

165 FERC ¶ 61,059  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur and Richard Glick.

California Independent System Operator Corporation      Docket No. ER18-2369-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued October 29, 2018)

1. On August 31, 2018, the California Independent System Operator Corporation (CAISO) filed revisions to its *pro forma* Reliability Must-Run Agreement (RMR Agreement) to provide CAISO with new authority to terminate an RMR Agreement at the end of a contract year and then redesignate the same resource for RMR service in the following year under a new *pro forma* RMR agreement, if a superseding *pro forma* RMR Agreement has been filed by CAISO and accepted by the Commission. As discussed below, we accept CAISO's proposed tariff revisions, to become effective September 1, 2018, as requested.

**I. Background**

2. CAISO explains that it uses various tools to assist it in ensuring reliability of the CAISO-controlled grid. These tools include: (i) the voluntary Capacity Procurement Mechanism (CPM), under which CAISO can procure backstop capacity by compensating a unit owner under various scenarios, typically for short-term needs; and (ii) RMR Agreements, under which CAISO designates a resource needed for reliability, and the unit owner is obligated to enter into an RMR Agreement.<sup>1</sup>

3. CAISO states that there have been significant changes in the 20 years since the *pro forma* RMR Agreement became effective. For example, CAISO states there was no resource adequacy program or CPM tariff authority when the currently effective *pro forma* RMR Agreement was developed. CAISO states that, since early this year, it has been engaged with its stakeholders in reviewing and considering improvements to

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<sup>1</sup> CAISO Transmittal at 2.

both its RMR and CPM programs to ensure that they work in a more complementary fashion.<sup>2</sup>

4. CAISO states that, on January 2, 2018, it issued a notice announcing that it was undertaking a review of the RMR and CPM programs. According to CAISO, the stakeholder process was initially divided into two phases, with Phase 1 focused on developing a must-offer obligation for RMR units, and with Phase 2 dedicated to a more comprehensive review and potential refinements to harmonize RMR and CPM under a cohesive procurement framework. CAISO states that, based on stakeholder comments and the Commission's guidance in an order rejecting CAISO's proposal to revise its tariff provisions related to its risk of retirement CPM,<sup>3</sup> it announced that it would consider all of the substantive issues regarding the RMR Agreement in a single process. CAISO anticipates that this stakeholder process will include a substantive replacement to the existing *pro forma* RMR Agreement.<sup>4</sup>

## II. CAISO's Proposed RMR Agreement Revisions

5. According to CAISO, under Article 2.2(d) of the currently effective *pro forma* RMR Agreement, if CAISO terminates or does not extend the term of an RMR Agreement, CAISO may not redesignate the RMR unit, or any other non-RMR unit at the same facility, for a one-year period following termination or expiration of the RMR Agreement. According to CAISO, the only exceptions to this rule apply if: (i) CAISO demonstrates that the unit is required to maintain reliability and the need to designate the unit as an RMR unit is caused by an extended outage of a generation or transmission facility that was not known to CAISO at the time of the termination or expiration; or (ii) the unit is selected through a CAISO competitive process in which the unit owner participated.<sup>5</sup> CAISO explains that it is proposing interim revisions to its *pro forma* RMR Agreement to provide CAISO with new authority to terminate the interim RMR Agreement at the end of the contract year and to redesignate the same resource for RMR service for the following year once the Commission has accepted a substantive replacement for the current *pro forma* RMR Agreement.<sup>6</sup> CAISO anticipates its

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

<sup>3</sup> *See Cal. Indep. Sys. Operator Corp.*, 163 FERC ¶ 61,023 (2018).

<sup>4</sup> CAISO Transmittal at 3.

<sup>5</sup> CAISO Transmittal at 1-4.

<sup>6</sup> According to CAISO, the "interim RMR Agreements" are to be only those RMR Agreements that become effective on or after September 1, 2018, and that are effective only until the Commission accepts a replacement *pro forma* RMR Agreement that results

stakeholder process will develop the replacement *pro forma* RMR Agreement, as described above.

6. CAISO proposes to revise three parts of the *pro forma* RMR Agreement to address CAISO's authority to redesignate a unit as RMR in the contract year following the termination. First, CAISO proposes a change in Article 2.2(b) to add a termination right by CAISO in one limited circumstance. Specifically, the proposed tariff revision provides that CAISO may exercise an option to terminate an RMR Agreement when the Commission has accepted a replacement *pro forma* RMR Agreement at the conclusion of its current stakeholder process. According to CAISO, it can exercise this termination option only after the Commission has found a new *pro forma* RMR Agreement to be just and reasonable, and it would become effective only at the beginning of the next contract year.<sup>7</sup>

7. CAISO explains that the second substantive revision is in Article 2.2(f) of the *pro forma* RMR Agreement, and would allow CAISO to redesignate RMR units immediately following a termination. As noted above, under the current *pro forma* RMR Agreement, CAISO may not decline to extend the term of an RMR Agreement and then redesignate the same unit for RMR service in the following year absent special circumstances. CAISO explains that this proposed revision would allow CAISO to redesignate a resource under the interim RMR Agreement to a Commission-accepted replacement *pro forma* RMR Agreement that reflects provisions arising from the comprehensive stakeholder review of the RMR program.<sup>8</sup>

8. CAISO states that the final proposed tariff changes in Articles 2.5(a) and 19.10(a) relate to the Termination Fee and Payment of Final Invoice, respectively.<sup>9</sup> CAISO contends that the revision to the Termination Fee provision makes clear that, if a RMR unit is terminated and redesignated under the new provisions as a result of a Commission-accepted replacement *pro forma* RMR Agreement, an otherwise applicable Termination Fee is not available. In addition, CAISO explains that the revision to the Payment of Final Invoice ensures that the calculations for a Long-Term Planned Outage Adjustment is based on the assumption that all Long-Term Planned Outages under the Agreement or

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from CAISO's ongoing RMR and CPM Stakeholder Process. See CAISO Transmittal at n.5.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.*

<sup>9</sup> CAISO also proposes a conforming revision in Article 2.2(d).

a successor agreement entered into as a result of a termination or redesignation occur as stated.<sup>10</sup>

9. CAISO explains that any RMR designations made after the interim RMR Agreement becomes effective would be subject to the proposed interim termination authority and transitioned to the new replacement *pro forma* RMR Agreement if the units are needed for RMR service in a subsequent contract year. CAISO does not propose including these tariff changes by default in the new replacement *pro forma* RMR Agreement, unless evaluated and accepted in the ongoing comprehensive stakeholder process.<sup>11</sup>

10. CAISO requests that the Commission issue an order accepting the proposed tariff revisions by November 1, 2018, to become effective September 1, 2018. CAISO also requests that the Commission waive the prior notice requirement to permit the requested effective date. CAISO contends that good cause exists to grant waiver because doing so will allow CAISO to ensure that all RMR designations made on or after September 1, 2018, are subject to the interim agreement and ultimately to the substantive replacement *pro forma* RMR Agreement. CAISO further indicates that, although it is not currently aware of any imminent RMR designations, CAISO is approaching the annual process of reviewing resource adequacy shortfalls, which could lead to new RMR designations prior to November 1, 2018, that should be subject to this interim agreement. In addition, CAISO claims that because it has engaged stakeholders in making these interim changes that do not otherwise affect rates, terms, and conditions, no entity is disadvantaged by waiver of the prior notice period.<sup>12</sup>

### **III. Notice and Responsive Pleadings**

11. Notice of CAISO's filing was published in the *Federal Register*, 83 Fed. Reg. 45,425 (2018) with interventions and protests due on or before September 21, 2018. Vistra Energy Corp./Dynergy Oakland, LLC, Department of Water Resources State Water Project, Modesto Irrigation District, and the Northern California Power Agency filed timely motions to intervene. Timely motions to intervene and comments were filed by Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SoCal Edison). The City of Santa Clara, California and the California Public Utilities Commission filed out-of-time motions to intervene.

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<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Id.* at 1-2.

<sup>12</sup> *Id.* at 5.

12. SoCal Edison supports CAISO's proposal. According to SoCal Edison, CAISO is currently running a thorough and productive RMR and CPM review stakeholder process, which has made promising progress thus far. Thus, SoCal Edison urges the Commission to accept CAISO's filing so as not to create potential conflicts in the provisions of existing and future RMR agreements as CAISO works to develop a mechanism that is just and reasonable and that addresses the reliability needs of CAISO's system.

13. PG&E explains that it does not object to the revisions expanding CAISO's authority as proposed in the filing. However, PG&E believes that the existing *pro forma* RMR Agreement is and will remain unjust and unreasonable even after the implementation of such interim revisions unless major updates and improvements are adopted through CAISO's comprehensive policy initiative or otherwise. According to PG&E, the *pro forma* RMR Agreement and corresponding tariff provisions in Section 41 of CAISO's tariff have remained largely unchanged since the 1999 approval of the settlement among CAISO and numerous stakeholders that first granted authority for CAISO to procure services from RMR resources. PG&E explains that while there have been some minor updates to the *pro forma* RMR Agreement and related tariff provisions in the ensuing years, many of the fundamental elements of the *pro forma* RMR Agreement and tariff remain unmodified, while energy markets in California have changed dramatically. As a result of these significant market changes, PG&E contends that portions of the *pro forma* RMR Agreement and corresponding tariff provisions have become outdated, resulting in a *pro forma* RMR Agreement that is unjust and unreasonable under section 206 of the Federal Power Act.<sup>13</sup> PG&E contends that the revisions requested by CAISO here in this filing do not cure these infirmities and argues that any action by the Commission approving the requested amendments should not be viewed as providing support for a claim that the *pro forma* RMR Agreement, or any provision thereof, is just and reasonable.

#### **IV. Discussion**

##### **A. Procedural Matters**

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We grant the out-of-time motions to intervene of City of Santa Clara, California, and the California Public Utilities Commission given the early stage of the proceeding, their interest in the proceeding and the absence of undue prejudice or delay.

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<sup>13</sup> 16 U.S.C. § 824e (2012).

**B. Substantive Issues**

15. We accept CAISO's proposed interim revisions to its *pro forma* RMR Agreement, effective September 1, 2018, as requested.<sup>14</sup> The proposed revisions will allow CAISO to terminate an interim RMR Agreement at the end of a contract year and redesignate the same resource for RMR service in the following year subject to the Commission accepting a new *pro forma* RMR Agreement at the conclusion of the ongoing stakeholder process. We find that this is reasonable because it provides a mechanism for CAISO and generators to transition from interim RMR Agreements to a new, Commission-accepted replacement *pro forma* RMR Agreement.

16. Finally, although PG&E does not object to CAISO's proposed tariff revisions, it raises concerns about the justness and reasonableness of the current *pro forma* RMR Agreement and asks that, if the Commission accepts CAISO's revisions, the Commission make clear that its action should not be viewed as providing support for the justness and reasonableness of the *pro forma* RMR Agreement going forward. Our finding here is limited to the revisions to the *pro forma* RMR Agreement that CAISO has filed in the instant proceeding and we do not address PG&E's comments regarding existing provisions of the *pro forma* RMR Agreement that CAISO has not proposed to modify here because they are beyond the scope of this proceeding. We note that there currently is a stakeholder process underway at CAISO working to address issues like those raised by PG&E.

**The Commission orders:**

CAISO's proposed tariff revisions are hereby accepted for filing, effective September 1, 2018, as discussed in the body of this order.

By the Commission. Commissioner McIntyre is not voting on this order.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>14</sup> *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).