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COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR'S DECEMBER 6, 2011 REPORT ON BASIS AND NEED FOR CPM DESIGNATION FOR SUTTER ENERGY CENTER

Summary

The Division of Ratepayer Advocates (DRA) opposes CAISO's proposed designation of Sutter Energy Center (Sutter) as capacity that is at "Risk of Retirement" and needed for reliability purposes.

The CAISO's Tariff section 43.2.6 allows a resource that is needed for reliability, but at risk of retiring due to economic reasons, to request a Capacity Procurement Mechanism (CPM) designation under very limited circumstances to address short-term reliability needs, where specific criteria are met. In its December 6, 2011 "Report on Basis and Need for CPM Designation for Sutter Energy Center" dated December 6, 2011 ("Report"), the CAISO announced its intention to seek a waiver of one of the most important of those criteria: that the resource at risk of retirement be needed for reliability purposes by the end of the calendar year following the current Resource Adequacy (RA) compliance cycle. A waiver of this condition would be required because the CAISO has concluded that the Sutter Energy Center is not needed for reliability until the 2017-18 timeframe.

DRA does not agree with the CAISO's conclusion that the resource will be needed that soon, but even if it were, CPM payments should not be available to a resource that is definitely not needed for several years. It would be both unjust and unreasonable to require ratepayers to pay for a resource that is not needed, or is not financially viable (for whatever reason).

- The CAISO's assertion of need is based on inflated assumptions regarding the forecasted need in 2017/18 which are not consistent with the California Public Utilities Commission's (CPUC) approved scenarios in the Long-Term Procurement Planning (LTPP) proceeding.
- If the CPM designation of Sutter is approved, DRA estimates that ratepayers would pay a minimum of $157.5 million dollars over a five year CPM contract term beginning in 2012, for capacity that the CAISO acknowledges is not needed, and will not be needed until 2017 at the earliest.
- The FERC recently authorized the at Risk of Retirement backstop procurement mechanism to be used only as a "last resort," when a resource is needed for reliability in the near future. By requesting a "waiver" of the criterion that the resource be needed in the next RA compliance year, CAISO's is proposing an extraordinary expansion of this first use of the Risk of Retirement designation.
- The CPM designation for Sutter under criteria that do not meet CAISO's current tariff requirements is detrimental to the RA capacity program and infringes on the CPUC's authority over long-term resource planning.

While CAISO states that it anticipates that its longer-term capacity procurement mechanism stakeholder proceeding will be completed next year, there is no guarantee that FERC will approve a new longer-term CAISO procurement mechanism, or that Sutter will be designated under this new mechanism. Therefore, the attempt waive of the current Risk of Retirement criteria could be a "bridge to nowhere."

(1) The CAISO's assessment of need in 2017-18 is based on overly conservative assumptions that are inconsistent with the assumptions developed by the CPUC in the Long-Term Procurement Planning Proceeding.

CAISO's technical analysis (referenced in its Report) claims there will be a need for more than 3,500 MW of additional new capacity in the 2017-18 timeframe, and asserts that its analysis is based on the CPUC's LTPP proceeding planning assumptions. This assertion is incorrect and misleading. Contrary to the CPUC's determination in the LTPP to use the "base case" scenario load assumptions,[1] the CAISO's technical analysis is based on the use of an alternative, "high load" scenario, which produces a load forecast 10% higher than the CPUC base case. **The CAISO's analysis of long-term need in the 2010 LTPP using the CPUC-approved scenarios showed no need for additional capacity in 2012 through 2020.**

Moreover, the CAISO and a majority of the parties entered into a settlement agreement filed in the LTPP proceeding, agreeing that there is no demonstrated need for additional capacity for the period 2012-2020. CAISO is continuing to study renewable integration needs with other stakeholders, and the results will most likely be explored in the next LTPP cycle. Thus, it remains to be seen if there will be any need for the development of new flexible resources to support RPS integration.

(2) The CPM designation of Sutter will result in millions of dollars of payments for capacity that the CAISO acknowledges is not needed for many years.

On the November 9th conference call, CAISO stated that it anticipated the duration of the CPM designation would be approximately nine months, beginning sometime in 2012. Assuming the CPM price is at the current $55/kw-year ICPM price, and that the quantity is 500 MW, the total cost for a nine month CPM designation will be around $20 million dollars for 2012.

CAISO's Report states that intends to have a more long-term CPM designation in place for the period of 2013-2020, and that it expects to assess the continued need

[1] The CPUC approved the use of four scenarios for long term procurement planning purposes to achieve the 33% Renewable Portfolio Standard requirements by 2020; these were the Trajectory, Time Constrained, Cost Constrained and Environmentally Constrained scenarios. Assigned Commissioner and Administrative Law Judge's Joint Scoping Memo and ruling issued in the LTPP Rulemaking (R.10-05-006) December 3, 2010.

for Sutter under this long-term mechanism. The additional capacity payments to Sutter for the period 2013-2018 come to $27.5 million per year, for a total of $137.5 million for all five years. Worse, the CPM price may increase, depending on the outcome and FERC approval of a settlement on the CPM price.[2] In sum, DRA estimates that the CPM designation for Sutter will result in ratepayers paying approximately **$157.5 million dollars** through 2018 at the current ICPM price.

Although DRA has not yet obtained access to the information submitted by Calpine in support of its request for the CPM at Risk of Retirement designation, it is public information that the Sutter Energy Center is a new combined cycle plant constructed in 2001 with a good heat rate; the revenue that it receives from power and ancillary services should be higher than its going forward costs and fuel costs. Thus, DRA is very skeptical of Calpine's claim that it cannot recover its going forward costs, even without an RA capacity contract, or that "mothballing" (temporarily shutting down the plant) is not a better solution.

(3) The proposed CPM designation is an unwarranted expansion of the CAISO's backstop procurement authority.

The CPM is a form of "backstop" procurement allowing the CAISO to procure capacity if RA capacity is insufficient. The new at Risk of Retirement is a special category of the CAISO's CPM Tariff approved by the FERC in March of this year.[3] In requesting this expanded CPM procurement authority, CAISO explained that this would be a "last resort, backstop mechanism" used "only in very limited circumstances" and subject to "stringent requirements" and a "robust analysis" of the need.[4] Further, the At Risk of Retirement was supposed to be "carefully designed to address a narrow situation" where the resource is needed for reliability in the next RA compliance cycle, but has not been procured for the current RA compliance period.[5] Notably, in approving the new CPM at Risk of Retirement Category, FERC directed the CAISO to re-file its tariff language to clarify that this new designation would be used as a "limited, last resort procurement mechanism" only if all other procurement measures have been exhausted.[6]

[2] The CPM price was not approved in the FERC's March 17, 2011 Order on the CAISO's Tariff Revisions; instead, FERC ordered parties to pursue settlement of the CPM price, which is pending and confidential until filed.
[3] FERC Order on Tariff Revisions (March 17, 2011), 134 FERC P 61,211.
[4] *Id.* at para. 112.
[5] *Id.* at para. 113.
[6] *Id.* at para. 130.

Now, in the first time the CAISO proposes to use this new category, CAISO is proposing to extend this category to a resource that is not needed in the current RA Compliance year (2012), or the next RA cycle (2013); nor is it needed in 2014, 2015, or 2016. Rather, CAISO projects that the Sutter plant will be needed in the 2017-18 timeframe. This scenario bears no resemblance to the narrow circumstances that FERC envisioned when approving the at Risk of Retirement category.

(4) The proposed "waiver" of the tariff requirements would infringe upon the CPUC's authority over Long-Term Planning and Resource Adequacy.

The CAISO's tariff authorized by FERC recognizes the need to place strict limits of the CPM designation to prevent duplication or interference with the CPUC's jurisdiction over resource planning.[7] The CAISO's tariff specifies five conditions that must occur before the Risk of Retirement designation can be triggered, and all five of the conditions in the tariff must be met. The condition that the resource will be needed for reliability in the next RA procurement cycle was intended to avoid interference with the CPUC's RA program, which currently requires procurement on a one year forward basis, and for this reason (among others) only allows CAISO backstop procurement when a resource is at risk of retiring, but needed in the next RA compliance year. Moreover, it was with this limited type of procurement in mind that parties settled on the CPM price. The CPM price was never envisioned to retain and compensate resources for up to five years.

This extraordinary extension of the CAISO's CPM backstop authority conflicts with the CPUC's authority over Resource Adequacy and Long-Term Planning, and would set a bad precedent if allowed. If Sutter Energy Center can receive an At Risk CPM Designation when it is not even needed for the next six years, what is to stop other plant owners from seeking the same CPM payments? Moreover, it would provide payment to plants that were not successful in obtaining an RA contract due to their high price bids in the Request for Offers (RFO) held by the utilities for RA capacity, and/or in the bilateral capacity markets. Providing capacity payments to plants that are not needed or unable to compete in the RA market undermines the RA program and promotes inefficiency in the capacity market.

[7] *Id.* at para. 126.

Conclusion

In summary, the issuance of an At Risk of Retirement designation for the Sutter plant has not been justified, and there is no reason why the FERC should grant CAISO's tariff waiver request to provide Sutter with a CPM backstop capacity payments. The CAISO's own technical analysis indicates that Sutter is not needed through 2016, thus CAISO concedes that this CPM designation would not comply with its tariff provisions. The requested waiver is inconsistent with the narrow authority granted by the FERC in approving the at Risk of Retirement category. DRA recommends that the CAISO not file with the FERC its proposed waiver request to designate the Sutter Energy Center.