Stakeholder Comments Template

Submitted by	Company	Date Submitted
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Please use this template to provide your written comments on the stakeholder initiative "RMR and CPM Enhancements."

Submit comments to initiativecomments@caiso.com

Comments are due January 10, 2019 by 5:00pm

Energy Division Staff (hereafter, "ED Staff" or "Staff") appreciates several changes the CAISO has included/added to the revised straw proposal, released on December 12, 2018, including the following:

- Changing the stakeholder notification of resource retirements and mothballs from a threshold size of 100 MW to 45 MW;
- Establishing a timeline for requesting and approving RMR designations to allow for additional planning and retirement of the resource;
- Eliminating condition 1 RMR option;
- Changing the RMR Rate of Return compensation; and
- Changing the CPM compensation above the soft offer cap to eliminate the full cost-of-service option.

However, Staff remains concerned with the following aspects of the proposal that were not adequately addressed in the most recent draft.

- CPM and RMR compensation not adequately addressed

- Anti-toggling provisions are not adequate to deter resources from moving between backstop and market participation
- RMR retirement affidavit requirements need to be more stringent with a stronger showing
- Proposal fails to adequately mitigate market power concerns

Staff requests that CAISO work with stakeholders to address these aspects, in order to ensure that backstop procurement, gaming and market manipulation are minimized. In R.17-09-020 the Commission is working to address the changing nature of the bilateral RA market. It is important that the CAISO continue to coordinate its backstop procurement reforms with the outcomes of a Track 2 decision and any additional subsequent decisions related to the resource adequacy framework.

Staffs does not believe CAISO's second revised straw proposal is or will be ready for Board approval in March. The elements listed above are critical changes that need to be included in a comprehensive RMR CPM reform package, as requested by FERC in its April 2018 Order denying CAISO's CPM Risk of Retirement proposed tariff revisions.

The FERC order specifically states:

> We encourage CAISO to propose a package of more comprehensive reforms, as discussed below. We expect that any such proposal will recognize the need to balance appropriate compensation for resources with the consideration of ratepayer concerns, as well as the need to strike a balance between CAISO's backstop procurement authority and primary procurement of supply needed for resource adequacy purposes.[1]

Additionally, FERC states:

> the issue of front-running the resource adequacy program is inextricably linked to issues of risk of retirement CPM compensation, the RMR program, and resource adequacy procurement in CAISO in general. The interrelated nature of these issues demonstrates the importance of CAISO's efforts in this area and the need to evaluate the fundamental reliability and market factors associated with resource adequacy as a whole.[2]

CAISO's proposed compensation for CPM ROR/RMR and CPM continue to be inadequate to address the front running and withholding issues that are leading generators to choose the backstop path over a bilateral agreement. Without changes to compensation levels, generators may continue to withhold from the bilateral market and seek higher compensation through the backstop mechanism.

[1] 163 FERC ¶ 61,023 at 46
[2] 163 FERC ¶ 61,023 At 47

Addionally, anti-toggling provisions are not adequate under CAISO's proposal to address Staff's previously raised concerns regarding compensation incentives to switch between CAISO's backstop compensation and the bilateral market.

Finally, there continues to be signs of abuse with the current CPM and RMR process that may not be mitigated under the current proposal. Generators continue to submit retirement/mothball notices and then decide to not retire/mothball (Ormond Beach 2). Or the resource is mothballed for several months and then returned to the market (King City, Wolfskil). (CAISO's announced retirement/mothball requests list reflects these changes in resource retirement status.) CAISO's proposed changes to its RMR mechanism are intended to provide a retirement and risk of retirement (ROR) vehicle for CAISO to assess grid reliability prior to making a retirement decision. However, the proposed retirement and risk of retirement vehicle, lacks necessary retirement request criteria and market tests needed to ensure that retirement requests are not leading to market withholding and manipulation.

RMR Compensation

Staff does not support full cost-of-service compensation, primarily because it allows for resources to switch (toggle) between market compensation and cost-of-service compensation. In its recent straw proposal, the CAISO continues to propose full cost-of-service compensation for RMR resources concluding that this compensation structure is consistent with FERC precedent[3, 4] and does not need to be changed since RMR will be a mandatory designation.

CAISO's revised proposal attempts to address Staff's anti-toggling concern, by stating:

> the pro forma RMR Agreement is designed to limit annual compensation to only the cost for providing one year's service. The costs are based on established ratemaking principles using the resource book value and latest available cost of service. Separate capital expenditures approved for recovery under the agreement are also based on recovery of annual costs for each year of service and provide for recovery of unrecovered capital if the resource closes within six months of RMR Agreement termination. If the closure criteria is met, the ISO pays back the unrecovered portion of capital over 36 months, and the resource must pay it back if it returns to service at any point during the 36-month period. These provisions minimize incentives and ability to toggle on and off the RMR Agreement.[5]

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[3] 150 FERC ¶ 61,116 at 17

[4] *Midcontinent Indep. Sys. Operator, Inc.,* 148 FERC ¶ 61,057, at P 84 (2014) ("While the Commission has accepted a range of reasonable compensation methodologies for RMR units in RTOs/ISOs, we find that it is unjust and unreasonable to not allow SSRs to receive compensation for the fixed costs of existing plant given MISO's authority under its Tariff to unilaterally require a generator that seeks to retire or suspend operations to remain online in order to address reliability concerns").

Staff does not believe the CAISO's additional language (cited above), fully addresses the toggling concern identified by FERC for cost-of-service compensation. Additionally, the revise proposal fails to define the parameters which should be included in cost of service compensation (such as asset life limits). Without stricter anti-toggling provisions and guidelines around what costs can be included in cost-of-service compensation, generators may continue to prefer an RMR designation over a bilateral contract.

In its proposal justifying cost of service compensation CAISO points to FERC's NYISO order stating: "compensation to an RMR generator 'must at a minimum allow for the recovery of the generator's going-forward costs, with parties having the flexibility to negotiate a cost based rate up to the full cost of service.'"[6] To comply with this order, NYISO developed both types of compensation: (1) an Availability Performance Rate (APR) based on a resources going forward fixed costs and (2) an Owner Developed Rate (ODR) based on a resources cost-of-service. However, FERC rejected the proposed tariff language, in part, because anti-toggling concerns were not addressed.

In its April 2016 Order FERC direct NYISO, to propose: **"rules to eliminate, or at least minimize, incentives for a generator needed for reliability to toggle between receiving RMR compensation and market-based compensation for the same units"[7]** Addionally, the Order states that: **"the Commission is concerned that any proposed provisions not provide an incentive for a generation resource to propose to deactivate earlier than it otherwise would have in expectation of being needed for reliability and, therefore, be able to receive more revenues under an RMR service agreement than by remaining in the market."[8]**

In response to this Order, the NYISO proposed to: (1) require RMR generators returning to market-based revenues after the termination of an RMR agreement to reimburse the NYISO for all capital expenditure costs paid under the RMR agreement (less depreciation) before returning to the market; and (2) exclude RMR generators from its reliability needs assessment base case, which it uses to determine its resource adequacy needs.[9]

In its November 2017 Order, the FERC rejected NYISO's proposal, stating that it was:

> not persuaded that offering Commission-approved **owner-developed rate compensation and excluding RMR generators from NYISO's reliability needs assessment base case are sufficient protections to "'eliminate, or at least minimize, incentives for a generator needed for reliability to toggle between receiving RMR compensation and market-based compensation for the same units,' even when there are no required capital expenditures**

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[6] CAISO Second Revised Straw Proposal p.23 cites - N.Y. Indep. Sys. Operator Corp., 150 FERC ¶ 61,116 at 17
[7] 155 FERC ¶ 61,076 at 123 and 124
[8] 155 FERC ¶ 61,076 at 123 and 124
[9] 161 FERC ¶ 61,189 at 64

The Order further states that:

> **[r]equiring RMR generators seeking to return to the market to repay revenues received pursuant to an RMR agreement in excess of the generator's going forward costs is necessary to remove the incentive to toggle, especially when there are no required capital expenditures.** By requiring repayment of revenues received in excess of going-forward costs, the generator under an RMR agreement will be in a similar position to a generator without an RMR agreement.[10]

The Commission directed NYISO to include this revision in its compliance filing.[11] To comply with the Commission's directives, the NYISO submitted the following revision to Section 15.8.7 of Rate Schedule 8 of its Services Tariff (which was accepted by FERC in an April 24, 2018 email order stating that the compliance filing satisfactorily complies with the November 16, 2017 Order[12]).

> **[T]the revised formula that applies to the claw-back of Above Market Revenues from former RMR Generators is now designed to claw-back the amount by which an Owner Developed Rate ("ODR") that NYISO pays in accordance with Section 15.8.5 of Rate Schedule 8 of its Services Tariff exceeds the going-forward cost based rate that the NYISO calculates in accordance with Section 15.8.1 of Rate Schedule 8 of its Services Tariff.[13]**

Staff does not believe CAISOs revised proposal adequately addresses the first type of toggling identified by FERC as documented in its 2016 FERC order. [14] Since CAISO has chosen full cost-of-service compensation, the type one toggling concern is not addressed. Staff requests that the CAISO revise its proposal to adequately address the type one toggling concern or change RMR compensation to be GFFC plus provisions for any needed capital additions to the extent not already included in GFFC. Staff believes this change would discourage generators from using the RMR mechanism to get higher compensation than they could through the bilateral procurement process.

Additionally, Staff does not believe the CAISO has addressed the issues raised by Staff in earlier comments regarding establishing parameters around what costs can be included in cost-of-

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[10] 161 FERC ¶ 61,189 at 83
[11] 161 FERC ¶ 61,189 at 84
[12] ER16-120-006 https://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=14896681
[13] January 16,2018 Compliance letter to FERC ER16-120 https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=14798207 at p.3
[14] "The first type arises when a generator is needed for reliability and has an incentive to seek to deactivate prematurely. As one example, the generator may be operating profitably in the market with its existing facilities. Because the generator is profitably operating in the market, its market revenues equal or exceed its going-forward costs. The generator might have an incentive to seek to deactivate prematurely if the generator knows it is needed for reliability (and thus, has market power) and the nonmarket compensation that it would receive under an RMR agreement would exceed its current market-based compensation.

service compensation (such as asset life limits).[15] Without addressing the compensation issue, resource may continue to opt for this mechanism over the bilateral process.

CPM Compensation and Market Power Mitigation

The CAISO's straw proposal does not address how it will mitigate local market power concerns. During a stakeholder meeting on October 23, 2018, CAISO staff clarified that local market power mitigation would be addressed by the CPM soft offer cap ($6.31/kW-month = $75.72/kW-year, with market returns). Staff believes the soft offer cap is too high (especially for a 12-month designation) to sufficiently mitigate local market power. It is too high because it includes both a 20% adder on a resources GFFC and the retention of market revenues. Compensation at this level may likely result in a generator with market power that is fully depreciated choosing the CPM path rather than the RMR path to secure a contract. Both DMM and SCE have also raised similar concerns. In its October 23rd comments DMM states:

> if the current CPM soft offer cap is paid to a resource for all 12 months of an annual CPM, this compensation is likely to exceed the annual GFFC of many resources. In addition to this fixed payment, CPM units keep all market revenues. To prevent pivotal resources from withholding capacity from the bilateral market in favor of compensation at the soft offer cap which might far exceed a resource's annual GFFC, **the ISO should reconsider the level of the soft offer cap for annual CPMs**.[16]

Similarly, SCE argues that a "12 month CPM should be treated like an RMR condition 2 contract with all market rents returned to offset the capacity cost of the resource. If the CAISO still believes that competition for a 12 month CPM is feasible, then the CAISO should employ market power screens when conducting the competitive solicitation process for such a CPM. SCE recommends that a three-pivotal supplier test based upon ownership be conducted. If the screen cannot be passed, then the CAISO would terminate the competitive solicitation and enter into an RMR agreement instead."[17]

Staff supports both DMM and SCE's recommendation listed above as ways to mitigate local market power and disincent resources from withholding from the bilateral market in favor of higher compensation through an annual CPM designation. This was the case in the annual 2018 CPM designations, in which two largely depreciated resources needed for local reliability received compensation at or near the CPM soft offer cap for all 12 months.

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

CAISO proposes to merge the existing risk of retirement ("ROR") CPM procurement authority from the CPM portion of the tariff into the RMR portion of the tariff so that there is one procurement mechanism for all ROR situations.

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[15] August 7th, 2018 CPUC Staff Comments
[16] DMM October 23rd Comments on September 19th Straw Proposal p. 4
[17] SCE October 23rd Comments on CAISOs Sept. Straw Proposal pg. 2

In its December 12, 2018 revised straw proposal, the CAISO states that to be offered an RMR designation, a resource must submit a formal retirement notice to the CAISO. CAISO's proposal includes resources seeking retirement status and resources seeking mothball status:

> This notice must include an affidavit by an officer of the company who has the legal authority to bind such entity attesting the resource will not remain in service and that the decision to retire is definite unless some other type of ISO procurement of the resource occurs, the resource is sold to a non-affiliated entity, **or the resource enters into an RA contract.** In the formal retirement notice to the ISO, the resource must state that it is planning to retire at a certain date, but no earlier than 90 days from the notice of termination of the PGA. The ISO will expect the resource to also send a notice to the CPUC, if applicable, indicating its intent to retire.[18]

However, under the current FERC approved CPM ROR tariff, generators are a required to submit an attestation that the resource's decision is definite unless CPM occurs. Adding additional reasons for a generator to not have to retire lowers the attestation/affidavit burden on the generator.

Additionally, the current CPM ROR tariff requires that certain specific information described in the CAISO's BPM be included in the affidavit. The current tariff states that the resource owner must submit to the CAISO and DMM:

> an affidavit of an executive officer of the company who has the legal authority to bind such entity, with the supporting financial information and documentation discussed in the BPM for Reliability Requirements, that attests 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[19]

The current Business Practice Manual language states that the affidavit must include the following supporting information and documentation:

> 4. Any analyses the resource owner performed, or had performed, to determine whether it is economic/uneconomic for the resource to remain in service during the current year including supporting documents.
>
> 5. Any document(s) confirming the formal decision of the Board of Directors, officers, or management of the resource owner, as appropriate, that the resource will be retired unless CPM procurement occurs.[20]

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[18] CAISO December 12th Revised Straw Proposal p.?
[19] CAISO Tariff 43A.2.6. (5)
[20] Business Practice Manual Section 12.6.4

The Business Practice Manual also provides that the ISO may request additional information and documentation so that it can perform its technical assessment. This information may also be reviewed by the Department of Market Monitoring:

> If the Department of Market Monitoring suspects that the resource's submission involves false information or market manipulation, then it may refer the suspected market violations to FERC's Office of Enforcement.

CAISO's current RMR proposal does not include the same types of information and documentation required under the current CPM ROR tariff. Staff is concerned that by not including these requirements and provisions, generators that are not truly seeking to retire will continue to use the retirement process, withholding themselves from the bilateral market to suppress supply and drive up market prices, only to return to the bilateral market for those higher prices.

The rules around resource retirements need to be firm and stringent to prevent market manipulation. Staff is concerned that the complete removal of these requirements from the current CPM ROR affidavit will lead to market manipulation behavior. There must be showing by the resource as part of its attestation that explains their decision to retire with evidence so that they can be held to that claim by CAISO, DMM, and FERC. Staff believes the Business Practice Manual language as currently written is critical to safeguard ratepayers from market manipulation.

ED staff proposes that the at a minimum the CAISO should require the same set of financial information and supporting documentation required under the approved CPM ROR tariff and BPM language.

1. <u>Comments on December 12, 2018 second revised straw proposal.</u>

<u>RMR and CPM</u>

a. Provide notice to stakeholders of resource retirements

   Comments: CPUC supports additional transparency to the retirement process and appreciates the CAISO's changes to include market notice when a resource 45 MW or greater submits a retirement notification.

<u>RMR</u>

b. Make RMR resources subject to a must offer obligation

   Comments: ED Staff continues to support the CAISO adding a must offer obligation to RMR resource designations.

c. Consider making RMR resources subject to the Resource Adequacy Availability Incentive Mechanism

Comments: ED Staff continues to be support of making RMR resources subject to the same RA availability incentives as RA resources. However, given the potential changes to RAAIM as proposed in the RA Enhancement Initiative Straw Proposal, it will be very important to thoughtfully design a RAAIM mechanism that incentivizes both resources under cost of service contracts and under a market-based contracts to be available to the CAISO when they are needed. This may require carve outs for RMR/cost of service contracts, where lower its NQC will not impact the price it gets paid. The CAISO should take this into consideration when refining is RAAIM mechanism in the current RA Enhancements stakeholder initiative.

d. Consider whether RMR Condition 1 and 2 options are needed

Comments:

ED Staff supports the CAISO's decision to remove Condition 1 option from its proposal.

e. Update rate of return for RMR compensation

Comments:

In its revised straw proposal, the CAISO also proposes "to eliminate the existing 12.25 percent from the pro forma agreement and require the RMR owner to establish the rate of return for schedule F cost as part of its initial rate schedule filing at FERC following designation for RMR service. The rate of return for new capital additions under schedule L will continue to be handled per schedule L submission with a rate of return to be established for each project based on the costs of each project. This approach will result in an up-to-date rate of return for future RMR agreements." [21]

Staff supports of this change since it will require the generator seeking compensation to justify its capital structure to FERC.

f. Allocate flexible Resource Adequacy credits from RMR designations

Comments:

Staff continues to support the allocation of flexible RA capacity for RMR resources that have flexible capacity. Allocation of these resources will ensure that the benefits are not stranded.

CPM

g. Change CPM pricing formula for resources that file at FERC for a CPM price above the soft-offer cap price

Comments: Staff supports this change, but remains concerned that the CPM price is too high for annual designations, as explained above.

[21] CAISO Second Revised RMR CPM Straw Proposal p. 24