

143 FERC ¶ 61,100  
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. ER08-760-001

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

(Issued May 6, 2013)

1. This order addresses timely requests for clarification and/or rehearing of the May 30, 2008 order conditionally accepting, subject to modification, the California Independent System Operator Corporation's (CAISO) Transitional Capacity Procurement Mechanism (TCPM).<sup>1</sup> The TCPM was an interim backstop capacity procurement mechanism that was in effect from June 1, 2008 through March 31, 2009. The TCPM tariff provisions were superseded by the Interim Capacity Procurement Mechanism (ICPM) upon implementation of the Market Redesign Technology Upgrade (MRTU),<sup>2</sup> and the ICPM tariff provisions were subsequently replaced by the Capacity Procurement Mechanism (CPM).<sup>3</sup> This order denies the requests for rehearing and grants in part and denies in part the requests for clarification of the TCPM Order.

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<sup>1</sup> *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,229 (2008) (TCPM Order).

<sup>2</sup> The ICPM was accepted by the Commission, subject to modification, and became effective upon implementation of MRTU. *Cal. Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,053 (2008), *order on reh'g*, 134 FERC ¶ 61,132 (2011) (ICPM Order).

<sup>3</sup> *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,211 (2011) (accepting and suspending certain features subject to the outcome of a technical conference). The CPM was ultimately accepted in an Order on Uncontested Settlement. *Cal. Indep. Sys. Operator Corp.*, 138 FERC ¶ 61,112 (2012).

## I. Background

2. The TCPM was conditionally accepted as a mechanism to enable CAISO to acquire generation capacity to maintain grid reliability if: (1) load serving entities failed to meet resource adequacy requirements;<sup>4</sup> (2) the procured resource adequacy resources were insufficient; or (3) unexpected conditions created the need for additional capacity.<sup>5</sup> The TCPM was intended to serve as a bridge between the Reliability Capacity Services Tariff (RCST), which was in effect prior to the TCPM, and the ICPM, which was implemented simultaneously with MRTU. The TCPM proposal built upon the RCST and, like the RCST, the TCPM was designed to operate with the must-offer obligation in the pre-MRTU markets.<sup>6</sup> In contrast, the ICPM and CPM were designed for use in the MRTU markets, which do not include a must-offer obligation.

3. The must-offer obligation required most generators serving CAISO to offer all of their capacity in the real-time market during all hours if the capacity was available and not already scheduled through bilateral agreements.<sup>7</sup> A generating unit could request a waiver of its must-offer obligation; however, CAISO could deny the waiver request (must-offer waiver denial) and require the generator to remain in operation.

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<sup>4</sup> A resource adequacy resource is a generator 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 a capacity contract, which provides these resources with an additional opportunity to recover fixed costs vis-à-vis resources that lack these contracts. For the purpose of this proceeding, non-resource adequacy resources refer to resources that are not operating under a capacity contract (i.e., resource adequacy or reliability must-run contract).

<sup>5</sup> See TCPM Order, 123 FERC ¶ 61,229 at P 1.

<sup>6</sup> The history of the RCST and must-offer obligation is well documented. See TCPM Order, 123 FERC ¶ 61,229; *Dynegy Moss Landing, LLC v. Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,280 (2008).

<sup>7</sup> The must-offer obligation was one element of the Commission-established prospective mitigation and monitoring plan for the California wholesale electric markets. *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 95 FERC ¶ 91,115, *order on reh'g*, 95 FERC ¶ 61,418, *order on reh'g*, 97 FERC ¶ 61,275 (2001), *order on reh'g*, 99 FERC ¶ 61,160 (2002), *pet. Granted in part and denied in part sub nom. Public Util. Comm'n of the State of Cal. v. FERC*, 462 F.3d 1027 (9th Cir. 2006).

4. Among other things, in the TCPM Order, the Commission accepted an increase of the TCPM Target Capacity Price<sup>8</sup> from \$73/kW-year, which was the price under the RCST, to \$77.89/kW-year. The Commission also conditionally accepted CAISO's proposal to use the TCPM to address unexpected short-term reliability needs, i.e. Significant Events.<sup>9</sup> The Commission required CAISO to clarify any criteria used to designate resources for Significant Event reliability needs to ensure non-discriminatory treatment between resources with bilateral reliability contracts and non-resource adequacy resources. The Commission also required CAISO to provide resources with a minimum 30-day designation upon the first commitment of a resource under the must-offer obligation.<sup>10</sup>

## II. Discussion

### A. Procedural Matters

5. Requests for rehearing and/or clarification of the TCPM Order were filed by CAISO; Southern California Edison Company (SoCal Edison); Pacific Gas and Electric Company (PG&E); Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities); and Dynegy Moss Landing, LLC and Dynegy Morro Bay LLC, El Segundo Power, LLC, and Reliant Energy, Inc. (collectively, California Generators). CAISO and SoCal Edison filed answers to the requests for rehearing and/or clarification.

6. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure prohibits answers to requests for rehearing.<sup>11</sup> Accordingly, we reject the answers filed by CAISO and SoCal Edison.

### B. Price

7. In the TCPM Order, the Commission accepted CAISO's proposal to increase the former RCST Target Capacity Price by the Consumer Price Index-Urban inflation factor in order to account for price increases that occurred since RCST was accepted. The Commission found that the TCPM Target Capacity Price, \$77.89/kW-year, was just and reasonable and within the range of reasonableness, i.e., between the fixed costs of

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<sup>8</sup> "Target Capacity Price" refers to the yearly price for capacity services and is intended to be no less than fixed costs and no more than the cost of new entry.

<sup>9</sup> *Id.* P 31.

<sup>10</sup> TCPM Order, 123 FERC ¶ 61,229 at PP 31-37.

<sup>11</sup> 18 C.F.R. § 385.713(d)(1) (2012).

existing generation and the cost of new entry. The Commission rejected a proposed adder that would have increased the Target Capacity Price by an additional 10 percent.<sup>12</sup>

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

8. California Generators contend that the TCPM price is too low. They argue that paying TCPM-designated resources a different price than resource adequacy resources that provide the same service may artificially depress resource adequacy prices.<sup>13</sup> California Generators note that four of California's nine load pockets lack sufficient capacity to meet their local resource adequacy requirements. California Generators argue that without a cost of new entry price signal, no new demand response, transmission, or generation will be developed in deficient areas. They assert that cost of new entry is the correct price in areas without sufficient generation to meet reliability needs.<sup>14</sup> California Generators argue that CAISO backstop pricing for TCPM will not discourage resource adequacy contracting.<sup>15</sup>

9. California Generators support a \$115/kW-year price, but alternatively they request increasing the \$73/kW-year RCST price by the Power Capital Cost Index for non-nuclear units. They assert that the factor used to inflate the RCST price for TCPM purposes should be relevant to the construction of power plants. California Generators explain that the Power Capital Cost Index for non-nuclear units rose 17.4 percent between 2006 and 2008. California Generators state that applying this 17.4 percent increase to the \$73/kW-year RCST price yields a Target Capacity Price of \$85.72/kW-year. While the Commission rejected CAISO's proposed 10 percent adder to the Target Capacity Price, California Generators argue that applying the Power Capital Cost Index would yield a price nearly identical to the \$86/kW-year proposed by the CAISO.<sup>16</sup>

### **2. Commission Determination**

10. We deny the California Generators' request for rehearing of the TCPM price. Specifically, we reiterate that under CAISO's capacity construct, the fixed costs of

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<sup>12</sup> TCPM Order, 123 FERC ¶ 61,229 at P 75.

<sup>13</sup> California Generators June 30, 2008 Request for Clarification and Rehearing at 10 (California Generators Rehearing Request).

<sup>14</sup> *Id.* at 11.

<sup>15</sup> *Id.* at 12-13.

<sup>16</sup> *Id.* at 14.

existing generation, on the one hand, and the cost of new entry, on the other hand, establish a just and reasonable range for pricing TCPM backstop capacity.<sup>17</sup> The approved TCPM price appropriately lies within this range. Further, we reaffirm that CAISO's proposal to derive the TCPM Target Capacity Price by adjusting the RCST price for inflation using the Consumer Price Index – Urban is just and reasonable.<sup>18</sup>

11. We reject California Generators' argument that the TCPM price is not high enough to provide an incentive for development to fulfill local resource adequacy needs. The TCPM price is not intended to promote construction of new generation, and the short-term nature of the TCPM does not provide the long-term incentive required to attract new investment.<sup>19</sup> Rather, the TCPM is simply a tool to procure backstop capacity and should not be viewed as a mechanism for achieving *all* resource adequacy objectives. Rather, the TCPM price should provide resources with revenues sufficient to offset a portion of their fixed costs commensurate with the backstop capacity service (i.e., a short-term service) they are asked to provide. For these reasons, we reiterate that the TCPM price is just and reasonable.<sup>20</sup>

12. Finally, California Generators request use of the Power Capital Cost Index instead of the Consumer Price Index – Urban as the inflation factor for deriving the TCPM Target Capacity Price. California Generators present this proposal for the first time in their request for rehearing. The Commission looks with disfavor on parties raising issues for the first time on rehearing, in part because other parties are not permitted to respond to a request for rehearing.<sup>21</sup> Accordingly, we deny California

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<sup>17</sup> TCPM Order, 123 FERC ¶ 61,229 at P 75.

<sup>18</sup> *Id.* P 75 & n.76 (finding that “CAISO’s proposed use of the [Consumer Price Index-Urban] inflation factor is a reasonable means to account for such increases in prices[,]” and citing examples of a variety of matters before the Commission that have used the Consumer Price Index-Urban as a standard rate of inflation) (citations omitted).

<sup>19</sup> *Id.* P 78.

<sup>20</sup> *Id.* PP 75-78.

<sup>21</sup> *See, e.g., PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,030, at P 15 and n.10 (2009) (“The Commission has held that raising issues for the first time on rehearing is disruptive to the administrative process and denies parties the opportunity to respond.”); *see also Allegheny Energy Supply Co., L.L.C.*, 122 FERC ¶ 61,104, at P 6 (2008) (same); 18 C.F.R. § 385.713(d) (“The Commission will not permit answers to requests for rehearing.”).

Generators' rehearing request. Moreover, as the Commission has often noted, rates need not be perfect, but must fall within the zone of reasonableness.<sup>22</sup> We have already determined that the TCPM price, using the Consumer Price Index, falls within this range, and we are not persuaded to revise this conclusion.<sup>23</sup>

### C. Resource Adequacy Resources and Non-Resource Adequacy Resources

13. The TCPM Order did not address what happens if a non-resource adequacy resource committed under the TCPM becomes a resource adequacy resource during the designation term; nor did the order address whether partial resource adequacy resources are eligible for TCPM capacity designations.

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

14. CAISO asks the Commission to clarify that if a resource that is committed under TCPM becomes a resource adequacy resource during the 30-day TCPM designation, the TCPM designation will expire on the date that the resource becomes a resource adequacy resource. The TCPM capacity payment will be pro-rated (as a percentage of 30 days) based on the actual number of days the resource was a TCPM resource.<sup>24</sup>

15. CAISO notes that the TCPM Order required CAISO to modify its proposal by providing resources with a minimum 30-day designation upon the first commitment of a resource under the must-offer obligation. CAISO highlights that the software

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<sup>22</sup> See, e.g., *PJM Interconnection, L.L.C.* 134 FERC ¶ 61,048, at P 48 n.61 (“Pricing provisions do not have to be perfect, only just and reasonable and not unduly discriminatory or preferential.”). See also *Sithe/Independence Power Partners, L.P. v. FERC*, 285 F.3d 1, 5 (D.C. Cir. 2002) (“feasibility concerns play a role in approving rates, indicating that FERC is not bound to reject any rate mechanism that tracks the cost-causation principle less than perfectly”); *Batavia v. FERC*, 672 F.2d 64, 84 (D.C. Cir. 1982) (“billing design need only be reasonable, not theoretically perfect”); *American Elec. Power Serv. Corp. v. FERC*, 116 FERC ¶ 61,179, at P 25 (2006) (provisions “need be neither perfect nor even the most desirable; they need only be just and reasonable and not unduly discriminatory or preferential”); *New England Power Co.*, 52 FERC ¶ 61,090, at 61,336 (1990) (rate design proposed need not be perfect, it merely needs to be just and reasonable), *aff'd*, *Town of Norwood v. FERC*, 962 F.2d 20 (D.C. Cir. 1992).

<sup>23</sup> TCPM Order, 123 FERC ¶ 61,229 at PP 75-78.

<sup>24</sup> CAISO June 30, 2008 Request for Clarification or, in the alternative, Rehearing at 16 (CAISO Rehearing Request).

economically dispatches units based on energy bid levels, and cannot differentiate between the resource adequacy and non-resource adequacy capacity of a partial resource adequacy unit.<sup>25</sup> CAISO states that the software may dispatch non-resource adequacy capacity when such capacity was not needed for reliability because other resource adequacy capacity was available for dispatch. CAISO states that the large number of partial resource adequacy resources aggravates the impact of the software problem.<sup>26</sup>

16. To account for the software problem, CAISO asks the Commission to clarify that the non-resource adequacy capacity of a partial resource adequacy resource should not receive a 30-day TCPM designation if such capacity is dispatched through the software.<sup>27</sup> CAISO argues that a 30-day TCPM designation is not just and reasonable in this circumstance because, due to the availability of resource adequacy or reliability must-run capacity, the non-resource adequacy capacity would not have been dispatched if CAISO did not have software limitations.<sup>28</sup> CAISO states that elimination of the 30-day compensation period would not apply in instances where CAISO must manually dispatch or commit capacity to meet reliability needs, nor would it apply to real-time dispatches of non-resource adequacy capacity if no resource adequacy and no reliability must run capacity were unavailable. CAISO also notes that, to the extent the Commission believes that some compensation other than an energy payment is appropriate when the software dispatches the non-resource adequacy capacity of a partial resource adequacy unit rather than the available resource adequacy capacity, the Commission should determine the appropriate level of such compensation.<sup>29</sup>

17. California Generators ask the Commission to clarify that the capacity of a partial resource adequacy resource not covered under a resource adequacy contract is eligible for a TCPM designation. In addition, California Generators argue that, if a resource is required to provide reliability services, then the resource should be compensated under the TCPM. California Generators argue that it is unduly discriminatory to penalize generators for making resource adequacy commitments for portions of their generating unit's capacity by rendering them ineligible for TCPM designations for the un-contracted

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<sup>25</sup> A “partial resource adequacy resource” refers to a unit that is only partially used for resource adequacy. The rest of the unit is a “non-resource adequacy” resource.

<sup>26</sup> CAISO Rehearing Request at 9.

<sup>27</sup> *Id.* at 10.

<sup>28</sup> *Id.* at 12.

<sup>29</sup> *Id.*

portion of their capacity. California Generators note that a unit would not likely cover all of its fixed costs if it sold only a portion of its capacity as resource adequacy capacity.<sup>30</sup>

## 2. Commission Determination

18. We grant CAISO's request to clarify that resources designated under the TCPM that subsequently enter into resource adequacy contracts should not be eligible to receive a double capacity payment. This will ensure that prices remain within the just and reasonable range. Consequently, we also direct that any capacity payment for TCPM-designated resources that entered into resource adequacy contracts during the TCPM designation term should be pro-rated based on the number of days the resource was a TCPM resource.

19. We also grant the clarification requests of CAISO and California Generators. Regarding CAISO's concern that limitations in its market software could result in unnecessary TCPM capacity designations, we clarify that the non-resource adequacy capacity of a partially-designated resource adequacy resource should not receive a 30-day TCPM designation if such capacity was dispatched through the market software for economic reasons when resource adequacy capacity was available for dispatch or commitment. In the TCPM Order, the Commission recognized that non-resource adequacy resources should be compensated for their capacity services when the capacity procured under the resource adequacy program was insufficient.<sup>31</sup> The logical corollary of this determination is that when resource adequacy resources are sufficient, non-resource adequacy resources dispatched due to market software limitations need not be compensated.

20. Regarding California Generators' request, we clarify that partial resource adequacy resources are eligible for TCPM capacity designations. As the Commission previously explained, it is unduly discriminatory for CAISO to rely on un-contracted capacity to meet its reliability needs without providing appropriate compensation for this service.<sup>32</sup> Therefore we clarify that if the remaining un-contracted capacity from a partial resource adequacy resource is needed for reliability services, this capacity should be designated under the TCPM.

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<sup>30</sup> California Generators Rehearing Request at 4-6.

<sup>31</sup> TCPM Order, 123 FERC ¶ 61,229 at P 36.

<sup>32</sup> See *Indep. Energy Producers v. Cal. Indep. Sys. Operator, Corp.*, 116 FERC ¶ 61,069, at P 36 (2006).

**D. Monthly Shaping Factors**

21. The RCST Settlement included monthly shaping factors to account for seasonal variations when determining the appropriate price for backstop capacity.<sup>33</sup> The Commission, in the TCPM Order, did not discuss the use of monthly shaping factors in calculating the TCPM price.

**1. Requests for Rehearing and/or Clarification**

22. CAISO and California Generators point out that the Commission did not reject the monthly shaping factors in the TCPM Order.<sup>34</sup> CAISO asks the Commission to clarify whether, for TCPM designations resulting from commitments under the must-offer obligation, the Commission intended to modify the monthly seasonal shaping factors<sup>35</sup> that CAISO retained in its TCPM proposal and, instead, pay TCPM resources a monthly capacity payment based on a flat 1/12 of the annual Target Capacity Price. CAISO states that the monthly shaping factors take into account seasonal variations in determining the appropriate price for capacity. California Generators similarly request that the same monthly shaping factors used in the RCST be used to determine monthly TCPM capacity prices from the annual TCPM capacity price.<sup>36</sup>

**2. Commission Determination**

23. We grant CAISO's and California Generators' requests and clarify that in the TCPM Order, the Commission did not intend to modify the monthly seasonal shaping factors proposed by CAISO. Therefore, the monthly shaping factors used in the RCST

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<sup>33</sup> See March 31, 2006 IEP Offer of Settlement, Docket No. EL05-146-000, Explanatory Statement at 17 (explaining that monthly shaping factors "are intended to weight the value of capacity in accordance with demand"); Settlement at Article 6.2.1 (table of monthly shaping factors).

<sup>34</sup> According to CAISO, the monthly shaping factors set forth in the CAISO Tariff apply to all TCPM designations.

<sup>35</sup> CAISO Rehearing Request at 16-17. CAISO explains that the monthly charge is calculated by multiplying the unit's availability factor by the monthly seasonal shaping factors and target annual capacity price and then adjusting for the peak energy rent.

<sup>36</sup> California Generators Rehearing Request at 3-4.

will also be used to determine monthly TCPM capacity prices.<sup>37</sup> Valuing capacity in accordance with seasonal demand is consistent with basic economic principles of supply and demand and, accordingly, just and reasonable.<sup>38</sup>

### **E. Cost Allocation**

24. In the TCPM Order, the Commission accepted CAISO's proposed cost allocation methodology; however, while proposed tariff section 43.8(5) expressly addressed cost allocation for Significant Events, it did not address allocation of costs arising from must-offer waiver denials.<sup>39</sup>

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

25. CAISO states that the TCPM Order did not specify how CAISO should allocate the costs associated with an automatic 30-day TCPM designation resulting from a must-offer waiver denial. Thus, CAISO provides the following options: (1) allocating the costs in accordance with the approved methodology for allocating the costs of TCPM Significant Event designations;<sup>40</sup> or (2) allocating the costs in a manner consistent with the methodology for allocating must-offer minimum load compensation and the

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<sup>37</sup> California Independent System Operator Corporation, FERC Electric Tariff, Third Replacement Volume No. 1, Appendix F, Schedule 6, Monthly Shaping Factors.

<sup>38</sup> Cf. *Interstate Natural Gas Pipeline Rate Design*, Policy Statement Providing Guidance with Respect to the Designing of Rates, 47 FERC ¶ 61,295, at 62,054 (1989) (suggesting assignment of pipelines' peak/off-peak costs by seasonal load factors or assigning the cost of transmission facilities used to provide service above the annual load factor to the peak period).

<sup>39</sup> TCPM Order, 123 FERC ¶ 61,229 at PP 91-92.

<sup>40</sup> CAISO Rehearing Request at 18. According to section 43.8(5) of the CAISO Tariff, if any TCPM Significant Event designations are made under section 43.4 of the Tariff, then CAISO would allocate the costs of such designations to all scheduling coordinators for load serving entities in the transmission access charge area(s) in which the TCPM Significant Event caused or threatened to cause a failure to meet reliability criteria. California Independent System Operator Corporation, FERC Electric Tariff, Third Replacement Volume No. 1, Section 43.8(5). The TCPM Order did not modify this methodology.

must-offer obligation daily capacity payment under the RCST.<sup>41</sup> CAISO states that it prefers the latter approach, which is consistent with the method accepted in the Amendment No. 60 proceeding and cost causation principles. CAISO explains that where a Significant Event is concerned, it has a reasonable expectation that the event that triggered the designation will continue for the expected duration of the designation. In contrast, when CAISO must procure capacity for a 30-day period based on a single must-offer waiver denial, CAISO is less sanguine that the capacity need will endure for the entire 30-day designation period.<sup>42</sup>

26. CAISO states that in the Amendment No. 60 proceeding, the Commission approved the allocation of minimum load costs based on the reason underlying the commitment, i.e., whether the capacity was needed for system-wide, zonal or local reasons.<sup>43</sup> CAISO adds that, in the RCST Settlement, the Commission found that it was just and reasonable to allocate must-offer capacity payment costs in the same manner as minimum load costs because must-offer capacity payment costs are incurred for the same reasons as minimum load costs, that is, to provide a reliability service.<sup>44</sup> Because the TCPM Order did not specify a particular method for allocating capacity costs associated with TCPM designations that result from must-offer waiver denials, CAISO proposes to use the Amendment No. 60 approach for TCPM designations that result from must-offer waiver denials.<sup>45</sup>

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<sup>41</sup> *Id.* at 19-20 & n.25 (citing *Cal. Indep. Sys. Operator Corp.*, Opinion No. 492, 117 FERC ¶ 61,348, *order on reh'g.*, 118 FERC ¶ 61,193 (2007) (Amendment No. 60)).

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

<sup>43</sup> *Id.* at 18-19 (citing *Cal. Indep. System Operator, Inc.*, 117 FERC ¶ 61,348, *order on reh'g.*, 117 FERC ¶ 61,193 (2007)).

<sup>44</sup> *Id.* at 19 (citing *Indep. Energy Producers Ass'n v. Cal. Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,096, at P 125 (2007)).

<sup>45</sup> *Id.* Specifically, CAISO proposes to classify the TCPM capacity costs pro rata as either local reliability costs, zonal costs, or control-area wide costs, respectively, based on the number of hours that the TCPM resource was denied a must-offer waiver for local, zonal or control-area wide reasons. Once the costs are classified as local reliability costs, zonal costs or control-area wide costs, they will then be allocated in accordance with section 40.6B.5 (i.e., in the same manner as un-recovered minimum load costs). CAISO requests that the Commission clarify, or find on rehearing, that this is a just and reasonable methodology for allocating the costs of must-offer waiver denial designations.

27. According to CAISO, a TCPM designation due to a must-offer waiver denial may have been the result of a local need. CAISO explains that the local need may be resolved quickly – potentially in less than a day and, therefore, during the remainder of the designation term the resource may be committed to resolve local, zonal or even CAISO system-wide needs. Thus, CAISO asserts that a designation resulting from a must-offer waiver denial is distinguishable from a TCPM Significant Event designation. The underlying cause of the Significant Event designation is expected to be more longstanding, such that it would be appropriate to allocate the costs to the transmission access charge area in which the event occurred and is expected to continue.

28. CAISO argues that it should allocate the resulting TCPM capacity costs in a manner similar to how it will allocate un-recovered minimum load costs, namely, a pro rata allocation of capacity costs based on the number of hours that the resource was denied a must-offer waiver for local, zonal, and system reasons during the designation. CAISO states that it will track the reasons why the unit was committed. Accordingly, CAISO asks the Commission to determine that the cost allocation methodology accepted in the Amendment No. 60 proceeding is appropriate for allocating the capacity costs that result from TCPM designations.<sup>46</sup>

29. Contrary to CAISO's preferred allocation method, SoCal Edison requests clarification that the cost allocation method provided in section 43.8(5) of the Tariff, which applies to Significant Event TCPM designations, would also apply to TCPM designations resulting from a single must-offer waiver denial. SoCal Edison argues that allocating TCPM costs arising from must-offer waiver denials to scheduling coordinators associated with the transmission access charge areas in which the threatened reliability issue is located would assign these costs to the scheduling coordinators whose load presumably benefits from the TCPM designation. Since section 43.8(5) only expressly refers to Significant Events, SoCal Edison recommends directing CAISO to add a new sub-section 43.8(6) to the Tariff to set forth the cost allocation for TCPM designations based on a single must-offer waiver denial.<sup>47</sup>

## **2. Commission Determination**

30. We grant CAISO's request for clarification to use the Amendment No. 60 method to allocate TCPM costs arising from automatic 30-day designations due to must-offer

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<sup>46</sup> *Id.* at 21.

<sup>47</sup> SoCal Edison June 30, 2008 Request for Rehearing and Clarification at 9 (SoCal Edison Rehearing Request).

waiver denials and deny SoCal Edison's competing request.<sup>48</sup> The fact that one allocation methodology is used for allocating costs resulting from Significant Event designations does not dictate that this is the only method that may be used to allocate TCPM costs resulting from must-offer waiver denials. Rather, we conclude that it is appropriate for CAISO to allocate the capacity costs associated with TCPM designations under the must-offer obligation in accordance with the methodology accepted in CAISO's Amendment No. 60 proceeding and used under the RCST. Specifically, the Amendment No. 60 cost allocation methodology provides CAISO with flexibility to allocate costs in a manner consistent with the actual use of capacity resources designated under the must-offer obligation. This approach is consistent with cost causation principles.<sup>49</sup>

31. As CAISO explains, the reason for committing a resource under the must-offer obligation is distinguishable from the reason for designating a resource under the Significant Event provisions. Additionally, the duration of a Significant Event is expected to be longer. Because the reason for committing a resource under the must-offer obligation may be short-term, must-offer capacity resources may provide various distinguishable capacity services during their 30-day designation term. Therefore, tracking the reliability services that these resources provide will enable CAISO to allocate the corresponding costs consistent with cost causation principles. CAISO proposes to identify and record each reason for committing a must-offer capacity resource during its 30-day designation term. Under this approach, CAISO will be able to establish whether must-offer capacity is being used to address system, zonal and/or local reliability needs. CAISO will have the flexibility to allocate capacity costs to the appropriate category of reliability need, and ultimately the subset of customers that benefits from the must-offer capacity services. Therefore, we determine that, consistent with cost causation principles, the use of the Amendment No. 60-type cost allocation methodology will appropriately allocate capacity costs arising from must-offer waiver denials during the term of must-offer capacity designation.<sup>50</sup> Accordingly, we accept

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<sup>48</sup> In Docket No. ER08-760-002, SoCal Edison protested the CAISO's compliance filing regarding the proposed use of the Amendment No. 60 cost allocation methodology. SoCal Edison's protests on this issue will be addressed in that proceeding.

<sup>49</sup> See *Alcoa Inc. v. FERC*, 564 F.3d 1342, 1346 (D.C. Cir. 2009) ("Rates must also generally adhere to the principle of 'cost causation.' 'Simply put, it has been traditionally required that all approved rates reflect to some degree the costs actually caused by the customers who must pay them.'") (quoting *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992)).

<sup>50</sup> See *id.*

CAISO's proposed approach to allocating must-offer waiver denial-related capacity costs.

**F. 30-Day Minimum Designation Term**

32. In the TCPM Order, the Commission accepted CAISO's proposed minimum 30-day term; the Commission modified CAISO's proposal to require a minimum 30-day designation of a capacity resource under the TCPM when the resource is first committed under the must-offer obligation.<sup>51</sup>

**1. Requests for Rehearing and/or Clarification**

33. Six Cities, PG&E, and SoCal Edison object to the minimum 30-day designation period, arguing that it is too long. In contrast, California Generators do not find that a 30-day designation is long enough.

34. PG&E argues that the Commission's determination that ratepayers would not be exposed to unjust and unreasonable costs as a result of the automatic 30-day TCPM designation is unsupported. PG&E explains that the automatic designation requirement will trigger capacity payments that far outweigh the initial reliability need, if any, and are unduly costly to customers and users of the CAISO-controlled grid. Accordingly, PG&E requests rehearing or clarification on the required minimum 30-day TCPM payment for a single must-offer waiver denial or a need less than 48 hours.<sup>52</sup>

35. Six Cities argue that the Commission erred in the TCPM Order by requiring CAISO to make automatic 30-day TCPM designations for must-offer waiver denials, basing its determination on the frequency of must-offer waiver denials under RCST. Six Cities argue that the disparity between the number of must-offer waiver denials as compared with the number of RCST designations does not support automatic designation for 30-days.<sup>53</sup> Additionally, Six Cities argue that the Commission did not consider whether costs to consumers would be just and reasonable when its TCPM modification may result in the procurement of excessive capacity at ratepayers' expense.<sup>54</sup> Six Cities

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<sup>51</sup> TCPM Order, 117 FERC ¶ 61,229 at PP 55-59.

<sup>52</sup> PG&E June 30, 2008 Request for Rehearing or Clarification at 4 (PG&E Rehearing Request).

<sup>53</sup> Six Cities June 30, 2008 Request for Rehearing at 7 (Six Cities Rehearing Request).

<sup>54</sup> *Id.* at 14.

state that it is unreasonable to impose a 30-day minimum payment obligation when a must-offer waiver denial is an artifact of errors from the real-time commitment process.<sup>55</sup>

36. PG&E asks the Commission to require CAISO to base a must-offer waiver denial on CAISO's demonstrated need for capacity over a prolonged period of time. PG&E asserts increasing compensation to \$77.89/kW-year, plus the addition of an automatic 30-day commitment, increase the potential single-day compensation by more than 1,800 percent.<sup>56</sup> PG&E argues that such an increase is unjust and unreasonable when commitment mistakes have occurred or there is a short-term need for capacity.

37. SoCal Edison states that non-resource adequacy resources have the opportunity to acquire a resource adequacy contract and failure to acquire a contract is a likely indication that the resource is not competitive. Therefore, SoCal Edison states that providing a 30-day TCPM commitment will not increase the incentive to obtain a resource adequacy contract. Further, SoCal Edison states that resources will likely use the TCPM payment as a floor for their resource adequacy bids.<sup>57</sup>

38. SoCal Edison asserts that there has not been a single instance when CAISO was required to use the RCST to backstop a load serving entity's resource adequacy deficiency. Thus, SoCal Edison argues that requiring monthly capacity contracts for essentially any CAISO-related unit completely undermines the intent of resource adequacy, which, in SoCal Edison's view, is to define how much ratepayers are willing to spend for reliability.<sup>58</sup>

39. SoCal Edison states that resource adequacy units are compensated for capacity through contracts with load serving entities. Thus, SoCal Edison argues that the Commission's determination that CAISO's proposal is not just and reasonable because it fails to compensate non-resource adequacy units is "non-sensical."<sup>59</sup> SoCal Edison contends that a TCPM designation does not change the service provided to customers, but

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<sup>55</sup> *Id.* at 15.

<sup>56</sup> PG&E Jun 30, 2008 Request for Rehearing or Clarification at 2 (PG&E Rehearing Request).

<sup>57</sup> *Id.* at 4.

<sup>58</sup> SoCal Edison Jun 30, 2008 Request for Rehearing at 5 (SoCal Edison Request for Rehearing).

<sup>59</sup> *Id.* at 5 & n.16 (citing TCPM Order, 123 FERC ¶ 61,229 at P 35).

only changes the cost of that service. Likewise, SoCal Edison asserts that one must-offer waiver denial does not change the obligations of non-resource adequacy resources.

40. SoCal Edison argues that the Commission's comparison of the non-resource adequacy units to reliability must-run units is invalid. SoCal Edison states that a reliability must-run agreement is a one-year contract with a host of terms and conditions that are not applicable to either the must-offer obligation or TCPM units. SoCal Edison argues that the service provided by reliability must-run contracts is a different service from that provided by either resource adequacy or non-resource adequacy units that are denied a waiver of the must-offer requirement.<sup>60</sup>

41. SoCal Edison refutes the Commission finding that "the TCPM is a backstop mechanism that should be used infrequently, and even less often going forward. Thus its costs should be minimal."<sup>61</sup> SoCal Edison states that TCPM was used three times within its first two weeks of implementation. Further, SoCal Edison notes that the Commission found that there may be "some additional costs to electricity customers" under its modifications and that the TCPM "is actually providing a monthly service to customers."<sup>62</sup> SoCal Edison notes that the Commission does not attempt to quantify either the additional costs borne by customers or the potential value of the service provided to determine whether the additional costs are just and reasonable.

42. SoCal Edison states where CAISO denies a must-offer waiver request, but later concludes that an existing resource adequacy or reliability must-run unit can solve the problem in a cost-effective manner, the Commission's ruling would burden customers with a 30-day capacity contract.<sup>63</sup>

43. California Generators argue that the minimum term of designation should be three-months rather than 30-days. California Generators assert that capacity is an insurance mechanism that provides a service even when the generating unit is not producing energy, and state that a unit's annual fixed costs do not change whether it is designated for a day, a month or a year. California Generators state that the TCPM does not provide generators with the opportunity to recover their fixed costs.<sup>64</sup> California

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<sup>60</sup> *Id.* at 5.

<sup>61</sup> *Id.* at 6 (citing TCPM Order, 123 FERC ¶ 61,229 at P 36).

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

<sup>63</sup> *Id.*

<sup>64</sup> California Generators Rehearing Request at 7.

Generators submit that, although the Commission has found that the reliability service is the same under the TCPM and resource adequacy program,<sup>65</sup> the opportunity for suppliers to recover their annual fixed costs under the TCPM is not comparable. Thus, California Generators argue that, if the services are comparable, then the opportunity to recover the costs of providing those services should be comparable as well. California Generators reiterate that a three-month designation would reasonably balance the practical reality that capacity service is provided not only when a resource is actually called on to operate, but also when a resource commits to being available to operate. California Generators contend that the duration of the must-offer waiver denial has no bearing on the costs a resource incurs by being available to CAISO. Therefore, California Generators request that the Commission grant rehearing and direct a minimum TCPM designation of three months.<sup>66</sup>

44. California Generators assert that, if a non-resource adequacy resource is denied a must-offer waiver request in order to meet local reliability needs, then that unit is providing the same service as a reliability-must-run or local resource adequacy unit. California Generators state that a resource providing local reliability services under a reliability must-run agreement, a local resource adequacy agreement, or the ICPM must receive an annual capacity designation. California Generators argue that it is unduly discriminatory for a unit that provides the same service that other local reliability units provide under resource adequacy and reliability must-run contracts to receive only a 30-day TCPM designation. Therefore, California Generators ask the Commission to grant rehearing and direct CAISO to provide a non-resource adequacy, non-reliability must-run unit used to meet local reliability needs with a one-year TCPM designation.<sup>67</sup>

## 2. Commission Determination

45. We deny rehearing concerning the automatic, minimum, 30-day designation term for must-offer waiver denials. First, we are not persuaded by SoCal Edison's concern that a must-offer waiver denial that CAISO later finds to be unnecessary does not warrant a 30-day TCPM designation. On the contrary, we find that, if CAISO intended to call on the unit, then a 30-day designation is appropriate. The unit has been designated to provide backstop capacity service and must prepare to provide this service. Furthermore,

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<sup>65</sup> *Id.* (citing TCPM Order, 123 FERC ¶ 61,229 at P 52).

<sup>66</sup> *Id.* at 9.

<sup>67</sup> *Id.*

if CAISO were to call on a unit in error, then CAISO may seek a waiver of the TCPM designation from the Commission.<sup>68</sup>

46. The TCPM was proposed and approved as a backstop capacity procurement mechanism. Thus, the TCPM was not intended to be the primary means of procuring capacity. We take administrative notice of the fact that CAISO used TCPM infrequently and merely for procurement of backstop capacity from June 1, 2008, and its sunset, March 31, 2009.<sup>69</sup> Accordingly, we dismiss SoCal Edison's concerns as moot.

47. Regarding the concerns of Six Cities, PG&E, and SoCal Edison that the 30-day minimum designation period is unsupported and that it will inappropriately increase consumers costs, we conclude that these parties have failed to provide any evidence that persuades us to grant rehearing. The Commission did not base its determination that a 30-day minimum designation term was appropriate merely on the high number of must-offer waiver denials or the limited number of capacity designations under the RCST. Rather, the Commission found that the discretion afforded to CAISO under the Significant Event provisions would allow CAISO to use non-resource adequacy resources without making a capacity designation.<sup>70</sup> The Commission explained that non-resource adequacy resources designated under the must-offer obligation provide essentially the same capacity services as resource adequacy resources.<sup>71</sup> However, absent a capacity designation comparable to the term offered under the resource adequacy program, this

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<sup>68</sup> Indeed, the Commission granted CAISO's request for a waiver following the designation of a TCPM unit in error. *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,060, at PP 1, 18 (2009).

<sup>69</sup> For each TCPM designation, *see* the following market notices posted on the CAISO website: [www.CAISO.com/1ff8/1ff8996716e30.pdf](http://www.CAISO.com/1ff8/1ff8996716e30.pdf) (June 2, 2008 must-offer waiver denial for two resources resulting from a planned outage in the Bay Area); [www.CAISO.com/2099/209983d929b20.pdf](http://www.CAISO.com/2099/209983d929b20.pdf); (November 25, 2008 must-offer waiver denial for three resources resulting from losing 900 MW of generation in an unplanned outage); [www.CAISO.com/2336/23368998312f0.pdf](http://www.CAISO.com/2336/23368998312f0.pdf) (December 19, 2008 must-offer waiver denial for Ormond Beach Unit 2 resulting from multiple transmission and generation outages); and [www.CAISO.com/236f/236f6efd22e50.pdf](http://www.CAISO.com/236f/236f6efd22e50.pdf) (February 8, 2009 must offer waiver denial for Encina Unit 4 resulting from multiple transmission and generation outages in one area).

<sup>70</sup> TCPM Order, 123 FERC ¶ 61,229 at P 36.

<sup>71</sup> *Id.* P 34.

“disparate treatment may result in unduly discriminatory treatment.”<sup>72</sup> We note that the Commission did not find that CAISO inappropriately administered the RCST. Rather, we found that under the original TCPM proposal, the potential for “disparate treatment may result in unduly discriminatory treatment of certain non-resource adequacy [resources].”<sup>73</sup> Accordingly, we deny rehearing and reaffirm our finding that a minimum 30-day designation term is warranted in order to ensure comparable treatment among different classes of resources providing similar capacity services.

48. Moreover, we disagree with certain parties’ assertion that a 30-day designation should only be made if the reliability need is prolonged. The Commission explained that, as proposed, the TCPM lacked an “objective benchmark” for requiring capacity designations.<sup>74</sup> Therefore, the Commission limited CAISO’s discretion by imposing a 30-day minimum designation. The Commission found that a 30-day minimum TCPM term was comparable to the minimum term that a similarly situated resource adequacy resource could expect to receive. By implementing a minimum designation term that is consistent with the resource adequacy program, the Commission helped to ensure comparable treatment among different classes of resources providing essentially the same capacity services.<sup>75</sup>

49. We also disagree with California Generators that suppliers should be compensated at higher levels simply because the initial designation period is limited to 30 days. As explained above, the Commission modified the TCPM proposal to prevent the potential for unduly discriminatory treatment of a particular class of resources. The Commission’s action was not intended to ensure that all resources remain economically viable, or that all resources are guaranteed to recover all of their annual fixed costs. Thus, we disagree with California Generators’ contention that relatively short-term designation should receive a premium capacity price.

50. We also deny California Generators’ request for a minimum three-month designation term for the reasons expressed in the TCPM Order. We reiterate the following:

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<sup>72</sup> *Id.* P 36 & n.41 (citing *Indep. Energy Producers Ass’n v. Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,069 (2006)).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* P 31.

<sup>75</sup> *Id.* P 59.

[W]e find that this 30-day minimum term, as opposed to a longer term, will better enhance the CAISO's ability to respond to shorter-term events in a cost-effective manner. In addition, resource adequacy showings are made in part on a monthly basis. Consequently, a minimum 30-day TCPM designation is more consistent with the resource adequacy program, and will better ensure non-discriminatory treatment between resource adequacy units and non-resource adequacy units going forward. [Independent Energy Producers Association] and California Generators have not shown that a 30-day designation provides insufficient compensation, and the CAISO retains the discretion to designate units for a longer period, if the expected duration of the Significant Event so warrants.

We emphasize that, if TCPM capacity services are needed beyond the initial 30-day term, then CAISO may extend the TCPM designation. For these reasons, we reaffirm that a minimum designation term in excess of 30-days is not required to ensure comparable treatment with resource adequacy resources.<sup>76</sup>

**G. Rejection of CAISO's Answer**

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

51. Six Cities ask the Commission to grant rehearing or clarification concerning its decision to reject CAISO's Answer. Six Cities assert that CAISO's Answer<sup>77</sup> contained information germane to Independent Energy Producers Associations (IEP) assertions regarding the implementation of the RCST and, specifically, the number of must-offer waiver denials that were issued between June 1, 2006 and December 31, 2007. Six Cities state that the Commission relied on IEP's assertion that CAISO's issuance of 525 must-offer waiver denials to 31 resources, and designation of only one unit as an RCST resource, meant that CAISO possessed a degree of discretion to designate backstop capacity resources that must be curtailed to ensure proper compensation to these resources under the TCPM.

52. Six Cities state that, despite the general prohibition on submitting answers to certain categories of filings set forth in Rule 213 of its Rules of Practice and Procedure, the Commission's well-established policy is to consider accepting responsive pleadings in circumstances where the pleading enhances the Commission's understanding of the

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<sup>76</sup> *Id.*

<sup>77</sup> Six Cities Rehearing Request at 9-10 (citing TCPM Order, 123 FERC ¶ 61,229 at P 19).

issues, provides the Commission with additional information to assist its decision-making process, or facilitates the development of an accurate and complete record.<sup>78</sup> Six Cities note that IEP's protest of the TCPM filing incorporated a prior submittal in another proceeding that was replete with allegations concerning CAISO's implementation of the RCST and the number of must-offer waiver denials issued. Thus, Six Cities assert that the Commission's acceptance of CAISO's response to those allegations was critical to development of the record.<sup>79</sup>

53. Six Cities note that CAISO explained in the transmittal letter accompanying its TCPM filing that the required three-month designation period under the RCST made it "very difficult to justify an RCST designation of capacity to address for [sic] shorter term events that create reliability problems."<sup>80</sup> Six Cities assert that failing to consider the reasons for CAISO's issuance of 525 must-offer waiver denials during the period when the RCST was effective does not constitute reasoned decision-making. Thus, Six Cities urge the Commission to accept CAISO's Answer and also to limit the automatic minimum 30-day designation to instances where the must-offer waiver denial was issued due to a lack of needed capacity.

## 2. Commission Determination

54. We deny Six Cities' request because we are not persuaded by Six Cities' arguments that the Commission erred in its decision to reject CAISO's Answer. Rule 213 of the Commission's Rules of Practice and Procedure states that "[a]n answer may not be made to a protest, an answer, a motion for oral argument, or a request for rehearing, unless otherwise ordered by the decisional authority."<sup>81</sup> Although the Commission has made exceptions to this rule, it is not obligated to do so. In section 205 proceedings, such as the instant proceeding, the filing party, here, CAISO, has the burden of persuading the Commission that its proposal is just and reasonable.<sup>82</sup> If CAISO wanted to include in the record the information contained in its Answer, CAISO could have and should have included this information with its section 205 filing proposing the

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<sup>78</sup> *Id.* at 10 (citations omitted).

<sup>79</sup> *Id.* at 11.

<sup>80</sup> *Id.* (citing CAISO Transmittal at 32).

<sup>81</sup> 18 C.F.R. § 385.213(a)(2) (2012).

<sup>82</sup> *Alabama Power Co. v. FERC*, 993 F.2d 1557, 1571 (citing 16 U.S.C. § 824d(e); *Winnfield v. FERC* 744 F.2d 871, 877 (D.C. Cir. 1985)).

TCPM. Before making the TCPM filing, CAISO had over 18 months of experience under the prior backstop capacity mechanism, the RCST, which originated as a settlement to a complaint filed by IEP.<sup>83</sup> Furthermore, CAISO also consulted with stakeholders before filing its TCPM proposal. Consequently, CAISO could have foreseen the type of challenges its proposal would face and anticipated the evidence needed to support its filing. Thus, the Commission was acting well within its discretion when it rejected CAISO's Answer in the instant proceeding.<sup>84</sup> For these reasons, the Commission denies Six Cities' request for rehearing.

## H. Miscellaneous

### 1. Application of the Just and Reasonable Standard

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

55. SoCal Edison asserts that the Commission used the wrong benchmark to determine the justness and reasonableness of the revised TCPM. Instead of finding that the TCPM was just and reasonable because it is applied “*uniformly or comparably*,”<sup>85</sup> SoCal Edison states that *non-discriminatory* application is the appropriate standard. SoCal Edison elaborates that the FPA requires the Commission to ensure that wholesale power rates are applied in a *non-discriminatory* manner.<sup>86</sup> Pointing out that the plain language of section 205 of the FPA provides that there can be “no *unreasonable* difference” in rates, charges, services, etc., SoCal Edison asserts that, in order for “‘unreasonable’ to not be superfluous, Congress could not have intended to require *uniform* application under the FPA.”<sup>87</sup>

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<sup>83</sup> See TCPM Order, 123 FERC ¶ 61,229 at PP 4-6, 35.

<sup>84</sup> The Commission notes that the inclusion of CAISO's Answer in the record, including the explanation of the must-offer waiver denials, would not have led the Commission to a different conclusion, as the Commission was considering the record as a whole, not merely the data contained in IEP's protest.

<sup>85</sup> SoCal Edison Rehearing Request at 2.

<sup>86</sup> *Id.* at 2-3.

<sup>87</sup> *Id.*

**b. Commission Determination**

56. We deny SoCal Edison's request. SoCal Edison is incorrect in its assertion that the reason the Commission found the TCPM to be just and reasonable is because it is applied uniformly or comparably.<sup>88</sup> Rather, we found the TCPM to be just and reasonable because the application of the TCPM, as modified, is not unduly discriminatory,<sup>89</sup> as required by Section 205 of the FPA. This is the appropriate standard for assessing a rate under section 205 the FPA.<sup>90</sup>

57. To support its request for rehearing, SoCal Edison points to the Commission's determination regarding CAISO's ability to designate capacity for Significant Events. We highlight the following salient excerpt from the relevant determination:

Accordingly, we direct the CAISO to modify its proposal by incorporating an objective criterion and providing units with a minimum 30-day capacity designation upon the first commitment under the must-offer obligation. *As explained below, we find that this modification will ensure non-discriminatory treatment between both resource adequacy resources and units under [reliability must-run] contracts, on the one hand, and non-resource adequacy resources on the other hand.* We also find that, notwithstanding this modification, the CAISO will retain adequate, but not potentially discriminatory, discretion for designating capacity under the TCPM.<sup>91]</sup>

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<sup>88</sup> Specifically, SoCal Edison refers to PP 32-35 and P 98 of the TCPM Order. *See supra* note 85.

<sup>89</sup> TCPM Order, 123 FERC ¶ 61,229 at PP 31-32.

<sup>90</sup> Section 205 of the FPA provides, in pertinent part:  
No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

16 U.S.C. § 824d(b) (2006).

<sup>91</sup> TCPM Order, 123 FERC ¶ 61,229 at P 32 (citations omitted) (emphasis added).

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In the transition from a reliability framework dependent upon the must-offer obligation to one based upon a comprehensive set of resource adequacy requirements under MRTU, the Commission has worked to ensure non-discriminatory treatment of generators and other resources. At a minimum, resource adequacy units receive monthly payments for capacity to cover their fixed costs. Similarly, [reliability must-run] units have annual contracts that provide payment related to their fixed costs. In the July 20, 2006 Order, the Commission concluded that it is unduly discriminatory to require non-resource adequacy units to comply with the must-offer obligation and provide similar reliability needs as resource adequacy units, without receiving a similar capacity payment. Moreover, the Commission approved the RCST settlement because it resolved this inconsistency among classes of generators, “ensuring that generators acting as reliability backstops receive fair compensation in the form of a capacity payment.”<sup>92]</sup>

58. As the above-quoted excerpts reveal, the Commission’s pivotal concern was ensuring that there is no undue discrimination among resource adequacy resources (i.e., capacity under reliability must-run agreements or resource adequacy agreements) and non-resource adequacy resources with respect to Significant Event designation. The Commission required a minimum 30-day term for TCPM designations to ensure that non-resource adequacy resources would be appropriately compensated for the backstop capacity service they provide.

59. SoCal Edison also points to the Commission’s determination regarding price discrimination:

We disagree with IEP that existing generators are subject to undue price discrimination. The TCPM uniformly applies to all generators that are operating without a capacity contract and are needed for reliability capacity services. In fact, both new and existing generators receive identical compensation under the TCPM for the services they provide. Further, the Commission finds that the compensation provided to these non-resource adequacy generators under the TCPM, as modified herein, is just and reasonable. Moreover, we note that a market-based rate should not guarantee cost recovery, but rather fairly compensate generators for the services they

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<sup>92</sup> *Id.* P 34 (citations omitted).

provide, without discriminating among classes of generators providing the same service. We find that the TCPM accomplishes this goal.<sup>[93]</sup>

Contrary to SoCal Edison's claim that the TCPM was found to be just and reasonable because it is applied uniformly (or comparably), in the excerpt quoted above, the Commission simply uses the term "uniformly" in connection with its statement that the TCPM will *not discriminate between new and existing generators* that are operating without capacity contracts because both will receive the TCPM compensation for their backstop capacity services. This statement, moreover, is ancillary to the Commission's chief rationale for finding the TCPM, as modified in the TCPM Order, to be just and reasonable and not unduly discriminatory. As we articulated, a minimum 30-day capacity designation upon the first commitment under the must-offer obligation "will ensure non-discriminatory treatment between both resource adequacy resources and units under reliability must run contracts, on the one hand, and non-resource adequacy resources on the other hand."<sup>94</sup> Thus, we disagree with SoCal Edison's reading of the TCPM Order and deny its rehearing request.

## 2. Evidence Supporting Commission Modification

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

60. SoCal Edison argues that the Commission failed to engage in reasoned decision-making by modifying the CAISO proposal to make one must-offer waiver denial equal a 30-day TCPM designation.<sup>95</sup> SoCal Edison argues that there is no evidentiary record supporting a 30-day TCPM designation.<sup>96</sup> SoCal Edison states that the Commission does not explain why CAISO's Significant Event designation process is just and reasonable for more than 30 days, but not just and reasonable for less than 30 days.<sup>97</sup> Therefore, SoCal Edison asserts that because no evidence was presented or considered to reach this determination, the modification requiring a 30-day minimum designation should be eliminated.

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<sup>93</sup> *Id.* P 98 (citations omitted) (emphasis added).

<sup>94</sup> *Id.* P 32.

<sup>95</sup> SoCal Edison Rehearing Request at 1 (citing TCPM Order, 123 FERC ¶ 61,229 at P 32).

<sup>96</sup> *Id.* at 3.

<sup>97</sup> *Id.*

61. SoCal Edison asserts that the Commission failed to take into account what resource adequacy units are paid, so there is no record supporting FERC's determination that 30 days of TCPM capacity payments is comparable to what resource adequacy units are paid.<sup>98</sup> SoCal Edison speculates that resources that can reasonably expect to obtain must-offer waiver denials will likely use the TCPM payment as the floor for their resource adequacy bids, which subverts the intent of the TCPM program. Moreover, SoCal Edison argues that the comparison between non-resource adequacy resources and reliability must-run contracts is invalid, in part because reliability must-run agreements provide a service that differs from the service provided by resource adequacy or non-resource adequacy resources.<sup>99</sup>

62. SoCal Edison states that in the TCPM Order, the Commission criticized CAISO's reliance on the must-offer obligation because it "would allow the CAISO to use non-resource adequacy generators to ensure reliability just as it uses resource adequacy (and [reliability must-run] units)."<sup>100</sup> SoCal Edison contends that this finding is in direct contravention of the Commission's finding prior to June 1, 2008 that such reliance was just and reasonable.<sup>101</sup> SoCal Edison asserts that the Commission has not explained any distinction between these two cases, and thus SoCal Edison argues that evidence of reliance does not justify revising the compensation to non-resource adequacy/reliability must-run resources.

63. In addition, SoCal Edison argues that, while the Commission found the price of \$73/kW-year plus the Consumer Price Index-Urban to be reasonable based on the RCST record,<sup>102</sup> there is no record in this proceeding or the RCST proceeding that supports paying \$73/kW-year for 30 days based upon receiving one must-offer waiver denial.

**b. Commission Determination**

64. We disagree with SoCal Edison's assertion that there is no evidentiary record supporting the Commission's modification (i.e., requiring a minimum 30-day designation upon the first instance of must-offer waiver denial) and therefore deny rehearing. As we

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<sup>98</sup> *Id.* at 4-5.

<sup>99</sup> *Id.* at 6.

<sup>100</sup> *Id.* at 4 (citing TCPM Order, 123 FERC ¶ 61,229 at P 36).

<sup>101</sup> *Id.* (referencing *Indep. Energy Producers v. Cal. Indep. Sys. Operator, Corp.*, 118 FERC ¶ 61,096 (2007) (Order on Paper Hearing)).

<sup>102</sup> *Id.* at 7 (citing Order on Paper Hearing, 118 FERC ¶ 61,096 at P 72).

found in the TCPM Order, “[t]he data supplied by IEP supports this determination.”<sup>103</sup> Further, contrary to SoCal Edison’s assertions, we found that a 30-day minimum designation term balanced the following: (1) CAISO’s ability to respond to shorter-term events in a cost-effective manner; (2) consistency with the resource adequacy program, thereby ensuring non-discriminatory treatment between resource adequacy units and non-resource adequacy units; and (3) sufficient compensation for a generator to remain available.<sup>104</sup> We reiterate that in the TCPM Order, the Commission endeavored to ensure that there is no undue discrimination among categories of resources providing backstop capacity services. As resource adequacy agreements and reliability must-run agreements generally have at least a monthly or annual term, a 30-day minimum designation term is necessary to provide compensation parity for non-resource adequacy resources and resource adequacy resources. Moreover, courts have acknowledged that ratemaking is not an exact science.<sup>105</sup> Thus, we find SoCal Edison’s concerns to be unfounded.

### **3. The Original TCPM Proposal**

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

65. SoCal Edison requests that the Commission accept CAISO’s original proposal, rather than the modifications the Commission required in the TCPM Order.<sup>106</sup> Specifically, SoCal Edison argues that the Commission failed to engage in reasoned decision-making by modifying the CAISO proposal to make one must-offer waiver denial equal a 30-day TCPM designation.<sup>107</sup> If the Commission rejects this request, SoCal Edison argues that it should modify the current proposal to protect consumers from outcomes that are not just and reasonable. SoCal Edison emphasizes that it is not just and reasonable to force customers to pay a 30-day capacity contract if CAISO makes a

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<sup>103</sup> TCPM Order, 123 FERC ¶ 61,229 at P 32; *see also id.* P 27 & n.31 and P 35 & n.43. The Commission’s decision must be based on substantial evidence in the record. As the Supreme Court has explained, “substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Universal Camera Corp. v. National Labor Relations Bd.*, 340 U.S. 474, 477 (1951) (quoting *Consolidated Edison Co. v. Labor Bd.*, 305 U.S. 197, 229 (1938)).

<sup>104</sup> TCPM Order, 123 FERC ¶ 61,229 at P 59.

<sup>105</sup> *See, e.g., PSC of Kentucky v. FERC*, 397 F.3d 1004 (D.C. Cir. 2005).

<sup>106</sup> SoCal Edison Rehearing Request at 7.

<sup>107</sup> *Id.* at 1 (citing TCPM Order, 123 FERC ¶ 61,229 at P 32).

designation error or discovers after denying a must-offer waiver request that there are resource adequacy and/or reliability must-run alternatives that were not originally considered. Accordingly, SoCal Edison asserts that CAISO must be required to use effective resource adequacy and reliability must-run units prior to denying a must-offer waiver request from a non-resource adequacy unit. Second, SoCal Edison contends that, in the event that CAISO issues a must-offer waiver denial to a non-resource adequacy unit and subsequently determines within a 24-hour period that alternative means were available to address the operating concern that led to the must-offer waiver denial, the unit should be paid a daily capacity payment as was the case under the RCST.<sup>108</sup>

**b. Commission Determination**

66. We reject SoCal Edison's request to reinstate and adopt CAISO's original TCPM proposal. The Commission found that CAISO had not shown that certain features of the original proposal were just and reasonable,<sup>109</sup> such as CAISO's excessive discretion with respect to designation of Significant Events. SoCal Edison has not presented evidence that persuades us to change our original findings. Regarding SoCal Edison's assertion that CAISO should be required to use resource adequacy resources and reliability must-run units prior to denying a must-offer waiver request from a non-resource adequacy unit, we agree. When it is feasible to do so, CAISO should use all procured capacity resources prior to denying a must-offer waiver request.<sup>110</sup> This is consistent with the TCPM's purpose as a backstop capacity procurement mechanism, and will also help keep TCPM costs down. Additionally, the Commission has recognized instances when the dispatch of non-resource adequacy resources does not warrant a capacity designation.<sup>111</sup>

67. We reject SoCal Edison's argument that if CAISO issues a must-offer waiver denial to a non-resource adequacy unit and subsequently determines within a 24-hour period that alternative means were available to address the operating concern that led to the must-offer waiver denial, then the unit should receive a daily capacity payment. Specifically, we find that a 30-day TCPM designation is appropriate when CAISO

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<sup>108</sup> *Id.* at 7.

<sup>109</sup> *See, e.g.*, TCPM Order, 123 FERC ¶ 61,229 at P 31.

<sup>110</sup> We note that CAISO TCPM tariff section 40.6A.6 provides the following: "To the extent conditions permit, the ISO will revoke the waivers of Resource Adequacy Resources and TCPM resources prior to revoking the waivers of FERC Must-Offer Generators."

<sup>111</sup> *See* TCPM Order, 123 FERC ¶ 61,229 at P 78.

intended to call on the unit because the unit was required to stand ready to provide backstop capacity service. As discussed above, if CAISO calls on a unit in error, it may file with the Commission to seek a waiver of its TCPM tariff provisions.<sup>112</sup>

The Commission orders:

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

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

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>112</sup> See *supra* note 68 and accompanying text.