UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	**)** **)**	**Docket No. ER19-1641-000**

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

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The California Independent System Operator Corporation (CAISO) respectfully submits this motion for leave to answer and answers[1] the protests and comments submitted in this proceeding.[2]

I. SUMMARY OF TARIFF AMENDMENT FILING

On April 22, 2019, the CAISO submitted proposed tariff provisions to improve its Reliability Must Run (RMR) program and further differentiate it from Capacity Procurement Mechanism (CPM) backstop procurement (April 22 RMR Tariff Amendment). As proposed, the CAISO will use RMR procurement to address resource retirement and mothball notifications and retain resources it needs for reliability. Thus, all retirement-related procurement authority, including what currently falls under risk of retirement CPM, will be addressed prospectively through the revised RMR tariff. The CAISO proposes no other changes to the CPM. It is addressing potential CPM modifications unrelated to retirement and mothballing in a new stakeholder initiative it has recently commenced. The proposed tariff provisions also "modernize" the 20-year old RMR Contract and RMR tariff provisions to better align them with the CAISO's current operating framework and needs. The CAISO proposed no changes to the existing RMR compensation framework, which provides for full fixed cost recovery

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[1] The CAISO submits this filing pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213. Capitalized terms not otherwise defined herein have the meanings set forth in Appendix A to the CAISO tariff. References to section numbers are references to sections of the CAISO tariff as revised by the tariff amendment filed in this proceeding, unless otherwise specified.

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

because accepting an RMR Contract is mandatory.

II. SUMMARY OF RESPONSE TO PROTESTS AND COMMENTS

NRG Power Marketing, LLC (NRG) and San Diego Gas & Electric Company (SDG&E) filed Protests. Calpine Corporation filed Comments and a Limited Protest. Pacific Gas & Electric Company (PG&E) filed a Motion to Reject in Part and Comments. The California Public Utilities Commission (CPUC) filed a Protest and Complaint.[3] Southern California Edison Company (SCE), the CAISO's Department of Market Monitoring (DMM), and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities) filed motions to intervene and comments.

Most interveners acknowledge the benefits of the CAISO's proposed tariff revisions but seek discrete clarifications or changes; although a couple seek dramatic changes to existing provisions that are both unwarranted and unnecessary. SCE recognizes the "extensive stakeholder process" the CAISO conducted and states that the "changes proposed are largely an improvement that recognize the evolution that the market has experienced and will place the CAISO in a better position moving forward."[4] SDG&E states that "[i]n most respects, [it] believes CAISO's proposed tariff revisions are general improvements to the status quo viz-a-viz the use of RMR and CPM."[5] The Six Cities "recognize the CAISO's efforts to balance the competing views of stakeholders during the underlying policy and tariff development process."[6] Calpine

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[3] As explained below, the CPUC's filing does not satisfy the Commission's requirements for a complaint under Section 206 of the Federal Power Act (FPA).

[4] SCE at 2.

[5] SDG&E at 2.

[6] Six Cities at 2.

"supports many aspects of the Filing" and also proposes some "discrete clarifications."[7] DMM, whose objections primarily pertain to RMR and CPM compensation, "supports the proposed tariff changes as incremental improvements which address significant and pressing flaws in the CAISO's RMR tariff provisions."[8] PG&E supports many aspects of the CAISO's filing,[9] including the CAISO's proposed notarized attestation requirement,[10] but requests that the Commission dramatically change the CAISO's existing retirement/mothball notification timeline and study process and unduly limit the reliability needs for which the CAISO can utilize RMR. The CPUC supports numerous aspects of the filing, and "appreciate[s] CAISO's efforts to tighten the attestation requirements in this filing," but seeks dramatic changes to the retirement process, even stronger attestation requirements, significant changes to the existing, Commission-approved compensation formulas for RMR and CPM, and contends that the CAISO's existing and unchanged, anti-toggling measures are insufficient.[11] NRG urges the Commission to reject the filing because it does not attempt to resolve certain unrelated resource adequacy (RA) issues being addressed at the CPUC and in other unrelated CAISO stakeholder initiatives.[12] Even in cases where these parties request that the tariff revisions be modified or rejected, their comments and protests raise no issues that would justify such action.

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[7] Calpine at 5.

[8] DMM at 1.

[9] PG&E at 3-7.

[10] PG&E at 6.

[11] CPUC at 3-12, 22-23, 31-41, 54-59.

[12] NRG at 3-4, 8-9.

The Commission should approve the CAISO's filing as a comprehensive and just and reasonable package of RMR and CPM risk of retirement reforms. CAISO's proposal is straightforward, reasonably addresses competing concerns, significantly improves the existing retirement/mothball process and retirement-related backstop procurement framework in a holistic manner, effectively meets the CAISO's changing reliability needs, aligns RMR with the CAISO's current operating paradigm and makes the RMR framework more efficient, effectively addresses prior Commission questions regarding the CAISO's risk of retirement framework, is consistent with Commission precedent, and does not disrupt existing contractual expectations. Informed by the pre-filing stakeholder process, the CAISO rebutted many of the interveners' arguments objecting to aspects of the proposal in its Transmittal Letter; yet, many interveners simply repeat the same arguments without acknowledging or addressing the CAISO's rebuttal.

Some protests seek to erect barriers to approving parts of the CAISO's proposal (or otherwise obfuscate the issues) by (1) relying on irrelevant or unsupported assertions, mischaracterizations, and "half-the-story" references, (2) referring to past events they find objectionable and which the CAISO's proposal actually would preclude, and (3) raising a host of issues that are beyond the scope of this proceeding and not affected by the CAISO's specific tariff changes. In other cases, protesters object to aspects of the CAISO's filing that are supported by clear Commission precedent and the practices of other independent system operators (ISOs) and regional transmission organizations (RTOs). Ultimately, the objections protesters raise do not justify rejecting or significantly modifying the CAISO's proposal, which will "modernize" the RMR construct and implement a more orderly, efficient and effective approach to address resource retirements and mothballs and the potential need for backstop procurement. In a handful of instances, the CAISO provides minor clarifications to its proposal as requested by several interveners.

Most interveners recognize that the proposed tariff amendments improve the existing retirement/mothball framework and backstop procurement resulting from retirements/mothballs. Putting aside intervener requests that seek discrete and targeted clarifications or modifications, interveners seeking more drastic changes focus on a few areas: (1) changing the existing and longstanding 90-day notification deadlines reflected in the CAISO's Participating Generator Agreement (PGA), which the CAISO does not propose to change (CPUC, PG&E); (2) changing fundamental principles of the existing RMR cost of service compensation, which the CAISO does not propose to change in this filing (DMM, CPUC); (3) changing CPM pricing (*e.g.*, pricing for 12-month CPM designations for resource adequacy deficiencies), which is not the subject of this filing and is being addressed in a recently initiated stakeholder proceeding (CPUC, DMM, SCE, PG&E); (4) changing the existing anti-toggling measures embedded in the CAISO tariff and RMR Contract that the CAISO does not propose to change in this proceeding;[13] and (5) changing the existing resource availability metrics in the tariff that the CAISO proposes to apply RMR resources to make them less robust (NRG, Calpine) or more stringent (PG&E, SDG&E).

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[13] As discussed further below, the CAISO has made changes to eliminate toggling concerns. In brief, the CAISO had originally proposed in the stakeholder process to eliminate the RMR owner's right to switch between the more market oriented Condition 1 form of RMR contract, and the Condition 2 form for RMR contract, which is full cost of service. Later in the stakeholder process, the CAISO proposed to eliminate Condition 1 entirely.

Most of these objections have one common theme: they go well-beyond the scope of the CAISO's filing, and as such, the Commission should reject them consistent with Commission precedent. Either they seek to change longstanding, existing retirement or RMR provisions that the CAISO does not propose to change in this filing or they seek to change other existing tariff provisions (*i.e.,* CPM) that are not the subject of this filing, are not affected by the specific changes proposed in this filing, and do not affect the specific changes the CAISO proposes. Even though a large portion of the protests issues that are beyond the scope of the CAISO's filing, the CAISO addresses them as appropriate out of an abundance of caution.

In any event, as discussed herein and in the Transmittal Letter accompanying the CAISO's tariff amendment filing, the existing and unchanged RMR and retirement notification provisions remain just and reasonable. For example, continuing to pay RMR resources their full cost of service is consistent with Commission precedent that compensation under a mandatory backstop procurement regime, which the CAISO has, should be at the resource's full cost of service. The existing RMR provisions effectively preclude toggling because (1) resources still needed for reliability cannot voluntarily "toggle off" of their RMR Contract to seek potentially more lucrative market compensation, and, (2) unlike other ISOs and RTOs, the CAISO only pays RMR resources a one-year "depreciated" slice of their needed capital upgrade costs; whereas, the other ISOs and RTOs up front fund the entire cost. Replacing the CAISO's existing 90-day notification deadline with the New York ISO (NYISO) or Midcontinent ISO (MISO) deadlines will unduly disrupt the expectations of every generator that has signed a PGA, and imposing either the MISO or NYISO processes will not materially improve the CAISO's process or change the need for RMR contracts, and may add unnecessary costs for CAISO ratepayers. The CAISO's existing retirement process, which works in conjunction with the CAISO's transmission planning process, has effectively assessed the need for retiring/mothballing resources and identified alternative solutions for RMR Contracts. The CAISO has approved mitigation solutions that, over time, will eliminate the need for every existing RMR Contract. Interveners point to one situation where affected parties were given little advance notice of a resource retirement as demonstrating a need for wholesale changes to the CAISO's process. As discussed herein, that situation was unique and an anomaly. More importantly, new processes the CAISO has already implemented as part of the underlying stakeholder initiative and other tariff changes the CAISO proposes to implement herein address the issues that situation raised. Contrary to the claims of protesters, extending the retirement notification deadline and implementing the processes of other ISOs would not have obviated the need for the RMR designation for that situation in any event.

Regarding the CAISO's proposal to apply its existing Resource Adequacy Availability Incentive Mechanism (RAAIM) to RMR resources, a couple of Load Serving Entity's (LSE's) support more stringent requirements, and two suppliers support less stringent requirements. SCE, who initially opposed applying RAAIM to RMR units during the stakeholder process, now states that as a result of modifications the CAISO made to address the concerns of the Market Surveillance Committee, it now believes the proposal constitutes a "reasonable compromise."[14] The CPUC also supports

[14] SCE at 2-3.

RAAIM subject to the CAISO confirming certain points regarding bid insertion, which the CAISO has confirmed in this answer.[15] The CAISO thoroughly supported applying RAAIM in the Transmittal Letter, and interveners make no attempt to rebut the CAISO's discussion why its proposal is just and reasonable. A 24 x 7 availability metric, as proposed by some commenters, is unnecessary, unduly punitive, and unduly discriminatory compared to RA and CPM resources that are providing similar reliability services and are subject to RAAIM. Resources likely to receive RMR designations will have a 24 x 7 must-offer obligation (with CAISO bid submission for non-use-limited resources), RAAIM availability measured on a 17 x 7 basis, and be subject to the CAISO's outage management rules which are designed to maintain reliable grid operations. The Commission has recognized that a resource's failure to comply with a must-offer obligation could be deemed a tariff violation and/or violation of the Commission's market behavior rules. These factors will sufficiently incent RMR resources to satisfy their must-offer obligation without the need to create more stringent availability metrics for RMR resources. On the other hand, availability metrics less stringent than those applicable to RA and CPM resources is inappropriate especially given that RMR resources have a must-offer obligation, and the CAISO has proposed several measures that sufficiently protect RMR resources nearing "end of life." Neither NRG nor Calpine show otherwise.

Objections to other aspects of the CAISO's proposal similarly warrant no change. The CPUC's request to require retiring/mothballing resources to submit documentation demonstrating that they are uneconomic is inconsistent with

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[15] CPUC at 10-11.

Commission precedent and the practices of other ISOs and RTOs and is unnecessary given that resource owners are attesting that they are uneconomic and that the decision to retire is definite unless the CAISO or some other entity procures them, or the unit is sold.

Objections to the proposed must-offer obligation for RMR resources are inconsistent with Commission precedent and the practices of other ISOs and RTOs. A must-offer obligation is also necessary and appropriate given the increasingly unpredictable and variable reliability needs on the CAISO system,[16] and the CAISO is requiring RMR resources to bid into the market at their full variable cost, which the Commission has found is the appropriate price in a competitive market. A must-offer obligation will ensure that ratepayers receive the full benefits of paying the full costs of RMR resources.

A few stakeholders object that RMR resources will be permitted to provide substitute capacity while on an outage as RA and CPM resources are permitted to do under the CAISO's tariff. Because RA resources located in local areas will be treated as Listed Local resources, they can only substitute a unit located in the same local area, and because the resources expected to be RMR resources will have a flexible capacity obligation, any substitute resource must have a flexible capacity obligation in the same category or higher. This issue essentially boils down to whether RMR resources that go on outage should be penalized and not have the opportunity to substitute (with the charges allocated to other generators that over-performed during the month) or be

[16] For similar reasons, the Commission should reject PG&E's request to limit RMR designations only to local reliability needs and no other type of reliability need.

permitted to provide substitute capacity that (1) might enable the CAISO to avoid procuring CPM capacity or issuing an Exceptional Dispatch to another resource (the costs of which will be allocated to LSES), and (2) will upfront provide CAISO operators with another flexible resource in the local area that has a 24 x 7 must-offer obligation (is subject to a 17 x 7 RAAIM). The CAISO believes the latter option is more reasonable and prudent from the perspective of promoting reliable and efficient grid and market operations.

PG&E's argument that RMR costs should be allocated to the participating transmission owner and not to load because RMR meets needs that can be mitigated with transmission solutions ignores overwhelming Commission precedent in other regions that RMR costs should be allocated to load.[17] In every ISO/RTO region, transmission solutions are considered and serve as alternatives to RMR, and the costs are allocated to load not to the transmission owner. Load, not transmission owners, are the ultimate beneficiaries of the reliability that comes from RMR designations and should bear the costs. In the face of this precedent, there is no reason to find that the CAISO's cost allocation proposal is unjust and unreasonable. The CAISO's proposed cost allocation is also consistent with the Commission-approved CPM cost allocation for risk of retirement CPM designations and captures load migration because it is based on actual monthly load.

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[17] The CPUC also opposes the CAISO's proposed RMR cost allocation, but its arguments pertain more to the allocation of RA credits for RMR designations, not to cost allocation and its desire that the participating transmission owner be involved in negotiating the RMR contract because "the CAISO may not view its role as protecting ratepayers in this potentially adversarial context." CPUC at 45. No other ISO or RTO involves the participating transmission owner in RMR contract negotiations.

The CPUC and SCE express concern that the CAISO's proposal to provide RA credits to LSEs for RMR designations does not effectively capture load migration. The CAISO further clarifies its proposal to address such concerns.

III. MOTION FOR LEAVE TO ANSWER PROTESTS

The CAISO respectfully requests authorization to respond to the protests filed in this proceeding.[18] Notwithstanding the general approach in Rule 213(a)(2),[19] the Commission has accepted answers to protests that assist the Commission's understanding and resolution of the issues raised in the protest,[20] clarify matters under consideration,[21] or materially aid the Commission's disposition of a matter.[22] The CAISO's answer will clarify matters under consideration, aid the Commission's understanding and resolution of the issues, and help the Commission to achieve a more accurate and complete record.[23] The CAISO's answer will also point out protesters' statements that mischaracterize the CAISO's proposal.

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

[19] 18 C.F.R. § 385.213(a)(2).

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

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

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

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

IV. CAISO ANSWER

A. Process and Timeline Issues

1. The Commission Should Reject PG&E's and the CPUC's Proposal to Modify the Existing Retirement Notification Deadline Contained in all Participating Generator Agreements

As discussed in the CAISO's April 22 RMR Tariff Amendment filing Transmittal Letter, under the existing *pro forma* Participating Generator Agreement (PGA), participating generators must give the CAISO at least 90 days notice before terminating the PGA or removing a resource from the PGA.[24] This requirement has been in the PGA since CAISO start-up. Every participating generator in CAISO markets has executed a PGA that contains the 90-day notice requirement. The CAISO did not propose to change this requirement in its tariff amendment filing.

PG&E and the CPUC request that the Commission change the existing 90-day notification requirement.[25] The CPUC urges the Commission to impose a longer notification requirement that is more in line with the New York ISO (NYISO) and Midcontinent ISO (MISO) notification requirements.[26] In that regard, MISO has a 26-week notification requirement, and the NYISO has a 365-day notification requirement. PG&E and the CPUC suggest that a 90-day requirement makes it difficult to identify and develop lower cost solutions prospectively.[27] PG&E states that it only had nine business days to assess the reliability need for the Metcalf Energy Center, which the

[24] Transmittal Letter at 26, citing Section 3.2.2 of the *pro forma* PGA, which is Attachment B-2 to the CAISO tariff.

[25] PG&E at 8-9; CPUC at 40.

[26] CPUC at 40.

[27] PG&E at 8-9; CPUC at 31, 39-41.

CAISO eventually designated as an RMR unit.[28] The CPUC notes that prior to the adoption of local RA capacity requirements in 2006 and 2007, the CAISO conducted a stakeholder and study process annually to make annual RMR determinations and that such study process included consideration of transmission alternatives.[29]

As an initial matter, PG&E's and the CPUC's request is beyond the scope of the CAISO's filing. Not only does the CAISO propose no change to the existing 90-day notification requirement in the existing *pro forma* PGA, it proposes no changes to any other provision of the *pro forma* PGA. The CPUC and PG&E are proposing a significant change that would dramatically disrupt the expectations of every generator that has executed a PGA, while providing no material benefit. They essentially seek to change a material term of every executed PGA. This would adversely affect all generators most of whom are not parties to this proceeding and had no notice from the CAISO's Section 205 filing that such PGA provision might be changed.[30] As the CAISO stated in its Transmittal Letter, the purpose of its tariff amendment filing was to improve the retirement and RMR process without upending existing contractual expectations.[31] PG&E and the CPUC also ignore that that the MISO and NYISO backstop and notification provisions did not disrupt existing contractual expectations because they created new frameworks and requirements where none existed before; whereas, the CAISO is modifying an existing, Commission-approved framework and must take into

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28 PG&E at 9.

29 CPUC at 40.

30 *See NRG Power Mktg., LLC v. FERC,* 862 F.3d 108,116 (D.C. Cir. 2017)***;*** *City of Winnfield, La. v. FERC*, 744 F.2d 871, 876 (D.C. Cir. 1984).

31 Transmittal Letter at 50.

account the effects on existing contracts and practices.[32]

Changes to the 90-day notification requirement are also unnecessary. First, there is ample evidence that 90 days notice of a change in generator status is reasonable in the CAISO footprint. Although the CPUC objects to the CAISO's existing 90-day generator retirement notice requirement, its own rules only require a generator owner to provide the CPUC with 90 days notice of any change in the long-term status of a unit.[33] References to experience with a single unit – the Metcalf Energy Center – do not support changes to the 90-day notification process. Tariff changes the CAISO is proposing herein along with other non-tariff enhancements the CAISO has already implemented address process issues the CAISO identified in a post mortem of the Metcalf RMR designation process intended to improve overall transparency following submission of a retirement/mothball notification.

As part of the underlying stakeholder initiative the CAISO implemented a new process to provide prompt notification to stakeholders of requested resource retirements and mothballs on July 6, 2018.[34] The CAISO implemented this new process (and proposed other enhancements herein) following discussions with stakeholders in the

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[32] *See Midwest Indep. Transmission Sys. Operator, Inc.,* 140 FERC ¶ 61,237 at PP 2-3 (2012), citing *Midwest Indep. Transmission Sys. Operator, Inc.,* 108 FERC ¶ 61,163, *reh'g denied*, *Midwest Indep. Transmission Sys. Operator, Inc.,* 109 FERC ¶ 61,157 (2004) (filing establishing 26-week retirement and suspension notification deadline, notice requirements, and system support resource (SSR) procurement framework); *New York Indep. Sys. Operator, Inc,* 150 FERC ¶ 61,116 at PP 9, 13 (2015) (Section 206 order noting that NYISO had no RMR process or rates, terms, and conditions for RMR service, including when generation owners must notify the NYISO of their intended deactivation); *New York Indep. Sys. Operator, Inc,* 155 FERC ¶ 61,076 (2016) (order on NYISO compliance filing to implement generator deactivation and RMR framework).

[33] Pub. Util. Comm'n of the State of Cal., Gen. Order No. 167, Operating Standard 23.

[34] *See* Transmittal Letter, Attachment C, March 20, 2019 memorandum to the Board from Keith Casey, Vice President, Market and Infrastructure Development, entitled *Decision on reliability must run and capacity procurement mechanism enhancements*, p. 4.

underlying stakeholder process, in large part to address the issues that arose in connection with the Metcalf RMR designation. The CAISO has established a report on the CAISO website that notifies stakeholders when a resource has informed the CAISO that it is planning to retire or mothball. The report includes all resource notifications, regardless of size. For resources larger than 45 MW, the CAISO also directly notifies stakeholders through a market notice. It provides stakeholders with information on upcoming resource retirements or mothballs that could trigger future CAISO backstop procurement. This allows stakeholders to consider impacts and other options and identify concerns and input to the CAISO. Thus, under existing procedures put in place after the Metcalf RMR designation, stakeholders will have at least 90 days notice of the anticipated retirement/mothball under what is now referred to as Path 1, which is the traditional retirement path in the CAISO. Importantly, the notes that prior to this it did not advise stakeholders of any retirement or mothball unless, and until, the CASO's reliability study found the unit was needed for reliability, and then the CAISO convened a stakeholder process to discuss a potential RMR designation. The CAISO's new notification process will significantly improve upon this.

Another significant change is the proposed alternative Path 2 process, under which resource owners without RA Contracts for the next calendar year must submit retirement/mothball notices to the CAISO by February 1 of the preceding year, *i.e.*, at least 11 months in advance of any retirement/mothball. Under that process, the CAISO will seek to issue a reliability study report by May 15, offer stakeholders a minimum of seven days to respond, and then seek approval for any proposed conditional RMR designations at the next feasible CAISO Board meeting. Thus, under the optional Path

2, there will be an earlier and longer notification period.

The new (and earlier) notifications under Path 1, and the newly developed Path 2 process, did not exist at the time of the Metcalf RMR designation. With this earlier notice, transmission owners like PG&E, and other stakeholders, will be able to inform the CAISO as the CAISO assesses the reliability need for the unit and potential alternatives to an RMR designation. Prior to this notification process, the CAISO did not formally inform stakeholders of retirement requests until after the CAISO had completed its reliability study (which, as PG&E notes, resulted in a severely truncated schedule for Metcalf and contributed in part to the issues faced there).

The CAISO notes that it does not perform the reliability studies for Metcalf and other generation being considered for retirement in isolation, especially for generation in local capacity areas. The CAISO performs local capacity technical studies annually for a one-year and five-year scenario, and every second year for a 10-year scenario. These studies project requirements and identify the generation in each of those local areas that can contribute to meeting those needs. Although a tailored reliability study is considered prudent – and necessary to ensure the latest possible inputs are used in considering the need to designate a generator as an RMR resource – the existing local capacity technical studies generally provide a clear indication of the likelihood of the reliability need for particular generators in a local area.[35] The CAISO's annual transmission planning process also incorporates economic planning studies that include

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[35] A recent exception to this was the need to designate the Feather River Generating Station as an RMR resource. This generation was not needed for local capacity, but rather for reactive voltage support. Already-approved, but not yet constructed, transmission projects that will address those needs in the future.

exploring opportunities to reduce local capacity requirements for the benefit of end-use ratepayers. To improve overall understanding of local capacity needs and screen potential areas for future economic-driven transmission studies, the CAISO has also undertaken recently reviews of local capacity areas to explore means to reduce local capacity requirement reliance on gas-fired generation.[36] These processes support early identification of need and generally support more timely identification of alternatives needed to replace existing units. These were unfortunately hampered in the case of Metcalf because of erroneous information provided in the transmission planning base cases supplied by PG&E, as discussed in greater detail below.

Also, the specific Metcalf scenario cannot arise under the CAISO's proposal. As the CAISO explained in its Transmittal Letter, the existing tariff does not require a formal retirement or mothball notice (or attestation) before the CAISO can consider a generating unit's request that the CAISO study the unit for a possible RMR designation.[37] As reflected in Attachment F to the Transmittal Letter, Calpine did not submit a formal retirement/mothball notification to the CAISO regarding Metcalf. Rather, Calpine's letter to the CAISO stated that "Calpine is currently assessing whether to make Metcalf available for CAISO dispatch effective January 1, 2018." Under the CAISO's proposed tariff provisions, this letter would be insufficient for the CAISO to

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[36] The CAISO notes that in the 2017-2018 Transmission Plan (Appendix G) it explored and identified alternatives for reducing reliance on gas-fired resources in local capacity areas in at least half of the local areas and sub-areas. It will complete the analysis in this planning cycle. The CAISO has transitioned several of these alternatives to the CAISO's economic study phase of this planning cycle for further consideration as potential economic driven transmission solutions. This public information can provide a "roadmap" for eliminating the need for existing gas-fired resources in local areas, *i.e.*, resources that potentially could receive RMR designations. This information further reduces the need for any notification requirement longer than 90 days.

[37] Transmittal Letter at 50-51.

even review the reliability need for the resource under the proposed tariff provisions. Rather, all resources must first submit a formal notice of retirement/mothball and the requisite attestation.

Also, the Metcalf scenario did not implicate the 90-day retirement notice rule. As discussed above, Metcalf did not submit a formal notice of retirement or mothball under the PGA. It merely requested that the CAISO study the reliability need for the unit, and the CAISO did. The CAISO performed studies and presented the results to stakeholders in a stakeholder call on September 26, 2017, and the CAISO requested that the CAISO Board of Governors approve a conditional RMR designation on November 2.

With the notification process the CAISO has implemented (and with a minimum 90-day notice requirement for Path 1 notifications and longer notification requirement for Path 2 submissions), the alternatives to RMR ultimately identified for Metcalf could have been identified in a more timely manner, but for the previously noted data error. The proposed process will establish a clearer path for consideration of the need for a retiring/mothballing resource. The new processes will also help avoid the compressed schedule that occurred with Metcalf.

The Metcalf situation also is an anomaly for other reasons. As referred to earlier, the CAISO's exploration of transmission alternatives to alleviate the constraints driving the need for the Metcalf RMR were hampered by incorrect transmission line ratings provided by the transmission owner in power flow base cases which led to the conclusion that significant, costly, and time-consuming upgrades would be needed. This error also affected earlier transmission planning studies and local capacity technical studies. With the correction by the transmission owner of the erroneous line rating information near the end of 2017 and after the Metcalf RMR Contract had been put in place, lower cost mitigation solutions were promptly identified and completed in a manner that allowed the CAISO to terminate the Metcalf RMR Contract after one year. These are the types of solutions that typically would be identified in the standard process. However, this (*i.e.*, Metcalf) is the exception to the rule, both due to the data issue that hampered earlier studies, and the speed with which the remaining mitigations could be identified, approved, and completed.[38] Metcalf was thus hampered by the erroneous data more than general process concerns.

The second anomaly relevant to the Metcalf scenario is the nature of the transmission solutions. Transmission alternatives to RMR designations typically involve new construction or significant re-conductoring efforts that cannot be identified, developed, and completed before the start of the year in which an RMR Contract would take effect. These typically take several years as is evidenced by the approved solutions that will eliminate the remaining RMR Contracts.[39] For example, the solutions the CAISO approved to replace the existing RMR Contracts require several years to

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38 The CAISO notes that with the corrected information, it was able to include in the first draft of the 2017-2018 annual transmission plan posted on February 1, 2018, the mitigation measures to eliminate the Metcalf RMR Contract. CAISO 2017-2018 Annual Transmission Plan, 259-63 (Feb. 1, 2018). The draft plan noted that because several of the identified upgrades would not be in effect until; the end of 2018 or early 2019, the identified RMR need for Metcalf remained valid. *Id.* at 262. A link to the draft plan is available at: http://www.caiso.com/Documents/Draft2017-2018_Transmission_Plan-Feb1_2018.pdf.

39 The CPUC and PG&E fail to recognize that the MISO and NYISO processes likewise contemplate that alternatives to RMR cannot be constructed in time to obviate the need for SSR or RMR agreements. For example, MISO, like the CAISO, undertakes an annual review of all SSR contracts to determine if they are still needed for reliability. MISO FERC Electric Tariff Section 38.2.7(m). The NYISO must timely terminate RMR contracts when the RMR generator is no longer needed for reliability. NYISO Open Access Transmission Tariff, Attachment FF, Section 38.19.

place in service. Requiring a 180 or 365 days retirement notice would not have obviated these RMR designations. However, once the erroneous data was corrected and the alternatives identified and approved, the alternatives addressing the Metcalf need could be completed in approximately one year after the CAISO identified them. The process challenges associated with the Metcalf RMR designation do not render the 90-day retirement notice requirement and the CAISO's RMR process unjust and unreasonable, but instead highlighted the need for additional clarity and structure around the RMR designation process, which the CAISO considers to have been effectively addressed through this stakeholder initiative.

The CPUC points to the prior Local Area Reliability Service (LARS) process that the CAISO had in effect prior to the adoption of local RA capacity requirements. The circumstances related to that prior process are completely different than those that exist today. At that time, there was no local capacity resource adequacy program administered by the CPUC that required LSEs to procure capacity located in local areas. The CAISO essentially relied on RMR to meet its local capacity requirements. Most market units located in local capacity areas were under RMR Contract; for example, in 2006 the CAISO had more than 60 units under RMR contracts. The CAISO had to assess annually which local market units it needed to meet reliability in the upcoming year. This resulted in the CAISO having a separate process dedicated to that effort. Although the LARS process permitted stakeholders to submit alternatives, including transmission alternatives, those generally could not be identified and completed in time to meet the next year's need.

The LARS process has effectively been replaced by California's resource adequacy program, the CAISO's resource adequacy requirements, and the CAISO's transmission planning process. Under the CAISO's existing process, if the CAISO receives a retirement/mothball notice the CAISO assesses whether the unit is needed for reliability and then evaluates any potential alternative solutions that can be implemented before the unit's retirement. If there are none, the CAISO will issue the unit an RMR designation. Following the RMR designation, the CAISO transfers the matter to the CAISO's annual transmission planning process[40] where the CASIO and stakeholders can study and identify potential transmission and non-transmission alternatives to continuing the RMR Contract. The Commission-approved transmission planning provisions and process apply to that effort.

Now, most local capacity is under RA contract, and the CAISO only relies on RMR to meet residual local reliability needs that have not been met by RA procurement, and it retains a couple of legacy RMR contracts. As indicated in the Transmittal Letter, the CAISO presently only has five units, under two separate contracts, totaling 260.2 MW of capacity under RMR Contract and representing less than 0.5% of total available resources. Further, the CAISO has approved transmission solutions that will eliminate all existing RMR contracts in in the next few years. Given the CPUC's approval of multi-year local RA procurement obligations starting in 2020, the CAISO anticipates that future RMR procurement should be limited.

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[40] The CAISO notes that its transmission planning process is annual, whereas, the NYISO's reliability planning process is biennial. *See* NYISO Open Access Transmission Tariff, Attachment FF, Section 38.3.4.3. This can make it difficult or impossible for the NYISO to address unit deactivation notices in the reliability planning process and necessitates the NYISO's 365-day deactivation notice requirement. *See New York Indep. Sys. Operator Corp.,* 161 FERC ¶ 61,189 at P 14-15 (2017). The CAISO's annual planning process makes this unnecessary.

The CAISO has had significant experience over the years dealing with resource retirements and RMR assessments. The 90-day notice requirement provides sufficient time to evaluate the need for retiring resources and identify alternative solutions that can be developed by the start of the upcoming calendar year in which an RMR Contract would otherwise take effect. If the CAISO has to issue an RMR designation, the CAISO will study the need for any continued RMR designation in the ongoing annual transmission planning cycle. As explained above, even in the Metcalf situation, the CAISO was able to evaluate transmission alternatives in the ongoing transmission planning cycle, which enabled it to terminate the RMR Contract after one year. As the CAISO noted in its Transmittal Letter, given the timing of the Path 2 process, if there is no near-term alternative to an RMR Contract, the CAISO can evaluate other alternatives in the ongoing annual transmission planning cycle, allowing longer-term alternative solutions to be developed earlier and thus reducing the ultimate duration of the need for an RMR Contract. Now that the RA program provides local capacity and the transmission planning process evaluates economic transmission solutions and non-transmission alternatives, a LARS-type process is unnecessary and would only confuse matters.

The CPUC and PG&E seek to "cherry-pick" aspects of the MISO and NYISO processes, in particular the retirement/mothball notification deadlines, but do not take the entirety of those processes into account. Even if the CAISO had the MISO or NYISO processes in place in 2017, there is no need to think they would have obviated the need for the Metcalf RMR designation.

MISO requires unit owners to give at least 26 months notice prior to their retirement/mothball date.[41] MISO must respond to the unit owner that the unit appears to be needed for system reliability within 75 days.[42] MISO has 26 weeks from the date the unit submitted its retirement/mothball notice to complete its alternatives study.[43] If MISO does not identify an alternative that is available by the unit's retirement/mothball date, then MISO will file a System Support Resource (SSR) agreement with the Commission.[44] The NYISO requires that resources provide at least 365 days advance notice of their retirement/mothball date.[45] Within 90 days thereafter, the NYISO must determine whether a reliability need will arise as a result of the generator's deactivation.[46] If the NYISO determines that it cannot timely address the reliability need through the current or next biennial reliability planning process, then the NYISO will provide parties 60 days to propose RMR alternatives.[47] NYISO then uses the remainder of the 365-day notice period (*i.e.*, 215 days) to evaluate the alternatives to determine which are viable and sufficient and enter into an RMR Contract or some other agreement with an RMR alternative.[48]

Regarding Metcalf, after the CAISO received corrected information from PG&E in late 2017, the CAISO was able to identify alternative solutions to Metcalf and include

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41 MISO FERC Electric Tariff, Module C, Section 38.2.7.a.

42 *Id.* at Section 38.2.7.b.

43 *Id.* at Section 38.2.7.c.

44 *Id.*

45 NYISO Open Access Transmission Tariff, Attachment FF, Section 38.3.1.1.

46 *Id.* at Section 38.3.4.3.

47 *Id.* at Section 38.4.1. *See also* Section 38.4.3.

48 *New York Indep. Sys. Operator Corp.,* 161 FERC ¶ 61,189 at PP 15, 17 (2017).

them in the first draft of the 2017-2018 annual transmission plan, dated February 1, 2018. The draft transmission plan (at footnote 97) noted that because several of the identified upgrades would not be in effect until the end of 2018 or early 2019, the identified need for the Metcalf RMR Contract in 2018 remained valid. In other words, after all the necessary mitigation solutions were identified, it was expected that they would take approximately one-year to complete. Thus, even if Metcalf had been considered under the MISO and NYISO processes and timelines discussed above, the alternative mitigation measures would not have been completed in time to eliminate the need for the Metcalf RMR Contract.

Under MISO's process, if Metcalf gave notice on July 1, 2017, MISO would take 75 days (until September 15, 2017) to determine the need for the unit and would have the reminder of the 26-week period to assess alternatives. Assuming a one-year schedule to complete the mitigation solutions, the solutions would not have been expected to be in place before late 2018. Thus, there still would have been a need for an RMR contract starting in January 2018.

Under the NYISO's process, if Metcalf gave notice on January 1, 2017, the NYISO would have had 150 days to determine the reliability need and receive alternative proposals (June 1), and then the NYISO still would have had to assess the alternatives (assuming that the NYISO did not decide that the matter should be addressed instead in the biennial transmission planning process in which case NYISO would have transferred the matter to that process). Given a reasonable amount of time to assess alternatives and select a mitigation solution, and given the expected one-year timeline to complete the mitigation solutions, any solution would not have been expected to be in place until the second half of 2018. That would not have obviated the need for an RMR Contract.

PG&E and the CPUC also ignore that the NYISO permits a resource that has submitted a deactivation notice to request that it be permitted to deactivate before the 365-day deadline. If it does and the NYISO is unable to permit the resource to deactivate for reliability reasons, starting on Day 181, the NYISO must compensate the resource an Interim Service Provider.[49] This compensation provision places generators in a comparable positon to those in MISO, which has a 26-day notice period.[50] This can result in the NYISO paying a deactivating resource for six months before it even implements the RMR Contract (or any alternative solution that can be implemented in lieu of an RMR Contract). The timing of the CAISO's process avoids the need for any interim compensation.

Given that transmission solutions typically take several years to complete, the MISO and NYISO processes do not guarantee materially prompter completion of alternatives than does the CAISO's process. The CAISO has successfully addressed retirement issues and identified alternative solutions for many years with a 90-day notice period, in conjunction with an annual transmission planning process. This process enabled the RMR contract with Metcalf to be terminated after one year and allowed the CAISO to approve replacement solutions for all existing RMR contracts. The CAISO's proposed Path 2 process, which requires a February 1 notification date, will provide an even longer notice period than exists today, providing more time to

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49 NYISO Open Access Transmission Tariff, Attachment FF, Section 38.13.

50 *New York Indep. Sys. Operator Corp.,* 161 FERC ¶ 61,189 at P 16 (2017).

consider alternatives and to refer any RMR designations to the ongoing transmission planning process early in the process so longer-term solutions can immediately be considered in the current planning cycle. Once the CAISO determines that it must make an RMR designation, it can immediately refer the matter to the ongoing transmission planning process to identify potential alternatives.

2. The Commission Should Reject PG&E's Request that the CAISO Establish Different Processes and Compensation for Mothballing and Retirement

PG&E argues that the Commission should order the CAISO to create separate mechanisms and processes for retirements and mothballs[51] with different notification timelines, different study timelines, and different pricing. PG&E states that if the CAISO finds that a mothballed unit is needed for reliability, it should only pay the resource its going forward costs to remain in service.[52] PG&E claims that the Metcalf situation discussed above shows why a different timeline is needed for retirement requests.[53]

The Commission should reject PG&E's request. The CAISO's proposal is just and reasonable without modification. The Commission has found that comparable ISO and RTO processes considering both retirements and mothballs and providing the same compensation for each is just and reasonable. As discussed in the Transmittal Letter, the MISO and the NYISO processes address both mothballs and retirements.[54] Neither MISO nor the NYISO have different notification deadlines or study timelines for

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51 PG&E at 8.

52 *Id.* at 10-11.

53 *Id.* at 9.

54 Transmittal Letter at 61-62, 66, citing NYISO, Open Access Transmission Tariff Attachment FF, Section 38 *et seq.* and Appendix A and MISO, FERC Electric Tariff, Module C, Section 38.2.7 *et seq*. and Attachment Y.

mothballs and retirements, and they do not compensate needed mothballing resources differently than they compensate retiring resources needed for reliability under their backstop procurement agreements.

There is no basis to require the CAISO to establish separate mechanisms. The CAISO performs the same type of reliability studies and applies the same reliability criteria for both retirements and mothballs, especially because generators in the CAISO can mothball up to three years prior to permanently retiring, repowering, or returning to service. The three-year potential period for mothballing is a significant length of time for reliability planning purposes and demonstrates that mothballing may not always be short term. For both retirements and mothballs, the CAISO evaluates similar types of alternatives that can be implemented before the intended retirement or mothball date and then evaluates alternatives that require a longer time horizon in its annual transmission planning process. Creating separate mechanisms for mothballs and retirements will not produce any efficiencies or identifiable benefits. To the contrary, it could disrupt the CAISO's established planning process, schedule, and resource allocation.

As discussed above, PG&E's reliance on the Metcalf situation as justification for rejecting or modifying the CAISO's proposal is misplaced. Metcalf involved neither a formal retirement nor mothball notification that required the CAISO to act within a specified timeline. The informal and non-committal request that prompted the CAISO to study the need for Metcalf will not occur under the proposed process. Metcalf does not support adopting different processes and timelines for studying retiring and mothballing resources.

Finally, there is no basis to compensate mothballing resources needed for reliability differently than retiring resources by paying only for their going forward costs. Accepting an RMR designation is mandatory for a mothballing resource just as it is mandatory for a retiring resource. If the CAISO needs a mothballing resource to remain in service to maintain reliability, it must have the authority to require such unit to remain operational just as it can require a retiring unit to remain in service. Mandatory RMR designations preclude the unit owner from pursuing other business opportunities. As the CAISO discussed in the Transmittal Letter, Commission policy requires that if an ISO or RTO has a mandatory backstop procurement framework, compensation must be based on a resource's full cost of service.[55]

In MISO, the Commission expressly found that MISO's System Support Resource (SSR) contract that required a generator that seeks to *retire or suspend operations* to remain online to address reliability concerns to be unjust and unreasonable because it only compensated the resource owner based on the

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[55] PG&E cites a PJM order for the proposition that the CAISO need only pay a mothballing resource its going forward costs. PG&E at 10, citing, *PJM Interconnection, LLC,* 107 FERC ¶ 61,112 at P 40 (2004). Nowhere does this order suggest that mothballing resources needed for reliability should be paid less than retiring resources needed for reliability. In the order, the Commission stated that "must-run units need to be compensated at a level that adequately covers their fixed and variable costs" and directed PJM "to develop a policy which would provide a reasonable opportunity for recovery of going forward costs, *at the minimum*." *Id.* (Emphasis added). As discussed in the Transmittal Letter (pp. 111-12), more recent precedent clarifies that if the RMR regime requires a unit needed for reliability to remain in service, compensation must be based on a full cost of service rate, but if participation on the part of a resource is voluntary, compensation need only provide for recovery of going forward costs, at a minimum. *New York Indep. Sys. Operator, Inc.,* 150 FERC ¶ 61,116 at P 17 (2015), *order on compliance and reh'g, New York Indep. Sys. Operator, Inc.,* 155 FERC ¶ 61,076 at P 84 (2016); *Midcontinent Indep. Sys. Operator, Inc.,* 148 FERC ¶ 61,057 at P 84-87 (2014). Indeed, in its first NYISO order where the Commission ruled that if NYISO chose an exclusively mandatory RMR regime NYISO should provide for full cost of service compensation, the Commission referred to the PJM order that RMR compensation must at a minimum allow for recovery of a units going forward costs with parties having the ability to negotiate a full cost of service contract. *See New York Indep. Sys. Operator, Inc.,* 150 FERC ¶ 61,116 at P 17. Thus, the PJM order cited by PG&E does not support going forward cost pricing in the context of the CAISO's mandatory RMR framework.

resource's going forward fixed costs.[56] In other words, the Commission found that in a mandatory backstop procurement regime, an ISO or RTO must compensate both retiring and mothballing resources needed for reliability at their full cost of service. Because the CAISO can require a mothballing unit (as well as a retiring unit) needed for reliability to remain online, it would be unjust and unreasonable for the CAISO only to compensate the mothballing resource based on its going forward costs.

3. The Commission Should Reject SDG&E's Proposed Restrictions on Mothballing Resources

SDG&E suggests that the CAISO's process permits mothballing resources to use the notification process as a price discovery tool. SDG&E requests that the Commission direct the CAISO to adopt the following measures for mothballing resources: (1) require a minimum mothballing term of four months; (2) require notification from the CAISO of a new reliability need to exit the mothballing period early so that the minimum to exit mothballing early would be more than receiving a contract for as little as one MW of capacity; and (3) limiting mothballing requests to the time of year that will not impact the May-to-November bilateral RA negotiations period.[57]

The changes proposed by SDG&E are significant modifications to the CAISO's proposal that go beyond the minor modifications the Commission can require under Section 205.[58] Although SDG&E lists these suggested modifications in its protest, it makes no attempt to discuss them separately and explain why each is just and

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[56] *Midcontinent Indep. Sys. Operator, Inc.,* 148 FERC ¶ 61,057 at PP 84-87.

[57] SDG&E at 3.

[58] *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, (D.C. Cir. 2017)

reasonable. The CAISO addressed each of these suggestions in its Transmittal Letter and discussed why they were not just and reasonable, necessary, or appropriate.[59] SDG&E neither acknowledges this discussion, nor makes any attempt to rebut the CAISO's arguments. The CAISO will highlight some of the key points it previously made, but will not repeat the entire discussion. The CAISO's proposed treatment of mothballing resources is just and reasonable without these measures.

Regarding the first suggestion, the CAISO notes that MISO has a two-month minimum term for mothballing, but the NYISO has no minimum term.[60] The CAISO's proposed attestation requirements to return from mothball are more robust than MISO's and the NYISO's because they permit a resource to return from mothballing for any reason; whereas, the CAISO permits a unit to return from mothball only for certain specified reasons that "remedy" the reason the unit mothballed in the first instance. [61] The CAISO's more robust attestation requirement can better deter "fishing" for an RMR designation because, unlike the MISO and NYISO attestations, it requires the attesting party to provide considerable detail on why the resource is being mothballed, thus putting the unit owner at greater risk if it submits false or misleading information.

Also, a two- or four-month minimum mothball term does not serve as much of a deterrent, especially given that any unit that mothballs will incur additional costs and require some minimum amount of time to return from mothball status. A unit returning from mothballing needs to provide evidence to the CAISO regarding the status of its

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[59] Transmittal Letter at 63-66; 72-73.

[60] *Id.* at 65.

[61] *Id.*

metering facilities, and receive approval from the CAISO to return back to the market in a reliable manner, a process which could take more than a month in certain circumstances. Further, as the CAISO noted in its Transmittal Letter, a minimum mothball term could be problematic if the CAISO or an LSE seeks to procure the resource before the end of the minimum mothball period. There are numerous instances where LSEs have sought to procure mothballed units, presumably because the LSE needed them or they were more beneficial to the LSE compared to other supply options. Also, if unexpected circumstances occur, the CAISO may need to procure a mothballed unit to maintain reliability. The CAISO or an LSE should not be required to seek tariff waiver any time they want to procure a mothballed resource whose minimum mothball time has not expired. A brief, minimum mothball period provides no material benefit and could be problematic.

Requiring a new reliability need to arise before a mothballed unit can return to service is unduly punitive and contrary to Commission precedent. As indicted above, MISO and the NYISO permit a mothballed unit to return to service for any reason (and without having to state a reason) by merely submitting a notification.[62] Suggesting that resources will “game” the process and return from mothball by merely selling 1 MW of capacity is both illogical and unrealistic. A resource that is mothballing because it is uneconomic is highly unlikely to return to service under conditions where it remains uneconomic. A unit owner must attest it is mothballing the unit because it is uneconomic to remain in service and also must attest to the reason why it is returning to service. Unless the resource is a 1 MW resource, a mothballed resource returning to

[62] *See* Transmittal Letter at Attachments G and H.

service after selling only 1 MW of capacity would clearly raise the specter that the unit owner submitted false and misleading information in its initial attestation and would be subject to investigation by the CAISO's DMM and potential referral to the Commission.[63]

Precluding a mothballed unit from returning to service if an LSE desires to procure it is unreasonable. In the CAISO footprint, LSEs often procure resources that have mothballed. If an LSE can obtain more favorable contractual arrangements with a mothballed resource than it can from a currently operating resource, it should not be precluded from doing so. Neither the CPUC nor any other LSE intervener in this proceeding seeks to restrict further a mothballed unit's ability to return to service. A resource that mothballs because it does not have an RA contract should not be precluded from returning to service before its specified mothball end date if secures such a contract. Presumably the resource will have "remedied" the reason why it mothballed in the first instance.

SDG&E's suggestion that mothball requests should be limited to after RA showing deadline starting in November is highly problematic. This would be a significant change to the paradigm that exists today where a resource owner can seek to mothball at any time during the year as long as it provides the requisite notice. As discussed *supra*, it would disrupt the expectations of every resource that has executed a PGA.[64] The CAISO discussed the problems with this suggestion in the Transmittal Letter,[65] yet SDG&E made no attempt to address the CAISO's concerns.

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63 *Id.* at 65.

64 *Id*. at 72.

65 *Id.* at 72-73.

SDG&E's proposal defeats one of the key purposes of this tariff amendment and fails to address an important issue identified by suppliers – units that must decide whether to retire/mothball or continue operating for the upcoming Resource Adequacy Compliance Year face important planning decisions that have significant financial and business implications. They often need a longer planning horizon to make those decisions in a timely and prudent manner.[66] No intervener disputed this, and no other intervener suggests limiting mothball requests until year's end.

SDG&E's suggestion would force resources that are uneconomic to continue operating for a longer period of time than is necessary simply because they would have to wait until after the annual RA showings to submit a mothball notice. Based on the CAISO's post-RA showing process, the CAISO would not be in a positon to even begin reviewing mothball notices and studying the need for specific units until late December,[67] and RMR process requirements would add even more time, meaning any RMR Contract could not be implemented well into the next calendar year.[68] That would drive the study process well into the following year, forcing unit owners to operate longer than necessary without a contract.[69]

In theory, a possible option to address SDG&E's issues, while still promoting the objectives of this initiative, would be to change the timing of LSE resource adequacy procurement and the deadlines for LSEs to submit their annual RA plans. However, a

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66 *Id.* at 17-20, 50-52.

67 Transmittal Letter at 72.

68 *Id.*

69 Further, if a designated unit needs upgrades or major maintenance to provide RMR service, it would have to undertake such activities during the RMR Contract year, rather than the prior year because SDG&E's process will have denied the resource the longer "runway" to undertake such activities.

change of that magnitude is far beyond the scope of this filing and would require extensive effort and coordination among the CAISO, the CPUC, the California Energy Commission (CEC), and all local regulatory authorities. Such a change would take years to study and implement.

SDG&E also claims that the CAISO's process will provide an incentive for mothballing resources to test whether they are needed for reliability and obtain "price discovery." SDG&E ignores that a mothballing resource receives no "price discovery" from a CAISO determination that it is not needed for reliability. Rather, the unit must mothball consistent with its attestation and can only return from mothball status if it meets one of the limited reasons specified in the attestation – all of which would result in the reason for mothballing being remedied. If the unit is needed for reliability, the most it can recover from the CAISO under an RMR Contract is its cost of service, which as the Commission has recognized is not a "windfall."[70] As PG&E recognizes, based on the regular studies the CAISO conducts and the vast amount of public information that is available from the CAISO, CPUC, and CEC, most resources (and stakeholders generally) already know whether or not a resource is needed for reliability;[71] they typically are not learning it for the first time as the result of a new CAISO study. Thus, SDG&E's concerns that the process will allow mothballing resources to learn their need and then unduly front run the RA process is misplaced.[72]

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[70] Transmittal Letter at 70-71, citing *Midcontinent Indep. Sys. Operator, Inc.,* 148 FERC ¶ 61,057 at P 86 (2016); *PSEG Power Conn., LLC,* 110 FERC ¶ 61,020 at P 30 (2005)

[71] PG&E at 16; *see also* DMM at 13.

[72] In the Transmittal Letter, the CAISO discussed at length why its proposed process does not unduly front run the RA process, and how its proposed process constitutes a significant improvement over the existing RMR process that already allows for front running. Transmittal Letter at 66-71.

In the Transmittal Letter, the CAISO identified several reasons why a resource owner would prefer to have an RA contract than an RMR Contract, including the opportunity to obtain a multiyear contract under the CPUC's new multi-year local procurement requirement. RMR Contracts are only for a year, and are subject to reassessment annually. Further, the CAISO will study long-term alternatives in the annual transmission planning process that will allow it to terminate an RMR Contract. RMR Contracts also force an RMR unit owner to make public its costs. In its Transmittal Letter, the CAISO noted a recent example where two resources with conditional RMR designations subsequently executed RA Contracts thus obviating the need for an RMR Contract.[73] The CPUC encouraged such contracting.[74] Thus, SDG&E's suggestion that issuing a conditional RMR designation to a mothballing resource will unduly preclude bilateral contract negotiations has been proven incorrect.

Finally, as discussed in the Transmittal Letter, the CAISO's proposal will better prevent over-procurement and LSEs paying twice for capacity.[75] SDG&E's proposal will not because LSEs would first procure all of their RA capacity to meet their RA obligations. Only afterwards would the CAISO evaluate mothball requests to determine if the mothballing resource is needed for reliability. Any resource the CAISO then procures would be in addition to all of the RA capacity LSEs procured. On the other hand, if LSEs procured the needed resource in their RA procurement, there would be no need for the CAISO to procure the resource, and there would be no additional cost

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73 *Id*. at 71.

74 *Id.*

75 *Id.* at 53, 72-73.

incurrence.

4. On Compliance, the Commission Should Permit the CAISO to Remove a Sentence from the Tariff that was Unintended and is an Immaterial, Non-Substantive Implementation Detail

Calpine supports the RMR designation process and timeline, but suggests a minor modification to one timeline date. In that regard, proposed tariff section 41.2(b) states that the CAISO will not commence the RMR Contract negotiation process for an RMR designated resource before September 1. Calpine states that negotiating fact-intensive cost-of-service schedules in the RMR Contract can take more than two months. Calpine suggests that the CAISO delete the hard and fast date of September 1 for commencing negotiations and instead commit to reviewing and discussing, upon receipt from the RMR designated owner, components of the owner's proposed schedules, including cost items to be included in the annual fixed revenue requirement.

The September date reflects when the CAISO typically begins reviewing cost and other data pertinent to an RMR contract and commences contract negotiations with RMR unit owners for the upcoming year. This schedule has not hindered timely filing of RMR Contracts for the upcoming year.

The CAISO nonetheless agrees with Calpine that early review of documentation can facilitate timely RMR Contract filings. However, Calpine's proposed language would require the CAISO to begin reviewing pertinent RMR Contract data and negotiating RMR Contracts as soon as the unit owner provides it to the CAISO. Under the CAISO's proposal, this could require the CAISO to review material as early as May or June, which may be unnecessary. Further, if the CAISO begins reviewing such data that early, and the unit subsequently accepts an RA contract, the CAISO's effort will have been in vain.

An alternative tweak will address Calpine's concern in a manner consistent with the CAISO's intent. The CAISO intended to remove the sentence referencing the September 1 negotiation date from proposed tariff section 41.2 (b) but inadvertently failed to do so before filing. The CAISO notes that it removed discussion of this sentence from the Transmittal Letter on the pages where the CAISO discusses the substance of CAISO tariff section 41.2(b).[76] Thus, the filed Transmittal Letter does not identify this negotiation timeline as being part of the CAISO's proposal.

This sentence is not a substantive term or condition of RMR service. It is a minor implementation detail that typically would be included in a business practice manual. Accordingly, if the Commission finds it appropriate, the CAISO agrees to eliminate this sentence from the proposed tariff in a compliance filing. That would reflect the CAISO's intent in making this filing, provide some flexibility in the timing of RMR Contract negotiations without unduly binding the CAISO or the unit owner, and constitute a very minor and immaterial change to an implementation detail.

B. The Commission Should Reject Proposed Changes to the Attestation

1. The CPUC's Claims that the Attestation Requirements are not Sufficiently Robust and Lack Merit

The CPUC is the only intervener that contends the CAISO's proposed attestation requirements are not sufficiently robust because they fail to require the unit owner to provide financial data demonstrating that it is uneconomic for the resource to continue operating. The CPUC claims that the proposed attestation is insufficient because it

[76] Transmittal Letter at 46-47.

could allow economic resources to receive RMR designations.[77] The CPUC argues that the Commission should require the CAISO to adopt the attestation requirement for resources seeking risk of retirement CPM designations. The CPUC states that the CPM tariff and relevant business practice manual contemplates that the unit owner will provide any analyses the unit owner has performed to determine whether it is uneconomic for the resource to remain in service and that the Department of Market Monitoring may review such information to determine whether the unit owner has submitted false or misleading information.[78]

In the CAISO's tariff amendment filing to implement risk of retirement CPM, the CAISO proposed to require unit owners to submit supporting financial information and documentation, as specified in the business practice manual, and that the CAISO would review the affidavit and supporting financial information to determine if the expectation of losses and decision to retire were reasonable and supported by the facts.[79] As the CAISO discussed in its Transmittal Letter for the April 22 RMR Tariff Amendment, in approving the CAISO's risk of retirement CPM tariff provisions, the Commission found that the CAISO's proposal to require an affidavit from the unit owner stating that it is uneconomic for the unit to remain in service and that the decision to retire was definite unless CPM procurement occurred was sufficient to establish that a resource cannot continue to operate economically.[80] The Commission ruled that because market

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[77] CPUC at 24, 31.

[78] *Id.* at 22-23, citing Section 12.6.4 of the Reliability Requirements Business Practice Manual.

[79] CAISO Tariff Amendment Filing, Docket No. ER11-2256, Proposed Tariff section 43.2.6 (Dec 1, 2010).

[80] *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,211 at P 132 (2011).

participants are prohibited from submitting false or misleading information to the CAISO, this attestation should be sufficient to establish that a resource cannot continue to operate economically.[81] Accordingly, the Commission found it was unnecessary for the CAISO to also assess the resource's financial condition.[82]

In light of its decision rejecting the CAISO's proposal to evaluate information regarding the financial status of unit, the Commission also found it unnecessary to address NRG's request that the Commission require confidential treatment for the financial data submitted by the applicant seeking a risk of retirement CPM designation.[83] The Commission stated that if the CAISO's Department of Market Monitoring has reason to suspect that a resources submitted false, inaccurate, or otherwise misleading information in its affidavit, it should refer such suspected violations to the Commission.[84] The Commission found the CAISO's proposal to conduct financial assessments of units seeking risk of retirement CPM designations to be unjust and unreasonable and rejected it. The Commission also noted that (1) the CAISO does not perform a financial assessment review as part of it RMR process and (2) other ISOs and RTOs do not perform financial assessments as part of their processes for procuring resources at risk of retirement.[85]

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81 *Id.*

82 *Id.*

83 NRG requested that the Commission provide confidential treatment for the financial information requested by the CAISO because it would be untenable and highly problematic to require a plant to make public that it is considering retirement prior to accepting a CPM designation. *California Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,211 at P 98.

84 *Id.*

85 *Id.* at n.162.

Although the CAISO subsequently eliminated the financial assessment tariff language from the risk of retirement CPM tariff, it failed to eliminate the language requiring the unit owner to provide supporting financial information and documentation. Section 12.6.4 of the CAISO's Reliability Requirements Business Practice Manual (BPM) also retains provisions requiring the unit owner to submit information that would enable the CAISO to undertake a financial analysis of the retiring unit's economic condition, *i.e.*, power purchase agreement information, fuel supply contract information, and any analyses the unit owner has done to show it is uneconomic for the unit to remain in service. Section 12.6.4 of the BPM also provides that the CAISO may request additional information from the unit owner to perform its assessment. Based on the Commission's ruling that it was unnecessary to address NRG's request for confidential treatment of the submitted financial information because the Commission was rejecting the CAISO's request to conduct a financial assessment of such information, the CAISO probably should have removed the financial data/documentation submission requirement from the tariff and BPM,[86] but it did not.

In any event, the CAISO's proposed attestation is not unjust and unreasonable because it fails to require the unit owner to submit financial analyses showing that it is uneconomic for the resource to remain in service or a formal decision of its Board that the unit will retire unless it is procured. The CPUC claims that existing attestation requirements are stronger than the CAISO's proposed attestation requirements. However, as the Commission noted in its 2011 decision on the CAISO's risk of retirement CPM proposal, the CAISO's RMR process does not require the CAISO to

[86] The Commission does not approve BPM provisions.

assess the financial condition of the unit owner before it can receive an RMR Contract, and the RMR tariff does not require the unit owner to submit financial analyses demonstrating the unit is uneconomic in order for the unit to be eligible for an RMR Contract. Indeed, the existing RMR process does not require the unit owner to submit any type of attestation. Thus, the CAISO's proposed process with a new attestation requirement is significantly more robust than the existing RMR process requirements.

As the Commission recognized in its 2011 order regarding the risk of retirement CPM and the CAISO discussed in its Transmittal Letter, no other ISO or RTO imposes a requirement like that proposed by the CPUC.[87] The CPUC fails to acknowledge this. Indeed, PJM Interconnection, LLC (PJM) and ISO New England (ISO-NE) do not impose any type of attestation requirement, and the NYISO's attestation merely requires the unit owner to indicate when it is retiring or mothballing. Only MISO requires the unit owner to attest that it is uneconomic for the unit to remain in service, and MISO does not require the unit owner to submit any financial analyses demonstrating its financial condition, and MISO does not undertake any financial assessments to determine if the unit is eligible for a cost of service backstop agreement. The NYISO's and MISO's affidavits apply both to unit retirements and mothballs. There is no basis to treat the CAISO differently than every other ISO or RTO.

Also, as the Commission recognized in the 2011 CPM order, the Commission's rules against submitting false or misleading information render it unnecessary to require the unit owner to submit financial information demonstrating that it is uneconomic for the unit to continue operating. The CAISO requires a notarized attestation from an officer

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[87] Transmittal Letter at 58-63.

with legal authority to bind the entity stating the owner is retiring or mothballing the unit because it is uneconomic to remain in service and that the decision to retire/mothball is **definite** unless one of the four specified events occurs. Because the attestation is from an officer of the company who has legal authority to bind the company, it is unnecessary to require that the unit owner also provide a formal decision of the Board that the unit is retiring or mothballing absent procurement. Resource owners submitting attestations face potential penalties if they submit false or misleading information in their retirement/mothball attestation/notice.[88] As DMM indicates in its comments, DMM can review attestations and refer any potential false or misleading information to the Commission. DMM notes that it already has tariff authority to require the submission of any financial data or analysis it might need in connection with any investigation of the submission of false or misleading information.[89]

The CPUC provides a couple of examples why it believes a stronger attestation like that in the risk of retirement CPM tariff is necessary. First, it states that an otherwise economic resource could be assessed for an RMR Contract simply by failing to obtain an RA contract because it requested a five-year contract or offered its

[88] The Commission has previously recognized that false retirement claims can constitute false or misleading conduct. *See New York Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,301 at P 135 (2008).

[89] DMM Comments at 9, citing CAISO tariff, Appendix P, Section 8.5.1. . DMM also recommends that the CAISO clarify in this filing or elsewhere that unit owners are expected to make a diligent effort to obtain contracts in the bilateral market prior to submitting retirement and mothball notifications. *Id.* The CAISO expects that unit owners will make a good faith effort to seek to obtain bilateral contracts before they submit retirement/mothball notifications. As discussed in the Transmittal Letter (p.57), the CAISO notes that not every resource is retiring because it is uneconomic. Resources regularly retire for reasons other than the lack of an RA contract, and such resources should not be expected to pursue RA contracts before submitting a notice of retirement. In the BPM process that will follow the Commission's action on this filing, the CAISO and stakeholders can explore reflecting such expectation in the BPM.

resources at an unusually high price. [90] These examples do not reflect rational unit owner behavior and would not be remedied by the attestation the CPUC seeks. Starting in 2020, the CPUC will have multi-year procurement requirements for local capacity (100% in years 1 and 2 and 50 percent in year 3), but there are no multi-year procurement requirements for system and flexible capacity. Also, the CPUC currently has a $40/kW-year waiver price in effect whereby an LSE in a local area potentially can obtain a waiver of its local capacity obligation from the CPUC if a resource owner is unreasonably holding out for a higher price.[91] A Proposed Decision pending at the CPUC would increase the waiver price to $51/kW-year.[92] Further, the most compensation a retiring or mothballing resource can earn from the CAISO under RMR is a one-year contract at a cost of service rate. That contract is subject to CAISO reevaluation annually, and the CAISO will assess alternatives in its transmission planning process so it can terminate the RMR Contract at the earliest possible date. It is irrational that a resource owner would hold out for a five-year contract or an unreasonable price under these circumstances, especially knowing that it does not obtain an RA Contract. It appears that the CPUC's real objection is that units the CAISO can require under the RMR framework to remain on-line to meet reliability needs should not be compensated based on their full cost of service.[93]

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[90] CPUC at 24. The CPUC also states that a resource might not have an RA contract because it is considering a sale.

[91] *See* Proposed Decision Adopting Local Capacity Obligations for 2020-2022, Adopting Flexible Capacity Obligations for 2020, and Refining the Resource Adequacy Program, *Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Local and Flexible Capacity Procurement Obligations for the 2019 and 2020 Compliance Years, Rulemaking 17-09-020,* 13-14 (May 24, 2019).

[92] *Id.* at 14-17.

[93] *See* CPUC at 24.

The CPM risk of retirement attestation and the financial information specified in the BPM do not provide any additional protections against specific behavior described by the CPUC than does the CAISO's proposed attestation. The CPM risk of retirement attestation in CAISO tariff section 43A.2.6 provides 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." This attestation language is essentially the same the attestation language the CAISO proposes herein, except that the CAISO's proposed attestation language would provide that retiring or mothballing the unit is definite unless the CAISO procures the unit, the resource receives another contract (*e.g*., an RA contract), or sells the unit. As the CAISO discussed in the Transmittal Letter, these are legitimate business activities that might make a unit economic, thus remedying the reason for the retirement/mothball notice.[94] Also, they are consistent with the Commission's principle that RMR should be a measure of last resort and that LSE procurement should be sought before any backstop procurement occurs.[95] The CPUC offers no reasons why these conditions are unjust and unreasonable.

The CPUC requests that the CAISO be required to apply to RMR the financial information submission requirements for CPM risk of retirement (wrongly) contained in the BPM. Those requirements do not address the examples the CPUC provides. In that regard, company analyses showing that it is uneconomic for the resource to continue operating or formal board decisions regarding retiring the unit would not show

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[94] Transmittal Letter at 64.

[95] *See, e.g.*, *Cal. Indep. Sys. Operator Corp.,* 134 FERC ¶ 61,211 at PP 124-127,130 (2011).

that the unit sought an unreasonably high RA price or an unreasonably lengthy RA contract. Thus, the examples do not support the CPUC's request and are otherwise illogical.

Finally, the CPUC provides several examples of mothballing units, retiring units, and units considering retirement and claims that these examples support the need for stricter affidavit requirements for RMR.[96] They do not! All of these examples occurred under the existing framework where retiring/mothballing resources are not required to submit any attestation and can request that the CAISO study the reliability need for their units without having to submit a formal retirement/mothball notice. That will no longer be the case if the Commission approves the CAISO's proposed tariff provisions. Thus, these examples do not support the CPUC's positon.[97]

First, the CPUC notes that when the CAISO designated Calpine's Feather River and Yuba City units as RMR, it also found that two other Calpine units, Wolfskill and King City, were not needed for reliability. The CPUC states that although these units mothballed for the first half of 2018, they subsequently returned to service contradicting Calpine's statement that they were no longer economic.[98] The CPUC ignores that under the CAISO's proposed tariff provisions, the CAISO would not even have studied the reliability need for these units because Calpine did not submit a formal notification request. Further, there was no requirement that Calpine attest that it was uneconomic for the units to remain in service, and that the decision to retire or mothball was definite

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[96] CPUC at 15-20.

[97] The CPUC's references to Metcalf fail for the same reason. Metcalf's request was under the existing regime that does not require an attestation or a formal notice of retirement or mothball in order for the CAISO to study the reliability need for a unit.

[98] CPUC at 17.

unless they were procured. The CAISO's proposal imposes such an affidavit requirement, and mothballed units can return to service only if procured by the CAISO, obtain a contract, are sold to an unaffiliated third party, or become economic (if the resource has actually been mothballed). Thus, the CAISO's proposal addresses the behavior of which the CPUC complains, and the CAISO adopted its proposal, in large part, in response to these prior events.

Second, the CPUC identifies four resources – Carson Cogeneration, Fairhaven Power Company, Harbor Cogeneration, and Gilroy Cogen Aggregate – that it says submitted mothball notices and subsequently rescinded them when the CAISO found that they were not needed for reliability.[99] That is incorrect. Three of these units mothballed when their contracts with utilities rolled-off. Other LSEs subsequently procured them while mothballed. The fourth unit did not submit a formal mothball notice, the CAISO did not study it for reliability, and the unit received an RA contract. It is unclear what is problematic with these examples. The three units actually mothballed when the CAISO determined they were not needed for reliability, and they subsequently returned from mothball after being procured by LSEs for RA, *i.e.*, their reason for mothballing was remedied. These are examples of how a process should work, and they occurred without the need for any formal attestation requirement. They do not support the need for an even stricter attestation requirement.

Third, the CPUC cites to Ormond Beach Unit Nos. 1 and 2, which submitted formal retirement notices to the CAISO, and the CAISO issued a conditional RMR designation for Unit No. 1. The CPUC notes that SCE subsequently contracted with

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[99] CPUC at 18.

Unit No.1, thus obviating the need for the RMR Contract. Both units remained in service and rescinded their retirement notices. This scenario does not support a stricter attestation requirement than the CAISO has proposed, especially given that after the CAISO's conditional RMR designation, the CPUC directed SCE to explore negotiating a contract with Ormond Beach and ultimately approved the contract that SCE executed.[100]

Next, the CPUC refers to the Encina Power Station, for which the CAISO issued a CPM designation to cure an annual RA deficiency.[101] The CPUC suggests that Encina received its CPM designation through the RMR/retirement process and not through the CPM process. That statement is incorrect. Encina received its CPM designation through the CPM process where the CAISO assessed units that might potentially meet the RA deficiency.[102] The CAISO has no authority to issue a CPM designation through its RMR/retirement process under its existing framework. Under the CAISO's proposal, a resource cannot receive a CPM designation through the retirement and mothball notification process, and the CAISO cannot use RMR to fill an RA deficiency. CPM designations can occur only through the CPM competitive solicitation process. As the CAISO explained in the Transmittal Letter,[103] if the CAISO

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[100] Transmittal Letter at 71. It is the CAISO's understanding that NRG kept Ormond Beach Unit 2 in service to serve as substitute capacity to mitigate any potential RAAIM charges Unit 1 might otherwise incur if on outage and because both units were at the same location, thus producing some efficiencies.

[101] CPUC at 19. The CPUC also discusses the annual CPM designations issued to the Encina Power Station and Moss Landing units to cure annual RA showing deficiencies for 2018. Although the CPUC discusses these designations in its section regarding the robustness of the CAISO's proposed attestation requirements, it is unclear how either of these examples pertains to such attestation requirements, and the CPUC does not even mention attestation issues in its discussion.

[102] *See* CAISO Market Notice, Capacity Procurement Mechanism Designation on 12/22/17 (Dec. 22 2017).

[103] Transmittal Letter at 37-40.

cannot fill an RA deficiency through the CPM process, the CAISO will take no further action because all units with PGAs are required to be available to meet CAISO reliability needs. The CAISO will not fill the RA deficiency by granting an RMR designation. If a unit that can cure the RA deficiency files a retirement/mothball notice, the CAISO will study whether the unit is needed to meet applicable reliability criteria. If it is, the CAISO will offer it an RMR designation, but it cannot offer the resource a CPM designation. If the unit merely cures the RA deficiency, but is not needed to meet reliability criteria, the CAISO will not issue an RMR designation to the unit, and will expect the unit to retire or mothball consistent with its attestation.

Lastly, the CPUC suggests that the CAISO should at least adopt the 180-day notice requirement in the risk of retirement CPM tariff provisions (CAISO tariff section 43A.2.6), not the 90-day notice requirement that is currently in effect.[104] The CPUC ignores that the risk of retirement CPM tariff provisions and the 90-day retirement notice provision currently co-exist. All resources must formally provide at least 90 days notice to the CAISO to retire. The risk of retirement CPM tariff provisions do not supplant this requirement. The 180-day notice requirement is merely an additional deadline that a resource owner must meet if it desires to request the CAISO study it for a risk of retirement CPM designation. Similarly, in the April 22 RMR Tariff Amendment filing, while retaining the traditional 90-day retirement notice requirement and process (Path 1), the CAISO also proposes the optional Path 2 approach under which generating units without RA contracts for the next RA year (*e.g.*, 2021) must submit retirement/mothball notices by February 1 of the preceding year (*e.g.*, 2020). In other words, they must

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[104] CPUC at 31.

provide at least 11 months advance notice before their RA contracts expire for the CAISO to study them under Path 2. Thus, both the existing CPM risk of retirement and the CAISO's proposed Path 2 are optional approaches to the traditional 90-day notice process that provide for longer advance notification. Ironically, the proposed Path 2 approach requires more advance notice (11 months) than does the CPM risk of retirement (180 days).

2. Once a Resource Permanently Retires, It Should not be Able to "Un-retire" After the Effective Date of its Retirement Under the Proposed Notice and Attestation Process

Calpine notes that a non-RMR designated resource that is mothballed must submit a notice and attestation to return to service. Calpine seeks clarification that the notice and attestation may also be used by a non-RMR designated resource that has been retired, if it later decides to terminate its retirement status.[105] Calpine states that a resource that is allowed to retire should not be precluded from returning to service if it subsequently becomes economic to return to service.[106]

As discussed in the Transmittal Letter and reflected in Section 12 of the Business Practice Manual for Generator Management, the CAISO currently has multiple scenarios for a change in unit status. These include mothballing, repowering, deciding to repower or permanently retire, or permanently retiring a unit. Under the scenario "deciding to repower or permanently retire," a unit can wait for up to three years prior to making a decision on repowering or permanently retiring. A unit that is mothballing is not permanently retiring the unit or replacing it with a new generating facility or

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105 Calpine at 13.

106 *Id.*

technology. As a result, the unit potentially could return to service if it becomes economic or obtains a contract, which is the reasoning behind the terms of the proposed attestation.[107]

For a unit that is permanently retiring, the CAISO and the local transmission owner expect the unit to be decommissioned and permanently removed from the CAISO market and disconnected from the grid. The retirement of the facility is expected to be permanent, as stated in the BPM.

A unit owner is aware of these options when it decides to submit a notice and attestation of retirement or mothball and can make an informed choice as to which box of the attestation it checks. If there is any possibility the unit owner might return the unit to service, it should check the mothball box. By checking the permanent retirement box, the unit owner is attesting and committing to retire the unit on a specific date. Unless the unit owner withdraws its notice prior to the retirement effective date, the CAISO deems the unit to be retired as of the effective date in the notice. This is consistent with the CAISO's long-standing practice. When a unit submits a notice of retirement, it is treated as permanently retired on the effective date specified in the notice. The CAISO immediately terminates the unit's deliverability rights, participating generator status and associated agreements, and removes the resource from the Full Network Model.[108]

It is improper to permit a unit owner that provides notice and attests it is permanently retiring the unit as of a specified date, and that date passes and the CAISO

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[107] Similarly, a unit that is repowering is not similarly situated to a unit that is permanently retiring. If a unit is repowering, it is expected to replace its existing facility with a new technology or facility within a certain period of time in order to retain its deliverability rights and interconnection to the CAISO system.

[108] BPM for Generator Management, Section 12.

takes all of the steps to treat the unit as retired, to subsequently submit a notice and be permitted to return to service. The unit owner had the opportunity to submit a mothball notice or rescind the retirement effective date notice before the retirement effective date occurred and did not. Simply submitting a notice to return to service by a unit that has permanently retired is improper, inconsistent with the CAISO's current practice, and does not align with the CAISO's obligation to effectuate a permanent retirement and reliably and safely operate the electric grid, which includes having a robust process to study the interconnection of any new generation to the electric grid. Today the CAISO would require the unit to be studied as a new interconnection request. That should not change under the new process.

C. Objections to Existing Pricing Differences Between RMR and CPM are Beyond Scope, Constitute Collateral Attacks on Prior Commission Orders, Ignore Precedent in Other Jurisdictions, and do not Support Rejecting the CAISO's Proposal

Several parties object that resources receiving 12-month CPM designations to fill resource adequacy deficiencies are compensated differently than RMR resources.[109] SDG&E claims that the CAISO "proposes" to pay resources receiving a 12-month CPM designation at the CPM soft-offer cap.[110] Some parties claim that the CAISO's proposal allows units to self-select paths to either be RMR or CPM and that the unit will select the path that provides it with the highest level of compensation.[111] PG&E and DMM suggest that units with market power will be able to select their preferred method of

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[109] CPUC at 15; PG&E at 12-17; DMM at 14-17; SCE at 6-8; SDG&E at 5.

[110] SDG&E at 5.

[111] *Id*.

compensation, RMR or CPM.[112] SDG&E suggests that the appropriate compensation for resources receiving 12-month CPM designations is RMR compensation, and SCE states that RMR pricing is appropriate for 12-month CPM designations where the resource has market power.[113] PG&E requests that the Commission direct the CAISO to "revisit" the CPM compensation for annual CPM designations where market power warrants a cost-based rate.[114] Six Cities states that the CAISO's recently opened initiative regarding CPM should address these CPM compensation issues.[115]

These arguments do not support rejecting the CAISO's proposed tariff changes. These interveners are arguing for a change in the pricing of 12-month CPM designations for RA deficiencies, which is beyond the scope of the CAISO's filing. No intervener has satisfied the procedural or substantive requirements of FPA Section 206 that are needed for the Commission to make any changes to the existing tariff provisions governing the pricing of such CPM designations, such as providing RMR-like compensation for 12-month CPMs as suggested by SCE and SDG&E. Also, as Six Cities has recognized, the CAISO has commenced a stakeholder initiative to examine

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112 PG&E at 17; DMM at 17. PG&E cites instances from 2017 where Calpine requested the CAISO study the reliability need for certain resources, and that Calpine did not retire the resources after the CAISO found they were not needed for reliability. PG&E at n.33. These examples are irrelevant. There were no attestation requirements when Calpine made its request, and resource owners were not required to submit formal retirement or mothball notices in order for the CAISO to study their reliability need and potentially issue RMR designations. As the CAISO described in its Transmittal Letter and herein, that situation cannot arise under the CAISO's proposal. Resources are attesting that they will retire or mothball and that the decision is definite unless specified conditions occur. Thus, resources can no longer simply "fish" for an RMR designation without consequence. The CAISO developed its proposed protections in large part in response to these prior events.

113 SDG&E at 5; SCE at 8.

114 PG&E at 15.

115 Six Cities at 10.

CPM pricing. That initiative will include examining pricing for 12-month CPM designations for RA deficiencies.

As the CASO indicated in its Transmittal Letter, the CAISO is not proposing to change RMR pricing or CPM pricing.[116] RMR pricing continues to be based on a unit's full cost of service, and the CAISO claws back all net market revenues. CPM continues to be based on a competitive solicitation process with a soft offer cap. CPM resources continue to retain all market revenues. Thus, SDG&E's claim that the CAISO "proposes" to compensate resources receiving 12-month CPM designations based on the CPM soft offer cap, is a mischaracterization. The CAISO is not "proposing" this; it is merely "not proposing changes" to the existing CPM pricing scheme. Indeed, except for eliminating the CPM risk of retirement tariff provisions, the CAISO is not proposing any other changes to the CPM provisions of the tariff.

There has been a difference in pricing between RMR and CPM (and CPM's predecessors) for almost 15 years. The CAISO's proposal does not create a pricing difference between RMR and CPM. Interveners' arguments essentially constitute a collateral attack on the Commission's prior orders approving a different pricing scheme for CPM than has existed for RMR.

Interveners argue that resources with market power should not be able to self-select between two different pricing schemes. They state that given the public availability of planning and local reliability data, most resources generally know whether they are needed for reliability and thus will select the pricing scheme – RMR or CPM –

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116 Transmittal Letter at 111.

that provides them with the highest level of compensation.[117] As the CAISO discussed in the Transmittal Letter, this is no different than the situation that exists in other ISOs and RTOs today.[118] After retiring/mothballing/deactivating resources learn that they are needed for reliability and will be procured pursuant to the ISO's or RTO's backstop procurement mechanism, they are then able to select between two pricing options, one which permits cost of service compensation and another typically based on going forward costs plus some adder or retention of market revenues.

DMM notes that the market frameworks of the other ISOs and RTOs are "very different" than the CAISO's CPM framework because they have centralized capacity markets, market power mitigation in their capacity markets, and must-offer obligations requiring resources to bid into those capacity markets.[119] Although this is true, DMM fails to draw a meaningful distinction or demonstrate its relevance. The differences DMM refers to are irrelevant to the factors that support the continued reasonableness of the difference in pricing between RMR and CPM, namely that other ISOs and RTOs permit resources found to be needed for reliability to voluntarily choose between two different pricing options that can provide the resource with different levels of compensation. On the other hand, DMM and other interveners argue that resources needed for reliability should have no choice of options regarding the formula used to determine their compensation, *i.e.*, there should only be one formula for pricing reliability resources. That positon is inconsistent with Commission precedent and the

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117 DMM at 21.

118 Transmittal Letter at 40-41.

119 DMM at 20-21.

practices of other ISOs and RTOs. The existence of a capacity market is irrelevant. PJM, NYISO, and ISO-NE permit resources *voluntarily* to submit deactivation notices, retirement/mothball notices, and de-list bids, whichever is applicable in the region. All three ISOs and RTOs determine the reliability need for such resources through separate reliability processes.[120] If the ISO or RTO determines that the resource is needed for reliability, the resource then gets to choose its compensation based on one of two pricing formulas.[121] In other words, resources in these other regions found to be needed for reliability based on a reliability study are permitted to select their preferred method of compensation from two options. This is the very opportunity to which DMM objects. DMM fails to demonstrate how this is materially different than the CAISO's existing framework. If anything, the CAISO's process is more restrictive because resources can only receive CPM pricing through the CPM process, and can only receive RMR pricing by submitting a notice of retirement/mothball and obtaining a study finding from the CAISO that they are needed to ensure compliance with reliability criteria.

DMM also ignores that although resources bidding into a centralized capacity market may have their specific bids mitigated, they ultimately are paid a market clearing price. None of these interveners are proposing a capacity market for the CAISO, and

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[120] PJM Open Access Tariff, Section 113, *et seq*.; NYISO Open Access Tariff, Attachment FF; ISO New England, Market Rule 1, Section III, 13.1.2.4.1, 13.2.5.2.5., 13.1.2.3.1.1.

[121] PJM Open Access Tariff, Sections 113.2, 114, 116, 117, and 119; NYISO, Open Access Transmission Tariff, Attachment FF, Appendix C, Form of RMR Service Agreement, Articles 1, 1.5, 11.26, and 4.1.; ISO-NE, Market Rule 1, Section III.13.2.5.2.5.1 (b) and Appendix I, Form of Cost of Service Agreement.

DMM notes that ISO-NE automatically includes de-list bids in the applicable forward capacity auctions, but ignores that a unit with a de-list bid that ISO-NE finds is needed for reliability can opt for full cost of service compensation instead of a de-list bid calculated in accordance with ISO-NE's market rules. ISO-NE, Market Rule 1, Section III.13.2.5.2.5.1 (b) and Appendix I, Form of Cost of Service Agreement.

none are proposing to pay CPM resources a market clearing price. CPM resources are paid their bid price, and CPM has a soft offer cap based on the going forward costs of a mid-cost combined cycle reference unit, plus a 20 percent adder.[122] Offers above the CPM soft offer cap are cost-based. Further, at least in ISO-NE and the NYISO, resources under cost of service agreements such as RMR are treated as price takers in the capacity market auction.[123]

Although the CAISO's proposal does not create the difference between RMR and CPM pricing, it includes several checks that will improve the interrelationship between RMR and the remaining categories of CPM. Several stakeholders recognize this fact; however, some want the Commission to go even further and order changes to the CPM pricing. First, as indicated immediately above, the proposal prevents resources from obtaining CPM compensation through the RMR process, and vice-versa. Second, RMR cannot be used to backstop RA deficiencies. Third, resources that decline CPM designations will not automatically receive RMR designations. The CAISO will first seek to procure other resources that might meet the need under its CPM authority. Fourth, to receive an RMR designation, a unit owner must first file a formal retirement notice and attestation, and the CAISO must conduct a reliability study and find that the resource is needed to meet reliability criteria. An RA deficiency may not constitute a failure to meet reliability criteria. A resource that rejects a 12-month CPM designation and files a retirement or mothball notification and attestation assumes the risk that the reliability

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[122] CAISO tariff section 43A.4.1.1.2, *see California Indep. Sys. Operator Corp.*, 153 FERC ¶ 61,001 at P 13, n.27. (2015).

[123] *ISO New England Inc.,* 165 FERC ¶ 61,202 at PP 82-85 (2018); *New York Indep. Sys. Operator Corp.,* 161 FERC ¶ 61,189 at PP 54-55, 62 (2017).

study will find that the specific unit is the only resource that can meet the reliability need. If it is not, the CAISO expects the unit to retire or mothball consistent with its notification. Resources may have a general idea regarding system conditions and their potential need, but until the CAISO actually conducts the reliability study and looks out a year (or two), a resource owner cannot be certain that it is in fact needed to meet reliability criteria.

The Commission should not reject these and other important changes and process improvements the CAISO proposes herein simply because some interveners dislike the existing pricing framework for 12-month CPM designations, particularly where those interveners have failed to demonstrate that the existing CPM pricing is unjust and unreasonable. The CAISO's filing treats all retirement and mothball related backstop procurement in a similar manner.

In the history of CPM and its predecessors, the CAISO has only procured capacity to backstop RA deficiencies twice – both in 2017. As the CAISO has previously discussed,[124] and the Commission has recognized,[125] those two circumstances were unique. First, LSEs were precluded by CPUC order from procuring the Encina resource as RA, because the resource's original once-through cooling compliance date had expired, which resulted in RA deficiencies.[126] Also, Encina was

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124 Answer of California Independent System Operator Corporation to Complaint, Docket No. EL18-177, 53-68 (Aug. 24 2018)

125 *CXA La Paloma, LLC v. California Indep. Sys. Operator Corp.,* 165 FERC ¶ 61,148 at P 75 (2018).

126 *Id.* at 65, citing CPUC Decision D.12-04-06, *Order Instituting Rulemaking to Negotiate and Refine Procurement Policies and Consider Long-Term Procurement Plans,* Rulemaking 10-05-006 (Apr. 24 2012)

already set to retire in 2018, but its replacement, the new Carlsbad unit, was not projected to be on-line until later in the year.[127] The CAISO primarily procured the Moss Landing unit to meet a collective local deficiency. For the most part, all LSEs had met their RA obligations (except for a handful of MW), but the procured resources did not meet a specific need in the sub-area where Moss Landing was located.[128] As the CAISO and others have discussed before, this resulted because the RA requirements do not require LSEs to procure sufficient resources to meet all local area needs; they only require LSE's to procure a specified amount of local capacity, which can be located in any local area within a Transmission Access Charge (TAC) Area and thus create the potential for collective local deficiencies.[129]

During the underlying stakeholder process, the CAISO and stakeholders discussed these two CPM designations and concluded that they were not caused by LSEs leaning on the CPM mechanism.[130] As many interveners have requested, the CAISO is addressing 12-month CPM designations in its recently initiated CPM pricing initiative, in connection with its review of the CPM soft offer cap. The Commission should not reject the proposed tariff revisions, in particular the process improvements, which are unrelated to and unaffected by CPM pricing provisions in question. The RMR and risk of retirement tariff improvements proposed in this proceeding are just and reasonable regardless of CPM pricing and provide significant improvements to the existing retirement and mothball process and related backstop procurement. The

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127 *Id. at 66.*

128 *Id.*

129 *Id.* at 66-67.

130 Transmittal Letter at n. 79.

proposed tariff revisions do not render the remaining CPM tariff provisions unjust and unreasonable, and vice-versa. No intervener alleges otherwise, and none of the interveners supporting a change in 12-month CPM pricing disagree that the proposed process enhancements are an improvement over the existing process. Further, that 12-month CPM pricing might be changed in the future does not render unjust and unreasonable the existing, and unchanged, pricing framework that is consistent with Commission precedent regarding the pricing of mandatory backstop mechanisms.

D. Opposition to the Proposed Must-Offer Obligation Lacks Merit and Ignores Commission Precedent

To ensure that ratepayers receive the full value of resources for which they are paying the full cost of service, the April 22 RMR Tariff Amendment includes a proposal to update the tariff and the *pro forma* Reliability Must-Run Contract expressly to make all RMR resources subject to a must-offer obligation. This obligation will require the submission of bids from RMR resources, aligning the treatment of RMR resources with the must-offer obligations and economic dispatch of RA resources and CPM resources under the existing tariff. This approach modernizes the RMR contracts in recognition of the fact that increasing variability and unpredictability on the CAISO system require all capacity resources (RA, CPM, and RMR) to be available to meet reliability and resiliency needs that can arise at any time under current and expected conditions.[131]

Many commenters support this aspect of the CAISO's filing.[132] Two commenters oppose the must-offer-obligation for RMR resources, although they notably fail to

[131] Transmittal Letter for April 22 RMR Tariff Amendment at 5-6, 75-83.

[132] *See* PG&E at 5-6; Six Cities at 2; CPUC at 5-10; and DMM at 6-7.

acknowledge, much less rebut, the evidence in the CAISO's filing showing that a must-offer-obligation for RMR resources is just and reasonable and consistent with Commission precedent.[133] For example, Calpine argues that imposing a must-offer obligation on an RMR resource, when that resource would either be retired or mothballed absent its RMR designation, will unduly suppress energy market prices.[134] Calpine ignores that the CAISO addressed this very concern in the April 22 RMR Tariff Amendment, explaining that having RMR resources submit bids at full marginal costs will result in efficient pricing and dispatch. ISO/RTO markets are based on the premise that, in a competitive wholesale electricity market, a resource's offer will be approximately equal to its marginal costs.[135] Under the must-offer obligation, RMR resources must include all applicable costs in their market bids.[136] Thus, bids from RMR resources will not be below their marginal costs, will therefore not unduly suppress market prices, and will be consistent with the Commission's competitive pricing principles.[137]

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133 Transmittal Letter at 75-83.

134 Calpine at 13-14.

135 *See, e.g., Pub. Citizen, Inc. v. Midcontinent Indep. Sys. Operator, Inc.,* 154 FERC ¶ 61,224 at P 88 (2016); *New York Indep. Sys. Operator, Inc.,* 110 FERC ¶ 61,244 at P 65 & n.76 (2005).

136 In the Transmittal Letter, the CAISO specified all of the components that must be reflected in an RMR unit's marginal cost bids. Transmittal Letter at 76-79. The CPUC asks the CAISO to clarify that bids will be cost-based and include only the RMR resource's actual costs and approved opportunity costs, and seeks explanations regarding approved adders. As the CAISO explained in the Transmittal Letter, approved adders include the Commission-approved Greenhouse Gas cost adder, opportunity cost adder, and major maintenance adder. *Id.*

137 Transmittal letter at 81 (citing *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,714 at PP 2-3, 7-10, 44-48, 53, Final Rule, Order No. 831, FERC Stats. & Regs. ¶ 31,387 at PP 2-7, 34-37 (2016).

Calpine concedes that it might be appropriate to include offers from RMR resources in the stack used to set clearing prices if dispatch of the RMR resource is needed for reliability.[138] One of the benefits of aligning RMR with the RA and CPM reliability constructs through the must-offer obligation is that it will streamline how the CAISO's market software dispatches market resources economically to meet system and local requirements, including reliability needs. The alternative to the market-based dispatch allowed by the must-offer obligation would be to continue to manually dispatch RMR resources based on study cases that can result in suboptimal dispatch and distort market prices.

In addition, less than full participation of RMR resources in the markets could lead to unnecessary over-procurement (including potential additional procurement by the CAISO under backstop procurement mechanisms) depriving ratepayers from receiving the full value of the RMR resources for which they are paying the full annual fixed costs.

NRG argues that a full-time must-offer obligation will expose RMR units to operational and financial risk, requiring units that would otherwise retire to operate in a different way from their historical operations.[139] The CAISO addressed this matter in its Transmittal Letter.[140] NRG makes no effort to address the CAISO's points and offers no new arguments to support its position. NRG ignores that an RMR resource likely has high marginal costs reflecting fuel and heat rate and major maintenance costs.

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138 Calpine at 14.

139 NRG at 7-8.

140 Transmittal Letter at 82.

Consequently, the RMR resource will have high cost-based bids and be selected in the CAISO markets to run infrequently compared with lower-cost resources. If the RMR resource has use limits, it can bid opportunity costs that will help to limit its use and avoid unnecessary investments in a specific RMR contract year. A use-limited RMR resource can also effectively manage its limits using outage cards pursuant to existing tariff and the business practice manual. Finally, as a last resort, under section 6.1(f) of the revised *pro forma* RMR Contract, the CAISO will have the authority to direct a use-limited RMR resource to submit an outage card if necessary to preserve its availability to meet reliability needs later in the year. This parallels and modernizes authority the CAISO has under the existing RMR Contract. All of these factors will serve to limit any risks of RMR resources being dispatched in a manner inconsistent with their operational limits. Interveners fail to show otherwise.

The heart of Calpine's and NRG's arguments is a suggestion that must-offer obligations cannot be just and reasonable for RMR and capacity resources. This suggestion cannot be reconciled with the fact that RMR resources in other ISOs and RTOs are subject to comparable must-offer obligations and cost-based bidding requirements.[141]

Calpine argues that, if the Commission does not reject the proposed must-offer obligation, it should modify it to require the CAISO, not the RMR resource, to submit marginal cost offers for start-up costs, minimum load costs, and energy costs based on the bidding rules specified in the tariff, claiming that this modification is needed to avoid

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[141] Transmittal Letter at 82-83.

"administrative burden" and "human error in the offer submittal process" on the part of the RMR resource.[142] The Commission should not require the CAISO to adopt Calpine's suggested modification. There is no reason why the owner of a resource receiving full cost recovery, including a reasonable return on their investment, should not undertake relatively modest administrative tasks as part of the RMR arrangements. Each RMR resource has the ability to check its own Master File and RMR contract information for itself, and also has both an obligation and an incentive to ensure that it submits accurate bids.[143] The CAISO notes that currently it does not submit bids for use-limited resources under any circumstances. The CAISO's proposal seeks to streamline and align RMR consistent with RA and CPM. RMR resources in other organized wholesale markets submit their own bids; the NYISO and ISO-NE do not insert bids on the resources' behalf as a matter of course.[144] The Commission should approve the same approach in this proceeding.[145]

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[142] Calpine at 15.

[143] Tariff section 4.6.4 prohibits bid submissions that could not be delivered feasibly based on the operational and technical constraints registered for a resource in the Master File, and requires all information registered in the Master File to be consistent with the offers and services provided by the resource in the CAISO markets. Similarly, the CAISO's Rules of Conduct require all resources to submit feasible bids and to provide information required by the tariff. *See* tariff sections 37.3 and 37.6, respectively. Section 30.5.1(e) of the tariff entitles the CAISO to take all reasonable measures to verify the accuracy of bidding information submitted to the CAISO.

[144] NRG also objects that it might have to make gas cost recovery filings if it is unable to recover its gas costs through the market. NRG at 8. This is not a significant concern. Under Commission-approved tariff provisions, resources that do not recover their as costs through the market must make cost recovery filings with the Commission. CAISO tariff sections 30.11 and 30.12. There is no reason RMR units should be treated differently than other resources (*e.g.*, RA and CPM) in this regard. NRG is essentially making a collateral attack on existing, Commission-approved tariff provisions. Modest administrative requirements to obtain full cost recovery are entirely reasonable.

[145] However, if an RMR resource were purposely or inadvertently to submit no bid into the CAISO markets, the CAISO would insert a generated cost-based bid for the RMR resource, just as the CAISO does for non-use-limited resources under the existing tariff. *See* Transmittal Letter at 79.

E. Interveners Raise No Arguments that Warrant Rejection of the CAISO Applying RAAIM to RMR Units

The CAISO proposes to apply the RAAIM provisions of its tariff applicable to RA and CPM resources to RMR units. PG&E and SDG&E argue that the CAISO should apply more stringent availability measures to RMR units; whereas, Calpine and NRG argue that the CAISO should apply less stringent measures. SDG&E and PG&E essentially support imposing a 24 x 7 availability metric on RMR resources claiming that RMR resources may not be available to provide voltage support or address thermal overloads when needed without a 24 x 7 incentive mechanism.[146] On the other hand, Calpine and NRG argue that availability incentive mechanism should be based on the historic availability of the particular unit and not the RAAIM availability standard, which they claim is arbitrary and could be problematic for older units. The CAISO comprehensively addressed both sides of the issue in its Transmittal Letter. These protesters rehash the same arguments, and make no attempt to address the CAISO's rebuttal.

As the CAISO stated in its Transmittal Letter, stricter measures are unnecessary because, among other reasons, (1) the CAISO will impose a 24 x 7 must-offer obligation on RMR units, (2) under Commission precedent, units must comply with energy market obligations (*i.e.*, a must-offer obligation) or potentially face to penalties for violating the tariff, (3) all units likely to receive an RMR designation will already be assessed RAAIM based on 17 x 7 availability, (4) the CAISO will submit bids for all non-

[146] SDG&E claims that under the existing *pro forma* RMR Contract, RMR resources are assessed penalties for performance over all hours. As the CAISO explained in the Transmittal Letter, that is incorrect. Transmittal Letter at 84, 87.

use limited RMR resources if they fail to submit bids 24 x 7, (5) the CAISO's outage coordination process effectively manages outages to maintain reliability, and (6) in response to the MSC's recommendation, the CAISO included in the revised RMR Contract a provision that reserves the right for the CAISO to offer a different deliverability metric if it believes RAAIM is inadequate given the specific reliability needs and the resource characteristics of the RMR unit.[147] PG&E and SDG&E also ignore that (1) RA and CPM resources can meet the same-types of reliability needs as RMR resources; yet, they do not have a 24 x 7 RAAIM metric, and (2) no other ISO or RTO imposes such stringent performance requirements on capacity resources like they suggest. PG&E and SDG&E have not shown that a 24 x 7 penalty metric is necessary to maintain reliability.

The CAISO notes that SCE, who opposed applying RAAIM to RMR units during the stakeholder process, now states that as a result of modifications the CAISO made to address the concerns of the Market Surveillance Committee, it now believes the proposal constitutes a "reasonable compromise."[148] The CPUC also supports RAAIM subject to the CAISO confirming that its proposed bid insertion (1) is applicable for all hours of the day, (2) includes no-bid mark ups, and (3) reflects only the actual costs associated with the operation of the resource. The CAISO clarifies that this is the case and, as discussed above, identified all of the elements of cost-based bids in the Transmittal Letter.

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[147] Transmittal Letter at 87-94.

[148] SCE at 2-3.

NRG and Calpine have not demonstrated that the CAISO's proposal is just and reasonable. NRG's claim that the RAAIM availability threshold is arbitrary ignores that it was based on average fleet availability over a four-year period.[149] RMR resources will have a must-offer obligation just like RA and CPM resources, and a comparable availability metric should apply. The CAISO's Transmittal Letter clearly explained how its proposal effectively addresses any concerns regarding older units.[150] NRG and Calpine do not rebut any of these points. The CAISO briefly summarizes them again. First, RMR units will be required to bid their marginal costs, including major maintenance and opportunity costs. Resources with higher maintenance costs, opportunity costs, limited run hours, and/or limited starts will be able to reflect these limitations in their marginal cost bids, making them less likely to be economically dispatched. If resources are running more than expected, their opportunity costs will be adjusted upward to preserve future availability better. Second, use-limited RMR resources can utilize the Use-Limited Outage Card, which exempts them from RAAIM for the hours they are on a use-limited outage. Third, the CAISO has authority under the RMR Contract to direct an RMR unit to submit an outage card to preserve a unit's availability for future periods, and such outage card will exempt the unit from RAAIM.

F. The Commission Should Permit RMR Resources to Provide Substitute Capacity when they are on Outage

Consistent with the general alignment of RMR with the CAISO's RA and CPM reliability constructs, under the April 22 RMR Tariff Amendment, RMR resources will be

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[149] *California Indep. Sys. Operator Corp.,* 153 FERC ¶ 61,002 at P19 (2015).

[150] Transmittal Letter at 94-95.

able to procure substitute capacity using the same rules that allow RA and CPM resources to procure substitute capacity under the existing tariff. As described in the Transmittal Letter, RMR units with effective flexible capacity will be required to provide substitute capacity from a unit with the same flexible capacity category or higher.[151] Also, an RMR resource in a local capacity area will be treated as Listed Local RA Capacity. When that RMR resource is on outage for a non-RAAIM-exempt nature of work, the RMR resource will be required to provide substitute capacity from a resource in the same Local Capacity Area or else face exposure to RAAIM non-availability charges due to the outage.[152] Allowing RMR resources to procure substitute capacity will thus give them a means to avoid RAAIM non-availability charges. It will also benefit LSE's by reducing the likelihood that the CAISO will have to issue an Exceptional Dispatch or a CPM designation to meet a local reliability need or a reliability need that requires flexible capacity. In addition, the substitute capacity proposal will benefit the CAISO by upfront providing another reliability resource with flexible capacity attributes and a must-offer obligation in the Local Capacity Area.[153]

A couple of commenters argue that RMR resources should not be allowed to procure substitute capacity. Those arguments are without merit.

The CPUC contends that the substitute capacity proposal will likely result in higher costs to ratepayers because the substitute resource will retain all market revenues – unlike the RMR resource, which will have all of its net market revenues

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[151] Transmittal Letter at 93.

[152] *Id.*at 85.

[153] Transmittal Letter at 6-7, 85, 93-94. As discussed *infra*, LSEs would get little or no benefit from RAAIM non-availability charges assessed to RMR resources if those resources were not allowed to provide substitute capacity.

clawed back by the CAISO. Providing a hypothetical example, the CPUC claims that applying RAAIM to the RMR resource and then relying on a CPM designation of another resource in the same Local Capacity Area is likely to be a less costly overall result for ratepayers.[154]

For starters, the CPUC's example is pure speculation because it assumes that another resource is actually available in the Local Capacity Area to serve as substitute capacity for the RMR unit. Moreover, the CPUC's claim that the CAISO's approach will result in greater costs to ratepayers is unsupported speculation. The CAISO believes it is just as likely, if not more likely, that the substitute capacity requirement will result in lower costs to ratepayers than would forbidding capacity substitution by RMR resources and instead relying on CPM designations. First, the CPUC states that if the RMR unit (earning $6 million in monthly fixed cost payments) substitutes capacity from a same-sized resource for one month at a price equal to the CPM soft-offer cap price, the RMR unit owner will still net $2.2 million for the month; however, customers will continue to pay $6 million to the RMR resource and will lose $3 million in market revenue offsets for the month, which will be earned by the substituting resource. The CPUC ignores that if the RMR unit goes on outage and does *not* provide substitute capacity, ratepayers will still lose the $3 million in offsets because the RMR unit on outage will earn no market revenues for the month to offset the fixed cost payment. In other words, ratepayers lose the market revenues offset regardless of whether the RMR unit substitutes or not.

[154] CPUC at 50-51.

Substitution does not cause the forbearance of market revenues, the outage does.[155]

Second, if the RMR resource did not provide substitute capacity, and the CAISO instead had to issue a CPM designation to the resource that the RMR unit owner otherwise would have substituted at the same price, ratepayers would not only have to continue to pay the RMR resource $6 million, they would also have to pay an additional $3.8 million for the one-month CPM designation. And, further, because the designation would be for a local need, the minimum CPM term would be two months,[156] meaning that ratepayers would pay an additional $3.8 million in CPM charges for the second month (for a total of $7.6 million in additional CPM costs). These costs might be avoided if the unit was able to provide substitute capacity.

Third, LSEs would get little or no benefit from RAAIM non-availability charges assessed to RMR resources if those resources were not allowed to procure substitute capacity. Under provisions in the existing tariff, which will apply to RMR resources under the CAISO's filing, RAAIM non-availability charges are used to fund RAAIM availability incentive payments to resources that exceed their monthly availability targets, not to LSEs.[157] In other words, RAAIM charges in any month are paid to over-performing resources during the month. Any remaining amounts of availability incentive payments are rolled over to the following month to help pay resources that exceed their availability targets for that month. Only if rolled-over amounts remain at the end of the

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[155] It is wholly speculative which unit(s) will actually earn those market revenues instead of the RMR unit because that will be determined by the outcome of the market in every interval during the month. Such market revenues do not automatically flow to the substitute resource.

[156] CAISO tariff section 43A.3.6.

[157] *See* CAISO tariff section 40.9.6.2(a).

year are those remaining amounts distributed to LSEs, based on their load ratio share for the year. [158]

The Six Cities question whether substitution is realistically available for RMR resources because, if RMR resources are uniquely needed to address a reliability concern, "other resources, even those in the local area, are presumably incapable of meeting that need and providing adequate substitution."[159] This concern does not necessitate prohibiting RMR units from providing substitute capacity. As the CAISO indicated in the Transmittal Letter, RA and CPM resources, too, can meet specific reliability needs, and they are permitted to provide substitute capacity.[160] The CAISO has reliably operated the grid under this paradigm and there is no reason it cannot continue to do so by permitting RMR reasons to provide substitute capacity.[161] Although RMR units may (or may not) be needed to meet a very narrow need, they also may be meeting more general and broader local area needs and flexible capacity needs. Importantly, the CAISO is providing local, system, and flexible RA credits for the designated quantity of RMR capacity. In other words, the RMR capacity it treated as RA capacity to meet the established system, local, and flexible capacity requirements. This means that LSEs will procure less RA capacity in these categories. Thus, if an RMR unit goes on outage and is not permitted to provide substitute capacity, the CAISO could be short of the expected levels of RA capacity.

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[158] *Id*. at section 40.9.6.2 (d).

[159] Six Cities at 4-5.

[160] Transmittal Letter at 93.

[161] *Id.*

Most RMR designations are expected to be for local capacity needs. In many cases, substitute capacity from the same Local Capacity Area can address the local capacity needs during the limited times when an RMR resource is on an outage, most likely in non-peak times when the unit is more likely to find substitute capacity. Similarly, RMR resources designated for flexible capacity needs can provide substitute capacity in the same or a higher flexible capacity category without posing reliability problems. Even if RMR resources were unable to provide adequate substitution in all cases, the Commission should still accept the substitute capacity proposal. Any amount of substitute capacity that RMR resources can procure will help, but forbidding RMR resources from procuring substitute capacity helps no one.

This issue essentially boils down to whether it is preferable to penalize RMR resources that go on outage (with the charges allocated to other generators that over-performed during the month) or permit them to avoid RAAIM charges by providing substitute capacity that (1) might enable the CAISO to avoid procuring CPM capacity or issuing an Exceptional Dispatch to another resource (the costs of which will be allocated to LSEs), and (2) will upfront provide CAISO operators with another flexible resource in the local area that has a 24 x 7 must-offer obligation (and is subject to a 17 x 7 RAAIM). The CAISO believes the latter option is more reasonable and prudent from the perspective of promoting reliable and efficient grid and market operations. From an operational perspective, it is preferable to require the RMR owner to make arrangements as soon as practicable to provide a substitute resource. A prudent operating framework should incent substitution, not the CAISO scrambling in real-time to find resources.

The Six Cities request that, if the Commission accepts the substitute capacity proposal and approves use of the RAAIM for RMR resources, the Commission should require the CAISO to file periodic reports for all RMR resources. The Six Cities state that the periodic reports should include information on the costs of any substituted resources and whether the substituted resources were capable of meeting the reliability needs for which the RMR resource was designated.[162] The entirely hypothetical concerns raised by the Six Cities do not support such a reporting requirement, particularly in light of the CAISO's successful experience in allowing RA and CPM resources to provide substitute capacity.

G. The CAISO's Proposal to Remove the Hardwired Rate of Return Provision from the RMR Contract is Just and Reasonable

Calpine notes that the current *pro forma* RMR Contract hardwires a 12.25 percent rate of return for net plant investment and Schedule L capital additions. Calpine states that the CAISO proposes to eliminate this provision "while proposing no replacement provision in the tariff."[163] Calpine objects that the revised *pro forma* RMR Contract does not specify how exactly the RMR unit owner should calculate its rate of return.[164] Calpine recommends that the CAISO establish a benchmark rate of return every three years to use under both Schedules F and L of the RMR Contract. Calpine states that the CAISO could develop the benchmark rate of return every three years in a stakeholder proceeding and publish it in its business practice manual.[165]

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162 Six Cities at 6.

163 Calpine at 8.

164 *Id.*

165 *Id.* at 10.

Calpine is the only stakeholder that objects to the CAISO removing the hardwired return on equity from the *pro forma* RMR Contract. The CAISO notes that Schedule F of the revised *pro forma* RMR Contract identifies the Allowable Pre-Tax Rate of Return as an item to be included in an RMR unit's annual fixed revenue requirement, just like the existing *pro forma* RMR Contract. The only difference is that the CAISO has removed the "hardwired" 12.25 percent value. Revised Schedule F retains the general wording that the owner must file the RMR Contract with the Commission subject to a final order of the Commission.[166] With the hardwired rate of return removed, the CAISO expects the RMR owner to include its proposed rate of return in place of the existing language for the Schedule F assets. In other words, the RMR owner will propose a pre-tax rate of return for use in calculating RMR rates and provide justification as part of its rate filing. As far as the duration of the rate, the CAISO agrees with Calpine that the rate once it is accepted by the Commission, to be part of the contract and would not require annual updates and that any challenge under section 206 of the Federal Power Act would be subject to the *Mobile-Sierra* standard of review.

Calpine argues that "the CAISO has submitted no data or information" to show that the 12.25 percent return in the current *pro forma* RMR Contract is no longer just and reasonable.[167] As an initial matter, this argument misstates the CAISO's obligation under section 205 of the Federal Power Act ("FPA"). The CAISO is under no obligation to demonstrate that any portion of its tariff, including a *pro forma* contract in the appendices to its tariff, is unjust and unreasonable before proposing changes to the

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[166] Revised *Pro Forma* RMR Contract, Article I. Part B.

[167] Calpine at 8.

tariff under section 205. The CAISO's only burden is to show that its proposal is just and reasonable, and it has. Stakeholders overwhelmingly supported the proposal to require that RMR owners justify a resource-specific rate of return.[168]

In addition, there is reason to question whether a 12.25 percent return would be found to be just and reasonable under current conditions. In late 2018, the Commission issued an order preliminarily finding that a base return on equity of 12.38 percent for the MISO transmission owners is unjust and unreasonable, subject to a paper hearing.[169] That preliminary finding was based on the Commission's new return on equity methodology for public utilities proposed in an October 2018 order that also preliminarily found that a base return on equity of 11.14 percent for transmission owners in ISO-NE is unjust and unreasonable.[170] These findings call into question the continued reasonableness of a 12.25 percent return for public utility sellers of electric power. To the extent a 12.25 percent return can still be supported, RMR owners will have the opportunity to do so in individual proceedings.

Letting the Commission decide the just and reasonable rate of return to be awarded under a cost of service backstop procurement contract is clearly just and reasonable and consistent with Commission precedent. As the CAISO noted in its Transmittal Letter, no other ISO or RTO hardwires a rate of return for resources or indicates the basis for calculating any rate of return in their *pro forma* backstop

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[168] Transmittal Letter for April 22 RMR Tariff Amendment at 96.

[169] *Ass'n of Businesses Advocating Tariff Equity, et al. v. Midcontinent Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,118, at P 19 (2018).

[170] *Martha Coakley v. Bangor Hydro-Elec. Co*., 165 FERC ¶ 61,030 at P 18 (2018) ("*Coakley*").

procurement agreements.[171] There is no basis to treat the CAISO differently than all other ISOs and RTOs or to find that the CAISO's backstop agreement alone is unjust and unreasonable because it does not include a provision specifying exactly how backstop units should determine their rate of return.

It is not just and reasonable to include a "hardwired" rate of return given that economic and business conditions constantly change and the circumstances and levels of approved rates of return change frequently and may vary based on the individual circumstances of the RMR unit owner or the RMR unit. In any event, it is the Commission's role, not the CAISO's role or the role of CAISO stakeholders, to determine the just and reasonable rate of return to be awarded an RMR Unit owner. Just as the CAISO does not determine the level of return for transmission owners on their transmission facilities, it is inappropriate for the CAISO to determine the return a generating unit owner should earn. Further, the rate of return a generating unit owner should receive is clearly a rate, term, or condition of service and, as such, such not be reflected in a business practice manual as Calpine proposes.

Calpine claims that the CAISO's filing is unclear whether a separate rate of return would apply to Schedule F plant and Schedule L additions.[172] The CAISO's filing creates no confusion. Calpine ignores that the existing *pro forma* RMR Contract only specifies a rate of return in Schedule F; there is no separately stated rate of return in

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[171] *See* CAISO Transmittal Letter. *See also* MISO FERC Electric Tariff, Attachment Y-1, Standard Form System Support Resource Agreement; NYISO Open Access Transmission Tariff, Attachment FF, Appendix C, Form of RMR Agreement; ISO-NE, Market Rule 1, Appendix I , Form of Cost of Service Agreement, Section 4.3 and Schedule 3 (stating that the annual fixed revenue requirement includes taxes and return, among other components).

[172] Calpine at 8.

Schedule L of the existing *pro forma* RMR Contract. The CAISO's filing makes no changes to this existing approach. Schedule L does not include a rate of return. Instead, the rate of return is negotiated as part of the capital item review and approval process and may well be consistent with the Schedule F rate but could be higher or lower. The CAISO has negotiated numerous Schedule L capital additions that have been accepted by the Commission without protracted litigation. Thus, rate of return under Schedule L will apply under the revised RMR Contract just as it applies today.

Calpine also states that it is unclear whether the RMR unit owner must litigate a corporate rate of return, the rate of return for the particular subsidiary that owns the RMR unit, or the rate of return for the specific resource.[173] The aforementioned backstop procurement agreements of the other ISOs and RTOs do not contain this specific information either, and the Commission has found them to be just and reasonable. Ultimately, this is a decision for the Commission based on its policies, not the CAISO. The Commission has approved numerous backstop procurement agreements over the years and has policies and practices for determining rates of return. As with all other backstop units in other ISOs and RTOs, the RMR unit owner will be required to justify a rate of return that is just and reasonable given its specific circumstances. It appears that Calpine's primary object is to obtain a hardwired rate of return and "not be required to use the methodology the Commission may adopt for determining the return on equity for public utilities that the Commission referenced in *Coakley v. Bangor Hydro-Electric Co*., 165 FERC ¶ 61,030 (2018)."[174] This is an issue

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173 *Id*.

174 Calpine at 10, n.28.

that can be addressed in an RMR owner's resource-specific rate of return filing with the Commission. The CAISO does note, however, that the Commission recently required a paper hearing on whether and how the *Coakley* return on equity methodology should apply to an RMR-like cost-of-service agreement for the Constellation Mystic Power unit in New England.[175]

As the CAISO indicated in its Transmittal Letter, the Commission will determine the appropriate rate of return for the RMR unit owner.[176] If the Commission believes that this specific wording should be included in the rate of return provision of the revised *pro forma* RMR Contract, the CAISO can add such wording in a compliance filing. It would not change the CAISO's intent or the CAISO's proposal. The CAISO does not believe this is necessary, however, because the revised RMR Contract already specifies that rate of return is a component of the annual fixed revenue requirement, the unit owner must file the contract at the Commission, and the contract is subject to Commission approval.

H. The CPUC and PG&E Fail to Demonstrate that Allocating RMR Costs to Load is Unjust and Unreasonable

The CAISO proposes to allocate RMR fixed costs to load rather than to the participating transmission owner (PTO)as it does today. Thus, the cost responsibility for RMR designations will be spread to those entities that will benefit most by the CAISO's backstop procurement. LSEs, not PTOs, are the ultimate beneficiaries of RMR costs and should bear the costs directly based on their proportionate use of the system while

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175 *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 at PP 31-34 (2018).

176 CAISO Transmittal Letter at 96.

the RMR contract is in effect. Because the CAISO's allocation methodology tracks proportionate load share on a monthly basis, it will also capture any load migration. The CAISO's proposed cost allocation also is consistent with how the CAISO allocates CPM costs for risk of retirement, significant event, and exceptional dispatch CPM designations.

The CPUC and PG&E oppose the CAISO's proposed allocation of RMR costs. PG&E's sole argument against the CAISO's proposal is that "RMR resources have traditionally been used for local reliability constraints that can be mitigated with transmission solutions" and therefore the Commission should retain the existing cost allocation methodology. As the CAISO noted in its Transmittal Letter, all other ISOs and RTOs allocate their RMR contract costs (and the costs of similar backstop agreements) to load, not to the PTO.[177] These same ISOs and RTOs consider transmission solutions as alternatives to RMR to meet reliability needs and approve transmission solutions to eliminate the need for RMR contracts, just like the CAISO does. For example in directing the NYISO to adopt an RMR cost allocation scheme consistent with Commission's allocation principles, the Commission noted that in PJM RMR costs are allocated to the load in the zone(s) of the transmission owner that will be assigned financial responsibility for the reliability upgrades necessary to alleviate the reliability impact that would result from the unit's deactivation."[178] Thus, although the Commission has recognized that PTOs build transmission solutions to mitigate reliability constraints, it found that the RMR costs should be allocated to load. Load benefits from

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[177] Transmittal Letter at 102.

[178] *New York Indep. Sys. Operator, Inc.,* 150 FERC ¶ 61,116 at P 20 (2015).

RMR costs and should bear the costs.

The CPUC provides no substantive argument why RMR costs should be allocated to PTOs and not to load, except to express concern about removing the PTO from the RMR Contract negotiation process because the "CAISO may not view its role as protecting ratepayer interests in this potentially adversarial context."[179] That is not a legitimate reason to allocate RMR costs to the PTO and has no linkage whatsoever to cost incurrence or benefits accrued. No other ISO or RTO involves the PTO in RMR Contract negotiations, and a PTO's role is not to "protect ratepayer interests" of which the CPUC is concerned. The CPUC also ignores that the Commission, not the CAISO, unit owner, or PTO, determines the just and reasonable rate under an RMR Contract. All interested parties, including the CPUC, have an opportunity to intervene and participate in the Commission proceeding regarding a unit owner's RMR filing.

The CPUC falsely states that "[t]o justify its cost allocation methodology, CAISO states that its proposed methodology aligns with how it currently allocates CPM capacity to resolve collective deficiencies among LSEs."[180] The CAISO's Transmittal Letter does not say this. Regarding the CAISO's cost allocation proposal, the Transmittal Letter states that "[t]his methodology provides transparency and certainty and tracks the Commission-approved methodology for allocating the costs of risk of retirement CPM designations, Exceptional Dispatch CPM designations, and Significant Event CPM designations, *i.e.*, all CPM designations not resulting from RA showing deficiencies." Notably, the CAISO does not state that the methodology is consistent with how the

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[179] CPUC at 45.

[180] *Id.* at 46.

CAISO allocates the costs of collective deficiencies. As discussed in the Transmittal Letter (p.12), collective deficiencies arise in connection with a deficiency in LSEs' overall year-ahead RA showings for local capacity. The CAISO's cost allocation is thus based on this paradigm, not monthly actual load, which is used for other CPM designations, including risk of retirement CPM.

The CPUC also conflates cost allocation with RA crediting. In that regard, the CPUC suggests that the proposed cost allocation is unjust and unreasonable because it does not allocate the capacity benefits of the RMR Contract (*i.e.*, the RA credits) to the customers who pay the costs of the RMR Contract, and thus may result in double procurement when load migrates from one LSE to another.[181] The CAISO does not allocate "the capacity benefits" of the RMR contract through the cost allocation process; it allocates them through the separate RA crediting process. Also, cost allocation cannot result in any double procurement; it has no impact on LSE procurement; although, inappropriate RA crediting and tracking potentially could result in double procurement if the appropriate measures are not in place. The CAISO discusses its RA crediting proposal and the objections thereto in the next section, but notes that the CPUC's protest acknowledges that the CAISO's RMR cost allocation proposal addresses load migration.[182] Thus, the CPUC provides no independent basis for rejecting the CAISO's RMR cost allocation proposal.

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[181] CPUC at 44-45.

[182] CPUC Protest, p. 46 ("while the CAISO states that its proposed methodology addresses load migration…it only address[es] the cost allocation…")

Separately, SCE agrees with the CAISO's RMR cost allocation proposal and requests that the Commission approve it, but requests that the CAISO clarify the cost allocation principles for RMR designations based on multiple drivers.[183] As SCE notes, the CAISO may procure an RMR unit to meet multiple reliability needs through a single resource procurement. SCE seeks clarification regarding how the CAISO will allocate RMR costs if the RMR unit resolves both a reliability need in a single local capacity area and a different system reliability need. SCE requests that the CAISO clarify that it will allocate the costs to load in the TAC Area where the local reliability need exists because that the primary driver for the RMR Contract.

The CAISO agrees with SCE and clarifies that, under the identified scenario and proposed tariff language, the CAISO would allocate the costs to load in TAC Area where the local reliability need exists. Under the existing resource adequacy paradigm, all local capacity automatically qualifies as system capacity. A local capacity reliability need can only be met with a corresponding local capacity unit; it cannot be met with a generic system unit. Thus, the CAISO's practice has always been to fill a local reliability need first and then, if there is any remaining system deficiency, it can be filled with a system resource. Under such a scenario, the costs of the local capacity unit are allocated to load in the TAC Area with the local reliability need. This allocation is appropriate because the local area needs could only be met by a limited set of resources and the system benefits of the procured resource would be acquired under the RMR contract at no incremental cost. As a result, there is no need to allocate any incremental cost to LSEs receiving only system benefits.

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[183] SCE at 4.

I. The CAISO Can Accommodate Load Migration Among CPUC-Jurisdictional LSEs With a BPM Provision or Compliance Filing

The CPUC and SCE oppose the CAISO's proposed RA crediting for RMR designations stating that it fails to account for load migration from one LSE to another within an RA compliance year.[184] SCE recognizes that it is impossible for RA crediting to perfectly reflect the actual costs an LSE pays but states that the CAISO's proposal could result in a situation where an LSE with an RA credit leaves the business, and the LSE that picks up the load now has an RA obligation and a CPM or RMR cost for which they will not receive an offset.[185] SCE requests the Commission require the CAISO to better track intra-year load migration by possibly reducing the amount of RA allocated to all LSEs prior to the year-ahead RA showings. The CPUC argues that the CAISO's proposal will result in double procurement as load migrates and will result in LSEs paying RMR costs but not receiving any RA credit.[186] The CPUC alleges that this will result in the LSE to which load migrated having to procure additional capacity because it is not receiving an RA credit for the RMR capacity associated with the migrated load, even though it will be paying RMR charges. The CPUC concludes that the CAISO's proposal results in free riding and double procurement when load migrates at any point during the year.[187]

The CAISO understands SCE's and the CUC's concerns about intra-year load migration and that under the CPUC's RA rules, if load migrates to an LSE intra-year and

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184 SCE at 9-11; CPUC at 45-46.

185 SCE at 11.

186 CPUC at 45.

187 CPUC at 26.

the LSE does not have the RMR credit associated with such load, it may have to procure additional RA capacity or potentially be found to be RA deficient and subject to RA deficiency penalties. The LSE does not face similar penalties for RA deficiencies under the CAISO tariff.[188]

The CAISO believes this concern arising from intra-year load migration can be addressed within the confines of the proposed tariff language.[189] Annually, the CAISO could provide the CPUC a report specifying the RA credits from RMR capacity the CAISO intends to provide each CPUC-jurisdictional LSE in advance of the year-ahead RA showings. The CAISO would include this new reporting obligation to the CPUC in the applicable CAISO business practice manual. The CPUC could then use the information provided by the CAISO, in conjunction with its RA allocations and consideration of intra-year load migration data, to assess the CPUC RA requirements and the RA obligations and showings of its jurisdictional LSEs in its processes and allocations. As indicated above, the CPUC already has processes to adjust LSEs' RA obligations intra-year. As load migrates to different LSEs during the year, the CPUC would then be able to "transfer" in its process a proportionate RA credit along with the migrating load for purposes of determining LSEs' monthly procurement obligations and whether individual LSEs have met their RA procurement obligations. The CPUC could

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[188] The CAISO recognizes that the CPUC conducts a separate and independent local RA requirement and showings process for its jurisdictional LSEs. In that process, the CPUC develops more granular (*i.e.*, quarterly) local RA requirements for LSEs that track intra-year load migration. The CPUC notifies the CAISO of intra-year changes in LSEs' RA obligations. The CPUC's separate local RA requirement and showings process creates the potential for CPUC program RA deficiencies if the CPUC cannot consider RMR-related RA credits in accounting for intra-year load migration.

[189] The concern does not arise in connection with the year-ahead RA showings because the RA credits must be "disbursed" in advance so LSEs know how much capacity they need to procure to meet their year-ahead RA obligations.

provide any updated information or RA obligations to the CAISO so the CAISO can reflect such information in its systems the same way as it is done today. The CPUC already informs the CAISO of intra-year changes in LSEs' monthly RA obligations.

Alternatively, through a compliance filing, the CAISO could submit revised tariff language proving that each year the CAISO would allocate the total RA credit from RMR designations associated with the load of CPUC-jurisdictional LSEs to the CPUC (instead of allocating them directly to CPUC-LSEs), and the CPUC could then allocate the credit to jurisdictional LSEs in advance of the year-ahead RA showings and then re-allocate the RA credit among its jurisdictional LSEs as necessary under its processes. The CAISO would continue to allocate the credit to non-CPUC jurisdictional LSEs as proposed in this filing.[190] The CPUC would then provide the CAISO with the allocation of the RMR credit so the CAISO could reflect it in its systems.

Either approach would be consistent with the CAISO's intent in providing RA credits for RMR designations to LSEs and would not affect the justness and reasonableness of any other tariff change that the CAISO is proposing in this filing.

J. The CPUC Fails to Demonstrate that the CAISO's Existing RMR Provisions are Insufficient to Prevent Inappropriate Toggling by RMR Units

The CPUC's comments on toggling reflect a misunderstanding of the Commission's anti-toggling concerns and rulings and how the CAISO's proposal addresses them. The CPUC also misstates the CAISO's tariff provisions and the mandatory nature of RMR designations.

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190 This would be similar to how the CAISO allocates its total flexible capacity need to local regulatory authorities who then reallocate the need to individual LSEs. *See* CAISO tariff section 40.10.2.

The Commission's orders have identified scenarios where toggling back and forth between market and RMR status is of concern:

- A generator that is operating with existing facilities knows it is needed for reliability and would receive higher compensation under an RMR agreement than market revenues would provide

- A generator operating under an RMR agreement needs upgrades that would be profitable based solely on market-based revenues, but the generator seeks to recover the upgrade costs through an RMR agreement and then return to market-based revenues that exceed going-forward costs.[191]

The Commission's anti-toggling precedent reflects concern about an RMR owner that is needed for reliability and has market power being able to move, at its own discretion, back and forth between RMR and the market based on which option provides higher compensation at a given point in time and allowing the RMR owner to retain all such revenues. ISOs/RTOs have rules that reduce such toggling incentives by clawing back the very revenues that create the incentive to toggle.[192]

As the CAISO explained at length in its Transmittal Letter, the CAISO's RMR structure is different in many respects from the eastern ISOs/RTOs with organized capacity markets: the CAISO's RMR structure compensates the RMR owner for RMR service only on a year-to-year basis by (1) paying cost of service for the RMR contract year, and (2) only one year of compensation (based on the approved depreciation period) for any approved capital item, which the RMR owner must upfront finance.[193]

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191 *New York Indep. Sys. Operator, Inc.,* 155 FERC ¶ 61,076 at P 126 (2016) (RMR owner must repay the higher of capital expenditures, less depreciation, received under the RMR contract or any above market payments received under the RMR contract.

192 *Id.,* at PP 123-127.

193 Transmittal Letter at 112-116.

The CAISO demonstrated how its existing RMR provisions address the Commission's anti toggling concerns.[194] The CAISO will not repeat all those arguments here. Rather, the CAISO will respond to the CPUC's erroneous statements and unsupported arguments.

1. The CAISO Has a Mandatory RMR Regime

One point the CAISO made clear in its Transmittal Letter is that RMR is a mandatory regime, whereby units cannot voluntarily opt out of any RMR designation or RMR Contract extension if the unit remains needed for reliability.[195] In its comments, the CPUC challenges the CAISO's assertions that RMR is a mandatory regime.[196] As an initial matter, the CPUC ignores that the choice of whether to have a mandatory or a voluntary RMR regime is that of the ISO or RTO.[197] The CAISO has chosen a mandatory RMR regime that has been in place since inception of the RMR program. The CAISO has the right under the CAISO tariff to designate a resource needed for RMR service, which requires the resource to propose rates terms and conditions using the *pro forma* RMR Contract. In addition, the CAISO has the unilateral right to extend the RMR contract for subsequent contract years on a one year annual basis, preventing the resource owner from controlling its status. Specifically, under CAISO tariff section 41.2, if the CAISO designates a resource as needed for RMR service, the resource owner "shall then be obligated to provide the CAISO with its proposed rates for Reliability Must Run service for negotiation with the CAISO." Further, under Article

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194 *Id.*

195 *Id. at 24-25, 112-116.*

196 CPUC at 21-31.

197 *New York Indep. Sys. Operator, Inc.,* 150 FERC ¶ 61,116 at P 17 (2015).

2.1(b) of the RMR Contract, the CAISO has the right to extend the RMR Contract by providing notice on or before October 1. CAISO tariff section 41.3 authorizes the CAISO to determine "which resources it requires to continue to be Reliability Must-Run Resources, which resources it no longer requires to be Reliability Must-Run Resources, and which Generating Units it requires to become the subject of a Reliability Must-Run Contract which had not previously been so contracted by the CAISO." Article 2.2 (b) of the RMR Contract specifies the reasons for which the CAISO or the RMR unit owner can terminate the RMR Contract. The RMR unit owner has no right to terminate the contract unless the CAISO defaults, the unit owner loses its government authorization, or if the CAISO rejects capital upgrades or repairs, such rejection is not reversed by ADR, and it would be uneconomic, illegal or impractical for the unit to remain in service. Thus, a unit owner needed for reliability cannot voluntarily reject or "toggle off" an RMR contract extension because it might be able to obtain greater compensation in the market.

The CPUC states that in response to stakeholder concerns about the timing of the Metcalf, Feather River, and Yuba City RMR designation the CAISO commented that if the resources were not procured as RA resources, the CAISO would proceed with the RMR designation.[198] The CPUC also points to statements made by the CAISO regarding Yuba City and Feather River RMR designations, noting that the timing of the CAISO's annual RMR extension decisions is made following preliminary RA showings and, if an LSE has procured the RMR capacity, the CAISO would then decide whether

[198] CPUC at 25.

or not to extend the RMR Contract for the following contract year.[199]

Setting aside that mere statements do not trump tariff and contractual provisions, these statements do not negate or undermine the mandatory nature of RMR designations, as set forth in the CAISO tariff and RMR Contract. If the CAISO desires to designate a unit as RMR or retain the unit as RMR if it remains needed for reliability, the CAISO has the authority to do so. The resource owner, on the other hand, does not have a choice in the matter. That the CAISO might initially make an RMR designation conditional on the unit not receiving an RA Contract does not undermine the mandatory nature of the CAISO's authority. It simply reflects that RMR is a measure of last resort, and that the CAISO will not exercise its backstop procurement unless LSEs have been given the opportunity to procure the resource and have not.[200] Conditional RMR designations are consistent with Commission precedent that RMR and similar backstop procurement must be a measure of last resort only if there are no other alternatives and the resources has not been procured by other means. The mandatory nature of RMR service is the basis for the obligation pursuant to Commission precedent to provide for traditional cost of service.[201]

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199 *Id*. at 26.

200 There must be a point in time for an initial RMR designation were a resource's status changes from non-RMR to RMR. That is not inappropriate "toggling". Pursuant to the CAISO proposal, the CAISO resources will be considered for RMR service if the resource will be unavailable to the CAISO either due to submission of a notice of retirement or notice to mothball the resource *and a CAISO study finds the resource is needed for reliability.* It is well understood that generating resources that do not have RA Contracts cannot earn sufficient revenues through CAISO's markets to remain available, particularly if costly major maintenance is looming. Such was the case for Calpine's Metcalf resource, a combined cycle resource, and Yuba City, a peaker, which required major maintenance to be available. As Calpine explained in stakeholder meetings and before the CAISO Board of Governors, RMR was the only viable option under the circumstances for the resource to remain available.

201 *New York Indep. Sys. Operator, Inc.,* 150 FERC ¶ 61,116 at P 17 (2015); *Midcontinent Indep. Sys. Operator, Inc.,* 148 FERC ¶ 61,057 at P 84-87 (2014).

Regarding annual RMR Contract extensions, under CAISO tariff section 41.3 and section 2.1(b) of the RMR Contract, the CAISO has the unilateral right extend the RMR Contract for an additional contract year. The RMR owner does not have the right to terminate the RMR Contract voluntarily because the owner wants to return to the market. Generally, the CAISO declines to extend the RMR Contract when the reliability need has been addressed through infrastructure investment, such as occurred in the PG&E area allowing the CAISO to terminate the Metcalf RMR Contract. The CAISO may also agree to decline to extend an RMR Contract, or decline to execute an RMR Contract following designation, if a load serving entity with the approval of the local regulatory authority enters into an RA contract. This is exactly what occurred when the CPUC directed SCE to procure one unit at Ormond Beach and the Ellwood resource following RMR designation. This does not mean that the resource owner has the right unilaterally to move back and forth between RMR and the market. It is a CAISO decision, and in the case of the Ormond and Ellwood situation, in deference to the local regulatory authority, the CAISO did not effectuate the conditional RMR designation. Where an LSE seeks to procure a resource already under an RMR Contract and is supported by the CPUC or applicable local regulatory authority, such contracting should be permitted as long as reliability is maintained. The RMR unit will have previously filed its RMR rates, depreciation schedules, and capital addition costs in its rate filing with the Commission. The CPUC and interveners will have had access to such cost information in conjunction with the rate case, and can consider that in negotiating any subsequent RA contract.

2. The NYISO's Anti-Toggling Provisions Are Inappropriate for the CAISO

The CPUC also argues that resources returning to the market must reimburse the CAISO all above-market revenues in excess of the resource's going forward costs. Citing a directive in a NYISO order, CPUC argues that once a resource requests mothball status, becomes an RMR resource, and then seeks to return to the market, it must repay any RMR revenues in excess of going forward fixed costs:

> Requiring 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.[202]

The CAISO first notes the vastly different RMR construct the NYISO has developed and voluntary nature of RMR service in NYISO.[203] It unreasonable and inappropriate to cherry pick a single requirement and impose it on the CAISO.

Although the CAISO will not second guess the appropriateness of these rules for the NYISO RMR construct, it is inappropriate to graft on to the CAISO RMR construct provisions adopted for a different, and voluntary, NYISO RMR regime. As discussed in the Transmittal Letter, MISO has different anti-toggling measures than NYISO, and the Commission rejected imposing the NYISO anti-toggling provisions on the Mystic power plant.[204] The CAISO's RMR construct is mandatory and only compensates RMR owners for each year of RMR service consistent with Commission precedent, which

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[202] 161 FERC ¶ 61,189 at P 83.

[203] *New York Indep. Sys. Operator, Inc.,* 155 FERC ¶ 61,076 at PP 87, 99 (2016).

[204] Transmittal Letter at 116.

provides for traditional full cost of service compensation where the RMR regime is mandatory. Requiring an RMR owner returning to the market to return revenues above going forward costs it received while operating under a mandatory RMR regime would be unduly punitive. Moreover, as a reminder, in adopting the Condition 2 form of RMR Contract as the sole form of RMR Contract, the CAISO will claw back all market revenues in access of the resource's costs. Accordingly, the CAISO is compensating the resource at cost based rates while the resource is under contract and there is nothing to claw back.

The CPUC also continues to question whether the CAISO has adequately addressed incentives regarding capital additions. It is not clear the CPUC understands how capital additions work under the RMR contract. If the CAISO needs the resource for reliability, then the CAISO will designate the resource for RMR service and the RMR owner can start the capital item process pursuant to the RMR contract. Subject to that process, the RMR owner must upfront fund the entire upgrade cost, and it will only recover a proportionate share of the costs for such upgrades from the CAISO one-year at a time, based on the Commission-approved depreciation schedule. If the RMR contract terminates prior to the end of the depreciation period, the RMR owner is due any unrecovered costs, but is not entitled to any return on investment for such remaining capital costs. Rather the CAISO pays any unrecovered costs in a termination fee that includes interest at the Commission rate and only if the RMR resource fully retires following RMR service. If the resource returns to market service, the CAISO ceases reimbursing the unit for its remaining unpaid capital costs. There is no further reimbursement. Accordingly, the CAISO only compensates the RMR owner for each year of RMR service based on a one-year's depreciated slice of the total costs. There is no over-compensation for the RMR owner to reimburse and therefore no inappropriate toggling incentives. The CAISO notes that both the NYISO and the MISO anti-toggling measures only require the unit owner to reimburse any **undepreciated** capital costs that were upfront funded by the ISO/RTO.[205] The CAISO's framework basically achieves the same result, because it only pays the RMR unit owner a one-year-at a-time, depreciated slice of its total capital costs (which the unit owner upfront funded). There is no need for the unit owner to refund any undepreciated capital costs because the CAISO never compensated it for any such undepreciated capital costs.

The CPUC also points to the MISO tariff as supporting its position. It does not. MISO's tariff contains no provision requiring the unit owner to pay back all market revenues earned above the unit's going forward costs. As the CPUC itself recognizes in its protest, if a Supplemental Support Resource (SSR) unit returns to the market MISO requires it to refund with interest all costs, **less depreciation**, of repairs and capital expenditures needed to continue operation of the resource.[206] Unlike the CAISO, MISO upfront funds all capital expenditures. Accordingly, if an SSR unit returns to the market, it only has to reimburse MISO for the **undepreciated** costs that were upfront funded. It does not have to reimburse MISO for any capital costs that have already been depreciated. In contrast, unlike MISO, the CAISO does not upfront fund any capital items. The RMR unit owner upfront funds the capital item and the CAISO

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[205] NYISO Market Administration and Control Area Services Tariff, Section 15.8.7 *et seq.*; MISO Open Access Transmission Tariff Section 38.2.7(e) (2).

[206] CPUC at 36 (citing MISO 38.2.7 FERC Electric Tariff Generation Suspension, Generation Retirement, and System Sup, MODULES 53.0.0.J. SSR Unit Compensation).

compensates the RMR owner year by year based on the approved depreciation schedule while the RMR Contract is in effect. Thus, when the CAISO RMR resource returns to market, reimbursement ends and there in further CAISO reimbursement obligation.[207] This results in similar treatment for capital projects where both MISO and the CAISO essentially compensate the returning resource owner for each year of service the resource is under a reliability contract.

The CPUC also notes that per the MISO tariff, a unit that rescinds a retirement or mothball notice after studies are performed, and the studies find that the resource is not needed for reliability, must reimburse MISO for the study costs.[208] This example has nothing to do with toggling. In both instances, the generating unit did not receive an RMR designation; so, there is no RMR agreement to or from which to toggle. In any event, in the Transmittal Letter, the CAISO sets forth the resource retirement process and the circumstances where a resource owner may rescind a retirement or mothball notice.[209]

The CPUC also notes that MISO requires SSR resources that return to service without an SSR agreement to pay for the costs of any transmission upgrades that were necessitated by the unit's retirement notice.[210] The CPUC argues that if the CAISO had similar RMR claw back provisions prior to the 2017 RMR designation of Calpine's

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[207] *See* Schedule L of the *pro forma.* If the resource retires after RMR service and the capital item has not been fully reimbursed under the RMR Contract, the unpaid balance plus interest at the Commission rate.

[208] CPUC at 36 (citing MISO 38.2.7.e, FERC Electric Tariff Generation Suspension, Generation Retirement, and System Sup, MODULES 53.0.0.J. SSR Unit Compensation).

[209] Transmittal Letter at 63-64.

[210] CPUC at 36 (citing MISO 38.2.7.e, FERC Electric Tariff Generation Suspension, Generation Retirement, and System Sup, MODULES 53.0.0.J. SSR Unit Compensation).

Metcalf resource, "Calpine might have been held responsible for the costs associated with transmission upgrades that obviated its RMR designation need."[211] The CAISO does not have such a provision and is not proposing such a provision, which would be a significant change to the CAISO's retirement/mothball framework. Such a provision was not discussed in the stakeholder process. Further, no ISO or RTO (other than MISO) has a similar provision, and the CPUC makes no attempt to show why such a provision would be just and reasonable in the CAISO footprint. Also, the RA program in the CAISO footprint is based on LSEs procuring capacity via bilateral contracts. If the CAISO must procure a viable and effective resource as RMR because LSEs failed to procure the needed resource in the first instance, the resource owner should not be punished if the CAISO subsequently approves alternative solutions that obviate the need for the RMR Contract after a few years and releases the unit from RMR service, and then an LSE procures the unit. Had an LSE procured the needed resource in the first place in the bilateral RA process, the CAISO would not have needed to enter into the RMR contract and would not have needed to evaluate and approve alternative mitigation measures.

K. The CAISO's Existing Cost-of-Service Pricing for Mandatory RMR Designations Is Just and Reasonable and Consistent with Commission Precedent

In this filing, the CAISO does not propose to change the fixed cost of service compensation for RMR units. Because the CAISO's existing RMR paradigm requires units to accept RMR designations, *i.e.*, it is an exclusively mandatory regime, the

[211] CPUC at 36-37.

CAISO pays RMR units their full annual cost of service.

DMM and the CPUC object to the CAISO continuing to pay RMR resources their full cost of service.[212] The CPUC states that the Commission has approved tariff provisions in other jurisdictions approving RMR compensation *up to* full cost recovery, and the CAISO has failed to demonstrate that RMR designations are indeed mandatory.[213] Without providing any case cites, the CPUC argues that full cost recovery is inconsistent with what the Commission has adopted in other jurisdictions.[214] DMM alleges that full cost of service pricing can create inefficient investment signals and decisions.[215] DMM argues that other ISO and RTO tariffs do not require full cost of service compensation for RMR units.[216]

As an initial matter, as discussed in the Transmittal Letter[217] and Section III.J, the CAISO's RMR program is mandatory. That reflects the CAISO's longstanding practice and intent. The Commission has recognized that whether to have a mandatory or a voluntary RMR regime is a decision for the ISO or RTO.[218]

Not only are DMM and the CPUC seeking to change tariff provisions that the CAISO does not propose to change, as discussed in the CAISO's Transmittal Letter, they ignore clear Commission precedent, that if the ISO's or RTO's backstop

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212 DMM at 22-28; CPUC at 41-42.

213 CPUC at 41.

214 *Id.* at 42.

215 DMM at 22-24.

216 *Id*. at 25-26.

217 Transmittal Letter at 111-12.

218 *See New York Indep. Sys. Operator, Inc.,* 150 FERC ¶ 61,116 at P 17 (2015).

procurement regime is mandatory, the ISO or RTO must provide for full cost of service recovery.[219] The wording in these orders is crystal clear! The rationale for this requirement is compelling: the ISO or RTO is mandating the unit owner to invest in and continue funding the operation of its generating unit, thus preventing the unit owner from making other business decisions it may prefer, including taking the unit out of service.

Regarding the CPUC's request that the Commission direct the CAISO to change its RMR pricing to obligate the resource "to file a negotiated cost of service filing for **up to** full cost of service," the CAISO notes the following discussion from the Commission's order on the NYISO's RMR pricing proposal:

> The Commission directed NYISO to propose compensation provisions that reflect the nature of NYISO's RMR proposal (*i.e.*, whether NYISO proposes a voluntary or mandatory RMR regime). Specifically, the Commission stated that if NYISO proposes an "exclusively voluntary RMR regime," NYISO must include a process by which NYISO and the RMR generator may negotiate an appropriate cost-based rate, which "must at a minimum allow for the recovery of the generator's going-forward costs," with flexibility to negotiate "**up to** the generator's full cost of service." On the other hand, the Commission explained that, should NYISO propose an "exclusively mandatory RMR regime," NYISO "should provide for compensation **at a** full cost-of-service rate."[220]

Thus, by the Commission's express words, "up to" full cost of service applies to voluntary RMR regimes, and "at the full cost of service" applies to mandatory RMR regimes. Because the NYISO, unlike the CAISO, does not have a mandatory RMR regime, the NYISO did not propose full cost of service recovery.[221] Because the CAISO

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[219] Transmittal Letter at 111-12, citing *New York Indep. Sys. Operator, Inc.,* 150 FERC ¶ 61.116 at P 17, o*rder on compliance and reh'g, New York Indep. Sys. Operator, Inc.,* 155 FERC ¶ 61,076 at P 84 (2016) and *Midcontinent Indep. Sys. Operator, Inc.,* 148 FERC ¶ 61,057 at PP 84-87 (2014).

[220] *NewYork Indep. Sys. Operator, Inc.,* 155 FERC ¶ 61,076 at P 84 (2016) (emphasis added, footnotes omitted).

[221] *Id.* at P 85.

has a mandatory RMR regime, full cost of service pricing is appropriate, and the Commission should reject the CPUC's proposed rewording.

DMM states that other ISO tariffs do not require compensating RMR units based on traditional cost of service rates, but then states that other ISOs that have adopted RMR regimes are voluntary.[222] DMM, too, ignores the Commission's precedent that different pricing applies depending on whether the RMR regime is voluntary or mandatory.

DMM's argument that full cost of service pricing creates inefficient investment signals and decisions also must fail. DMM states that paying an RMR resource its full cost of service will result in the CAISO approving transmission solutions with costs greater than the RMR units going forward costs but less than the unit's full cost of service. This tautology states the obvious, but fails to address the basic principle recognized by the Commission's precedent – if an ISO or RTO requires a unit to continue operating and incurring costs, it must compensate the unit based on its full cost of service. This recognizes that the ISO or RTO is forcing the unit owner to continue operating for public utility service and denying the unit owner other business opportunities without providing the unit owner full cost of service recovery. If a

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[222] DMM at 25-26. DMM notes that the MISO tariff provides that a market participant will be compensated only for costs "that do not exceed the full cost of service (including the fixed cost of existing plant." DMM ignores this wording resulted from a Commission order regarding MISO's System Support Agreement, where MISO unilaterally had the authority to require a generator that seeks to remain in service to remain online to address a reliability concern, but was only paying the resource its going forward costs. As discussed in the CAISO's Transmittal Letter, the Commission found this was unjust and unreasonable. The Commission found that under a voluntary regime, it is only necessary to provide an opportunity for the generator to recover its costs in the marketplace; but where a unit seeks to retire and the ISO can require the unit to remain in service to provide utility service, it is unjust and unreasonable to not allow the unit to receive compensation for the fixed costs of existing plant. The appropriate compensation requires an opportunity for the unit to recover its full fixed cost of service, including the fixed costs of existing plant. *Midcontinent Indep. Sys. Operator, Inc.,* 148 FERC ¶ 61,057 at PP 84-87 (2014).

generating unit being forced to remain in service is being paid its full cost of service, it is impractical to assess transmission solutions based on the unit's going forward costs. DMM also ignores that backstop arrangements should be priced in a manner that discourages leaning on the backstop procurement mechanism by LSEs. Pricing last-resort, RMR procurement that requires acceptance by the needed unit based only on a unit's going forward costs, and not its full fixed cost of service, could encourage LSEs to bypass RA procurement and instead lean on CAISO RMR procurement.

L. PG&E Fails to Show Why RMR Should Not be Available to Meet all Types of Reliability Needs

As noted in the CAISO's April 22 RMR Tariff Amendment, CAISO tariff section 41.2 provides broad authority for the CAISO to designate resources needed for RMR service to ensure compliance with Reliability Criteria.[223] When the CAISO implemented this authority early in its history through the development of the *pro forma* RMR Contract, the CAISO limited its dispatch rights under the RMR Contract to local reliability needs. In the April 22 RMR Tariff Amendment, the CAISO proposes a must-offer obligation for RMR resources under the revised RMR Contract, which includes much broader dispatch rights that are commensurate with its existing, broad tariff authority to use RMR to ensure compliance with Reliability Criteria and recognize that RMR units will now have a must-offer obligation. The CAISO anticipates that local reliability needs will likely be the needs that drive RMR designations, but given the evolving fleet of resources on the CAISO system, the retirement of gas-fired resources, the increasing variability and unpredictability on the system, and the need to integrate

[223] CAISO Transmittal Letter at 97-98; *see also* CAISO tariff section 41.

renewable resources, the CAISO must be able to utilize RMR resources fully based on any type of reliability need that arises.

PG&E argues that RMR designations should only be used for local reliability needs and not for system and flexible capacity needs.[224] As an initial matter, neither the existing nor the proposed CAISO tariff mentions using RMR to meet system or flexible capacity requirements. It merely says that the CAISO can use RMR to ensure compliance with Reliability Criteria, which essentially is the same backstop procurement authority every other ISO and RTO has.[225] PG&E is the only intervener arguing that RMR should be limited to local reliability needs.[226]

First, PG&E claims there is a fundamental distinction between local capacity requirements and system and flexible capacity requirements, namely that local capacity must be located in a specific local area, but flexible and system capacity have no locational specification. This is an irrelevant distinction. Reliability needs can arise anywhere on the system and need not be limited to local areas. Likewise, the CAISO's RMR authority should not be limited to local area reliability needs. The CAISO must be able to use RMR to address any reliability need that arises and require a unit to remain in service to meet the need.

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[224] PG&E comments at 19-24.

[225] Transmittal Letter at 99-100.

[226] Six Cities does not oppose the CAISO's proposal but requests the Commission direct the CAISO to evaluate what details might be included in a business practice manual regarding the relevant criteria the CAISO will apply in making such designations and that there is sufficient opportunity for stakeholders to review and comment on designations. Six Cities at 6-7. The CAISO can explore these matters with stakeholders in the business practice manual process that will follow any Commission order approving the CAISO's filing.

Second, PG&E states that LSEs are required to make an annual showing that they have contracted for the requisite quantity of local capacity, which is the same each month of the year, but here is no similar requirement that the same quantity of system and flexible capacity be shown each month. PG&E is conflating RA requirements with reliability criteria and requirements. As the CAISO discussed *supra*, it will not use RMR to backstop RA deficiencies. RMR designations require the CAISO to conduct a reliability study to determine if an RMR designation is necessary to ensure compliance with Reliability Criteria. The CAISO also notes that the prerequisites for an RMR designation do not include a requirement that the reliability need be a 24 x 7 x 365 need; nor does any other ISO or RTO have such a requirement. Indeed, many reliability needs, such as voltage support and thermal overloads, are dependent on specific system conditions that trigger mitigation needs that are not 24 x 7. PG&E acknowledges this fact elsewhere in its protest where it notes that RMR units designated to meet local voltage support needs are usually needs in partial peak or low-load periods.[227]

Third, PG&E argues that designation for system or flex capacity would be an expansion of RMR authority.[228] As discussed briefly above, the CAISO is not expanding its RMR tariff authority which is not limited to local reliability needs under the tariff. The CAISO is only changing its dispatch authority under the RMR Contract to

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[227] PG&E at 11.

[228] The CAISO had initially proposed some clarifying tariff language, but determined it was unnecessary due to the broad authority already existing in the tariff to designate resources for RMR service to meet reliability criteria. PG&E comments at 19. PG&E appears to be referring to earlier draft tariff language that is not reflected in the final tariff language.

clarify that it would apply to ensure compliance with all types of Reliability Criteria and is not limited only to meeting local reliability needs. Importantly, the CAISO is required under the tariff to demonstrate the reliability needs through a study.[229] Stakeholders have an opportunity to review the studies to confirm the reliability need is justified.

Fourth, PG&E states that the LSE showings for system and flex will be sufficient because there currently is a surplus of such capacity, and system resources are interchangeable. Again PG&E conflates RA requirements with reliability criteria compliance and reliability needs. A specific RA requirement may, or may not, correspond to a specific Reliability Criterion. As the CAISO has stated, it will not be using RMR to backstop the RA program; it will only use RMR to ensure compliance with Reliability Criteria. Also, although it may be sufficient for the CAISO to rely on RA showings, there is no guarantee that this will be sufficient to ensure compliance with Reliability Criteria, especially given the rapidly evolving conditions the CAISO faces.

Fifth, PG&E notes that the CAISO should use CPM as a backstop. The CAISO may be able to meet a reliability need thorough CPM but CPM is voluntary. If a needed resource declines a CPM and seeks to retire, the CAISO must be able to rely on its mandatory RMR procurement authority to require the unit to remain in service to meet the reliability need.

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[229] CAISO tariff sections 41.2 and 41.3

M. The Proposed Tariff Amendment Reflects a Holistic Package of RMR and Risk of Retirement CPM Reforms

In the Commission's April 12, 2018, order rejecting the CAISO's tariff amendment to make incremental changes to its risk of retirement CPM tariff provisions, the Commission strongly encouraged the CAISO and its stakeholders to adopt a holistic, rather than a piecemeal, approach to address issues related to the "risk of retirement of resources needed for reliability."[230] The April 22 RMR Tariff Amendment reflects such a holistic approach, revamping the CAISO's entire RMR structure and addressing the issues raised by the risk of resource retirement in a set of enhancements informed by an extensive stakeholder process stretching over a year. A couple of protestors, however, suggest that the filing does not represent the holistic approach envisioned by the Commission.

NRG goes so far to suggest that the Commission should completely reject the April 22 RMR Tariff Amendment because it does not reflect the holistic approach encouraged in the ROR CPM Order.[231] NRG's argument is that no changes to the RMR and CPM risk of retirement provisions of the CAISO tariff can be considered by the Commission while there are open issues at the CPUC regarding the CPUC's RA programs.[232] NRG fundamentally misunderstands and misrepresents the holistic approach described in the ROR CPM Order. Although that order references resource

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230 *California Indep. Sys. Operator Corp.*, 163 FERC ¶ 61,023 at PP 46-48 (2018) (ROR CPM Order).

231 NRG at 5.

232 NRG at 3-4 ("Yet serious questions and doubts about the state's RA program remain unaddressed, and fundamental modifications to the RA program remain under consideration both at the CAISO and at the CPUC.").

adequacy, it does so in the context of an examination of how both the RMR and CPM programs will address the risk of retirement of resources. The order's directive that the CAISO submit quarterly informational filings "on the progress of the ongoing stakeholder process addressing RMR and risk of retirement CPM" eliminates any doubt as to the scope of the stakeholder process the Commission had in mind.[233]

The CAISO's filing is a holistic approach to risk of retirement issues that addresses the concerns raised in the ROR CPM Order. For example, in response to the Commission's questions as to whether both risk of retirement CPM and RMR need to be retained as separate backstop mechanisms, the CAISO has moved to a single backstop mechanism – RMR – for retiring/mothballing resources.[234] Another key reason why the Commission rejected the CAISO's risk of retirement CPM provisions in 2018 was the significant concern about "front running" raised by almost every intervener.[235] That is not the case with this filing. As explained in the CAISO's filing, because RMR procurement is most likely for local capacity needs, the CPUC's recent adoption of multi-year RA procurement for local capacity greatly diminishes any potential for any front-running.[236] The CAISO also pointed to several other reasons why the April 22 RMR Tariff Amendment better addresses front-running issues compared to its prior ROR tariff amendment filing.[237] No intervener disputes these points.

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[233] CPM ROR Order at P 49.

[234] *Id.* at P 48.

[235] *Id.* at P 43.

[236] Transmittal Letter at 8, 68-69.

[237] *Id.* at 69-70.

NRG effectively suggests that no change can be made to any of the procurement provisions of the CAISO tariff without a total re-examination of all tariff provisions regarding RMR, CPM, and RA. Such an approach would make it impossible for ISOs and RTOs to make incremental improvements to their market rules. NRG acknowledges the impossibility of the standard it proposes when it concedes that "all the [alleged] flaws in the procurement structure likely cannot be fixed simultaneously."[238]

The approach for evaluating the CAISO's filing proposed by NRG also misrepresents the proper legal standard under section 205 of the FPA. All the CAISO is required to show is that its proposed tariff revisions are just and reasonable, and the CAISO has done so. NRG nonetheless claims that the CAISO must meet the burden of demonstrating problems with its existing tariff, claiming that "there is no immediate problem that the proposed changes must urgently address."[239] The CAISO, of course, does believe that there is a critical need to address the risk of retirement procurement framework. Even if this were not the case, however, the CAISO has no obligation to demonstrate that existing tariff provisions are unjust and unreasonable before proposing a change under Section 205.

Calpine also suggests that the CAISO's filing is not the result of a holistic approach to CPM reform.[240] However, this claim does not prevent Calpine from supporting many aspects of the filing. Instead, Calpine asks the Commission to direct

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[238] NRG at 5.

[239] *Id.*

[240] Calpine at 3-4.

that potential future CPM enhancements being considered by the CAISO be made in a single filing rather than in two or more filings. The sufficiency of future CPM filings not yet before the Commission are beyond the scope of this proceeding and should not be addressed in any order on the April 22 RMR Tariff Amendment.

N. The Commission Should Reject Impermissible Attempts to Invoke FPA Section 206 and Arguments that go beyond the Scope of this FPA Section 205 Proceeding

The CAISO filed the April 22 RMR Tariff Amendment pursuant to FPA section 205 to implement various tariff revisions developed in the stakeholder process to improve the RMR program and further differentiate it from the CPM backstop procurement framework.[241] The CAISO made it clear that "[t]he only CPM-related tariff changes the CAISO proposes in this tariff filing involve removing the risk of retirement provisions from the CPM tariff in Section 43A."[242] Nevertheless, several parties in this proceeding make arguments on issues that go far beyond the scope of the FPA section 205 proceeding on the April 22 RMR Tariff Amendment. The Commission should reject all of those arguments.

First, the CPUC styles its filing as a protest of the April 22 RMR Tariff Amendment and a complaint.[243] The CPUC fails to make clear exactly which portions of the CPUC's filing consist of a protest and which consist of a complaint. However, at a minimum, the portions of the filing that the CPUC attempts to characterize as a

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241 Transmittal Letter at 1, 3-11, 28-32.

242 *Id.* at 119.

243 As the CPUC notes on the first page of its filing, complaints are filed pursuant to FPA section 206 (16 U.S.C. § 824e) and Rule 206 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.206).

complaint appear to include: (1) recommendations that the CPUC makes in Section III.A of its filing regarding the attestation requirements (pages 13-32), because the CPUC concludes the section by stating that it "makes these recommendations pursuant to Section 206 of the Federal Power Act;"[244] and (2) the CPUC's arguments in Section IV of its filing that aspects of the CAISO's existing CPM mechanism are unjust and unreasonable (pages 52-60), since the CPUC "asserts that elements of CAISO's CPM mechanism (and tariff) are unjust and unreasonable under Section 206 of the Federal Power Act, and that these tariff provisions should be revised."[245]

The Commission should dismiss all portions of the CPUC's filing to the extent the Commission finds that they constitute (or may constitute) a complaint. Filings that attempt to comingle complaints with other types of filings fail to satisfy the essential requirements for a complaint under FPA section 206. "The Commission has long held that a complaint should not be submitted as part of a motion to intervene or protest in an ongoing proceeding – such a filing does not allow interested parties sufficient notice of the complaint because it is not formally docketed and noticed."[246] The Commission consistently rejects complaints that are combined with protests,[247] and should do the

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[244] CPUC at 32 n.43.

[245] CPUC at 54.

[246] *Midcontinent Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,040 at P 18 (2016) (citing Commission precedent). As to the docketing and notice requirements for a complaint, the Commission explained in one of the cited orders that "[c]omplaints filed with the Commission are given a separate docket number and a notice of filing is issued by the Commission and published in the Federal Register. This procedure provides all interested parties notice that a complaint has been filed, and provides them an opportunity to respond. The notice contains a comment date by which all interested persons must file comments, protests, or interventions. Furthermore, the Secretary must serve a copy of the complaint on any person against whom the complaint is directed." *La. Power & Light Co.*, 50 FERC ¶ 61,040 at 61,062 (1990) (citing 18 C.F.R. § 385.2001(b)(1), which sets forth the same requirements under the same C.F.R. section today).

[247] *See, e.g.*, *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,248 at P 5

same with regard to the CPUC's filing.

The complaint portions of the CPUC's filing are deficient for other reasons as well. "Under section 206(b) of the FPA, the burden of proof . . . rests with the Complainants. It therefore is the Complainants' responsibility to demonstrate, on the basis of substantial evidence, both that the rate in effect is unjust and unreasonable and that their proposed alternative rate is just and reasonable."[248] As explained above in this answer, the CPUC fails to provide substantial evidence meeting either of these two responsibilities under FPA section 206.[249] Instead, the CPUC makes unsupported and conclusory statements that fall far short of the required substantial evidence. Further, Rule 206 of the Commission's Rules of Practice and Procedure state that a complaint must contain a number of specified items.[250] The CPUC's filing does not include those contents.[251] The Commission will dismiss a complaint that does not include them.[252]

(2004)("We will dismiss that portion of Movant's September 3 filing that alternatively requests consideration of the filing as a conditional complaint. The Commission has consistently rejected efforts to combine complaints with other types of filings."); *see also TransCanada Power Mktg., Ltd. v. ISO New England, Inc.*, 122 FERC ¶ 61,049 at P 22 (2008); *Ind. Mich. Power Co.*, 51 FERC ¶ 61,191 at 61,524 (1990).

[248] *Ameren Services Co.*, 124 FERC ¶ 61,173 at P 9 (2008) (footnote omitted).

[249] Indeed, because the CPUC fails to meet its primary responsibility to demonstrate by substantial evidence that the rate in effect is unjust and unreasonable, the Commission does not even need to address the CPUC's secondary claim that its proposed alternative is just and reasonable. *See Cal. Mun. Util. Ass'n v. Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,315 at P 71 (2009).

[250] *See* 18 C.F.R. §§ 385.206(b)(1)-(11).

[251] To provide just two examples, Rule 206 requires a complaint to state whether the complainant believes that alternative dispute resolution (ADR) under the Commission's supervision could successfully resolve the complaint, and requires that the complaint include a form of notice. 18 C.F.R. §§ 385.206(b)(9)(ii), -(10). But the CPUC's filing says nothing about ADR and contains no form of notice.

[252] *See, e.g.*, *Coalition of Eastside Neighborhoods for Sensible Energy v. Puget Sound Energy*, 153 FERC ¶ 61,076 at PP 59-60 (2015); *Eric S. Morris v. Sw. Power Pool, Inc.*, 149 FERC ¶ 61,207 at PP 13-15 (2014); *Californians for Renewable Energy, Inc. v. Cal. Pub. Util. Comm'n*, 129 FERC ¶ 61,075 at PP 11-15 (2009).

Although not captioned as a complaint, SCE's comments argue that certain aspects of the CAISO tariff unchanged by the April 22 RMR Tariff Amendment should be altered because changes in circumstances have rendered these tariff provisions "unjust and unreasonable."[253] These arguments are effectively requests that the Commission modify the CAISO tariff under FPA section 206 and must be dismissed for the same reasons the Commission should dismiss portions of the CPUC protest purported to be complaints.

In general, the Commission should reject all arguments made by parties that are beyond the scope of this proceeding on the April 22 RMR Tariff Amendment. The Commission does not permit parties to raise issues that go beyond the specific tariff revisions under review.[254] Nonetheless, some parties in this proceeding have raised a wide range of issues that go far beyond the scope of the CAISO's proposed tariff revisions. For example, the CPUC argues that the CAISO should revise the provisions in its tariff regarding the compensation provided to a CPM resource that offers capacity at a price above the CPM soft offer cap.[255] The CAISO explained in the April 22 RMR

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[253] SCE at 5-9 (arguing that the CAISO should be required to implement a three pivotal supplier test in its annual competitive solicitation process, that the CAISO should credit LSEs with any effective flexible capacity procured in a 12-month CPM, and that the CAISO should account for load migration when allocating RA credits).

[254] *See, e.g.*, *Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,306 at P 28 (2006) ("To the extent that [the parties'] concern about problems with management of the queue is a request to address matters other than the proposed tariff revisions, they raise issues beyond the scope of this proceeding."); *Cal. Indep. Sys. Operator Corp.*, 162 FERC ¶ 61,278 at P 32 (2018) ("We thereby decline Public Citizen's request to initiate a section 206 proceeding, and find Public Citizen's comments expressing its concerns with the existing rate to be outside the scope of this proceeding addressing CAISO's section 205 filing."); *Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,276 at P 11 (2013) ("We will not address State Water Project's concerns regarding the cost allocation methodology for ancillary services produced in real-time, as this issue is not before us and thus is outside the scope of this proceeding.").

[255] CPUC at 54-56;

Tariff Amendment, however, that it is considering a separate tariff filing, which is not linked to the RMR and risk of retirement CPM changes proposed in the instant proceeding, to revise the provisions on compensation for CPM resources with cost offers above the CPM soft offer cap and to make minor clarifications to the CPM provisions in the tariff.[256] Any issues with that potential future filing can be addressed if and when the CAISO submits such a filing. The CAISO also notes that it is not proposing any changes to RMR full cost of service (or CPM) pricing in this filing. The process and other changes to RMR the CAISO proposes in this proceeding do not affect, and are not affected by, CPM pricing.

The CPUC, DMM, PG&E, SCE, SDG&E, and Six Cities raise other issues regarding CPM compensation or alleged market power in the CPM solicitation process.[257] As explained in the April 22 RMR Tariff Amendment, those other issues are beyond the scope of the instant proceeding:

> Certain stakeholders proposed unrelated and far-reaching changes to the CPM compensation scheme that the CAISO declined to adopt and is not proposing in this tariff amendment. These changes include changing the level of the CPM soft offer cap, changing the pricing for 12-month CPM designations to require RMR-type pricing, and applying a three-pivotal supplier test to all accepted bids in the CPM competitive solicitation process. These stakeholders' proposals would require new tariff sections or changes to tariff sections that the CAISO does not propose to change in this filing, and are beyond the scope of the tariff changes the CAISO proposes herein and actively considered in the underlying stakeholder initiative. . . . Changes these stakeholders desire can be pursued under Section 206 of the Federal Power Act. . . . [The] CAISO never intended these specific issues to be within the scope of this stakeholder initiative and tariff amendment filing.[258]

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256 Transmittal letter at 31 n.82 and 119 n.324.

257 CPUC at 58-60; DMM at 20-22; PG&E at 12-17; SCE at 5-9; SDG&E at 5; Six Cities at 8-10.

258 Transmittal Letter at 119.

Some commenters argue that it is appropriate to raise issues regarding CPM compensation and the CPM solicitation process in the instant process because these issues were discussed in the stakeholder process that led to the April 22 RMR Tariff Amendment.[259] Nothing in the statute suggests that the scope of a section 205 filing can be defined by stakeholder discussions preceding that filing. That would encourage stakeholders to raise all sorts of issues in a stakeholder process for the purpose of automatically injecting them into the Section 205 process at the Commission. Such an approach would have a chilling effect on future ISO and RTO stakeholder processes. ISOs and RTOs would have strong incentives to narrowly limit stakeholder discussions to avoid the risk of opening up existing tariff provisions to re-evaluation in a resulting 205 proceeding. Such an approach would also undermine the fruitful exchange of ideas facilitated by a productive stakeholder process.

There is a further reason why consideration of CPM compensation issues is premature. The existing Commission-approved tariff requires the CAISO (or the California Energy Commission) to conduct a cost of generation study and for the CAISO to convene a stakeholder process to consider the study results before determining whether to change the CPM soft offer cap. A draft CEC study was only provided to the CAISO in May 2019. The CAISO has initiated a new stakeholder process to assess the study results and consider changes to the CPM soft offer cap (and 12-month CPM pricing). As explained in the April 22 RMR Tariff Amendment, the "additional CPM compensation-related changes certain stakeholders seek are best addressed in connection with the discussion of the cost of service study results so any changes to CPM pricing at or below the CPM soft offer cap can be addressed in a single initiative

[259] *See, e.g.,* Six Cities at 8-9; CPUC at 53-54.

and be informed by current cost data."[260]

On May 16, 2019, the CAISO issued a market notice announcing the start of the new stakeholder initiative addressing the Capacity Procurement Mechanism (CPM) Soft Offer Cap. The market notice stated that "[t]he scope of this initiative includes updating the CPM soft offer cap and reviewing compensation for 12-month CPM designations."[261] The Commission should find that it is appropriate for parties to raise their CPM compensation and market power issues in that stakeholder process, not the instant proceeding.

V. CONCLUSION

For the reasons set forth herein and in the transmittal letter, the Commission should accept the CAISO's proposed tariff revisions with the minor clarifications identified herein.

Respectfully submitted,

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Dated: June 5, 2019

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260 Transmittal Letter at 119.

261 *See* http://www.caiso.com/Documents/NewInitiative-CapacityProcurementMechanismSoft-OfferCap.html. The market notice stated that the CAISO will publish an issue paper in early June for discussion on a subsequent conference call with stakeholders.

CERTIFICATE OF SERVICE

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

Dated at Folsom on this 5th day of June, 2019

<u>/s/ Grace Clark</u>
Grace Clark