERC ¶ 61,148 at P 75.

online later that year.<sup>82</sup> As to the Moss Landing designation in December 2017, CAISO issued a CPM designation to Moss Landing for 2018 due primarily to a “collective local deficiency” under section 43A.2.2 of the CAISO tariff.<sup>83</sup> As to the CPM Significant Event designations referenced in August 2018 and September 2018, these were the result of a California Energy Commission forecast change.<sup>84</sup> Regarding the RMR contracts, CAISO’s 2017-2018 Transmission Plan notes that transmission upgrades are expected to be in place no later than the end of 2020 to address the reliability need for the Yuba City RMR and by the end of 2021 to address the reliability need for the Feather River RMR.<sup>85</sup> Similarly, CAISO terminated the RMR agreement with the 570 MW Metcalf unit for 2019.<sup>86</sup> The record evidence supports the Commission’s finding that these CPM and RMR designations were unique and transitional in nature. We affirm the Commission’s finding that evidence of CAISO’s increased use of CPM and RMR authority “does not indicate a failure of the current resource adequacy paradigm to attract and retain flexible capacity.”<sup>87</sup> Accordingly, we continue to find that the designations at issue are consistent with CAISO’s backstop procurement authority and are not indicative of a flaw in the resource adequacy program or a threat to system reliability.<sup>88</sup>

32. Similarly, the Commission reviewed, but was not persuaded by, NRG’s evidence that CAISO has provided out-of-market support to approximately 10 percent of the local

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<sup>82</sup> CAISO August 24, 2018 Answer at 65; CAISO 2018-2019 Transmission Plan, at 56 (Mar. 19, 2019), *available at* [http://www.caiso.com/Documents/RevisedDraft-2018-2019\\_Transmission\\_Plan.pdf](http://www.caiso.com/Documents/RevisedDraft-2018-2019_Transmission_Plan.pdf).

<sup>83</sup> CAISO August 24, 2018 Answer at 66-67.

<sup>84</sup> CAISO September 10, 2018 Answer at 17-18.

<sup>85</sup> CAISO August 24, 2018 Answer at 59.

<sup>86</sup> *See* CAISO November 7, 2018 Memorandum to the Board, [www.caiso.com/Documents/Update-Results-RMRCContractExtensions-2019-Nov2018.pdf](http://www.caiso.com/Documents/Update-Results-RMRCContractExtensions-2019-Nov2018.pdf).

<sup>87</sup> Complaint Order, 165 FERC ¶ 61,148 at P 75.

<sup>88</sup> Moreover, we note that many of these needs could not have been anticipated by any resource adequacy framework and, therefore, do not reflect a failure of that framework.

generating capacity in California over the past two years.<sup>89</sup> We do not find that this evidence demonstrates the failure of the resource adequacy program to secure the resources necessary to ensure reliability. NRG cites the same RMR designations (i.e., Metcalf, Feather River, and Yuba City) and annual CPM designations (i.e., Encina and Moss Landing) noted above, to which we have already responded.<sup>90</sup> As for the remaining designations, NRG's own witness, Mr. Stoddard, explained that the "monthly [CPM] designations were in some cases made for force majeure events, such as a local transmission outage or wildfires, but in other cases simply because load was higher than forecast or unit outages."<sup>91</sup> As such, the Commission considered these uses of CPM to be consistent with the purpose of CAISO's CPM authority and not indicative of a larger systemic failure.

33. Further, the Commission has already considered and disagreed with additional arguments regarding the CPM process such as those referenced by NRG,<sup>92</sup> and NRG does not offer any argument that persuades us to reconsider this determination. In addition,

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<sup>89</sup> NRG Rehearing Request at 7 (citing NRG Comments at 3). NRG represents that its 10 percent estimate refers to the November 2016 to August 2018 time period, and includes RMR contracts, annual CPM designations to units in local reliability areas, and emergency monthly CPM designations. NRG Comments at 5-6.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 6 (citing Stoddard Affidavit at P 15).

<sup>92</sup> NRG Rehearing Request at 16. NRG argues that the Commission did not address in the discussion section of the order NRG's witness testimony by Mr. Stoddard and arguments he raised, including the Commission's endorsement of price discrimination between similarly situated units that accept CPM designations, the manner in which the designations encourage the exercise of buyer-side market power in the resource adequacy market, and the fact that "the vast majority of designations, for either only 30 or 60 days from the date when committed . . . often only pay for the portion of the resource from which energy was actually dispatched (often the minimum load, or PMIN, or the plant), while the entire unit remains available to the CAISO to be dispatched if needed." *Id.* In a previous proceeding, the Commission rejected the argument that CPM designations should be for the entire capacity of a resource, rather than the portion that is needed by CAISO. *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,211, at P 188 (2011). Finally, NRG's suggestions regarding the potential exercise of buyer-side market power are conclusory and unsupported by record evidence. *See, e.g.*, NRG Rehearing Request at 16.

the Complaint Order recognized that CAISO is undertaking initiatives that deal with concerns raised regarding the use of its CPM authority.<sup>93</sup>

#### 4. Section 206 Burden

34. In the Complaint, CXA La Paloma argued that without centralized capacity procurement the current wholesale market design in California, which divides responsibilities for resource adequacy between CPUC and CAISO, is unduly discriminatory and unjust and unreasonable because it fails to address the inadequate revenue problem.<sup>94</sup>

35. In the Complaint Order, the Commission found that CXA La Paloma had not satisfied its burden to demonstrate that CAISO's tariff had become unjust and unreasonable or unduly discriminatory or preferential.<sup>95</sup> The Commission explained that CAISO administers its resource adequacy obligations, in coordination with CPUC and other local regulatory authorities, under sections 40, 41, and 43A of its tariff. The Commission emphasized that it previously has accepted this division of responsibilities for resource adequacy because "this bifurcated framework respects the jurisdictional boundaries of the FPA while recognizing the states' historical role in ensuring resource adequacy."<sup>96</sup> The Commission held that CXA La Paloma had not provided any argument or evidence that circumstances have changed such that this division of resource adequacy responsibilities was no longer just and reasonable.<sup>97</sup> Further, the Commission disagreed with CXA La Paloma's undue discrimination claims, finding that CXA La Paloma had focused its arguments on "state-administered programs and not on CAISO's tariff or on CAISO's implementation of its tariff authority."<sup>98</sup> As such, the Commission found that CXA La Paloma's challenges to the CPUC LTTP/IRP did not establish a legally cognizable claim under FPA section 206.<sup>99</sup>

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<sup>93</sup> See *supra* n.38.

<sup>94</sup> Complaint at 28-41.

<sup>95</sup> Complaint Order, 165 FERC ¶ 61,148 at P 69.

<sup>96</sup> *Id.* P 70.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* P 77.

<sup>99</sup> *Id.*

36. NRG contends that the Complaint Order applied the FPA section 206 legal standard in an inconsistent manner.<sup>100</sup> We disagree. While NRG takes issue with a number of “formulations” the Commission used to deny the Complaint, we maintain that the Commission used the appropriate standard to review the Complaint. Under FPA section 206, “the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon . . . the complainant.”<sup>101</sup> Further, “[w]ithout a showing that the existing rate is unlawful,” the Commission “has no authority to impose a new rate.”<sup>102</sup> Accordingly, CXA La Paloma had the duty to demonstrate that CAISO’s existing tariff provisions, which the Commission has previously accepted as just and reasonable and not unduly discriminatory or preferential, have become unjust, unreasonable, unduly discriminatory or preferential. It is under this standard, applied in the Complaint Order, that the Commission determined that CXA La Paloma had not met its burden. That the Commission discussed numerous examples of how CXA La Paloma failed to satisfy its burden does not mean, as alleged by NRG, that the standard applied by the Commission is “as slippery as an eel”<sup>103</sup> or in any way internally inconsistent.

37. Likewise, we find unpersuasive CXA La Paloma’s claim that the Complaint adequately identified specific CAISO tariff provisions, and that the Commission erred in finding that CXA La Paloma did not “identify any specific CAISO tariff provisions that are unjust and unreasonable.”<sup>104</sup> CXA La Paloma, as the complainant, must do more than simply identify the relevant provisions; it must demonstrate that they have become unjust and unreasonable. As discussed above, even where CXA La Paloma may have identified issues such as low prices in the energy market, an increased need for flexible ramping capacity, or the impact of renewable resources on energy market prices, CXA La Paloma did not sufficiently meet its FPA section 206 burden and demonstrate that CAISO’s tariff was unjust and unreasonable.

38. We also find unpersuasive CXA La Paloma’s assertion that it need not demonstrate that a specific tariff section has “failed to achieve its objective of ensuring sufficient capacity to operate the grid reliably, because whether a tariff section achieves

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<sup>100</sup> NRG Rehearing Request at 18-19.

<sup>101</sup> 16 U.S.C. § 824e(b) (2012); *see also, e.g., FirstEnergy Serv. Co. v. FERC*, 758 F.3d at 353.

<sup>102</sup> *Emera*, 854 F.3d at 25.

<sup>103</sup> NRG Rehearing Request at 18.

<sup>104</sup> CXA La Paloma Rehearing Request at 11.

its objective is irrelevant to whether the rate or practice is unduly discriminatory.”<sup>105</sup> The Commission’s statement that “CXA La Paloma ha[s] not alleged that any provisions of the . . . CAISO tariff have failed to achieve their objective of ensuring sufficient capacity to operate the grid reliably” was in response to CXA La Paloma’s claims that imminent reliability issues necessitated a change to the existing resource adequacy framework.<sup>106</sup> As discussed above, CXA La Paloma failed to support those claims in this proceeding.

39. CXA La Paloma also argues on rehearing that it sufficiently demonstrated that the California resource adequacy regime is unduly discriminatory on its face. CXA La Paloma claims that under the LTPP/IRP, there is an undue preference for new resources and renewable resources, resulting in unduly discriminatory compensation for resources that are similarly situated.<sup>107</sup> NRG and WPTF likewise take issue with the Commission’s discussion of CXA La Paloma’s claim that the LTPP/IRP gives undue preference to renewable resources.<sup>108</sup> CXA La Paloma asserts that it provided evidence of undue discrimination by identifying backstop resource adequacy provisions of the tariff and showing they were inadequate to ensure just and reasonable and not unduly discriminatory treatment of existing resources and non-renewable resources.<sup>109</sup>

40. CXA La Paloma, NRG, and WPTF contend that the Complaint Order erred by deferring to state policy choices to justify the LTPP/IRP’s exclusion of existing and thermal resources. CXA La Paloma argues that if a state policy that directly affects a Commission-jurisdictional market, or sales of a Commission-jurisdictional product is facially unduly discriminatory or unjust and unreasonable, the Commission must order rule changes in the markets under its jurisdiction to eliminate the undue discrimination.<sup>110</sup> Similarly, WPTF argues that the impact of state subsidies on wholesale markets is legally cognizable, must be investigated, and must be remedied if wholesale markets are

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<sup>105</sup> *Id.* at 13 (internal quotations omitted).

<sup>106</sup> *See* Complaint at 22-23.

<sup>107</sup> CXA La Paloma Rehearing Request at 4, 8-11 (citing Complaint Order, 165 FERC ¶ 61,148 at P 77).

<sup>108</sup> NRG Rehearing Request at 11-12; WPTF Rehearing Request at 10.

<sup>109</sup> CXA La Paloma Rehearing Request at 10.

<sup>110</sup> *Id.* at 9. CXA La Paloma claims that sales of resource adequacy, including CPM, are subject to the Commission’s jurisdiction, and that if sales of CPM, a resource adequacy product, are subject to the Commission’s jurisdiction, then markets for and sales of resource adequacy are jurisdictional as well. *Id.* at 12.

adversely affected.<sup>111</sup> NRG also argues that the Commission inappropriately ignored the impacts that state procurements have on the wholesale rate.<sup>112</sup> NRG claims that the Commission ignored its statutory responsibility to ensure just and reasonable rates.<sup>113</sup>

41. NRG argues that the Complaint Order ignored evidence of undue discrimination inherent in the current resource adequacy construct. Specifically, NRG asserts that the Commission did not analyze Powerex's evidence that price differentials demonstrate clear and intentional price discrimination and are not an unintended consequence of the state pursuing a legitimate policy objective, and that discriminatory outcomes observed in the bilateral capacity market suppress wholesale rates in the short-term energy markets.<sup>114</sup> NRG also contends that the Commission ignored evidence of undue discrimination provided in Mr. Stoddard's testimony.<sup>115</sup>

42. We agree with rehearing parties that the Commission's statutory obligation is to ensure that wholesale rates, as well as rules, regulations, practices, and contracts affecting those rates, are just and reasonable and not unduly discriminatory or preferential.<sup>116</sup> Here, CXA La Paloma's complaint focused on claims of undue discrimination in state-administered programs, and not on CAISO's tariff or on CAISO's implementation of its resource adequacy authority.<sup>117</sup> Thus, we do not find merit in the rehearing arguments that the Commission was in error by finding that the claims in the complaint were not legally cognizable.

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<sup>111</sup> WPTF Rehearing Request at 9-10.

<sup>112</sup> NRG Rehearing Request at 12. NRG states that the Commission previously has "been forced to address how state programs can render an existing tariff unjust and unreasonable." *Id.* NRG also argues that the resource adequacy program has created two classes of generators - the "haves" (those with long-term contracts or active state support) receiving higher rates for providing the same service as the "have-nots" (those that subsist on suppressed energy and resource adequacy contracts). *Id.* at 13.

<sup>113</sup> *Id.* at 20. Specifically, NRG claims that the Commission failed to adequately consider the interests of suppliers, or to ensure that they have a reasonable opportunity for recovery of, and on, their invested capital. *Id.*

<sup>114</sup> *Id.* at 17.

<sup>115</sup> *Id.* at 16.

<sup>116</sup> See *FERC v. Elec. Power Supply Ass'n*, 136 S. Ct. 760, 774 (2016).

<sup>117</sup> Complaint Order, 165 FERC ¶ 61,148 at P 77.

43. Moreover, we disagree with parties who argue that *Calpine Corp., et al. v. PJM Interconnection, L.L.C.*<sup>118</sup> dictates that the Commission must intervene here.<sup>119</sup> In *Calpine*, the Commission addressed two proceedings: (1) a complaint alleging that PJM Interconnection L.L.C.'s (PJM) tariff was unjust and unreasonable because it did not address the impact of subsidized existing resources on the capacity market; and (2) PJM's FPA section 205 tariff filing setting forth two alternate proposals designed to address the price suppressing effects of state out-of-market support for certain resources. In particular, the Commission addressed issues concerning the impact of state-subsidized resources on capacity market clearing prices in PJM. CAISO, however, does not have a centralized capacity market with a market clearing price. The fact that the Commission found, based on the circumstances of that proceeding, that PJM's tariff was unjust and unreasonable<sup>120</sup> does not require the same result in the instant proceeding. We continue to find that CXA La Paloma failed to provide record evidence to support its allegations that the resource adequacy regime in California is unjust and unreasonable,<sup>121</sup> and affirm that *Calpine* does not compel us to revisit the Commission's decision in the Complaint Order.

44. Accordingly, we disagree with WPTF's claim that the Complaint Order "required an analysis of the impact of state subsidies on the existing wholesale market including an analysis of relevant evidence and application of a discernable standard such as that employed in *Calpine* to evaluate whether the market is such that it 'harness[es] competitive market forces and produce[s] just and reasonable rates.'"<sup>122</sup> As discussed in the Complaint Order and above, the Commission reviewed all relevant evidence presented on the issue of undue discrimination, and found that such evidence did not demonstrate that the existing resource adequacy construct in California is unduly discriminatory. As the Commission noted, the process for addressing longer-term resource adequacy needs is the CPUC IRP process (which replaced the prior LTPP process) as the umbrella planning proceeding that CPUC uses to assess long-term

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<sup>118</sup> See *Calpine Corp., et al. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018) (*Calpine*).

<sup>119</sup> CXA La Paloma Rehearing Request at 18; WPTF Rehearing Request at 7-10; NRG Rehearing Request at 12-13.

<sup>120</sup> *Calpine*, 163 FERC ¶ 61,236 at PP 6, 149-156.

<sup>121</sup> Complaint Order, 165 FERC ¶ 61,148 at PP 69-78.

<sup>122</sup> WPTF Rehearing Request at 10 (citing *Calpine*, 163 FERC ¶ 61,236 at P 156).

additional resource needs and identify necessary procurement to meet those needs.<sup>123</sup> CPUC describes the IRP process as an analysis leading to an optimized portfolio of resources to serve load that is constrained by greenhouse gas emissions, reliability and cost.<sup>124</sup> As the Commission has recognized, “under state authority, a state may choose to require a utility . . . to purchase power from the supplier of a particular type of resource.”<sup>125</sup> Moreover, the Commission has previously found unpersuasive similar arguments asserting that, under the current resource adequacy framework in California, existing generation is treated in an unduly discriminatory manner.<sup>126</sup>

45. Further, we deny rehearing on the basis that the Commission ignored evidence regarding changing market conditions that render the current resource adequacy construct unjust and unreasonable.<sup>127</sup> CXA La Paloma again references Exhibit Nos. JT/JC-1 through JT/JC-9 to support its points, but as noted above, the Commission reviewed and

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<sup>123</sup> Complaint Order, 165 FERC ¶ 61,148 at P 6.

<sup>124</sup> CPUC, R.16-02-007, *Order Instituting Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements*, at 13 (Feb. 11, 2016).

<sup>125</sup> *Southern Cal. Edison Co.*, 70 FERC ¶ 61,215, at 61,676 (1995).

<sup>126</sup> *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,229, at P 99 (2008); *Cal. Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,053, at P 104 (2008). In addition, we note that as evidence for the proposition that the CPM provisions of CAISO’s tariff are unjust and unreasonable, CXA La Paloma cites paragraph 8 of the affidavit attached to its Complaint. CXA La Paloma Rehearing Request at 10 (citing Jeffrey Tranen and Joseph Cavicchi Affidavit ¶ 8). Paragraph 8 of the affidavit, however, does not discuss CAISO’s CPM tariff authority, or demonstrate unduly discriminatory outcomes under that tariff authority.

<sup>127</sup> CXA La Paloma cites Exhibit Nos. JT/JC-1 through JT/JC-9 to show that changing market circumstances are giving rise to the inadequate revenue problem and unduly discriminatory compensation issues for FERC-jurisdictional resource adequacy, and require the Commission to reassess the justness and reasonableness of CAISO’s resource adequacy tariff provisions. CXA La Paloma Rehearing Request at 12. Similarly, NRG argues that the Complaint Order ignores the fact that the California grid is going through one of the most massive transitions towards a low carbon grid anywhere in the world, and that the resource adequacy regime has not reformed in a meaningful way in response to changing wholesale market conditions. NRG Rehearing Request at 9-10.

analyzed these exhibits and did not find them persuasive. While we acknowledge these exhibits present evidence of an increased proportion of renewable resources and a trend of lower prices in the energy market, those trends illustrate how the grid is evolving, but do not necessarily, as discussed above, demonstrate inadequate revenue or undue discrimination. Moreover, the Commission noted that the CPUC Resource Adequacy Refinement Proceeding and related stakeholder processes are undertaking appropriate initiatives to address such changing circumstances.<sup>128</sup>

46. We also disagree that the Commission mischaracterized CXA La Paloma's argument as to the unjust and unreasonable and unduly discriminatory nature of resource adequacy procurement in California.<sup>129</sup> CXA La Paloma explains that there is a two-step process under FPA section 206—first, the Commission must assess whether a rate or practice is just and reasonable and not unduly discriminatory, and second, if this showing is made, the Commission must establish the just and reasonable and not unduly discriminatory rate. CXA La Paloma argues that it is not claiming that centralized capacity procurement is the only way to make CAISO's resource adequacy procurement regime just and reasonable and not unduly discriminatory, but because CAISO's practices and rates are facially unduly discriminatory, the Commission must complete the second step of the analysis and must replace the unduly discriminatory and preferential practices and rates. We are not persuaded by this argument. Because the Commission, in the Complaint Order, did not find a jurisdictional rate or practice that was unjust, unreasonable, unduly discriminatory or preferential, the Commission need not reach the second step of the section 206 analysis.<sup>130</sup> In contrast to CXA La Paloma's

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<sup>128</sup> Complaint Order, 165 FERC ¶ 61,148 at P 80.

<sup>129</sup> CXA La Paloma argues that the Commission's "insistence that the decision not to implement centralized resource adequacy procurement does not render the existing resource adequacy paradigm unjust and unreasonable and that it need not opine on a centralized capacity market as a remedy mischaracterizes La Paloma's arguments." CXA La Paloma Rehearing Request at 14.

<sup>130</sup> See, e.g., *Emera*, 854 F.3d at 24-25 (stating that, until there is a showing that an existing rate is unlawful, the Commission does not have the authority to impose a new one).

claims,<sup>131</sup> this finding was the basis for declining to take remedial measures in this proceeding, as the Commission articulated in the Complaint Order.<sup>132</sup>

## 5. Further Proceedings

47. Finally, we do not find persuasive NRG's assertions that the Commission's reliance on future stakeholder proceedings is not reasonable.<sup>133</sup> The record evidence did not persuade the Commission that additional processes, other than those noted in the Complaint Order that were already underway, were necessary. Along these lines, we also reject WPTF's request for the Commission to convene a technical conference to examine the shortcomings of the existing resource adequacy framework.<sup>134</sup> We find this action to be unnecessary given our findings in the Complaint Order, as affirmed here.

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>131</sup> CXA La Paloma Rehearing Request at 17-18 (arguing the Commission provided no reasoned basis for declining to take remedial measures in a market that is "past the tipping point for new, renewable resources").

<sup>132</sup> Complaint Order, 165 FERC ¶ 61,148 at P 78 ("[B]ecause we find that CXA La Paloma has not satisfied its burden under FPA section 206 to show that the existing resource adequacy construct is unjust, unreasonable, or unduly discriminatory or preferential, we find that it is not necessary to opine on the merits of a centralized capacity market as a remedy for CXA La Paloma's concerns or to consider a transitional payment mechanism, as requested in the complaint.").

<sup>133</sup> NRG Rehearing Request at 19-20.

<sup>134</sup> WPTF Rehearing Request at 11.