

134 FERC ¶ 61,132  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

California Independent System  
Operator Corporation

Docket Nos. ER08-556-001  
ER06-615-033

ORDER DENYING REQUESTS FOR REHEARING AND GRANTING AND  
DENYING REQUESTS FOR CLARIFICATION

(Issued February 18, 2011)

1. On October 16, 2008, the Commission conditionally accepted, subject to modification, California Independent System Operator Corporation's (CAISO) proposed Interim Capacity Procurement Mechanism (ICPM),<sup>1</sup> the backstop capacity procurement mechanism for use upon start-up of CAISO's market redesign technology upgrade (MRTU). This order denies requests for rehearing and grants in part and denies in part requests for clarification of the ICPM Order.

**I. Background**

2. On February 8, 2008, CAISO filed the ICPM pursuant to section 205 of the Federal Power Act (FPA)<sup>2</sup> and Part 35 of the Commission's regulations.<sup>3</sup> The purpose of the ICPM is to enable CAISO to acquire generation capacity to maintain grid reliability if load serving entities fail to meet resource adequacy requirements, procured resource adequacy resources<sup>4</sup> are insufficient, or unexpected conditions create the need for

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<sup>1</sup> *Cal. Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,053 (2008) (ICPM Order).

<sup>2</sup> 16 U.S.C. § 824d (2006).

<sup>3</sup> 18 C.F.R. Part 35 (2010).

<sup>4</sup> A resource adequacy resource is a resource that has been procured by a load serving entity in response to resource adequacy requirements implemented by either the California Public Utilities Commission (CPUC) or other local regulatory authority. Resource adequacy resources operate under capacity contracts, which provide these resources with the opportunity to recover fixed costs. For the purpose of this proceeding,

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additional capacity. The ICPM replaced the Transitional Capacity Procurement Mechanism (TCPM) upon implementation of MRTU.

3. The ICPM creates the framework under which CAISO is permitted to make capacity designations and establishes the price for procuring backstop capacity services, as well as the method for allocating the costs incurred. However, unlike the pre-MRTU capacity backstop mechanisms, the Reliability Capacity Services Tariff (RCST) and the TCPM,<sup>5</sup> which were subject to a must-offer obligation,<sup>6</sup> participation in the ICPM is voluntary. Under the ICPM, CAISO may designate capacity resources in order to maintain reliable grid operation if either: (1) a load serving entity has not procured the full amount of its local or system-wide resource adequacy requirements, when the portfolio of resources procured by all load serving entities in an area is insufficient to meet the reliability criteria for the area; or (2) if an ICPM Significant Event<sup>7</sup> occurs that creates a need to supplement resource adequacy resources. ICPM designations are made for a minimum of 30 days and require the resource to offer its designated capacity into the MRTU markets for the designation period. In exchange for these services, each of the resources procured under the ICPM receives a capacity payment of \$41/kW-year, unless it is demonstrated that their costs justify a higher price.

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non-resource adequacy resources are resources that are not operating under a capacity contract (i.e., resource adequacy contract or reliability must-run contract).

<sup>5</sup> The RCST was replaced by the TCPM on June 1, 2008. The TCPM expired on the first day of MRTU implementation.

<sup>6</sup> The must-offer obligation “required most wholesale electricity generators serving California markets to supply available electrical capacity – that is, capacity that had not already been contracted for – at specified rates to electricity purchasers.” *City of Anaheim v. FERC*, 558 F.3d 521, 522 (D.C. Cir. 2009). The history of the must-offer obligation is well documented. *See Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,229 (2008) (TCPM Order); *Dynegy Moss Landing, LLC v. Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,280 (2008).

<sup>7</sup> ICPM Significant Events are defined as “a substantial event, or combination of events, that is determined by the CAISO to either result in a material difference from what was assumed in the resource adequacy program for purposes of determining the [resource adequacy requirements], or produce a material change in system conditions or in CAISO [controlled grid operations], that causes, or threatens to cause, a failure to meet [reliability criteria] absent the recurring use of [non-resource adequacy resource(s)] on a prospective basis.” CAISO February 8, 2008 Transmittal Letter in Docket Nos. ER08-556-000 and ER06-615-020 at 3 (ICPM Transmittal).

4. El Segundo Power LLC, Dynegy Moss Landing, LLC, Dynegy Morro Bay, LLC, and Reliant Energy, Inc (California Generators) filed a request for rehearing and clarification of the ICPM Order. Calpine Corporation (Calpine) filed a request for rehearing.

## II. Discussion

### A. Capacity Price

#### 1. Opportunity to Recover Fixed Costs

##### a. Request for Rehearing and/or Clarification

5. California Generators argue that the Commission erred by (1) departing without adequate explanation from precedent by holding that capacity markets must compensate all sources of capacity on an equal basis,<sup>8</sup> and (2) violating the prohibition against unduly discriminatory rates by approving a capacity market mechanism that provides capacity suppliers a payment that is less than other capacity suppliers receive.<sup>9</sup> They assert that the ICPM will result in its participants receiving lower payments for their generating capacity than other CAISO market participants,<sup>10</sup> despite the Commission's prior holdings that generating resources that provide similar reliability services must be provided a similar payment.<sup>11</sup>

6. California Generators claim that the reliability service that CAISO receives from non-resource adequacy units under the ICPM is effectively the same as the service

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<sup>8</sup> California Generators' November 17, 2008 Request for Rehearing and Clarification in Docket Nos. ER08-556-001 and ER06-615-033 at 3, 6 (citing *Indep. Energy Producers Ass'n v. Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,069, at P 36-38 (2006) (July 20, 2006 Order); *Northeast Energy Assoc. v. FERC*, 158 F.3d 150 (D.C. Cir. 1998) (remanding order to the Commission for failure to explain deviation from past precedent and policy); *Louisiana Pub. Serv. Comm'n v. FERC*, 184 F.3d 892 at 897 (D.C. Cir. 1999) (reversing position without persuasively distinguishing contrary precedent is quintessentially arbitrary and capricious); and *Mississippi Valley v. FERC*, 659 F.2d 488, 506-07 (5th Cir. 1981) (engaging in reasoned decision-making requires explaining departure from previous policies)) (California Generators' Rehearing Request).

<sup>9</sup> *Id.* at 3 (citing 16 U.S.C. § 824d(b) (2006); July 20, 2006 Order, 116 FERC ¶ 61,069 at P 36-38; *Bluefield Water Works and Improvement Co. v. Public Service Comm'n*, 262 U.S. 679 (1923)).

<sup>10</sup> *Id.* at 5 (citing 16 U.S.C. § 824d(b) (2006)).

<sup>11</sup> *Id.* (citing July 20, 2006 Order, 116 FERC ¶ 61,069 at P 36).

provided by resource adequacy units or pursuant to a reliability must-run contract and thus bound by the same offer requirements and commitment rules. California Generators argue that, notwithstanding the fact that an ICPM resource is contributing to reliability to the same extent as these other resources, the Commission approved a scheme that provides less compensation for ICPM resources than for reliability must-run or resource adequacy units.<sup>12</sup>

7. California Generators submit that by designating units under the ICPM when load-serving entities fail to procure their resource adequacy requirements, CAISO is acknowledging that ICPM reliability service is a perfect substitute for resource adequacy reliability service. They argue that, while the Commission claims that the ICPM designation “is consistent with both the resource adequacy program and prior Commission action,” the evidence contradicts this assertion.<sup>13</sup> They insist that the payments provided under the ICPM are in no way similar to the payments provided to resource adequacy units. Specifically, California Generators assert that the Commission failed to address the following differences:

(1) The fact that the value of a negotiated forward resource adequacy contract with a known term is substantially greater than a month-by-month, after-the-fact ICPM designation;

(2) Despite the fact that a load serving entity’s resource adequacy obligation varies from month-to-month, most resource adequacy contracts are negotiated on a seasonal or yearly basis. It is incorrect for the Commission to take the position that a payment of \$3.42/kW-month (the actual monthly compensation rate under the ICPM) is somehow comparable to the range of observed bilateral resource adequacy deals which typically have seasonal, annual, or multi-year terms;<sup>14</sup> and

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<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Id.* at 5 (quoting ICPM Order, 125 FERC ¶ 61,053 at P 89).

<sup>14</sup> *Id.* at 7. California Generators provide that the CPUC’s annual resource adequacy reports for 2006 and 2007 show a range of excess system capacity in the off-peak months between 21-38 percent over the resource adequacy requirement, demonstrating that load serving entities are buying resource adequacy at a term longer than a single month’s system requirement. California Generators assert that the excess procurement in the off-peak months is evidence that resource adequacy suppliers must recover their annualized fixed cost whether procured for a single month, year, or season. The 2006 Report can be found at:

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(3) Reliability must-run contracts have always contained annual terms, consistent with the fact that costs associated with a reliability must-run unit do not vary substantially for terms of less than a year and that CAISO realizes the reliability value in all months in which a reliability must-run unit is available.<sup>15</sup>

8. Moreover, California Generators argue that the Commission fails to address the concern that if CAISO has access to, and control over, inexpensive, on-demand, after-the-fact insurance through its backstop mechanism, it has no incentive to modify resource adequacy requirements and load serving entities' procurement behavior to acquire the capacity necessary to ensure reliability in the forward bilateral resource adequacy capacity market. They insist that this leaves the owners of such units "captive to the no-win choice of trying to earn their existing units' fixed costs out of the CAISO's highly mitigated markets or abandoning investment in new capacity – clearly a choice between two undesirable options."<sup>16</sup> California Generators claim that this reality is at odds with the Commission's conclusion that the ICPM "provides CAISO with a temporary tool to procure additional existing capacity when the capacity procured by [load serving entities] under the resource adequacy program is insufficient to meet reliability needs."<sup>17</sup> California Generators argue that conversely, there is little to no incentive for investors to risk capital in a market where prices and requirements are undermined by such practices.

9. California Generators assert that, although ICPM capacity is not demonstrably different from the capacity provided under the RCST, the Commission approved the use of a methodology that is different from what the Commission approved in the RCST. California Generators state that the Commission adopted the \$41/kW-year price for ICPM capacity with no monthly shaping, which differed from the target capacity price for the RCST.<sup>18</sup> Thus, they claim that the Commission's acceptance of the \$41/kW-year methodology for the ICPM contradicts its action in the RCST proceeding. California

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<http://docs.cpuc.ca.gov/Published/REPORT/65960.htm>. The 2007 Report can be found at [http://docs.cpuc.ca.gov/word\\_pdf/REPORT/81717.doc](http://docs.cpuc.ca.gov/word_pdf/REPORT/81717.doc).

<sup>15</sup> *Id.* at 6-7.

<sup>16</sup> *Id.* at 7-8 (citing California Generators' Motion to Intervene and Protest in Docket No. ER06-615-020 at 10).

<sup>17</sup> *Id.* at 8 (citing ICPM Order, 125 FERC ¶ 61,053 at P 42).

<sup>18</sup> *Id.* at 8 & n.13 (explaining that net revenues from energy and ancillary service sales were deducted from the RCST's target capacity price of \$73/kW-year, and target annual capacity price payments were adjusted, or "shaped," monthly to provide the most value (and value-at-risk due to outage to encourage availability) in the peak summer months).

Generators submit that the ICPM price does not provide generators with a reasonable opportunity to recover fixed costs.<sup>19</sup> According to California Generators, the \$41/kW-year ICPM price is derived from a California Energy Commission study of the going-forward costs of a new combustion turbine, inflated by 10 percent. Finally, California Generators contend that the \$41/kW-year figure excludes recovery of and on capital investment, which the Commission has stated is critical for the functioning of capacity markets.<sup>20</sup>

10. In addition, California Generators argue that the Commission erred in finding that a non-shaped, non-location-based capacity price provides just and reasonable compensation for the value of ICPM capacity. They assert that the ICPM does not adequately compensate capacity suppliers for the locational value of their capacity, and that it is impossible to reconcile prior orders finding that just and reasonable rates are required to have a locational component with the finding in the ICPM Order that locational compensation is not required.<sup>21</sup> They assert that just and reasonable compensation must be shaped to reflect the seasonal or yearly value of the capacity provided, or to reflect the fact that a unit incurs costs in other months to make the unit available in the month of an ICPM designation.<sup>22</sup>

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<sup>19</sup> *Id.* at 8-9 (citing *Bluefield Water Works and Improvement Co. v. Public Service Commission*, 262 U.S. 679, 692-93 (1923)).

<sup>20</sup> *Id.* at 9.

<sup>21</sup> *Id.* at 14 (citing *Devon Power LLC*, 110 FERC ¶ 61,313, at P 20 (2005) (directing ISO-New England to “implement a market-based mechanism...that appropriately values capacity according to location...”); *Devon Power LLC*, 110 FERC ¶ 61,315, at P 50 (2005) (“Once a mechanism that properly values capacity based on its location is finalized and in place, capacity resources will be able to recover their costs and earn consistent reasonable rates of return. . . .”); *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,112, at P 19 (2004) (“Market design features that can work as solutions to these problems include: locational changes such as locational installed capacity, locational operating reserves, locational pricing for energy in times of local operating reserves scarcity; higher bid caps or relaxed mitigation for otherwise mitigated units needed for reliability (increased reference prices; proxy unit based approaches; increased offer caps in unit-based cost capping regimes); or other approaches.”); *Devon Power LLC*, 103 FERC ¶ 61,082, at P 28 (2003) (finding that high cost, seldom-run units cannot recover costs in Southwest Connecticut because of lack of locational price signals)).

<sup>22</sup> *Id.* at 15-16.

11. California Generators argue that the Commission erred in accepting a capacity regime that allows generators to receive capacity payments for a period as short as one-month. According to California Generators, the Commission is effectively allowing CAISO to acquire needed capacity, including during the peak period, at a rate of \$3.42/kW-month. California Generators assert that this failure to shape capacity payments to reflect the actual value of peak-period capacity alone results in unjust and unreasonable rates, and is inconsistent with prior Commission orders and market data.<sup>23</sup>

12. California Generators point out that, as reflected in all the cost data presented in the record, a generator's costs reflect commitments to operate for periods of one-year or greater and are usually stated in \$/kW-year terms. California Generators explain that under the ICPM, a generator is compensated for as little as one month's costs, whereas the cost studies in the record examine annual costs.<sup>24</sup>

13. California Generators argue that any just and reasonable rate that allows monthly procurement of capacity requires the payment of a premium. They insist that there is no evidence that the cost of keeping a unit available to provide one month's ICPM service could be found by taking a pro rata share of the annual cost. Further, California Generators state that, as the Commission noted in approving the RCST, it is reasonable for the price of a short-term product to be higher than the price for a longer term product.<sup>25</sup>

**b. Commission Determination**

14. We deny California Generators' requests for rehearing for the reasons set forth in the ICPM Order and as further explained below. Regardless of whether ICPM capacity services are similar to the capacity services provided under the resource adequacy program, the ICPM price of \$41/kW-year is within the bilateral price range for resource adequacy services, which according to the record established in this proceeding falls between \$15/kW-year and \$45/kW-year. Because the ICPM price is within the range of bilateral prices for capacity, the ICPM, which is a temporary mechanism designed to fill gaps between resource adequacy procurement and actual reliability needs via short-term procurement of capacity, should not significantly influence current bilateral prices for resource adequacy capacity.<sup>26</sup> Consequently, the ICPM pricing methodology was

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<sup>23</sup> *Id.* at 15 (citing *Indep. Power Producers Ass'n v. Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,276, at P 14 (2007) (finding that a "capacity price . . . adjusted by monthly shaping factors" was just and reasonable in the California market)).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 15-16.

<sup>26</sup> ICPM Order, 125 FERC ¶ 61,053 at P 43.

designed to support short-term reliability needs and not deter the execution of long-term bilateral contracts for resource adequacy capacity. Moreover, under the ICPM, generators are allowed to cost justify going-forward costs in excess of \$41/kW-year, such that all generators will be able to receive just and reasonable compensation if the \$41/kW-year is insufficient. We therefore reaffirm our finding that the ICPM accomplishes the short-term backstop reliability goals that it was designed to address, and that the capacity price of \$41/kW-year, with the opportunity to cost-justify a higher payment, constitutes just and reasonable compensation for non-resource adequacy resources that volunteer to provide backstop capacity services.

15. We disagree with assertions that the ICPM is unjust and unreasonable because the pricing methodology, including CAISO's decision to not include monthly shaping factors in the ICPM's design, is not the same as the methodology implemented under the RCST. As a threshold matter, we note that California Generators did not raise their concerns regarding CAISO's proposal to design the ICPM without shaping factors until the rehearing stage. The Commission looks with disfavor on parties raising new issues on rehearing.<sup>27</sup> This is because other parties are not permitted to respond to a request for rehearing.<sup>28</sup> Further, "such behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision."<sup>29</sup> Since California Generators failed to raise their concerns regarding the lack of shaping factors before the rehearing stage, parties had no opportunity to comment on whether CAISO should have included shaping factors in its ICPM design. As CAISO's ICPM proposal clearly did not include shaping factors, California Generators could have and should have raised this issue in its initial comments on the filing. Thus, we find that it is inappropriate to raise this issue on rehearing, and consequently we deny rehearing.

16. Moreover, regarding California Generators' concerns over the Commission's approval of CAISO's methodology, which differed from the methodology approved under the RCST, the Commission finds that section 205 of the FPA limits the Commission's evaluation of a utility's proposed tariff revisions to an inquiry into "whether the rates proposed by a utility are reasonable – and not to extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate

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<sup>27</sup> *Baltimore Gas & Electric Company*, 91 FERC ¶ 61,270, at 61,922 (2000); *Baltimore Gas & Electric Company*, 92 FERC ¶ 61,043, at 61,114 (2000).

<sup>28</sup> 18 C.F.R. § 385.713(d) (2010).

<sup>29</sup> *Californians for Renewable Energy, Inc. v. Calpine Energy Services*, 107 FERC ¶ 61,238, at P 7 (2004) (footnote omitted) (citing *Tenaska Power Services Co. v. Southwest Power Pool, Inc.*, 102 FERC ¶ 61,140, at P 14 (2003); *Northern States Power Company (Minnesota)*, 64 FERC ¶ 61,172, at 62,522 (1993); *Cities and Villages of Albany and Hanover, Illinois*, 61 FERC ¶ 61,362, at 62,451 (1992)).

designs.”<sup>30</sup> The proposed revisions “need not be the only reasonable methodology.”<sup>31</sup> Although the Commission has found other rate designs to be just and reasonable in previous and unrelated proceedings, the Commission was obligated to accept a section 205 filing that was shown to be just and reasonable. Thus, upon consideration of the record, the Commission found the ICPM, as modified, to be just and reasonable. For this reason, the Commission need not consider whether other alternatives such as the RCST may also be just and reasonable.

17. Regarding local capacity needs, we note that the ICPM is a temporary backstop procurement mechanism to the existing resource adequacy programs and is not designed to value local capacity needs on a long-term basis. The Commission found “that the CAISO’s proposal to price backstop capacity at the upper end of [the bilateral price] range is not unreasonable and provides non-resource adequacy resources with a payment for capacity services that is comparable to the payment received by resource adequacy resources.”<sup>32</sup> We note that this range includes bilateral contract prices relating to resource adequacy capacity procured to meet local requirements. By pricing backstop capacity at the upper end of this range, non-resource adequacy resources are provided with comparable compensation regardless of whether ICPM procurements are made for system or local needs.

18. We disagree that ICPM compensation should include a premium relative to the compensation afforded to resource adequacy resources simply because the minimum ICPM designation term is monthly. The Commission explained that “[t]he resource adequacy program requires [load serving entities] to make a monthly procurement demonstration and, to meet this requirement, [load serving entities] may choose to contract on a monthly basis.”<sup>33</sup> The Commission concluded that “it is likely that certain resource adequacy resources operate under monthly arrangements.”<sup>34</sup> Therefore, the minimum ICPM designation term is in line with the minimum contractual arrangements afforded to resource adequacy resources. If ICPM capacity services are needed beyond the initial monthly designation, CAISO may retain ICPM capacity services for the duration of the need. Accordingly, we disagree that the ICPM compensation should include a premium because the minimum term of an ICPM designation is monthly. We

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<sup>30</sup> *Cities of Bethany, Bushnell, et al. v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (citing *Public Service Co. of Indiana*, 56 FPC 3003 (1976)).

<sup>31</sup> See *Oxy USA v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995).

<sup>32</sup> ICPM Order, 125 FERC ¶ 61,053 at P 41.

<sup>33</sup> *Id.* P 89.

<sup>34</sup> *Id.*

find that adopting such a premium may discourage bilateral contracting under the resource adequacy program.

19. Finally, we disagree that ICPM capacity services should be priced relatively high in order to provide an incentive to revise the resource adequacy requirements established by the CPUC and/or local regulatory authorities. The objective of the ICPM is to ensure both that CAISO has the means to procure additional capacity resources if resource adequacy resources are insufficient, and to ensure that these capacity resources are compensated in a manner comparable to resources procured under the resource adequacy program. While generation resources must be reasonably compensated, the Commission must also balance this compensation with its statutory obligation to ensure that the rates customers pay are just and reasonable. Thus, the ICPM is not the appropriate mechanism through which to encourage further refinement of resource adequacy requirements.

## **2. Consideration of Evidence in Support of the \$41/kW-year Price**

### **a. Requests for Rehearing and/or Clarification**

20. In their requests for rehearing, both California Generators and Calpine raise concerns about the consideration that was given to record evidence in the ICPM Order. California Generators assert that against evidence of increases in the cost of capacity (and all the variable inputs that lead to the creation of capacity), CAISO relies on outdated financial information and proposes a procedure to qualify capacity for reliability services compensation. California Generators argue that this results in a proposal that under-compensates non-resource adequacy generating units that provide CAISO with backstop capacity reliability.<sup>35</sup> Specifically, California Generators argue that the Commission's order failed to address the following evidence:

- (1) The \$41/kW-year was developed from cost of new entry estimates that predate recent increases in construction and commodity prices;
- (2) The price to be paid for capacity procured under the ICPM should be no less than \$117/kW-year based on updated data, including empirical results from 180 MW peaking units recently constructed in California; and
- (3) The empirical evidence that bilateral capacity contracts cleared in the \$15-\$45/kW-year range ignores the fact that the CPUC does not require its load serving entities to enter into capacity purchases at prices above \$40/kW-year. The bilateral capacity prices cited by the

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<sup>35</sup> California Generators' Rehearing Request at 10.

Commission are therefore not the result of a competitive market and are not entitled to deference.<sup>36</sup>

21. According to California Generators, the entirety of the Commission's discussion of this record evidence is the following: "Further, we point out that, as the CAISO provides, the bilateral price for resource adequacy services ranges between \$15/kW-year and \$45/kW-year. Consequently, we find that the CAISO's proposal to price backstop capacity at the upper end of this range is not unreasonable[.]"<sup>37</sup> California Generators state that nowhere does the Commission address the evidence showing that because of the CPUC rules, bidding contracts are not a reliable indication of market determined rates that the Commission can reasonably rely on as a proxy for a just and reasonable rate. Further, California Generators argue that the order does not discuss how this evidence informed its conclusion; therefore, California Generators argue that "the courts will not find that the Commission has adequately weighed the record evidence when there is no sign that the Commission considered facts that contract its eventual conclusion."<sup>38</sup>

22. Similarly, Calpine provides that the Commission justified the ICPM price solely by relying on a reported range of resource adequacy prices between \$15/kW-year and \$45/kW-year. Calpine contends that the Commission assumed, without record support, that this reported range of prices is just and reasonable and non-discriminatory.<sup>39</sup> Moreover, Calpine submits that the Commission has ignored the role that a CPUC-prescribed \$40/kW-year price trigger has played in effectively capping resource adequacy prices. Calpine states that the resource adequacy program grants waivers to load serving entities from meeting resource procurement obligations if prices exceed a specified price of \$40/kW-year. Further, Calpine provides that this waiver price was based on "using data from the [RCST] settlement of the [Independent Energy Producers (IEP)] complaint."<sup>40</sup> Thus, Calpine asserts that in establishing a price "trigger" that has had

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<sup>36</sup> *Id.* at 11.

<sup>37</sup> *Id.* at 12 (citing ICPM Order, 125 FERC ¶ 61,053 at P 41).

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

<sup>39</sup> Calpine notes that the Commission has not found that the resource adequacy program as a whole is designed in a just and reasonable and non-discriminatory manner. Calpine argued in its protest that the reported resource adequacy prices fall short of the benchmark of the costs of a new peaker facility. Moreover, Calpine states that investor owned utilities have developed and installed new capacity with levelized costs that are many multiples of the reported resource adequacy prices and going-forward fixed costs. Calpine Corporation's November 17, 2008 Request for Rehearing in Docket Nos. ER08-556-001 and ER06-615-033 at 6 (Calpine Rehearing Request).

<sup>40</sup> *Id.*

obvious impacts on prevailing resource adequacy capacity prices, the CPUC adopted a price that had been agreed to in a settlement that was intended to establish a price for backstop procurement under an outdated predecessor mechanism to the ICPM. Accordingly, Calpine argues that it is unreasonable to use realized resource adequacy prices to justify the future backstop procurement price under the ICPM, when the resource adequacy prices have been limited by a price cap or trigger based on outdated data, which have not been revisited by either the CPUC or the Commission.

23. California Generators note that the Commission took administrative notice of the CPUC proceeding, citing the flawed \$73/kW-year price, without acknowledging the evidence that the \$73 figure is based on a 2006 CPUC Order that utilizes an even older analysis. According to California Generators, the Commission's reliance on three-year-old generation construction data is in error due to the evidence presented in this and other proceedings that construction costs have soared in the past several years.<sup>41</sup>

24. California Generators contend that the Commission relied on a pricing formula that is in part based on the cost of new entry from prior to 2004. California Generators assert that the Commission cannot reasonably: (1) argue that the ICPM is not designed to attract new construction, and thus should not be based on a cost of new entry-dependent price; (2) find that a \$41/kW-year price derived from a cost of new entry-dependant formula is a just and reasonable rate; and (3) refuse to update the cost of new entry-based value to reflect the current construction pricing reality. California Generators submit that the Commission has departed without sufficient explanation from the range of reasonableness method utilized to derive the RCST and TCPM capacity prices. Further, California Generators state that the Commission has not given weight to the argument that the range of reasonableness for the capacity backstop price has expanded because of the increased cost of new construction. California Generators maintain that the Commission has failed to set the backstop capacity price at an appropriate midpoint in the expanded range of reasonableness. Thus, California Generators argue that the Commission's rationale for supporting the \$41/kW-year price is inconsistent and not the product of reasoned decision-making.<sup>42</sup>

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<sup>41</sup> California Generators note that the Commission's 2008 Summer Energy Assessment states the following: "An index of costs for the main inputs that go into building new generating plants. . . shows how that index has almost doubled since 2003. . . Much of this cost increase results from rising global demand for basic materials. Part of it also comes from shortages of people to do key engineering and construction jobs. In any case, the implication is that, we will pay more, not less, for the next round of construction." California Generators' Rehearing Request at 13 (citing Summer Energy Market Assessment 2008 at P 6-10).

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

25. Finally, California Generators claim that the Commission ignored its responsibility to determine whether the compensation paid to capacity resources is just and reasonable and instead relied on capacity price determinations made by the CPUC without independent confirmation that the prices were just and reasonable. Moreover, California Generators state that the Commission has a duty to examine all record evidence and decide whether the resulting rate is just and reasonable.<sup>43</sup>

26. Similarly, Calpine argues that the Commission erroneously found that “the proposed ICPM price of \$41/kW-year will result in appropriate compensation to resources that provide backstop capacity services.”<sup>44</sup> According to Calpine, each of the reasons advanced in support of this conclusion assume, without evidentiary support and contrary to fact, that the resource adequacy program works adequately when it does not. Consequently, Calpine submits that the ICPM compensation cannot be defended because the ICPM is a backstop to a presumptively just and reasonable resource adequacy capacity procurement program.

27. Calpine provides that the Commission justified ICPM compensation by reference to it being a backstop procurement mechanism “for short periods,” which is “not designed to encourage new investment.”<sup>45</sup> While the ICPM will result in only monthly designations, Calpine points out the adequacy of resulting compensation must be assessed against the reason that the ICPM designation would be needed, which is that the resource adequacy program’s procurement of capacity will be inadequate.<sup>46</sup> Accordingly, Calpine argues that the Commission erred in not recognizing that the shortcomings of the resource adequacy program are a principal reason why CAISO proposed the ICPM.

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<sup>43</sup> *Id.* at 14.

<sup>44</sup> Calpine Rehearing Request at 3 (citing ICPM Order, 125 FERC ¶ 61,053 at P 41).

<sup>45</sup> *Id.* (citing ICPM Order, 125 FERC ¶ 61,053 at P 41).

<sup>46</sup> Calpine reiterates that the resource adequacy program does not ensure the availability of sufficient generation capacity, especially during peak periods. Calpine explains that this is due, in part, to the rules under which the resource adequacy program procures resource adequacy resources. Further, Calpine provides that the resource adequacy program requirements are not structured to allow CAISO to obtain capacity from resource adequacy resources to meet specific peak period and real-time reliability needs. In addition, Calpine states that California’s long-term procurement processes have operated in a discriminatory manner because investor-owned utilities have been allowed to procure capacity through discriminatory solicitations that expressly exclude existing and even planned generation. *Id.* at 3-4.

28. Calpine argues that the fact that ICPM designations will be monthly and for a short period does not justify the annualized price that will be paid to ICPM-designated resources. According to Calpine, the Commission recognizes that non-resource adequacy resources and resource adequacy resources should be compensated similarly for providing similar reliability services. Calpine provides that the only reason given by the Commission as to why compensation might be different is that ICPM compensation is not designed to encourage new investment.<sup>47</sup> However, Calpine asserts that incentives for new investment should flow from the California capacity procurement program as a whole. Thus, Calpine contends that the ICPM Order fails to consider whether the resource adequacy program, the ICPM, and other CAISO procurement of reliability services produce sufficient investment incentives, which Calpine asserts they do not.

**b. Commission Determination**

29. For the following reasons, we deny Calpine's and California Generators' requests for rehearing and, as discussed below, find that the \$41/kW-year ICPM payment, which provides for recovery of going-forward costs<sup>48</sup> and allows generators to cost-justify going-forward costs in excess of the \$41/kW-year price, is just and reasonable. We disagree that backstop capacity services should be priced at a level high enough to encourage new investment. ICPM capacity designations are not necessarily an indication that the system is short of available capacity and that new entry is needed; rather, it may merely be an indication of a deficiency in resource adequacy procurement. The ICPM is a temporary mechanism<sup>49</sup> that provides CAISO with a way to procure additional short-term capacity when capacity resources procured under the resource adequacy program are insufficient or do not effectively address the unexpected reliability conditions of the CAISO grid. The Commission has previously "rejected cost of new entry pricing because [] the short-term capacity procurement under these mechanisms did not provide

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<sup>47</sup> *Id.* at 5.

<sup>48</sup> Going-forward costs are generally understood to be the minimum fixed costs that a resource needs to recover in order to remain available for operation and does not include capital and financing costs. Going-forward costs are defined for purposes of the CAISO proposal as the sum of fixed operation and maintenance, ad valorem, and administrative and general costs. CAISO February 8, 2008 Transmittal in Docket Nos. ER08-556-000 and ER06-615-020 at 32; *see also* ICPM Order, 125 FERC ¶ 61,053 at n.26.

<sup>49</sup> ICPM is currently set to expire 24 months after MRTU implementation. *See Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,150, at P 247 (2009).

sufficient long-term price signals to indicate the need to build new generation.”<sup>50</sup> Because the ICPM is a temporary mechanism designed to fill gaps between resource adequacy procurement and actual reliability needs, we conclude that basing the price of backstop capacity services on the cost of new entry is not appropriate. Further, since the ICPM is a short-term reliability signal, and not a long-term investment signal, the higher capacity costs that may result from the cost of new entry may result in overcompensating ICPM resources for the service provided.

30. Moreover, when arguing that the ICPM payment is too low, California Generators reference costs relating to the construction of new resources, rather than the going-forward costs upon which the ICPM is based. California Generators have failed to demonstrate that the ICPM payment is outdated, especially in light of the fact that a unit that finds that it is unable to recover its going-forward costs under the \$41/kW-year ICPM price is permitted to cost-justify a higher ICPM payment.<sup>51</sup> The Commission explained that “[t]his feature will ensure that existing resources needed for reliability services are given the opportunity to demonstrate incurred costs in excess of \$41/kW-year and to recover these costs.”<sup>52</sup> Allowing generators to cost-justify going-forward costs in excess of the \$41/kW-year ICPM payment ensures that generators will recover their going-forward costs, thereby, ensuring a just and reasonable ICPM payment. Accordingly, we find that the compensation afforded to suppliers under the ICPM is just and reasonable.

31. We find that the Commission’s consideration of the CPUC-prescribed \$40/kW-year price trigger as evidence of existing bilateral prices, in addition to other evidence in the record, was adequate. Because generators voluntarily enter into bilateral contracts under the assumption that they are recovering their going-forward costs, bilateral prices serve as a reasonable proxy for a short-term capacity price.

32. In approving the ICPM proposal, the Commission considered the bilateral price range for resource adequacy capacity.<sup>53</sup> The Commission used this information as supporting evidence that ICPM resources would receive compensation that is similar to compensation afforded to resource adequacy resources. In addition, we reiterate that

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<sup>50</sup> ICPM Order, 125 FERC ¶ 61,053 at P 42 (citing TCPM Order, 123 FERC ¶ 61,229 at P 76 (quoting *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,276 at P 23)).

<sup>51</sup> See CAISO Tariff Section 43.6.2.

<sup>52</sup> ICPM Order, 125 FERC ¶ 61,053 at P 44.

<sup>53</sup> As noted by the Commission, “the bilateral price for resource adequacy services ranges between \$15/kW-year and \$45/kW-year.” ICPM Order, 125 FERC ¶ 61,053 at P 41 (citing ICPM Transmittal at 36).

under the ICPM, generators with going-forward costs in excess of \$41/kW-year may cost-justify a higher ICPM payment to recover their going-forward costs. These facts assisted the Commission in determining that the proposed ICPM payment of \$41/kW-year, combined with the opportunity to cost-justify higher going-forward costs, is just and reasonable. Finally, as explained *supra*, the Commission was limited to considering the proposal before it. Thus consideration of the RCST and TCPM methodology was not appropriate, as the ICPM, as modified, was found to be just and reasonable.<sup>54</sup>

### 3. Voluntary Nature of the ICPM

#### a. Requests for Rehearing and/or Clarification

33. Calpine argues that the Commission appeared to justify inadequacies in the ICPM compensation on the grounds that ICPM's designations are voluntary and resources may "pursue other avenues of recovering their fixed costs."<sup>55</sup> According to Calpine, there is no record support for finding that existing or new generation resources have other avenues in which to realize just and reasonable and non-discriminatory compensation for rendering reliability services.<sup>56</sup>

34. According to California Generators, the Commission erroneously determined that because participation in the ICPM is voluntary, the capacity payments received by generators under the ICPM are just and reasonable. California Generators state that this finding is not supported by the evidence, and errs in the following two respects: (1) it ignores the generating unit's obligation to respond to CAISO dispatch instructions and operating orders at any time, regardless of whether the unit volunteers to accept an ICPM designation; and (2) it places generators not wishing to participate in an unjust and unreasonable capacity regime at a severe competitive disadvantage. Ultimately, California Generators contend that the voluntary choice to accept or decline ICPM service is hardly a choice if units seeking to decline the ICPM designation are placed into

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<sup>54</sup> *See supra* P 16.

<sup>55</sup> Calpine Rehearing Request at 5.

<sup>56</sup> Calpine states that the shortcomings of the resource adequacy program and California's long-term procurement processes deny existing generation reasonable and non-discriminatory opportunities to be compensated for capacity services. Calpine explains that the resource adequacy prices for both system resource adequacy and for local resource adequacy are less than the value of capacity as normally measured by the cost of new entry for a reference peaker unit and that those prices also fell short of covering the going-forward fixed costs of existing capacity. Calpine argues that the ICPM Order erred by ignoring these facts. *Id.*

an unduly discriminatory position vis-à-vis either resource adequacy units or units that choose to accept the ICPM designation.<sup>57</sup>

35. Moreover, California Generators assert that the ICPM Order places a generator in the unenviable position of rejecting an ICPM designation and then being faced with the possibility of CAISO dispatching the unit through Exceptional Dispatch. California Generators note that the order provides that “even if a resource chooses to decline a 30-day ICPM designation, the CAISO can still commit this resource for reliability purposes when its capacity services are needed.”<sup>58</sup> Thus, California Generators state that suppliers have no option but to provide capacity when CAISO demands it, while receiving compensation that is inadequate to compensate the generator for the yearly costs it incurs making its capacity available. Therefore, California Generators argue that committing a resource for reliability purposes without paying the owner a compensatory rate for the service it provides is not just and reasonable.

36. Calpine claims that the Commission failed to consider all relevant factors and justify its conclusion that the proposed \$41/kW-year price is just and reasonable, and not unduly discriminatory. Calpine explains that CAISO is retaining other means of procuring capacity through Exceptional Dispatch and through the commitment of resources under the residual unit commitment process.<sup>59</sup> Thus, Calpine asserts that the Commission cannot find that ICPM compensation is adequate for short-term backstop capacity procurement without considering whether, taken as a whole, the resource adequacy program, other CAISO procurement of reliability services, and the ICPM compensate generators in a just and reasonable and non-discriminatory manner.<sup>60</sup> Therefore, Calpine claims that the Commission unjustifiably focused only on isolated ICPM designations for short periods.

#### **b. Commission Determination**

37. We deny Calpine’s and California Generators’ requests for rehearing and clarify that the Commission did not conclude the ICPM proposal was just and reasonable simply because it is voluntary. The Commission explained that as a voluntary backstop capacity procurement mechanism “resources are free to decline an ICPM designation and pursue

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<sup>57</sup> California Generators’ Rehearing Request at 9-10.

<sup>58</sup> *Id.* at 10 (citing ICPM Order, 125 FERC ¶ 61,053 at P 55 & n.45).

<sup>59</sup> According to Calpine, CAISO routinely denies its highly efficient generating facilities’ requests for planned maintenance during summer peak periods, thus implicitly procuring the full capacity of those units. Calpine Rehearing Request at 4.

<sup>60</sup> *Id.*

other avenues of recovering their fixed costs.”<sup>61</sup> The ICPM “pricing structure is designed to ensure just and reasonable treatment of non-resource adequacy resources that are needed for reliability services and to provide an incentive to these resources to voluntarily accept ICPM designations.”<sup>62</sup> The Commission reached this conclusion after considering both the ICPM proposal and the evidence presented in the record as a whole. Moreover, with regard to whether ICPM compensation is adequate for short-term backstop procurement, we note that the ICPM is merely intended to allow generators to recover going-forward costs. If a unit cannot recover its going forward costs, it may cost-justify a higher payment. Alternatively, the unit may pursue opportunities to sell its capacity bilaterally into other markets.

38. We find that the concerns about how ICPM interrelates with the Exceptional Dispatch mechanism relate exclusively to the design of the Exceptional Dispatch mechanism. For the purposes of CAISO’s ICPM proposal, which is at issue in the instant proceeding, participation is always voluntary. Therefore, concerns about the Exceptional Dispatch mechanism are beyond the scope of this proceeding.<sup>63</sup>

## **B. Partial Designation**

### **1. Request for Rehearing and/or Clarification**

39. According to California Generators, the Commission erred in finding that partial designations of ICPM resources result in just and reasonable rates.<sup>64</sup> California Generators state that the Commission provides that its decision is consistent with the CPUC Resource Adequacy Program rules, which allow for partial unit procurement and designation. However, California Generators assert that the Commission failed to recognize that the fixed costs of a unit are incurred indivisibly and that if partial unit designations become the norm it will mean that some portion of a unit’s fixed costs cannot be recovered through capacity compensation. Thus, California Generators argue that ICPM compensation must be based on the entire qualifying eligible capacity of a resource procured by CAISO.

40. California Generators submit that the nature of the resource adequacy program has not changed between the TCPM Order and the ICPM Order; however, the resource adequacy designations have changed from full-unit designations under the RCST and

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<sup>61</sup> ICPM Order, 125 FERC ¶ 61,053 at P 41.

<sup>62</sup> *Id.*

<sup>63</sup> *See Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,150 (2009) (Exceptional Dispatch Order).

<sup>64</sup> California Generators’ Rehearing Request at 16.

TCPM to partial unit designations under the ICPM.<sup>65</sup> Thus, California Generators argue that in allowing partial unit designations, the Commission erred by considering the procurement practices that take place under the resource adequacy program rather than the nature of the backstop capacity service provided. Further, California Generators assert that the Commission erred by not requiring CAISO to procure backstop capacity service through the ICPM on a full-unit basis consistent with how CAISO procures capacity through its reliability must-run contracts.<sup>66</sup>

41. According to California Generators, CAISO may commit a unit of any size through its markets as long as there is any amount of resource adequacy capacity contracted on that unit. Once the unit is committed, California Generators explain that CAISO essentially has access to the unit's full capacity, the same as it did with full-unit designations under the RCST and TCPM. Further, California Generators state that while the non-resource adequacy capacity may not bid into CAISO's markets, CAISO, through Exceptional Dispatch, may dispatch energy from that non-contracted capacity as needed. Thus, California Generators argue that the operational reality is that the committed generating unit is fully available to CAISO.<sup>67</sup> Moreover, California Generators point out that the unit is still incurring the same fixed costs regardless of the amount of its contracted resource adequacy capacity.

42. California Generators assert that the current resource adequacy program, which allows for partial unit contracting, creates a veneer that treats the capacity of a discrete, whole generating unit as divisible. California Generators state that suppliers of capacity from discrete units, faced with a choice to sell something or to sell nothing, opt to sell part of that unit. Although suppliers will almost certainly not recover a unit's entire fixed costs from a partial sale, California Generators explain that they earn something from the sale and thus voluntarily enter into it. Nevertheless, California Generators assert that this veneer does not align with the operational reality that CAISO effectively has use of the

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<sup>65</sup> California Generators explain that under the RCST and TCPM, units must comply with the Commission's must-offer obligation by bidding into CAISO's real-time market. According to California Generators, CAISO controls the amount of capacity on-line through the must-offer waiver denial process. California Generators provide that nothing compels CAISO to wait until CAISO expects to dispatch energy from all of that unit's capacity before committing that unit. California Generators add that when CAISO commits a unit through the must-offer waiver denial process it commits that unit at minimum load. Further, California Generators assert that the act of committing that unit makes the full amount of that unit's capacity available to CAISO. *Id.* at 17.

<sup>66</sup> *Id.* at 16-17.

<sup>67</sup> *Id.* at 17-18.

full amount of every committed unit, regardless of the amount of that unit's contracted resource adequacy capacity.<sup>68</sup>

43. California Generators state that neither a resource adequacy unit nor a reliability must-run unit is required to give back its capacity payments if it is not committed by CAISO during the term of its contract.<sup>69</sup> Consequently, California Generators seek an ICPM policy that is consistent with what the Commission has approved for reliability must-run, the RCST, and the TCPM – namely that when CAISO indicates a need for backstop capacity service by offering an ICPM designation, that designation should be for the full amount of non-contracted capacity on the unit, consistent with the amount of service that unit will provide. Thus, California Generators request that the Commission find that an ICPM designation should be for the full amount of non-contracted capacity.

## 2. Commission Determination

44. The Commission disagrees with California Generators' assertion that our consideration of the procurement practices under the resource adequacy program was in error. As the Commission has explained, the ICPM is, in part, designed to fill a gap between resource adequacy requirements and actual reliability needs. Therefore, it is appropriate to base the reasonableness of ICPM procurement rules on whether they result in comparable treatment of non-resource adequacy resources that are procured to address insufficient resource adequacy requirements. As we stated in the ICPM Order, "by proposing to allow resources to be partially designated as ICPM capacity resources, the ICPM accomplishes this objective by implementing designation rules comparable to the resource adequacy program."<sup>70</sup> There is no evidence on record that the implementation of similar ICPM procurement rules will result in capacity resources being subject to unduly discriminatory treatment compared to resource adequacy resources.

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<sup>68</sup> *Id.* at 18.

<sup>69</sup> According to California Generators, reliability must-run capacity is not a divisible service. California Generators explain that reliability must-run contracts provide fixed cost recovery that is intended, along with market revenues, to cover a unit's entire annual fixed costs. Further, California Generators elaborate that a reliability must-run unit is providing CAISO with capacity service whether or not it is committed. California Generators note that reliability must-run designations are made in advance based on projected needs, not based on actual use. *Id.* at 18-19.

<sup>70</sup> ICPM Order, 125 FERC ¶ 61,053 at P 94 (referencing Cal. P.U.C. Decision 04-10-035; *Opinion on Local Res. Adequacy Requirements*, Decision 06-06-064, Cal. P.U.C. (June 29, 2006)).

45. Further, we remain unconvinced that the ICPM procurement rules should be modified so that a resource receives compensation corresponding to its qualifying capacity rather than the amount of backstop capacity service actually being provided. The Commission explained that partial unit procurement is consistent with the procurement rules under the resource adequacy program<sup>71</sup> and that the ICPM is reasonably tailored to ensure comparable treatment of resources providing reliability capacity services. By arguing for full resource designations California Generators are seeking more favorable procurement rules than are present under the resource adequacy program. Such an inconsistency could result in consumers having to pay for capacity in excess of CAISO's short-term system reliability needs and provide a disincentive for suppliers to participate in the resource adequacy program. Thus, there is no basis for the CAISO to adopt ICPM procurement rules that are inconsistent with procurement practices under the resource adequacy program. Therefore, we deny California Generators' request for rehearing on this issue.

### C. Partial Resource Adequacy and Exceptional Dispatch

#### 1. Request for Rehearing and/or Clarification

46. If the Commission rejects its request for rehearing, California Generators ask the Commission to clarify that its finding in the ICPM Order that CAISO may designate part of a unit under ICPM will not prevent it from concluding that, pursuant to the investigation in Docket No. EL08-88, an Exceptional Dispatch should give rise to the offer of a 30-day balance of unit ICPM designation.<sup>72</sup> Further, California Generators request that the Commission clarify that, in the Exceptional Dispatch proceeding, the Commission's ICPM Order will not prejudice whether an ICPM designation for Exceptional Dispatch, which provides CAISO with capacity service from non-resource adequacy capacity, should lead to a balance of unit ICPM designation.

#### 2. Commission Determination

47. We clarify that denying California Generators' request for rehearing in the instant proceeding does not prevent the Commission from concluding that an Exceptional Dispatch should give rise to the offer of a 30-day balance of unit ICPM designation. Nonetheless, in an order issued February 20, 2009, the Commission accepted "CAISO's proposal to offer partial ICPM designations to exceptionally dispatched resources for capacity that is not under a resource-adequacy contract, a reliability-must-run contract, or subject to an ICPM designation."<sup>73</sup> The Commission explained that "the payment

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

<sup>72</sup> California Generators' Rehearing Request at 19.

<sup>73</sup> Exceptional Dispatch Order, 126 FERC ¶ 61,150, at P 187 (2009).

scheme for Exceptional Dispatch must strike a balance between, on the one hand, providing appropriate compensation to resources that are called upon to provide capacity services, and, on the other hand, avoiding incentives for suppliers to seek exceptional dispatches instead of ICPM designations or resource adequacy contracts.”<sup>74</sup>

#### **D. Reporting of Partial Designations**

##### **1. Request for Rehearing and/or Clarification**

48. California Generators request that, if the Commission determines that CAISO may offer ICPM designations to only a portion of the available capacity of a generating unit, that the Commission also specify reasonable measures to assure that such discretion is administered transparently and without undue discrimination. California Generators state that they agreed with CAISO on measures for use in administering TCPM designations to a partial resource adequacy unit. California Generators explain that these measures specified the steps that CAISO would take whenever it issued a must-offer waiver denial to a partial resource adequacy unit, and included an explicit determination of whether CAISO needed only the resource adequacy capacity for reliability purposes, or whether it also needed any of the non-resource adequacy capacity of the unit. If CAISO determined that it required any of the remaining non-resource adequacy capacity of the unit, California Generators state that CAISO would then proceed to designate the remaining capacity of the unit under the TCPM.<sup>75</sup> California Generators submit that CAISO also committed to undertaking an after-the-fact review of manual out-of-sequence dispatch instructions issued for non-resource adequacy capacity to determine whether any resource adequacy capacity was available to meet such a need. If not, California Generators state that such out-of-sequence dispatches would be indicative of a local or zonal reliability need, in which case a TCPM designation would be made. According to California Generators, CAISO also indicated it would post the results of its after-the-fact review.

49. California Generators assert that such measures are equally essential and appropriate whenever a unit is partially designated under the ICPM. According to California Generators, the discretion to issue an ICPM designation to a portion of a unit creates a threat of undue discrimination that is comparable to that which caused the Commission to conclude that CAISO had excessive discretion with regard to the determination of Significant Events in the TCPM proceeding.<sup>76</sup> Thus, California

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

<sup>75</sup> California Generators’ Rehearing Request at 22 (citing Motion for Leave to File Answer Out of Time and Answer of the California Independent System Operator Corporation, Docket No. # ER08-760-001, July 16, 2008).

<sup>76</sup> California Generators claim that such a concern led the Commission to direct

(continued...)

Generators assert that CAISO's offer of an ICPM designation to only a portion of the available capacity of a generating unit would represent undue discrimination if CAISO had a reliability need for additional capacity from that generating unit. In the event that the Commission determines that CAISO may make ICPM designations to partial units, California Generators submit that the Commission must also direct CAISO to perform an objective and transparent analysis of whether any additional capacity from a generating unit is required, and to post such analyses on a timely basis.<sup>77</sup>

## **2. Commission Determination**

50. The Commission declines to impose additional reporting requirements relating to partial ICPM designations. Under the ICPM Tariff, CAISO is required to provide market participants with information concerning ICPM designations.<sup>78</sup> For example, pursuant to ICPM Tariff Section 43.5.2, CAISO must provide market participants with information relating to the reason for any ICPM designation as well as the resource that was procured and the amount of the designation. Additionally, pursuant to ICPM Tariff Section 43.5.3, CAISO is required to release information relating to the commitment of capacity not procured under the ICPM or resource adequacy program. The Commission previously determined that the reporting requirements under ICPM Tariff Section 43.5 provided sufficient transparency into the reasons behind ICPM capacity procurements.<sup>79</sup>

Regardless of whether an ICPM designation to only a portion of the available capacity of a generating unit would represent undue discrimination if CAISO had a reliability need for additional capacity from that generating unit, we find that the ICPM reporting requirements will enable monitoring that can help to assure that ICPM is administered transparently and without undue discrimination. Therefore, rehearing of this issue is denied.

## **E. The Need for an Evidentiary Hearing**

### **1. Request for Rehearing and/or Clarification**

51. Calpine asserts that due to insufficient support in the record for the annualized ICPM price, the Commission erred in not setting for an evidentiary hearing the issue of establishing a just and reasonable and not unduly discriminatory price for resources providing capacity services under the ICPM. According to Calpine, where there are

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CAISO to modify its TCCPM proposal to incorporate a single must-offer waiver denial as the trigger for a TCCPM designation for a non-resource adequacy generating unit.

<sup>77</sup> California Generators' Rehearing Request at 23.

<sup>78</sup> See ICPM Tariff Section 43.5.

<sup>79</sup> ICPM Order, 125 FERC ¶ 61,053 at P 74.

material facts in dispute regarding a proposed formula rate that are not resolved on the paper record, the Commission should set the matter for an evidentiary hearing.<sup>80</sup> Calpine explains that in an evidentiary hearing, parties should be permitted to adduce evidence as to what would be a just and reasonable and nondiscriminatory annualized price for a uniform capacity product, taking into account the imperfections of the resource adequacy program, the many means by which reliability services are obtained from generating resources in California and the current up-to-date costs of developing new peaking capacity.

## 2. Commission Determination

52. We deny rehearing. As Calpine agrees, an evidentiary hearing is appropriate when there is a dispute of material fact that cannot be resolved on the basis of the written record.<sup>81</sup> That is not the case here. In the instant proceeding, the Commission evaluated a significant amount of evidence filed by parties that supported<sup>82</sup> or opposed<sup>83</sup> the proposed ICPM price.<sup>84</sup> In its rehearing request, Calpine does not describe any additional evidence that it would have presented in an evidentiary hearing, much less how the

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<sup>80</sup> Calpine Rehearing Request at 7-8.

<sup>81</sup> *San Diego Gas & Elec. Co. v. Sellers of Energy*, 121 FERC ¶ 61,184, at P 143 n.197 (2007). As the Commission noted in *Public Service Co. of Indiana, Inc.*, 51 FERC ¶ 61,367, at 62,218-19 and n.67 (1990), while the FPA and case law require the Commission to provide parties with a meaningful opportunity for a hearing, the Commission is required to reach decisions on the basis of an oral, trial-type evidentiary record only if the material facts in dispute cannot be resolved on the basis of the written record, i.e., where written submissions do not provide an adequate basis for resolving disputes about material facts. *Id.* (citing *Lomak Petroleum, Inc. v. FERC*, 206 F.3d 1193, 1199 (D.C. Cir. 2000) (citing *Conoco Inc. v. FERC*, 90 F.3d 536, 543 n.15 (D.C. Cir. 1996) (quoting *Environmental Action v. FERC*, 996 F.2d 401, 413 (D.C. Cir. 1993))).

<sup>82</sup> See ICPM Order, 125 FERC ¶ 61,053 at P 24-25 (referencing comments from Southern California Edison Company, California Municipal Utilities Association, Pacific Gas and Electric Company, and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California).

<sup>83</sup> See *id.* P 26-40 (referencing comments filed by California Generators, Independent Energy Producers Association (IEP), Constellation New Energy, Inc., and Mirant Energy Trading, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC, and Calpine). The comments from IEP included an affidavit on price from A. Joseph Cavicchi.

<sup>84</sup> The ICPM affords generators the opportunity to cost-justify a payment reflecting going-forward costs in excess of \$41/kW-year.

record evidence was insufficient for the Commission to determine an appropriate ICPM price. Accordingly, we reaffirm that the Commission's approval of the ICPM price, with the ability to cost-justify a higher payment, was supported by the record and thus, did not necessitate an evidentiary hearing. Furthermore, the Commission has broad discretion to structure its proceedings so as to resolve a controversy in the way it best sees fit.<sup>85</sup> For these reasons, we find that the Commission did not err in accepting the ICPM capacity price, as no issue of material fact was present that could not be resolved on the basis of the written record in this proceeding.

The Commission orders:

(A) The requests for rehearing of the ICPM Order are hereby denied, as discussed in the body of this order.

(B) The requests for clarification of the ICPM Order are hereby granted and denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>85</sup> See *Ameren Energy Generating Company*, 108 FERC ¶ 61,081, at P 23 (2004) (footnotes omitted) (“The courts have repeatedly recognized that the Commission has broad discretion in managing its proceedings...”); see also *Fla. Mun. Power Agency v. FERC*, 315 F.3d 362, 366 (D.C. Cir. 2003) (citing *Telecomm. Resellers Assoc. v. FCC*, 141 F.3d 1193, 1196 (D.C. Cir. 1998) (administrative agencies enjoy broad discretion to manage their own dockets)).