

Stakeholder Comments Template

Submitted by	Company	Date Submitted
Jaime Rose Gannon jrg@cpuc.ca.gov 415-846-4365	California Public Utilities Commission	3/11/2019

Please use this template to provide your written comments on the stakeholder initiative “RMR and CPM Enhancements.”

Submit comments to initiativecomments@caiso.com

Comments are due February 22, 2019 by 5:00pm

Energy Division Staff (hereafter, “ED Staff” or “Staff”) thanks CAISO for its continued efforts to refine its backstop mechanisms through its “RMR and CPM Enhancements” initiative. Staff continues to support several aspects of CAISOs [straw proposal, as reflected in its January 23rd, 2019 version](#), including the following:

- Expansion of the Must Offer Obligation (MOO) to RMR resources
- Elimination of condition 1 RMR
- Establishing a timeline for requesting and approving RMR designations to allow for additional planning and retirement of the resource;
- Changing the RMR Rate of Return (ROR) compensation; and
- Changing the CPM compensation above the soft offer cap to eliminate the full cost-of-service option.

However, Staff remains concerned with the following major aspects of the proposal that were not adequately addressed in this initiative. These encompass the major issues that Staff believes are most important to address, however, is does not preclude Staff from raising at the CAISO Board and FERC issued identified in prior comments made on other aspects of the proposal.

- CPM and RMR compensation
- RMR Pro forma needs to specify that the allowable asset life to be used in calculating undepreciated book value should mirror the period the resource was financed over not the useful life of the asset.
- RMR anti-toggling provisions to deter resources from moving between backstop and market participation
- RMR retirement affidavit requirements need to be more stringent to deter gaming
- Mitigation of market power not adequately assessed and addressed.

Staff requests that CAISO continue to work with stakeholders to address these critical issues to minimize backstop procurement and market manipulation. Staff continues to assert that a comprehensive RMR CPM reform package, as requested by FERC in its April 2018 Order denying CAISO's CPM Risk of Retirement proposed tariff revisions, should address these issues.

In R.17-09-020 the Commission is working to address the changing nature of the bilateral RA market. In its recent Track 2 decision D.19-02-022 the Commission adopted a multi-year local construct beginning in 2020 and committed to addressing the issue of a central buyer of local RA in a decision in the fourth quarter of 2019, directing parties to conduct at least three workshops on the issue and come back to the Commission with a proposal. Staff requests that the CAISO coordinate its backstop procurement reforms with its Track 2 decision and any additional subsequent decisions related to the resource adequacy framework.

RMR and CPM Compensation

This initiative has not adequately assessed backstop compensation levels to determine if the levels are appropriate for the specific purposes they serve. The last two years have demonstrated that generators are finding the backstop compensation levels more lucrative than the bilateral market. It has also been demonstrated that resources proposing retirement are not actually retiring, but moving back and forth between mothball status and market status. This behavior impacts supply and prices. The very fact that there has been a significant uptick in backstop procurement and retirement requests highlights the need to take a closer look at compensation levels. This should be done prior to expanding procurement authority under these mechanisms. Is cost-of-service compensation appropriate for resources that are not truly seeking to retire? Is cost-of-service compensation appropriate for resources that have received market revenues (capacity contracts and energy rents not subject to cost-of-service compensation limits) for years, if not decades? Is the current CPM compensation level (at \$6.31 kW-month) appropriate for annual (12 month) designations if the resource appears to be exerting market power? These are some of the questions that should be assessed and addressed when comprehensively designing a backstop reform package.

Staff continues to oppose "full" cost-of-service compensation for RMR because it allows for resources to toggle between market compensation and cost-of-service compensation, especially in light of the fact that there is no test to ensure that the resource is indeed "uneconomic." Additionally, the RMR pro forma currently provides no specificity regarding the calculation of the undepreciated book value used to calculate the cost-of-service rate. Without

stricter anti-toggling provisions and guidelines specifying the costs that can be included in this “full” cost-of-service model, generators may continue to choose RMR designations over a bilateral contracting.

The cost-of-service rate is largely driven by the amount of undepreciated book costs. CAISO’s current draft RMR pro forma makes no modification (or clarification) to the appropriate asset life that should be used in determining undepreciated book cost, and the language currently allows generators the flexibility to define its own book life. This could be leading to gaming (i.e., short book lives for tax purposes and long book lives for cost-of-service compensation). Staff request that the CAISO add to the pro forma agreement additional language that requires the RMR owner to use the finance life of the asset to develop its undepreciated book costs.

This flexibility has resulted in, and may continue to result in, an RMR owner claiming the useful life of the asset rather than the finance life of the asset, which can substantially increase the requested cost-of-service. For example, say *resource A* was financed over a 20-year period, but claims it has useful life of 40 years. *Resource A* which is now a 20-year-old asset, receives an RMR designation and files for cost-of-service rate. Its rate is based on its undepreciated 40-year book life (rather than its 20-year finance life) multiplied by a rate of return. Under a 40-year asset life the RMR owner can show that its 20-year-old asset has an additional 20 years of undepreciated book value on which it needs to earn a rate of return. By not specifying finance asset life in the pro forma agreement, the resource is able to request a rate of return on an additional 20 years of undepreciated book value. This flexibility may result in ratepayers paying twice for the same asset, which is unjust and unreasonable.

RMR Anti-Toggling Provisions are Inadequate

In its draft final straw proposal, CAISO asserts that its RMR compensation rules are consistent with FERC guidance and address toggling incentives appropriately. CAISO states that “the RMR contract is designed to compensate the RMR owner for the year of the RMR service at cost of service as required by FERC where RMR service is mandatory. This principle applies both to undepreciated book costs plus variable costs as well as any capacity additions.”

Additionally, CAISO states that it modified pro forma to eliminate the static 12.25 percent rate of return and instead requires generators to justify a rate of return in their FERC filing.

Staff reiterates that changing the rate of return compensation from 12.25% to a value that the RMR owner must justify to FERC does not mitigate anti-toggling concerns. The rate of return is just one component of the cost-of-service rate. Staff asserts that under the draft final proposal resources are still able to toggle back and forth between market compensation and cost-of-service compensation.

RMR resources that go back to the market after being under a cost-of-service contract should have claw backs as they do in the NYISO. ¹ **As FERC stated in its NYISO order:**

¹ January 16, 2018 Compliance letter to FERC ER16-120
<https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=14798207> at p.3

“[r]equiring RMR generators seeking to return to the market to repay revenues received pursuant to an RMR agreement in excess of the generator’s going forward costs is necessary to remove the incentive to toggle, especially when there are no required capital expenditures. By requiring repayment of revenues received in excess of going-forward costs, the generator under an RMR agreement will be in a similar position to a generator without an RMR agreement.²

Ability to choose between RMR and CPM mechanisms

The ability for resources to choose between the two backstop mechanisms needs to be addressed by strengthening the affidavit requirements for RMR and adding a pivotal supplier test for CPM. CASIO has only clarified that it will use RMR as a retirement tool and CPM as a backstop tool. However, currently and in the CAISO proposal, a resource that is needed for reliability can pick which mechanism it will use based on an estimation of which mechanism will result in higher compensation. In previous comments, Staff and other parties have raised this issue, yet these concerns were not addressed in CAISO’s final Draft Straw proposal.

CPM Compensation and Market Power Mitigation

Staff believes the soft offer cap is too high (especially for a 12-month designation) to sufficiently mitigate local market power. It is too high because it includes both a 20% adder on a resource’s GFFC and allows the resource to retain market revenues. Compensation at this level may result in a fully depreciated generator with market power choosing the CPM path rather than the RMR path to secure a contract. In addition, Staff supports a pivotal supplier test as proposed by SCE or revision the CPM compensation price for annual CPM designations.³

RMR retirement affidavit requirements need to be more stringent and include supporting financial information and documentation that substantiates retirement decisions.

Staff strongly urges the CAISO to strengthen its retirement affidavit requirements. Staff and other parties have urged the CAISO to require generators to submit financial information to support its decision to retire for economic reasons. CAISO addressed these requests in its draft final proposal by stating that FERC rejected the ISO’s CPM ROR proposal to include financial documentation. “FERC stated that because market participants are prohibited from submitting false or misleading information to the ISO, the affidavit should be sufficient to establish that a resource cannot operate economically.”⁴ Staff does not believe that this reasoning is sufficient because the current ROR CPM affidavit requires that the executive officer of the company to

² 161 FERC ¶ 61,189 at 83

³ [CPUC Staff January 18th Comments to Second Revised Straw Proposal](#) at p.6

⁴ CAISO Draft Final Straw proposal at 17

attest **“that it will be uneconomic for the resource to remain in service in the current RA Compliance Year and that the decision to retire is definite unless CPM procurement occurs”**⁵

FERC’s rejection of a financial information requirement in that instance appears to be because it was unnecessary since the resource owner was already attesting to being uneconomic.

The current draft tariff language requires the affidavit to attest **“that it intends to take the generating unit out of service by retiring or mothballing it, and that the decision is definite unless the CAISO procures the Generating Unit, the Generating Unit enters an RA contract or some other arrangement for compensation for the capacity of the Generating Unit, or the Generating Unit is sold to a non-affiliated entity.”**⁶

This language is clearly less stringent than the current CPM ROR affidavit language cited above that was approved by FERC, and does not require the resource owner to attest that it is “uneconomic,” nor that retirement is definite (only that they intend to mothball, which has no time limit). Staff does not believe that the affidavit requirements are stringent enough to deter gaming that will result in front running the bilateral market. The CAISO should add additional requirements to its attestation requirement that address economic retirement, especially because that is what it plans to use the RMR mechanism for.

CPUC staff once again requests that the affidavit requirement be strengthened to prevent gaming (togglng). Staff reiterates that the CAISO’s current CPM ROR approved by FERC has a more stringent affidavit than what is being proposed by the ISO in its Final draft proposal. Since the CAISO proposes to merge CPM ROR with the excising RMR tariff, Staff believes the affidavit needs to be more stringent. In response to Staff’s January 20th comments CAISO states that:

Some stakeholders believe that resources seeking to retire or mothball (and potentially receiving an RMR agreement) should provide financial information so an assessment can be undertaken to determine the resource’s financial condition. In connection with the ISO’s ROR CPM, FERC rejected the ISO’s proposal to require resources seeking CPM designations to provide financial information to deter gaming. FERC stated that because market participants are prohibited from submitting false or misleading information to the ISO, the affidavit should be sufficient to establish that a resource cannot operate economically.⁷

Staff notes that the order CAISO is referring to specifically states:

Regarding CAISO’s proposal to review a resource’s financial condition as a further deterrent against attempts at gaming, we find that CAISO has not explained why an assessment of the resource’s financial condition is necessary.¹⁶² Further, we note that CAISO proposes to require an affidavit stating that it will be uneconomic for the unit to remain in service in the current year and committing to retire the unit if a CPM designation is not offered. Based on the fact that a market participant is prohibited from submitting false or misleading information to CAISO, the affidavit should be

⁵ Current CAISO tariff 43A.2.6. (5)

⁶ CAISO Draft tariff language section 43.2.1

⁷ Final Draft Straw Proposal at 17

sufficient to establish that a resource cannot continue to operate economically. If the Department of Market Monitoring has reason to suspect that a resource submitted false, inaccurate, or otherwise misleading information in its affidavit, the CAISO tariff requires such a suspected violation to be referred to the Commission for appropriate sanction.¹⁶³ Thus, we find CAISO’s proposal to conduct financial assessments of resources requesting risk of retirement CPM designations to be unjust and unreasonable and hereby reject it.¹⁶⁴⁸

CAISO appears to be mistaken regarding the conclusions of the FERC order they referenced. The underlined language above clearly states that because the resource is attesting to being uneconomic it is unnecessary to require financial information. CAISO’s current proposal has removed any mention of “uneconomic” from the affidavit attestation requirement, making it much easier for a resource to game the proposed retirement mechanism. Ultimately FERC found that the CAISO’s CPM ROR proposal:

contains multi-layered safeguards and stringent requirements that will adequately protect against the possibility that resource owners will manipulate the system to receive CPM designations. Not only does CAISO’s proposal provide stakeholders and CAISO’s Department of Market Monitoring with the opportunity to review all risk of retirement applications,¹⁶⁰ but CAISO market participants are bound by rules prohibiting the submission of false or misleading information.¹⁶¹ Thus, we find that CAISO has adequately addressed any potential for gaming.⁹

Staff requests that CAISO work with stakeholders to add more stringency attestation requirements that will ensure gaming concerns are mitigated.

RMR Cost Allocation

In its draft final proposal CAISO changed its proposed allocation of RMR costs. Specifically, CAISO is seeking stakeholder comments on whether it should change its RMR cost allocation from being allocated to the transmission owner to being allocated to the load serving entity (based on the load serving entity’s actual load. This element of the straw proposal was added in the final stages of this initiative and Staff has not yet had adequate time to fully work through the implications of this proposal. Historically RMR was used as a local market power mitigation tool to ensure local reliability, prior to the development of local RA requirements. RMR resources were viewed as an avoided transmission cost since local reliability needs were created by transmission constraints to the local area(s). Departing from this thinking to an LSE based cost allocation approach (that bills LSEs based on load) will take additional time and stakeholder input.

⁸ California Independent System Operator Corporation, 134 FERC ¶61,211 at 132 (2011)

⁹ California Independent System Operator Corporation, 134 FERC ¶61,211 at 131 (2011)