142 FERC ¶ 61,248
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation — Docket No. ER13-550-000

ORDER ON TARIFF REVISIONS

(Issued March 29, 2013)

1. On December 12, 2012, pursuant to section 205 of the Federal Power Act (FPA),[1] and Part 35 of the Commissions regulations,[2] California Independent System Operator Corporation (CAISO) filed revisions to its tariff to implement an interim flexible capacity and local reliability resource retention (FLRR) mechanism to offer financial support to resources that are uneconomic or at risk of retirement, but are determined to be needed for flexible capacity and local reliability in the next two-to-five year forward period.[3] The Commission recognizes the importance of addressing the reliability issues described by CAISO in its filing but cannot find CAISO's proposal to be just and reasonable. Therefore, we reject the FLRR mechanism.

2. Because we are rejecting the FLRR mechanism as an appropriate tool to address the stated needs of maintaining a reliable grid, the Commission finds that further efforts to address the deficiencies in the FLRR proposal would be misplaced. Instead, we believe that the most effective course of action would be for CAISO and its stakeholders to focus on the development of a durable, market-based mechanism to provide incentives to ensure that the reliability needs are met. We appreciate the CAISO's sense of urgency and do not take our action of rejecting CAISO's proposal lightly. Therefore, to facilitate a structured dialogue, the Commission directs staff to convene a technical conference, as discussed below. The purpose of such a conference would be to coordinate FERC staff

[1] 16 U.S.C. § 824d (2006).

[2] 18 C.F.R. Part 35 (2012).

[3] CAISO December 12, 2012 Filing in Docket No. ER13-550-000 (FLRR Proposal).

with CPUC, CAISO and industry participants on resolving the reliability issues presented here.

I. Background

3. In 2007, CAISO undertook a study on the flexibility and reliability of CAISO's generation fleet under the 20 percent renewable portfolio standard, and it conducted additional studies in 2011 to quantify the flexible capacity needed to integrate the 33 percent renewable portfolio standard required under California law. The studies conducted by CAISO concluded that there would be a shortage of downward and upward load following capability.[4] In addition to an anticipated influx of variable energy resources and distributed generation, certain flexible, once-through-cooling resources may retire due to environmental restrictions.[5] As a result, CAISO anticipates a shortage of 3,500 MW of capacity as early as the end of 2017, and a shortage of 4,600 MW of capacity by 2020.[6]

4. The Public Utilities Commission of the State of California (CPUC) and other local California regulatory authorities have established resource adequacy programs[7] as the primary means of ensuring that there are sufficient resources in California to maintain reliable grid operations. In addition to the resource adequacy program, CPUC conducts a biennial long-term procurement planning process that determines the California investor-owned utilities' procurement needs for the next ten years, including contracting for energy and constructing new generation.

5. There may be circumstances when capacity procured under the CPUC programs, and the programs of other local regulatory authorities, is insufficient to meet CAISO's operational and/or local reliability needs. Under these circumstances, CAISO relies, in

[4] FLRR Proposal at 6-9.

[5] On October 1, 2010, the State Water Board "Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling" went into effect. The policy applies to 19 existing plants that withdraw water from California's oceans and bays for use in a single-pass cooling system, also known as once-through-cooling. The once-through-cooling technology must be phased out to implement closed-cycle wet cooling or another equally effective system to reduce intake flow and velocity or impacts on aquatic life. *Id.* at 7-8.

[6] *Id.* at 2, 7-8.

[7] A resource adequacy resource is a resource that has been procured by a load serving entity in response to resource adequacy requirements implemented by CPUC or a local regulatory authority. Compensation under the resource adequacy program provides these resources with the opportunity to recover fixed costs.

part, on the backstop procurement authority in the Capacity Procurement Mechanism (CPM) provisions of its tariff. In March 2011, the Commission accepted CAISO's proposal to modify its CPM tariff provisions to create a new category of CPM designations for capacity at risk of retirement.[8] Under these tariff provisions, CAISO may offer a CPM designation to a resource that notifies CAISO that it is at risk of retirement and satisfies a number of requirements, including a finding by CAISO that the resource will be needed for reliability purposes, either for its locational or operational characteristics, by the end of the next calendar year.[9]

6. In January of 2012, CAISO filed a waiver request with the Commission, as a last resort, to protect against the retirement of Sutter Energy Center (Sutter), a flexible resource that CAISO determined would be needed in the 2017-2018 timeframe because of the retirement of once-through-cooling resources. Ultimately, under the direction of CPUC, the investor-owned utilities were able to reach a resource adequacy agreement with Sutter for the remainder of 2012, and the waiver request was withdrawn.[10]

7. CAISO contends that its ability to meet its future reliability needs will be reduced if key flexible resources retire. CAISO argues that the resource adequacy programs and CPUC's long-term procurement planning process do not distinguish between generic capacity and specific operational characteristics such as flexibility. Therefore, CAISO states that the existing CPUC procurement tools do not resolve its concerns that sufficient flexible capacity that is needed in the future may retire prior to the period in which it is needed for reliability. CAISO also notes that the CPM risk-of-retirement provision does not allow CAISO to ensure sufficient flexible capacity will be available beyond two years. CAISO proposes the FLRR as an interim mechanism[11] to fill the existing procurement gap so that CAISO can satisfy its reliability needs without resorting to one-off filings such as the Sutter Waiver Request.[12]

---

[8] *Cal. Sys. Operator Corp.*, 134 FERC ¶ 61,211 (2011) (CPM Order).

[9] CAISO Tariff, § 43.2.6.

[10] FLRR Proposal at 14, CAISO January 26, 2012 Waiver Request, Docket No. ER12-897-000 (Sutter Waiver Request).

[11] CAISO proposes a sunset date that would terminate the FLRR proposal after five-years, or upon the implementation of multi-year forward capacity procurement obligations for flexible and local resources.

[12] FLRR Proposal at 11-14.

II. Notice and Responsive Pleadings

8. Notice of the CAISO Filing was published in the *Federal Register*, 77 Fed. Reg. 76,022 (2013), with interventions and protests due on or before January 2, 2013. On December 14, 2012, the Commission extended the notice period to allow for comments or protests on or before January 23, 2013. CPUC filed a notice of intervention and protest. Timely motions to intervene were submitted by City of San Francisco; Cogeneration Association of California and the Energy Producer; Dynegy Moss Landing LLC, Inc.; Edison Mission Energy; Independent Energy Producers; J.P. Morgan Ventures Energy Corp.; M-S-R- Public Power Agency; Modesto Irrigation District; Powerex Corp.; Sacramento Municipal Utility District; and San Diego Gas & Electric Company. Electric Power Supply Association (EPSA) submitted a motion to intervene out of time. Timely motions to intervene and protests were submitted by Alliance for Retail Energy Markets (AReM); California Department of Water Resources State Water Project (SWP); California Municipal Utilities Association and the Utility Reform Network (collectively, CMUA); Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities); City of Santa Clara;[13] Northern California Power Agency (NCPA); NRG Companies and the Dynegy Companies (collectively, NRG); Pacific Gas and Electric Company (PG&E); Southern California Edison Company (SoCal Edison); Western Power Trading Forum (WPTF). Answers were submitted by CAISO, Calpine, CMUA, NCPA, Six Cities, and PG&E. NRG and CPUC submitted answers to CAISO's answer.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant EPSA's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the parties' answers because they have provided information that assisted us in our decision-making process.

---

[13] City of Santa Clara states that it supports the Comments submitted by NCPA and CMUA.

B. FLRR Proposal

11. In order to ensure reliability in light of the changing resource portfolio, CAISO proposes to designate and compensate resources that are at risk of retirement in the current year, but that are determined to be needed for flexible capacity or local reliability needs in the two-to-five year forward period. Under the FLRR proposal, CAISO will forecast and determine the system flexibility and local reliability requirements each spring in a system flexibility study that is meant to inform load serving entities' procurement. CAISO states that the assumptions to be used in this study, including explanations of any material differences from the most recent CPUC long-term procurement plan process, will be posted to provide stakeholders with an opportunity to comment. CAISO notes that the process used to develop its system flexibility study will provide similar opportunities for stakeholder engagement as the study plan and unified planning assumptions for the transmission planning process.[14]

12. Under the proposed tariff provisions, a resource owner may submit a request to CAISO for an FLRR designation for a resource on the verge of retirement by November 1 of the year prior to the requested designation year. Upon receipt of a request, CAISO will determine whether the resource will be needed by examining whether the forecasted fleet of resources, absent that resource requesting the FLRR designation, is able to supply the forecasted system flexibility or local reliability requirements. CAISO notes that, in the event that more than one resource notifies CAISO of its intent to retire in the same year, CAISO will compile the lowest cost portfolio that ensures adequate resources to maintain system reliability.[15]

13. To be eligible for an FLRR designation a resource must not have a resource adequacy contract for the upcoming year, or part of the upcoming year. Additionally, the resource requesting a designation must submit documentation that demonstrates it is no longer economically viable, including a sworn affidavit from an officer of the company, attesting that the resource will be unable to recover its going-forward costs during the requested FLRR designation year and that it will retire during the requested FLRR designation year. CAISO will engage an independent evaluator to examine whether, based on the submitted information, the resource will be uneconomic to operate in the FLRR designation year.[16]

---

[14] FLRR Proposal at 20-21.

[15] *Id.* at 17, 22.

[16] *Id.* at 22-23.

14. After CAISO identifies a resource or resources that it proposes to designate under the FLRR mechanism, the recommendation will be reviewed by stakeholders and subject to approval by the CAISO's Board of Governors (Board). If approved, CAISO will issue an FLRR designation to the resource and obtain the resource's written acceptance. At that point, the resource must post security to ensure that CAISO and other market participants will recover any payments to the resource during the FLRR designation year if the resource nonetheless retires. The resource must also waive any right to seek a CPM risk-of-retirement designation for the year immediately following the FLRR designation year. An FLRR designation will be effective from the date of Board approval through the end of that calendar year (although the resource will receive compensation based on the full year). A resource may be eligible for an FLRR designation in the subsequent year if the resource owner again notifies CAISO of its intent to retire the resource and the resource meets the applicable eligibility criteria.[17]

15. Under the proposed FLRR mechanism, a designated resource is obligated to respond to all requests for offers of resource adequacy capacity for which the resource is eligible during the year of the designation. If the resource fails to do so, the resource will forfeit FLRR compensation for the period equal to the longest contract term offered by a request for offer for which it was eligible but did not participate. The resource owner is also required to forego any actions and filings that will enable the resource to retire during that year.[18] Unlike the CPM, the proposed FLRR mechanism imposes no must-offer obligation on designated resources. Thus, CAISO argues that the FLRR mechanism is not a capacity procurement program, but simply a mechanism to provide financial support to a resource until the time when the resource may be needed to enhance the flexibility of the system. CAISO asserts that procurement of a resource that is under an FLRR designation will remain entirely under the control of load serving entities and their jurisdictional authorities.[19]

16. CAISO proposes to compensate an FLRR resource for its going-forward costs less all bilateral capacity contracts and capacity procurement revenues that it receives, and less 90 percent of the net energy and ancillary services revenue that the resource earns in CAISO's markets. CAISO asserts that retention of 10 percent of the net market revenues provides an incentive for resources to participate in CAISO's markets. The remaining 90 percent of net market revenues will offset the costs of the FLRR mechanism to be allocated to load. CAISO contends that this proposed compensation is appropriate because, under the FLRR proposal, CAISO is not purchasing generic capacity, but rather

[17] *Id.* at 17, 24-26.

[18] *Id.* at 27.

[19] *Id.* at 28-29.

ensuring that specific resources earn sufficient revenues to cover their costs so that they will remain available for another year.[20]

17. CAISO will engage an independent evaluator to evaluate the resource's financial information and establish the maximum going-forward costs for which the resource will be compensated; the resource owner will have to file the calculated going-forward costs for Commission approval.[21] CAISO sets forth a list of eligible costs, including major maintenance costs, which would be subject to a cap of $2 million per year.[22]

18. Under the proposal, costs for resources designated for local reliability needs will be allocated to load serving entities in the area(s) where the designation need arose, based on load ratio share. For resources designated for system flexibility, CAISO will allocate the costs system-wide, because the analysis of system flexibility requirements is a system-wide analysis. If a resource is designated for both a system flexibility requirement and a local reliability requirement, the FLRR payments will be allocated system-wide.[23] CAISO contends that the proposed allocation is consistent with cost causation principles.

19. CAISO emphasizes that the FLRR mechanism is proposed as an interim measure. CAISO states that it is working with CPUC and other local regulatory authorities, and stakeholders, toward the implementation of a multi-year forward capacity procurement obligation for flexible and local resources for all load serving entities within CAISO's balancing authority area. Thus, CAISO proposes a sunset date for the FLRR mechanism at the earlier of five years (midnight on March 31, 2018) or the implementation of some other form of multi-year forward capacity procurement obligations for flexible and local resources developed through stakeholder processes, provided that the FLRR mechanism has not been used during the 24 months after implementation of such measures.[24]

---

[20] *Id.* at 29-32, 34-36.

[21] *Id.* at 28.

[22] *Id.* at 29-31 (CAISO notes both PJM Interconnection, LLC and Midwest Independent Transmission System Operator have Commission-approved retirement deferral mechanisms that permit recovery of capital investment costs).

[23] *Id.* at 37-38.

[24] *Id.* at 38-39.

C. Protests

1. Conceptual Objections

20. Most of the protestors urge the Commission to reject the FLRR proposal. They contend that the need for a mechanism such as the FLRR is a symptom of more fundamental structural market problems that will not be fixed, and may be exacerbated by, the FLRR mechanism.[25] Calpine and NRG highlight that the problem facing California's energy markets is that generation resources cannot earn an acceptable return from energy and ancillary service markets and the CPUC resource adequacy program.[26] Calpine argues that the non-market based FLRR mechanism provides no price signals, and leaves in place a flawed market structure that does not result in competitive prices, weakens competitive markets, and discriminates in the procurement of capacity.[27] Similarly, NRG argues that the proposed FLRR mechanism will subsidize and retain certain non-competitive units in the market through preferential payments, thereby damaging competitive markets in California.[28] WPTF expresses concern that the FLRR mechanism will stall bilateral contracting at prices sufficient to provide incentives for resource owners to continue operating.[29]

21. CPUC, WPTF, and NRG argue that the FLRR mechanism may result in inefficient market outcomes because the planning assumptions used by CAISO are inconsistent with CPUC's planning assumptions. WPTF asserts that CAISO's proposal to procure capacity using criteria that are inconsistent with CPUC's will inhibit market participants' ability to make informed procurement and investment decisions, thereby institutionalizing the need for the FLRR mechanism. CPUC contends that its determination of long-term needs for additional capacity differs from CAISO's due to CAISO's discounted treatment of the use of demand-side resources. CPUC notes that it is currently engaged in revising demand-side programs to be able to meet local capacity needs over the planning horizon.[30]

---

[25] *See, e.g.,* Calpine January 23, 2013 Protest at 3-4 (Calpine Protest); NRG January 23, 2013 Protest at 8-10 (NRG Protest); AReM January 23, 2013 Protest at 4-5 (AReM Protest); WPTF January 23, 2013 Protest at 3-4 (WPTF Protest).

[26] NRG Protest at 8-9; Calpine Protest at 7.

[27] Calpine Protest at 2-5, 10.

[28] NRG Protest at 18-19.

[29] WPTF Protest at 5.

[30] CPUC January 23, 2013 Protest at 8-10, 13-14 (CPUC Protest).

22. NCPA, Six Cities, and AReM complain that the proposed FLRR mechanism is not a "backstop" tool because there is no underlying resource adequacy obligation that defines flexible forward capacity procurement.[31] Six Cities and CMUA argue that, in the absence of any underlying resource adequacy requirements, load serving entities have no clear guidance for shaping their resource procurement policies to meet CAISO's flexibility and local reliability needs and thereby avoid "backstop" procurement by CAISO.[32] Many parties argue that CPUC is actively addressing short-term and long-term flexible capacity needs in California, including how to determine generator eligibility and quantifying flexibility, and the FLRR mechanism will impede the process of developing a comprehensive solution.[33]

23. Several parties contend that the FLRR mechanism has no clear benefit, and will not ensure long-term reliability, as it is intended.[34] CMUA and Six Cities state that, without provisions obligating a designated resource to participate in CAISO's markets, the FLRR mechanism does not address the reliability need that CAISO uses to justify its proposal.[35] In particular, CMUA states that the FLRR mechanism will not succeed in ensuring that resources are available to meet future needs, noting that there is nothing in the FLRR construct to prevent a resource owner from collecting FLRR payments for one or two years and then retiring.[36]

24. CPUC, SWP, Six Cities, and NCPA all argue that the proposed FLRR mechanism constitutes an unjustified intrusion upon the local regulatory authorities' primary jurisdiction to establish planning reserve margins and to establish resource adequacy procurement obligations.[37] CPUC states that both resource adequacy and long-term procurement planning are under CPUC's jurisdiction under California law. CPUC emphasizes that both the United States Supreme Court and the Commission have

[31] NCPA January 23, 2013 Protest at 4-5 (NCPA Protest); Six Cities January 23, 2013 Protest at 4 (Six Cities Protest); AReM Protest at 4-5; CMUA January 23, 2013 Protest at 6-7 (CMUA Protest).

[32] Six Cities Protest at 4; CMUA Protest at 7.

[33] *See, e.g.*, CMUA Protest at 15-16; CPUC Protest at 11-17, AReM Protest at 4.

[34] CMUA Protest at 14-15; Six Cities Protest at 11; NRG Protest at 20-21; SoCal Edison January 23, 2013 Comments at 6-7 (SoCal Edison Comments).

[35] CMUA Protest at 14; Six Cities Protest at 11.

[36] CMUA Protest at 15.

[37] SWP January 23, 2013 Protest at 7-8 (SWP Protest), NCPA Protest at 5-7; CPUC Protest at 17-19, 28-34; Six Cities Protest at 5-8.

recognized and deferred to state decisions on resource adequacy matters.[38] CPUC contends that CAISO's role in setting local resource adequacy requirements and its backstop procurement authority are limited to the timeframe of meeting operational needs in the current or next resource adequacy year.[39] CPUC also asserts that CAISO ignores CPUC's existing authority to prevent the retirement of resources that are needed to address reliability risks.[40]

25. CPUC suggests that the FLRR mechanism may not be a Commission-jurisdictional tariff under section 205 of the FPA because the FLRR mechanism does not result in a contract for capacity or otherwise involve a transaction for energy or ancillary services, but only prohibits resources from retiring during the designation year.[41] Additionally, CPUC argues that the FLRR proposal violates section 42 of the CAISO tariff, which prohibits CAISO from basing need determinations on long-term generation and demand forecasts. Further, CPUC argues that the FLRR mechanism far exceeds the parameters of other risk-of-retirement mechanisms approved by the Commission, under which the determination of need for the resource is based on current conditions and established reliability criteria.[42]

26. CPUC contends that the FLRR proposal violates section 215 of the FPA[43] by transforming Commission-approved reliability standards into a new five-year reliability requirement. CPUC asserts that the savings clause of FPA section 215 would only permit CAISO to preempt CPUC action if the Commission determines that CPUC action is inconsistent with any Commission-approved reliability standard, which CAISO has not alleged. Moreover, CPUC contends that the reliability need described by CAISO is unsupported speculation, based solely on CAISO's concern about a situation that could

---

[38] CPUC Protest at 18 (citing *New York v. FERC*, 535 U.S. 1, 24 (2002); *Devon Power LLC, et al.*, 109 FERC ¶ 61,156 (2004); *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at PP 1117-1118 (2006)).

[39] *Id.* at 16-19.

[40] *Id.* at 30 (citing Cal. Pub. Util. Code § 761.3(a); General Order 167, Appendix E, *available at*: http://162.15.7.24/PUBLISHED/GENERAL_ORDER/108114.HTM.).

[41] *Id.* at 33.

[42] *Id.* at 34 (referencing PJM Interconnection, LLC and Midwest Independent Transmission System Operator retirement deferral mechanisms).

[43] 16 U.S.C. § 824o (2006). This section sets forth the Commission's statutory obligations with respect to developing and enforcing reliability standards.

arise if a series of possible scenarios all come to pass. CPUC contends that any differences between its and CAISO's determinations of need merely demonstrate that entities can disagree over the best approach to meeting future resource needs.[44]

27. Even if the FLRR proposal does not violate the savings clause of FPA section 215, CPUC argues that Commission approval of the FLRR mechanism would violate the statutory process for approving new reliability standards. CPUC asserts that any designations of resources under the FLRR mechanism would amount to CAISO applying flexibility standards before any such standards have been proposed by an authorized entity or approved by the Commission.[45]

28. CPUC asserts that, if the Commission does not reject the FLRR mechanism, a hearing is necessary to address factual issues such as: (1) what benefits, if any, ratepayers will gain in exchange for the unknown costs of the FLRR mechanism; (2) whether the FLRR mechanism is more efficient than alternative solutions; (3) whether the FLRR mechanism will distort energy or capacity prices; and (4) the impact on CPUC's procurement policies. Further, CPUC contends that, even if the Commission approves the FLRR mechanism, the proposed expiration dates are not reasonable because, as proposed, the FLRR mechanism will inflict unknown and unchecked costs on load serving entities through the end of 2018. CPUC requests that the Commission limit CAISO to conducting no more than two cycles of the FLRR designation process (i.e., for 2013 and 2014).[46]

29. NRG argues that the FLRR proposal is a collateral attack on CPM, and is simply an expansion of the existing risk-of-retirement authority under CPM. NRG argues that, in the CPM proceeding, the Commission rejected NRG's contention that CAISO should provide a minimum three year forward designation, finding that CPM is not designed as a multi-year forward capacity market. NRG argues that there is no basis for the Commission to accept the proposal now.[47]

30. NRG, AReM, Calpine, and WPTF acknowledge the pressing reliability needs identified by CAISO, and argue that comprehensive reform of California's capacity construct is necessary. Thus, they request that the Commission direct CAISO to develop with its stakeholders a forward capacity market design that incorporates the value of flexible capacity. NRG argues that such action is squarely within the Commission's

---

[44] CPUC Protest at 24-27.

[45] *Id.* at 27-28.

[46] *Id.* at 50-52.

[47] NRG Protest at 5, 20 (citing CPM Order, 134 FERC ¶ 61,211 at P 42).

jurisdiction to ensure resource adequacy in California.[48] Calpine requests that CAISO submit a capacity market proposal to the Commission by October 1, 2013, and implement such proposal by October 1, 2014.[49] WPTF and AReM add that CAISO's reliability needs could also be more appropriately addressed through enhancements to its ancillary services markets. SoCal Edison also suggests that a forward capacity market in California would likely address the CAISO concerns in a more structured, transparent and efficient manner than the proposed FLRR mechanism. According to SoCal Edison, a properly designed capacity market would use demonstrated need and match competitive supply to serve this need, resulting in economically efficient price signals.[50]

2. Objections to Implementation Details of Proposal

31. Protestors object to many of the implementation details of the FLRR mechanism. For instance, CPUC, NCPA, WPTF, and Calpine all argue that the proposed designation process is excessively complex and infeasible, and assert that the absence of a clear timeline may result in uncertainty for resources requesting designation.[51] Parties also object to the requirement that a resource reveal its financial information for evaluation by an independent evaluator, arguing that revealing competitively sensitive information harms the generator and discourages participation, as well as being inconsistent with the CPM Order.[52] NRG argues that requiring a resource to commit to retiring should it not receive an FLRR designation is not reasonable because market conditions could change rapidly between the time of the request and the time a decision on the designation becomes final.[53]

---

[48] *Id.* at 12 (citing *Conn. Dep't of Pub. Util. Control v. FERC*, 569 F.3d at 477, 481 (D.C. Cir. 2009) (emphasizing that it is *this* Commission's ultimate obligation to ensure that California has the necessary resource mix to ensure reliability); *PJM Interconnection L.L.C.*, 115 FERC ¶ 61,079, at P 26 (2006); section 215 of the FPA (charging the Commission with maintaining reliability)).

[49] Calpine Protest at 5.

[50] SoCal Edison Comments at 10.

[51] Calpine Protest at 11-19; CPUC Protest at 35; NCPA Protest at 10-12; WPTF Protest at 6.

[52] *See, e.g.*, Calpine Protest at 20-21 (citing CPM Order, 134 FERC ¶ 61,211 at P 132).

[53] NRG Protest at 26-27.

32. Protesters argue that CAISO's proposed process for determining its flexibility needs is not transparent and potentially arbitrary. CPUC expresses concern that CAISO has not clarified what planning assumptions and reliability criteria CAISO intends to use to develop the forecasts to determine if a resource is needed.[54] SoCal Edison objects to the proposed process under which CAISO can unilaterally decide how flexibility is defined, how much flexibility is currently available, what resources will be available in the future, what alternatives are available as substitutes, the role of demand response, the role of imports in five years, and the payment start date.[55] SWP and NCPA suggest that the use limitations of the flexibility designation could effectively exclude hydroelectric resources and demand response resources from addressing CAISO's need for flexible capacity.[56]

33. Protesters also oppose CAISO's proposed FLRR eligibility requirements. SoCal Edison argues that the eligibility requirements are not stringent enough and recommends limiting eligibility to resources physically located within the CAISO footprint. SoCal Edison also asserts that CAISO should offer an alternative long-term standby payment if it is the least cost solution.[57] PG&E recommends that CAISO require a resource that was unsuccessful in obtaining a resource adequacy contract to provide sufficient justification that its offer in the bilateral resource adequacy market was priced consistently with its going-forward costs. PG&E also asserts that once-through-cooling units should not be eligible for an FLRR designation.[58]

34. Many protesters oppose at least some aspect of CAISO's FLRR compensation proposal. For instance, SoCal Edison and PG&E both argue that, because the FLRR mechanism does not include a performance requirement, the compensation structure is not providing a commensurate value for service.[59] PG&E recommends a price floor where, if the price is above that floor, the FLRR designated resource should have the same obligations to be available in the CAISO's spot markets during the FLRR designation year as a resource adequacy resource.[60]

---

[54] CPUC Protest at 35-44.

[55] SoCal Edison Comments at 4-5.

[56] SWP Protest at 12-13, NCPA Protest at 10-12.

[57] SoCal Edison Comments at 7-9.

[58] PG&E January 23, 2013 Comments at 7-10 (PG&E Comments).

[59] SoCal Edison Comments at 6; PG&E Comments at 5.

[60] PG&E Comments at 5-6.

35. Calpine and WPTF object to the role of the independent evaluator in determining the resource's maximum going-forward costs, noting that the proposal may result in insufficient compensation.[61] Calpine argues that the FLRR proposal lacks necessary transparency and violates a resource's due process rights, effectively mandating that a resource requesting a designation waive its FPA section 205 rights to file its own rates with the Commission.[62]

36. Calpine opposes the use of going-forward costs as the basis for FLRR compensation, and notes that the Commission rejected compensation based on going-forward costs in the CPM Order. Calpine also argues that the proposed process for determining going-forward costs will likely be so protracted and litigious that, at the time a resource owner must make a retirement decision and request an FLRR designation, the owner will face substantial risk as to whether it will receive compensation sufficient to justify continued operations. Calpine requests that, if the Commission accepts the FLRR proposal, it should reject the unit-specific rate filing process as infeasible and direct CAISO to use a predetermined administrative price for the FLRR mechanism.[63]

37. NRG and Calpine argue that the proposed FLRR compensation is unduly discriminatory because it pays FLRR resources differently than CPM resources, even though they provide comparable reliability services.[64] Calpine notes that all participating generators must be available for dispatch instructions thereby providing a reliability service even in the absence of a must-offer obligation.[65]

38. NRG and Calpine also argue that CAISO has not supported its proposal to offset 90 percent of market revenues that generators with FLRR designations would make. NRG argues that market revenue offsets send the wrong price signal to resources needed for reliability by reducing the incentive and ability to make plant investments that could increase plant efficiency.[66] Similarly, NRG, WPTF, and Calpine object to CAISO's proposal to cap the total recoverable investment at $2 million, arguing that such a cap

[61] Calpine Protest at 24-26, WPTF Protest at 6-7.

[62] Calpine Protest at 24-26.

[63] *Id.* at 21-26.

[64] NRG Protest at 18-19; Calpine Protest at 27-34.

[65] Calpine Protest at 33-34.

[66] NRG Protest at 21-22.

would effectively force resources to take losses in future years in order to undertake the maintenance projects that may be necessary for continued operation.[67]

39. Parties also protest other details of the compensation proposal including the requirement to post financial security prior to knowing the final compensation, the omission of compensation for environmental and efficiency upgrades that would have been avoided if the resource retired, and the "but for" test associated with the recovery of debt service costs, among other things.[68]

40. SoCal Edison asserts that CAISO should develop a market-based proxy for resource adequacy contracts between affiliates to prevent gaming by FLRR-designated resources seeking to avoid reductions to their FLRR payments. SoCal Edison also contends that FLRR payments should cover only the nine months of the year that an FLRR resource is under contract, and not the full 12-month calendar year.[69]

41. Generally, the protesters object to the proposed cost allocation, arguing that it is inconsistent with cost causation. SWP, NCPA, Six Cities, and CMUA all argue that the cost allocation should appropriately reflect each load serving entity's contribution to the need for flexibility.[70] For instance, NCPA, Six Cities, and CMUA all argue that they purposely shape their resource mix to mitigate operational impacts of variable resources by procuring flexible resources at a premium and, therefore, should not also have to bear the cost of the FLRR mechanism.[71] SWP recommends that FLRR costs should be allocated based on the combination of a load serving entity's load characteristics and its resource portfolio.[72] PG&E recommends that cost allocation be modified such that any FLRR designation based in part on a local need is allocated to that local area, regardless of whether the FLRR designation also serves the secondary purpose of addressing a system flexibility need.[73]

---

[67] NRG Protest at 22-24; WPTF Protest at 5-9; Calpine Protest at 34-35.

[68] *See, e.g.*, WPTF Protest at 8-9, Calpine Protest at 34-39.

[69] SoCal Edison Comments at 9.

[70] SWP Protest at 19-20; NCPA Protest at 15-18; Six Cities Protest at 8; CMUA Protest at 9-10.

[71] NCPA Protest at 15-18; Six Cities Protest at 8; CMUA Protest at 9-10.

[72] SWP Protest at 19.

[73] PG&E Comments at 9.

D. Answers

42. PG&E, NCPA, Six Cities, CMUA, and SWP argue that requests that the Commission direct CAISO to implement a centralized forward capacity market are beyond the scope of this proceeding. They contend that such requests are premature and could interfere with the active, ongoing efforts by CPUC to ensure that needs for flexible capacity will be satisfied.[74] NCPA and SWP assert that the California energy and capacity markets face unique challenges due to aggressive environmental policies and express concern that a Commission-mandated market structure change carries a high risk of unintended consequences. NCPA and SWP recommend that CPUC and the local authorities are the entities best suited to reconcile California programs and policy interests.[75] NCPA notes that alternatives to capacity markets exist, but contends that no model for flexible capacity procurement will work until CAISO defines the flexible capacity characteristics and amounts it needs.[76]

43. PG&E argues that the proposed FLRR compensation is just and reasonable because, given the purpose of the FLRR mechanism, compensation should only be the bare minimum possible to keep a resource afloat. PG&E contends that there is no justification for using the CPM price and notes its preference for cost-based FLRR compensation. PG&E also supports CAISO's proposed $2 million cap on major investments, arguing that funding large capital projects through the FLRR mechanism would not be appropriate. Finally, PG&E asserts that FLRR compensation should not include a component for avoided interest on debt absent a persuasive demonstration by the resource requesting the designation that the cost was avoided.[77]

44. Six Cities reiterate their objection to the proposed cost allocation, maintaining that, if the FLRR mechanism is implemented, costs should be allocated based on the characteristics of load serving entities' load and resource portfolios so as to reflect load serving entities' contributions to CAISO's requirements for operational flexibility.[78]

---

[74] PG&E February 7, 2013 Answer at 3-6 (PG&E Answer); NCPA February 7, 2013 Answer at 2 (NCPA Answer); Six Cities February 7, 2013 Answer at 2-5 (Six Cities Answer); CMUA February 7, 2013 Answer; SWP February 7, 2013 Answer at 2-4 (SWP Answer).

[75] NCPA Answer at 2-8; SWP Answer at 4-8.

[76] NCPA Answer at 4-5.

[77] PG&E Answer at 6-12.

[78] Six Cities Answer at 5-7.

45. Calpine underscores the imminent reliability threat posed by the potential retirement of existing resources and contends that this threat points to the need for California to develop and implement multi-year, forward procurement mechanisms that would directly and effectively meet CAISO's flexible capacity needs. Calpine argues that CPUC's efforts have not yielded a solution and do not justify leaving CAISO without tariff authority to address the reliability threat posed by the prospect of economic retirement of existing flexible resources. However, Calpine points out that most market participants generally oppose acceptance of the FLRR mechanism as proposed. Even if the FLRR mechanism can be modified and accepted by the Commission, Calpine requests that the Commission require CAISO to sunset the FLRR mechanism by December 15, 2015, and require CAISO to update the Commission on progress toward a durable, market-based forward procurement mechanism. Calpine opines that the shorter sunset period may encourage CPUC reforms. Calpine recommends that if the capacity construct that exists after expiration of the FLRR mechanism still fails to meet CAISO's reliability needs, the Commission should direct CAISO to submit by date certain a proposal for a forward capacity procurement mechanism.[79]

46. CAISO maintains that approval of the FLRR mechanism is an appropriate exercise of the Commission's jurisdiction. Specifically, CAISO rejects CPUC's contention that the FLRR proposal violates FPA section 215 by asserting that the FLRR mechanism is not a new reliability requirement, but is a mechanism intended to ensure compliance with existing reliability requirements. CAISO argues that FLRR mechanism does not require any procurement actions. Further, CAISO argues that, because the FLRR mechanism does not procure capacity, it does not intrude on CPUC's jurisdiction over resource adequacy. CAISO highlights that nothing in the FPA precludes CAISO from implementing a program to address reliability needs where, as here, the state has not yet acted, nor does it preclude the Commission's authority to approve such a program. CAISO rejects NRG's claim that the FLRR proposal is a collateral attack on the CPM Order, noting that the Commission did not rule on NRG's suggestion for a multi-year CPM designation in that order.[80]

47. CAISO argues that the need for the FLRR mechanism remains unrebutted and denies that calls for more comprehensive solutions justify rejecting the FLRR proposal. CAISO reiterates that existing CPUC mechanisms and undertakings are not effective because they leave a significant gap in forward procurement mechanisms for resources needed in the two-to-five year planning horizon. CAISO acknowledges CPUC's efforts to determine flexible capacity needs, but notes that there is no indication that CPUC will address flexibility needs two to five years in the future. CAISO also argues that the absence of fully defined parameters of a flexible capacity product does not diminish the

[79] Calpine February 7, 2013 Answer.

[80] CAISO February 11, 2013 Answer at 3-10 (CAISO Answer).

need for a backstop to avoid the premature retirement of resources capable of providing flexible capacity. CAISO points to Calpine's notice last year of the intent to retire the Sutter plant to demonstrate that the threat is real, not theoretical. CAISO maintains that the FLRR mechanism is simply a prudent insurance policy against such events.[81]

48. CAISO agrees with the parties with regard to the root causes of market conditions that could lead to the retirement of needed resources. However, CAISO cautions that, due to the realistic timeframe for implementing more comprehensive solutions, these options cannot address the more immediate need to avoid premature retirements. Thus, CAISO argues that setting this matter for hearing or directing CAISO to develop a market-based solution would interfere with its ability to respond in a timely manner to reliability concerns raised by the potential retirement of the necessary resources. CAISO also asserts that requests that the Commission direct CAISO to develop a centralized capacity market are unreasonable, impractical, and fail to address the immediate concerns of premature retirement. CAISO states its intent to actively pursue a more permanent solution, but expresses concern over a delay in implementing any solution to address the rapidly changing composition of California's energy portfolio. CAISO contends that the sunset provision in the FLRR proposal will increase the urgency to implement a long-term solution.[82] Further, CAISO notes that parties urging alternate solutions misapprehend the nature of the Commission's FPA section 205 review, under which the Commission need not consider whether a proposal is the best alternative so long as it is just and reasonable. CAISO maintains that the FLRR proposal is within the zone of reasonableness.[83]

49. CAISO refutes contentions that the FLRR mechanism undermines the ability of load serving entities to manage their supply portfolios by reiterating that the FLRR mechanism does not involve the procurement of capacity and by arguing that no load serving entity can address the system-wide need for flexibility through its load-specific procurement decisions.[84]

50. In addition, CAISO disagrees with arguments that the FLRR mechanism would be detrimental. Specifically, CAISO refutes contentions that the FLRR mechanism will damage what is left of the competitive market in California. CAISO notes that an FLRR designation does not mean that a unit is not competitive in the longer term; only that they cannot earn sufficient revenue in the following year to stay on-line. CAISO explains that,

---

[81] *Id.* at 11-15.

[82] *Id.* at 18, 21-24.

[83] *Id.* at 20 (citing *Cities of Bethany v. FERC*, 727 F.2d 1131 (D.C. Cir. 1984)).

[84] *Id.* at 19.

because there is no forward price signal for flexible capacity in the current market construct, resources that will be needed in the future have no way of knowing what their value will be. Thus, CAISO contends that until an intermediate-term procurement mechanism is in place, the FLRR mechanism is needed to provide payments to units that are uneconomic today, but may be needed in the future due to their flexible attributes. Further, CAISO asserts that retaining these units until the need arises or until mechanisms are developed to value flexible or local reliability attributes will likely improve the competitiveness of the markets.[85]

51. CAISO defends its proposed process for determining needs, asserting that the proposal includes sufficient detail and emphasizing the inclusion of stakeholder review as a required part of the process. CAISO insists that nothing in the FLRR proposal suggests that either the assessment inputs or the study results will supplant or replace CPUC's standard planning assumptions used in its long-term planning process. Moreover, CAISO asserts that its determination of system flexibility and local reliability requirements during the FLRR forward period are advisory only and cannot, therefore, have a detrimental impact on the market.[86]

52. With regard to protests that the resource eligibility criteria are too vague or imprecise, CAISO argues that additional detail is appropriately included in the business practice manuals, and need not be included in the tariff. CAISO rejects the majority of the requests by PG&E and SoCal Edison to modify the proposed eligibility requirements, claiming they are not well-explained or supported. However, CAISO agrees to submit a compliance filing to clarify that a once-through cooling resource would be eligible for an FLRR designation if the identified need for the resource arises prior to its scheduled retirement date, but not if the identified need is beyond the resource's schedule retirement date.[87]

53. Similarly, CAISO argues that it is appropriate to include additional details about the timing of the process and specifics about the required financial documentation in the business practice manual. CAISO clarifies that the FLRR proposal does not require a resource owner requesting a designation to publicly divulge sensitive financial information and explains that it will adhere to its existing tariff requirements regarding the treatment of confidential information. Finally, because the FLRR mechanism is intended as a last resort, CAISO suggests that if a resource owner believes that conditions

[85] *Id.* at 19-20.

[86] *Id.* at 25-31.

[87] *Id.* at 31-35.

could change radically enough to reverse the resource's financial plight, seeking an FLRR designation may be premature.[88]

54. CAISO argues that an FLRR resource should not be subject to performance obligations during the designation year. CAISO contends that such obligations would not be appropriate because the FLRR mechanism is only providing a limited financial lifeline and does not constitute the procurement of capacity. For the same reason, CAISO argues that compelling the resource to remain available beyond the designation year, until the year it is needed, is not appropriate.[89]

55. CAISO maintains that none of the protests regarding the proposed FLRR compensation raise legitimate issues concerning the just and reasonable nature of the proposed compensation methodology. CAISO justifies its generator-specific approach by reiterating that, unlike the CPM, the FLRR mechanism imposes no must-offer obligation. CAISO rejects PG&E's recommendation to impose a must-offer obligation on FLRR resources whose going forward costs are calculated to be above $24/kW-year. Moreover, CAISO states that it does not believe PG&E's concern warrants a fundamental shift in the FLRR proposal in order to align an FLRR must-offer obligation with resource adequacy prices.[90] CAISO also contends that a standardized price could lead to a default capacity price floor, which could undermine the existing bilateral resource adequacy market. Further, CAISO argues that a standardized price could over or under-compensate units at risk of retirement because these resources would not all need the same amount of revenue to avoid retirement. CAISO asserts that the benefit of a generator-specific determination of costs outweighs the convenience of a standardized price.[91]

56. CAISO defends its proposal to offset 90 percent of market revenues earned by an FLRR resource, as well as the proposed cap on maintenance investment costs as necessary and appropriate parts of the overall compensation methodology. CAISO argues that SoCal Edison's concerns about gaming with resource adequacy contracts "market" are misplaced, noting that this concern is more appropriately addressed by CPUC. CAISO dismisses as unlikely SoCal Edison's concern that resources would incur a debt immediately prior to an FLRR request for the sole purpose of recovering it through the FLRR mechanism.[92]

---

[88] *Id.* at 35-39.

[89] *Id.* at 39-41.

[90] *Id.* at 39-41.

[91] *Id.* at 42-44, 53-54.

[92] *Id.* at 46-53.

57. CAISO contends that the enumerated list of recoverable costs in the FLRR proposal is clear and reasonable. CAISO notes that costs related to security posting, environmental permitting, and debt service are recoverable with an adequate demonstration by the resource owner to the independent auditor that recovery is justified. CAISO further clarifies that the independent auditor would be free to consider evidence that a contract value does not represent actual costs. CAISO denies that use of the independent auditor forces generators to waive their FPA section 205 rights because the FLRR designation is voluntary and initiated at the request of the generator.[93]

58. CAISO counters protestors' claims that the security posting requirement creates an unacceptable level of risk by pointing out that the decision to seek an FLRR designation is purely voluntary. CAISO also notes that the decision about whether to retire during the designation year is also wholly within the control of the resource owner. Thus, CAISO maintains that the security is an important safeguard to keep the unit from pocketing the FLRR payment and immediately retiring.[94]

59. CAISO refutes objections to its cost allocation methodology by asserting that cost causation principles requires the allocation of costs to either those that create the need for the cost or those who benefit from the expenditure. Here, CAISO argues that an allocation based on benefits is preferable due to the difficulty of assigning responsibility for the creation of the need for the FLRR designation. Further, CAISO asserts that a system-wide allocation of costs is roughly commensurate to the benefits provided because the entire system benefits from ensuring against deficiencies in flexible capacity.[95]

60. Finally, CAISO asserts that its proposed sunset period should not be shortened. CAISO contends that the proposed five-year period is commensurate with the multi-year effort that may be required to develop a more permanent solution. Additionally, CAISO argues that the dual sunset provision (expiration upon the earlier of five years or the implementation of a multi-year forward capacity procurement obligation) provides incentives for it and stakeholders to progress more quickly towards the permanent solution so that the successor mechanism can be filed with the Commission and become effective well in advance of the expiration of the five-year period.[96]

---

[93] *Id.* at 56-59.

[94] *Id.* at 44-45.

[95] *Id.* at 59-68.

[96] *Id.* at 68-70.

61. NRG contends that CAISO has not shown an urgent need for an interim mechanism. NRG argues that CAISO overestimates the amount of time necessary to implement a long-term solution, and notes that ISO New England developed a mechanism for implementation within a year. NRG also maintains that CAISO has not rebutted protestors' concerns that the FLRR mechanism will be detrimental. NRG disagrees with CAISO's contention that the FLRR mechanism is not a capacity procurement mechanism due to the absence of a must-offer obligation for FLRR resources. NRG emphasizes that CAISO can still compel any resource with a participating generator agreement to operate through exceptional dispatch. NRG insists that procuring capacity in this manner will have harmful consequences on the markets by keeping uneconomic resources in operation and impacting the revenue opportunities for other resources that have not been designated.[97]

62. CPUC reiterates that CAISO fails to show that the FLRR mechanism would not conflict with the state's authority over resource adequacy, or that it is necessary in light of long-term procurement planning proceedings. CPUC states that its long-term procurement planning process looks out over the entire 10-year period, and does not limit evaluation to the five-to-ten period, as stated by CAISO. CPUC, therefore, disputes that any "gap" exists in procurement mechanisms for the one-to-five year period that would justify the need for the FLRR mechanism.[98] CPUC states that, since CAISO filed its answer on February 11, 2013, CPUC issued a decision authorizing new procurement in SoCal Edison to meet long-term Local Capacity Requirements in the CPUC's long-term procurement planning docket.[99] Therefore, CPUC states that it has procured capacity to address the areas affected by the expected retirements of once-through-cooling generation resources, albeit less capacity than what CAISO recommended based on results of its local capacity requirements studies for 2021. However, CPUC continues to dispute CAISO's assumptions, arguing that the discretion to apply conservative assumptions in the FLRR mechanism would prevent retirements of conventional resources that are not needed.[100]

E. Commission Determination

63. We find merit in the protestors' arguments that the proposed FLRR mechanism is flawed. Not only does the proposal lack detail required for its implementation, but the

---

[97] NRG February 26, 2013 Answer.

[98] CPUC February 22, 2013 Answer at 3-6.

[99] *Id.* at 4; *see* CPUC Docket R.12-03-014, *available at*: http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M050/K347/50374520.PDF.

[100] *Id.* at 7-8.

effectiveness of the proposal, whether it is consistent with the CAISO market-based market design, and whether it would result in just and reasonable rates and not be unduly discriminatory has not been demonstrated by the CAISO. Further, there is insufficient evidence in the record that the proposed FLRR will ensure long-term reliability. Thus, as discussed below, we reject CAISO's FLRR proposal.

64. First, the proposal is inconsistent with and undermines the need for forward price signals for flexible capacity in the current market construct, so that resources needed in the future will be able to gauge what their value will be.[101] The FLRR mechanism fails to generate transparent price signals to reach its intended outcome. The Commission has previously affirmed the need to employ market-based tools to provide transparent and effective locational price signals to ensure reliability.[102] The FLRR mechanism does not create price signals that will inform forward procurement and fails to address the underlying need to ensure the presence of financial incentives for resources to enter and remain in the market. Instead, we find the FLRR mechanism to be an ineffective out-of-market solution that provides payments to resources that may be uneconomic today but have not been shown to be needed for reliability purposes based on generation and demand forecasts that may change.

65. We find that the proposed FLRR mechanism will not effectively accomplish the stated goal of ensuring the availability of the needed resources in the two-to-five year forward period. As CAISO admits, an FLRR designation is not meant to keep a unit competitive in the long-term, but only to provide a "financial lifeline" for the upcoming year, in the hope that conditions change and the resource will be able to secure an adequate revenue stream. CAISO fails to explain how, without more comprehensive market reforms, sufficient compensation opportunities will arise for FLRR-designated resources to continue operating without additional years of FLRR payments. If market conditions do not change, and the FLRR resource is unable to secure additional sources of revenue, it is free to retire without penalty after the end of the designation year. We find that it is not reasonable to impose the costs of the FLRR mechanism on customers for such a speculative future benefit.

66. Similarly, CAISO has not shown that the resources it saves from retirement for the current year with the FLRR designation will provide the service of balancing variability in the forward period. CAISO has not clearly defined the parameters of its system flexibility study, nor has it specified how that assessment will inform procurement decisions. Importantly, the assumptions used to develop the system flexibility study may differ markedly from those used by CPUC in its long-term planning process. As WPTF states, CAISO's use of criteria that are inconsistent with CPUC's criteria would inhibit

---

[101] CAISO Answer at 19-20.

[102] *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,079 at P 29.

market participants' abilities to make informed procurement and investment decisions. We agree with WPTF's assertions and find that a well-designed, market-based tool that produces forward price signals for flexible capacity and local reliability resources may be a more effective method for ensuring that an appropriate mix of resources are procured.

67. In addition to the problems with the theoretical underpinnings of the FLRR mechanism, we share protestors' concerns with regard to many details of the FLRR proposal. In particular, we find that CAISO's proposed cost allocation could require load-serving entities that are procuring an efficient and effective mix of resources to pay for deficiencies elsewhere. A market-based proposal should attempt to signal to the market where needs are, and allocate costs according to cost causation principles. As discussed above, CAISO has failed to demonstrate how an FLRR resource procured in the current year will provide the service of balancing variability in the forward period, and thereby benefit the system. Therefore, although CAISO argues that everyone benefits from having the right mix of resources online, CAISO has not demonstrated how or whether the system would benefit at all from procurement in the current year of any FLRR resource.

68. Given the problems with the out-of-market approach taken by CAISO in the FLRR proposal, the Commission finds that further efforts to refine the details of the FLRR proposal would not achieve a just and reasonable result. Thus, we encourage CAISO and its stakeholders to focus on the development of a durable, market-based mechanism that provides incentives to ensure that resources with the adequacy and operational needs CAISO requires are available to meet system needs. While we recognize CAISO's need to have tools in place to forestall premature retirements while it develops a more comprehensive solution, we find that CAISO currently has at its disposal a number of options for addressing any imminent resource retirements that may result in reliability threats, including its existing CPM risk-of-retirement provisions.

69. We appreciate the request of CAISO to have tools available to meet its needs, reliability or otherwise, but for the reasons stated above cannot accept the CAISO's proposal. Because of the sense of urgency and the magnitude of our order today and, in order to facilitate the expeditious resolution of the underlying reliability issues presented in this proceeding, the Commission directs staff to convene a technical conference with California stakeholders. The Commission is cognizant of and appreciates the efforts made by CPUC, CAISO, and market participants on this front. It is not our intention to disrupt or discourage those efforts. However, the Commission has a statutory duty to ensure reliability, and the FLRR filing directly raises this issue for the Commission and highlights an impending need for more flexible resources in California in the upcoming years. Thus, we direct staff to convene a technical conference to collectively pursue solutions to the reliability challenges presented in this proceeding. Specifically, the purpose of such a conference would be to coordinate FERC staff with CPUC, CAISO and industry participants on resolving the reliability issues presented here.

<u>The Commission orders:</u>

(A) CAISO's proposed tariff revisions are hereby rejected, as discussed in the body of this order;

(B) Commission staff shall establish the date for a technical conference within 120 days following the date of issuance of this order, as discussed in the body of this order.

By the Commission. Commissioner Norris is dissenting in part with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation — Docket No. ER13-550-000

(Issued March 29, 2013)

NORRIS, Commissioner, *dissenting in part*:

I agree with all of the reasons the majority has provided for why the FLRR proposal is unworkable and that it should be rejected.

For all those who filed comments or protests in this preceding including the CPUC, CAISO, and the California stakeholders, it is clear there is broad recognition that California has not only a resource adequacy problem, but also a specific need for more flexible resources. Failure to adequately address these problems presents a very real and serious reliability threat to the California electric grid.

Where I disagree with the majority is how we approach resolving the problem. I believe we have clearly indicated why the FLRR proposal should be rejected. I believe the ball is now back in CAISO and California's court to find a workable and acceptable resolution. I remind everyone that there will not be a single or perfect solution. But, I would give California another crack at a solution before moving this into FERC's court.

I also note that, while the parties are working towards a solution to the broader resource adequacy concerns, the CPUC and CAISO have numerous mechanisms at their disposal for addressing any imminent resource retirements. If the California parties believe a Commission technical conference would be helpful, then I would be in full support of holding one. I am also open to any other way the Commission can assist them in addressing the reliability threat they face. I am just less inclined to step in and say "let FERC solve this problem for you."

For these reasons, I respectfully dissent in part.

____
John R. Norris, Commissioner