

166 FERC ¶ 61,140
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

California Independent System Operator Corporation

Docket No. ER18-1169-002

ORDER ON REHEARING

(Issued February 21, 2019)

1. The California Independent System Operator Corporation (CAISO) seeks rehearing of the Commission’s order issued in this proceeding on June 21, 2018.¹ That order accepted in part, subject to condition, and rejected in part, CAISO’s proposed tariff revisions related to opportunity cost adders, resource characteristics registered in the Master File, and other clarifying changes. On rehearing, CAISO challenges the Commission’s decision to reject its proposal to allow resources to register market values in the Master File.² CAISO also argues that, by extension, the Commission erred in rejecting related proposals.³ Because we continue to find that CAISO’s market values proposal does not provide sufficient protections against the potential for physical withholding, and the related proposals are not severable from the market values proposal, we deny CAISO’s rehearing request.

I. Background

2. Generators participating in the CAISO markets are required to submit information to CAISO regarding the operational and technical constraints of their resources. This information must be accurate and must reflect the “physical characteristics” of each resource.⁴ For example, if a resource is physically capable of starting up five times

¹ *Cal. Indep. Sys. Operator Corp.*, 163 FERC ¶ 61,211 (2018) (June 2018 Order).

² CAISO Rehearing Request at 1.

³ *Id.* at 3-4.

⁴ CAISO April 2018 Answer at 29 (citing CAISO Tariff § 4.6.4).

per day, the scheduling coordinator should register five startups per day for the resource. CAISO maintains this generator-provided information in an electronic repository called the Master File.

3. In its March 23, 2018 filing, CAISO proposed two changes to clarify and revise the information registered in the Master File. First, CAISO proposed to replace “physical characteristics” with “design capability values.”⁵ According to CAISO, this approach would be “more objective,” as it would consider the design capabilities of a generating resource when operating at maximum sustainable performance over minimum run time while recognizing that resource performance may degrade over time.⁶ Second, CAISO proposed to allow scheduling coordinators to register “market values” for certain physical parameters in the Master File for default use in the CAISO markets. Specifically, a resource could register market values for its maximum number of daily startups, the maximum daily number of multi-stage generating resource transitions, and ramp rates, which CAISO would utilize during market operations and need not reflect a resource’s design capability.⁷

4. Because CAISO foresaw “potential gaming behavior and reliability concerns associated with physical withholding,” CAISO proposed several restrictions on the use of market values.⁸ For maximum daily startups and maximum daily multi-stage generating transitions, the minimum market value would be two per day, unless the design capability of the resource is one per day.⁹ For operational ramp rates, any market value must be sufficient to permit the resource to provide its flexible resource adequacy capacity obligation.¹⁰ In addition, CAISO proposed to reject a market value if it is infeasible given a resource’s design capability or inconsistent with a resource’s commitment to provide resource adequacy capacity.¹¹ Despite these restrictions, however, CAISO stated

⁵ CAISO March 2018 Filing at 29-30.

⁶ CAISO Rehearing Request at 16-17.

⁷ See Proposed CAISO Tariff § 4.6.4.2. For ramp rates, the parameters included operational ramp rates, operating reserve ramp rates, and regulation ramp rates. CAISO March 2018 Filing at 30-31.

⁸ CAISO April 2018 Answer at 30-31.

⁹ CAISO March 2018 Filing at 31; CAISO Rehearing Request at 5-6.

¹⁰ CAISO March 2018 Filing at 31; CAISO Rehearing Request at 6.

¹¹ CAISO March 2018 Filing at 32; CAISO Rehearing Request at 7.

that it would “honor” the “preferred” market values “in the market and generally for exceptional dispatch purposes unless the CAISO’s reliability needs dictate otherwise.”¹²

5. In the same filing as the market values proposal, CAISO also proposed tariff revisions that would remove all ramp rates as a component of daily bids and, according to CAISO, make other “minor clarifications” to provide more specific cross-references throughout its tariff.¹³

6. In the June 2018 Order, the Commission accepted, subject to condition, CAISO’s separate proposed tariff revisions concerning use-limited resources, which are not at issue on rehearing and not otherwise discussed here.¹⁴ But the Commission rejected CAISO’s market values proposal, finding that CAISO had not shown it to be just and reasonable.¹⁵ The Commission also rejected CAISO’s related proposals regarding design capability values, ramp rates, and other clarifying changes, finding that they could not be severed from the market values proposal.¹⁶

7. The Commission explained that, under CAISO’s market values proposal, resources would be permitted to use preferred market values for the above-referenced physical parameters, thereby allowing market participants to make less capacity available to the market.¹⁷ The Commission stated that this could undermine the market’s economic resource dispatch when transmission constraints or other supply limitations create opportunities for the exercise of market power.¹⁸ The Commission observed that CAISO did not propose any provisions to address this potential for market power exercise, and found that CAISO’s current tariff does not provide for the mitigation of physical operating parameters in addition to energy bids, as there is currently no need to do so

¹² CAISO April 2018 Answer at 34; CAISO March 2018 Filing, Att. E at 5 (stating that the purely physical “design capability” values will “only be accessed by operations manually under stressed system conditions” during exceptional dispatch).

¹³ CAISO March 2018 Filing at 34-35.

¹⁴ June 2018 Order, 163 FERC ¶ 61,211 at P 32.

¹⁵ *Id.* P 44.

¹⁶ *Id.* PP 47, 53.

¹⁷ *Id.* P 44.

¹⁸ *Id.*

under CAISO's "physical characteristics" approach.¹⁹ The Commission also recognized that CAISO proposed several restrictions on the use of market values, but it concluded that these restrictions were insufficient.²⁰

II. Rehearing Request

8. CAISO argues that the Commission should not have rejected the market values proposal, as the sole reason for doing so – the Commission's finding that CAISO failed to mitigate the increased potential for physical withholding – is unfounded.²¹ Since CAISO claims that this rejection was in error, it also contends that, by extension, the Commission should not have rejected CAISO's other proposed tariff revisions.²²

9. CAISO argues that the Commission's finding that CAISO failed to demonstrate its market values proposal is just and reasonable is unfounded for several reasons. CAISO states that no party, including the CAISO Department of Market Monitoring (DMM), expressed concern that the market values proposal could increase the risk of physical withholding, or that additional mitigation provisions are necessary.²³ CAISO also contends that the Commission ignored numerous existing requirements in CAISO's tariff and elsewhere that the Commission has previously found are sufficient to prevent physical withholding.²⁴ In light of these existing protections and prior Commission findings, CAISO claims that it did not need to propose new market power mitigation provisions.²⁵ Further, despite the adequacy of these existing safeguards, CAISO argues that its market values proposal does not actually increase the risk of physical

¹⁹ *Id.* PP 45-46.

²⁰ *Id.* P 46.

²¹ CAISO Rehearing Request at 17.

²² *Id.* at 18.

²³ *Id.* at 1, 7-8, 26-27.

²⁴ *Id.* at 17, 20-26.

²⁵ *Id.* at 22.

withholding;²⁶ rather, it provides “myriad benefits” that “manifestly outweigh the remote risk of additional market abuses,” particularly for non-resource adequacy resources.²⁷

10. Ultimately, CAISO requests that the Commission grant rehearing and find the market values proposal just and reasonable. In doing so, CAISO asks that the Commission also accept its proposals regarding design capability values, ramp rates, and other clarifying changes, which CAISO states were rejected “solely” because they were not severable from the market values proposal.²⁸

III. Discussion

11. We deny CAISO’s request for rehearing. We recognize that there are existing rules in CAISO’s tariff that prohibit the exercise of market power through physical withholding. We also acknowledge that, in other cases, the Commission has found that these rules are sufficient to protect against such behavior. However, those cases are distinguishable, and despite the existing safeguards, we again find that CAISO’s market values proposal presents a new opportunity for market participants to exercise market power that CAISO has not sufficiently addressed. Accordingly, we affirm the Commission’s decision to reject CAISO’s market values proposal, as well as the related proposals regarding design capability values, ramp rates, and other clarifying changes that are not severable.²⁹

A. CAISO’s market values proposal creates the potential for physical withholding and is therefore not just and reasonable.

12. CAISO claims that the Commission failed to recognize the existing statutory, regulatory, and CAISO tariff requirements that protect against physical withholding.³⁰ We did not. Nor did we ignore the Commission’s prior findings regarding their effectiveness, as CAISO contends.³¹ In the June 2018 Order, the Commission analyzed CAISO’s existing tariff and found that the market values proposal creates the potential

²⁶ *Id.* at 26-28.

²⁷ *Id.* at 29-30.

²⁸ *Id.* at 30-31.

²⁹ June 2018 Order, 163 FERC ¶ 61,211 at PP 44, 47, 53.

³⁰ CAISO Rehearing Request at 20-26.

³¹ *Id.* at 21-22.

for physical withholding because “CAISO’s existing market power mitigation lacks the ability to adjust market value parameters should a resource withhold capacity.”³²

13. Under CAISO’s current tariff, when a market participant can relieve a binding constraint that is deemed non-competitive, the participant’s bid may be mitigated.³³ Currently, a resource’s physical operating parameters registered in the Master File can only reflect the resource’s true “physical characteristics;” therefore, when a resource’s bid is mitigated, there is no need to mitigate the resource’s physical parameters in addition to its energy bid. Under CAISO’s proposal, however, resources would be permitted to reflect their preferred physical parameters in the Master File, subject only to certain limitations and minimal oversight. Specifically, CAISO’s proposal requires resources to register at least two daily startups, and allows CAISO to reject a market value if it finds that the value is infeasible given the design capabilities of a resource or inconsistent with a commitment to provide resource adequacy capacity. CAISO has not proposed any tariff changes to authorize it to mitigate the preferred market values for the applicable physical parameters, if necessary. Therefore, under CAISO’s proposal, if a market participant fails a market power screen, indicating that a market participant has the potential to distort competitive outcomes and its bid is mitigated, its preferred physical operating parameters will not also be mitigated to design capabilities. As such, CAISO has not responded to our specific concern regarding the absence of any mechanism in CAISO’s tariff that could be used to mitigate a resource’s physical parameters in addition to its energy bid if CAISO finds the potential for market power.³⁴ As discussed further below, we therefore affirm the Commission’s finding that CAISO’s proposal raises the potential for physical withholding, which CAISO has not sufficiently mitigated.

14. Absent some form of mitigation, we reiterate that allowing market participants to register desired or preferred market values for physical operating parameters may create opportunities to benefit from physical withholding by earning higher uplift payments or raising market prices. A market participant could restrict a resource’s daily startups or

³² June 2018 Order, 163 FERC ¶ 61,211 at PP 45-46 (discussing the potential consequences of CAISO’s market values proposal, analyzing CAISO’s existing tariff, and finding that the “introduction of market values creates a need for CAISO to assess whether a market participant is using a resource’s market value to engage in physical withholding, and if so, to mitigate that parameter to the design capability”).

³³ CAISO Tariff §§ 31.2.3, 34.1.5, 39.7.

³⁴ June 2018 Order, 163 FERC ¶ 61,211 at P 46 (highlighting that, under the market values proposal, there is no ability for the mitigation to adjust parameters submitted to the Master File).

ramp rates to appear less flexible than it actually is, resulting in the market not being able to “access the resource’s full capacity in a particular interval that would be available based on the design capability values.”³⁵ For example, using unmitigated market values, a market participant could reduce the number of daily startups for a resource so that the market must keep it on during hours when prices are lower than its bid price, rather than shut it down and start it again when prices rise. The market participant could benefit from uplift payments for this energy production, which may not have been dispatched if the number of daily startups had been higher in order to reflect the design capability. As another example, a market participant with multiple resources could use less flexible market values for its less expensive resources, to limit their availability, causing the need for more expensive resources to run, thereby raising prices and increasing profits to its fleet.

15. Although CAISO states that resources must register at least two daily startups, and CAISO may “reject a market value” if it finds that the value is “infeasible” given the design capabilities of a resource or “inconsistent” with a commitment to provide resource adequacy capacity, we again find that these restrictions are insufficient to remedy our concerns.³⁶ As an initial matter, CAISO’s proposal to reject a value if it is infeasible suggests that the proposed value must be less restrictive than the resource’s actual physical limit (e.g., this would only apply if a resource overstates its ramp rates or daily startups, beyond its physical capabilities). However, our finding that the market values proposal could increase the potential for physical withholding stems from the fact that resources would be permitted to use values that are more restrictive than the physical limit.³⁷ In other words, the values are feasible. We therefore find that this proposed restriction does not address our concerns.

16. As discussed further below, CAISO’s reliance on consistency with existing resource adequacy commitments to reject a market value is also flawed in these circumstances, because the concern about physical withholding is not limited to withholding by resource adequacy resources. It is therefore unclear whether CAISO would be able to prevent all physical withholding through this policy. Specifically, this limitation will not address capacity that is not subject to a resource adequacy commitment. This means that CAISO would not be able to reject market values for non-resource adequacy resources, or for capacity that exceeds a resource’s resource adequacy obligation. Under tight supply conditions, non-resource adequacy resources may be needed to meet system demand, increasing their potential market power. CAISO argues

³⁵ *Id.* at n.83.

³⁶ CAISO March 2018 Filing at 32; June 2018 Order, 163 FERC ¶ 61,211 at P 46.

³⁷ June 2018 Order, 163 FERC ¶ 61,211 at P 46.

that it can procure non-resource adequacy resources through a capacity procurement mechanism (CPM) exceptional dispatch instruction, which then subjects such resources to a must-offer obligation.³⁸ However, we clarify that the June 2018 Order's finding regarding physical withholding involves circumstances that are "outside of exceptional dispatch,"³⁹ so CAISO's reliance on this ability is not persuasive.

17. While CAISO's proposed requirement that resources must register at least two daily startups is a necessary starting point given the CAISO system's typical twice-daily peak load pattern, it also does not mitigate against the risk of physical withholding.⁴⁰ The ability of a resource to submit a startup value greater than two, but below its design capability could be especially problematic given CAISO's particularly steep morning and evening net load ramp periods, and the frequency and size of load adjustments in both the hour-ahead and fifteen-minute market.⁴¹ These variations in system needs throughout the day may present opportunities for market participants to exercise market power through use of market values for physical parameters. Given these shortcomings, we find CAISO's argument that it crafted the market values proposal carefully to include restrictions that reinforce existing resource adequacy-related rules to be irrelevant.

18. Turning to CAISO's other arguments, we also find that CAISO's reliance on the prohibitions against market manipulation in the FPA, our regulations, and CAISO's own tariff is insufficient to address the identified potential for physical withholding.⁴² It is true that these provisions prohibit all entities – regardless of resource adequacy obligation – from manipulating electric energy markets. Indeed, as CAISO notes, the Commission

³⁸ CAISO Rehearing Request at 14-15.

³⁹ June 2018 Order, 163 FERC ¶ 61,211 at P 44.

⁴⁰ *Id.* P 46.

⁴¹ See *Q2 2018 Report on Market Issues and Performance*, California ISO Department of Market Monitoring at 32 (August 20, 2018) <http://www.caiso.com/Documents/2018SecondQuarterReportonMarketIssuesandPerformance.pdf>

⁴² CAISO Rehearing Request at 23-26 (citing section 222 of the FPA, 16 U.S.C. § 824v (2012), section 1c.2(a) of the Commission's regulations, 18 C.F.R. § 1c.2(a) (2018), and CAISO's tariff provisions providing market monitoring authority, CAISO Tariff §§ 39.3.1, 39.4).

may assess penalties against entities that engage in such behavior.⁴³ But neither these enforcement-related provisions nor CAISO's reliance on the California resource adequacy program requirements and related precedent support CAISO's argument that no additional mitigation provisions are necessary here. As discussed herein and in the June 2018 Order, CAISO's market values proposal raises the potential for physical withholding, and its proposed restrictions are insufficient deterrence.⁴⁴ Accordingly, despite our existing ability to enforce FPA requirements and our regulations prohibiting market manipulation, our obligation under FPA section 205 to ensure that proposed rates are just and reasonable and not unduly discriminatory does not permit us to overlook this "fatal" shortcoming.⁴⁵

19. We find that CAISO's reliance on *West-Wide Must-Offer Requirements* and the Commission's orders approving CAISO's current market design is misplaced.⁴⁶ In *West-Wide Must-Offer Requirements*, the Commission rejected the argument that its proposed termination of the West-wide must-offer requirement could allow resources in the Western Electricity Coordinating Council (WECC) to engage in physical withholding.⁴⁷ In doing so, the Commission stated that resources in WECC with resource adequacy obligations to CAISO load-serving entities would still have a must-offer obligation under CAISO's tariff.⁴⁸ For all other resources, the Commission noted that the FPA and Commission regulations prohibit electric energy market manipulation.⁴⁹ And in its orders approving CAISO's current market design, the Commission stated that CAISO's resource

⁴³ CAISO Rehearing Request at 25.

⁴⁴ June 2018 Order, 163 FERC ¶ 61,211 at PP 44-46.

⁴⁵ See *Nw. Corp. v. FERC*, 884 F.3d 1176, 1182 (D.C. Cir. 2018) (stating that it is the filing party's "burden under Section 205 to show that its proposed rate was just and reasonable," and that its failure to do so was "fatal").

⁴⁶ CAISO Rehearing Request at 21-22 (citing *West-Wide Must-Offer Requirements*, 157 FERC ¶ 61,051 (2016); *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076, at P 552 (2007); *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 at P 1113 (2006); *Cal. Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,310 at P 39 (2005)).

⁴⁷ CAISO Rehearing Request at 21 (citing *West-Wide Must-Offer Requirements*, 157 FERC ¶ 61,051 at PP 14-17).

⁴⁸ *West-Wide Must-Offer Requirements*, 157 FERC ¶ 61,051 at P 17.

⁴⁹ See CAISO Rehearing Request at 21 (citing *West-Wide Must-Offer Requirements*, 157 FERC ¶ 61,051 at P 17).

adequacy program is a necessary component of its market power mitigation structure; as a result, the Commission approved CAISO's proposed mitigation package, in principle, as sufficient to prevent the exercise of market power.⁵⁰ However, while CAISO's resource adequacy program, its market power mitigation structure, and the general prohibitions against market manipulation in the FPA and Commission regulations are important component elements that protect against physical withholding, they are not dispositive here. CAISO's market values proposal represents a departure from the context of the earlier orders cited by CAISO; that proposal therefore warrants a renewed and independent analysis based on the specific proposal before us. And, as the Commission found, that proposal creates the potential for physical withholding. Accordingly, we find that CAISO's reliance on these cases is misplaced.

20. In addition, we note that CAISO has presented new evidence regarding many of the protections against physical withholding included in the California resource adequacy program for the first time on rehearing.⁵¹ The Commission generally does not allow the introduction of new evidence at the rehearing stage of a proceeding, as it disrupts the administrative process and prevents other parties from responding.⁵² Nevertheless, for the sake of clarity, we address these arguments below.

21. CAISO points to a "robust" resource adequacy program and related market rules that, according to CAISO, "mitigate physical withholding and ensure the needed capacity

⁵⁰ See CAISO Rehearing Request at 22 (citing *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076 at P 552; *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 at P 1113; *Cal. Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,310 at P 39).

⁵¹ See CAISO Rehearing Request at 11-17 (discussing the resource adequacy program established by California law).

⁵² See, e.g., *Nevada Power Co.*, 111 FERC ¶ 61,111, at P 10 (2005) (explaining that accepting additional evidence with a request for rehearing "is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision"); *PJM Interconnection, L.L.C.*, 121 FERC ¶ 61,173, at P 34 (2007) ("allowing new evidence on rehearing presents a moving target and eliminates the need for finality to proceedings"); *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,548 (1994) ("The Commission generally will not consider new evidence on rehearing, as we cannot resolve issues finally and with any efficiency if parties attempt to have us chase a moving target."); *Arkansas Power & Light Co.*, 52 FERC ¶ 61,029, at 61,156 n.14 (1990) ("The Commission has discretion to reject evidence that was available but not proffered for consideration at the time of the final decision or final order.").

and physical attributes are offered into, and utilized by, the market.”⁵³ In particular, despite the potential ability to use market values to exercise market power, CAISO emphasizes that resource adequacy resources – i.e., local, system, and flexible capacity resources – must provide capacity consistent with their must-offer obligations.⁵⁴ For non-resource adequacy resources, CAISO concedes that there is no must-offer obligation, but states that, if such resources choose to participate in the CAISO markets, they must follow the general bidding requirements in CAISO’s tariff.⁵⁵ Additionally, CAISO notes that it may use “crucial backstop measures to address issues of resource insufficiency,” which also impose must-offer obligations on procured resources for the duration of any procurement.⁵⁶ And, with reference to other resource adequacy-related mechanisms in its tariff, CAISO states that, despite the use of market values, CAISO may still issue exceptional dispatch instructions based on physical design capabilities if any additional resources are needed.⁵⁷

22. CAISO’s new arguments regarding the sufficiency of the resource adequacy program and the above-referenced resource adequacy-related rules are both procedurally improper, as discussed above, and unpersuasive. As the Commission noted in the June 2018 Order, CAISO’s proposal may result in resources making less capacity available to the market, which may increase the potential for physical withholding and thereby “affect dispatch and increase energy and ancillary service prices that may benefit the market participants’ affiliated resources.”⁵⁸ The potential for this market abuse exists for both resource adequacy resources with must-offer obligations and non-resource adequacy obligations without any must-offer requirements.

⁵³ CAISO Rehearing Request at 2, 14.

⁵⁴ *Id.* at 11-14.

⁵⁵ *Id.* at 14-17.

⁵⁶ *Id.* at 12-13 (citing CAISO Tariff § 43A.2.5).

⁵⁷ CAISO Rehearing Request at 13-14 (discussing the day-ahead market’s residual unit commitment process, which allows CAISO to procure capacity above resource adequacy capacity and triggers a must-offer obligation in the real-time market, as well as the bid-based resource adequacy availability incentive mechanism, which creates incentives for resources with obligations to participate consistent with the type of resource adequacy capacity they are providing); *id.* at 17 (noting that CAISO has exceptional dispatch authority).

⁵⁸ June 2018 Order, 163 FERC ¶ 61,211 at P 45.

23. Specifically, a must-offer obligation under the resource adequacy program does not mitigate against the potential for physical withholding under the market values proposal. Such an obligation (for non-flexible resource adequacy resources) does not require a specific number of daily startups, so the potential for “gaming behavior” based on the potential registration of preferred market values in the Master File remains.⁵⁹ Further, for resource adequacy resources generally, operating parameters are also not always tied to a must-offer obligation. Indeed, under CAISO’s proposal, a resource may offer into the market consistent with its offer requirement, but its registration of restrictive market values in the Master File may have the effect of limiting how often the market can accept those offers. CAISO’s reliance on the resource adequacy availability incentive mechanism to address this shortcoming is unpersuasive. This mechanism only applies to offers, and a resource can meet its must-offer obligation by offering in, but also limit its actual availability by limiting its physical parameters. Further, this mechanism can neither undo, nor penalize, this withholding. CAISO’s tariff also expressly provides that any “limitations specified in the Master File” excuse the non-availability of a resource adequacy resource from its must-offer obligation—and the ability to register new “limitations” in the Master File is exactly what CAISO proposes to allow here.⁶⁰

B. The June 2018 Order properly considered the potential for market power.

24. We also reject the notion that the June 2018 Order’s finding regarding the market values proposal is unfounded because no other party expressed concern about such behavior.⁶¹ CAISO – the party proposing tariff revisions under FPA section 205 – has the burden to show that its proposal is just and reasonable.⁶² This burden is not satisfied

⁵⁹ CAISO April 2018 Answer at 30-31 (discussing efforts to address potential for gaming behavior and reliability concerns associated with physical withholding).

⁶⁰ CAISO Tariff, § 40.6.1(2) (“Resource Adequacy Resources must be available except for limitations specified in the Master File, legal or regulatory prohibitions or as otherwise required by this CAISO Tariff or by Good Utility Practice.”).

⁶¹ *Id.* at 1 (“[n]o party to this proceeding raised this issue and no party argued that the CAISO’s existing market rules do not address this issue in light of the CAISO’s proposed changes to the resource characteristics requirements.”); *id.* at 26 (“neither DMM nor any other party raised concerns that the market value tariff revisions would increase the ability of a resource to exercise market power through physical withholding.”).

⁶² *See, e.g., New England Power Generators Ass’n, Inc. v. FERC*, 879 F.3d 1192, 1200 (D.C. Cir. 2018) (quoting 16 U.S.C. § 824d(e) (2012)).

solely by the absence of a protest; rather, the filing party maintains the burden to support its proposal regardless of any challenge.

25. In this proceeding, the record shows that CAISO crafted the market values proposal in an attempt to mitigate the potential for physical withholding and other market abuses, as summarized above.⁶³ To this end, CAISO touted the importance of specially proposed restrictions on the use of market values, stating that they were “necessary to avoid potential gaming behavior and reliability concerns associated with physical withholding.”⁶⁴ In various attachments to its March 2018 filing, CAISO also highlighted the need to prevent the potential exercise of market power.⁶⁵

26. The Commission considered these proposed restrictions here and in the June 2018 Order.⁶⁶ On balance, however, the Commission determined that they were not sufficient.⁶⁷ The fact that no other party also addressed this issue is not determinative; rather, this is the type of technical and policy-based analysis of a proposed rate that “lies at the core of the Commission’s regulatory mission.”⁶⁸ Accordingly, as discussed above, we affirm the June 2018 Order’s finding that CAISO has failed to meet its evidentiary burden.

C. CAISO’s benefits analysis is misplaced.

27. As discussed above, CAISO is incorrect that existing protections against physical withholding mitigate the potential for physical withholding that could occur under the

⁶³ See *infra* P 4 (discussing CAISO’s proposed limits on the use of market values).

⁶⁴ CAISO April 2018 Answer at 30-31 (addressing, in particular, the requirement of at least two market-value startups per day).

⁶⁵ See CAISO March 2018 Filing, Att. C at 45-46; *see also* CAISO March 2018 Filing, Att. E at 5-6.

⁶⁶ June 2018 Order, 163 FERC ¶ 61,211 at P 46 (“We recognize that CAISO has proposed certain limitations to the market values to mitigate the concern that a unit could exploit the CAISO system’s typical twice-daily peak load pattern.”).

⁶⁷ *Id.*

⁶⁸ See, e.g., *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 55 (D.C. Cir. 2014) (per curiam) (citing *Alcoa Inc. v. FERC*, 564 F.3d 1342, 1347 (D.C. Cir. 2009)).

market values proposal.⁶⁹ Given this, we disagree with CAISO's contention that, despite these existing protections, the risk of such behavior would be no greater after the market values proposal went into effect.⁷⁰ We therefore also disagree with CAISO's ultimate assessment of the risk created by the market values proposal. Accordingly, we reject CAISO's related argument that the Commission failed to properly weigh the proposal's "myriad" benefits.⁷¹

28. CAISO states that if resource adequacy resources meet their must-offer obligations, they are not exercising market power through physical withholding; according to CAISO, such resources would have to meet their must-offer obligation regardless of whether CAISO uses design capabilities or market values.⁷² CAISO therefore concludes that, because its proposal would not create incentives for resource adequacy resources to violate their must-offer obligations, it does not increase the risk of physical withholding.⁷³ CAISO reaches a similar conclusion for non-resource adequacy resources, because while there is no must-offer obligation for these resources, if necessary, CAISO can issue exceptional dispatch instructions.⁷⁴

29. CAISO also states that the ability to use market values will improve the efficiency of CAISO's markets by encouraging resource participation, since now, resources with capacity that is not under a must-offer obligation (i.e., non-resource adequacy resources) may either self-schedule or refrain from bidding entirely.⁷⁵ CAISO states that its proposal would incentivize these resources to participate economically in the markets and reduce the need for exceptional dispatch when the system needs additional capacity.⁷⁶ CAISO also claims that its proposal will avoid excessive wear and tear on resources and

⁶⁹ See *infra* section III.A.

⁷⁰ CAISO Rehearing Request at 26-28.

⁷¹ *Id.* at 29-30.

⁷² *Id.* at 27 (citing *West-Wide Must-Offer Requirements*, 157 FERC ¶ 61,051 at P 17).

⁷³ CAISO Rehearing Request at 27.

⁷⁴ *Id.* at 27-28.

⁷⁵ *Id.* at 29.

⁷⁶ *Id.*

create flexibility for market participants to manage contractual limitations.⁷⁷ CAISO states that these benefits outweigh the risk of physical withholding.⁷⁸

30. We disagree. As previously explained, the market values proposal creates a potential for physical withholding that is not mitigated by the existing tariff provisions and other rules and regulations that also address physical withholding. However, in response to CAISO's arguments, we again clarify that a must-offer obligation, although a necessary measure, is not sufficient to protect against the gaming behavior or physical withholding that even CAISO noted could occur under the market values proposal. Additionally, if CAISO wishes to correct market rules that it perceives as "undesirable from a market efficiency standpoint,"⁷⁹ it is incumbent upon CAISO as the filing party to craft a proposal that accomplishes its goals while not also creating unnecessary or unmitigated risk that resources may engage in market abuses like physical withholding. Accordingly, for the reasons articulated above, we reject the arguments that the market values proposal does not increase the risk of physical withholding, and ultimately, that the purported benefits of CAISO's proposal outweigh that risk.

D. The Commission properly rejected CAISO's related proposed tariff provisions.

31. As discussed above, we continue to find that CAISO has not shown that the market values proposal is just and reasonable, as it does not provide sufficient protections against potential physical withholding. With respect to the related tariff provisions, however, which include CAISO's proposals to implement the new design capability values approach, to remove ramp rates as components of daily bids, and to make other clarifying changes, CAISO argues only that the June 2018 Order erred in rejecting them because the order erred in rejecting the market values proposal.⁸⁰ CAISO does not argue that they should be independently considered and, if just and reasonable, accepted. Rather, CAISO claims that our rejection of the design capability values proposal has left ambiguity in CAISO's tariff, which CAISO states may reduce economic participation by non-resource adequacy resources in the CAISO markets.⁸¹

⁷⁷ *Id.* at 29-30.

⁷⁸ *Id.*

⁷⁹ *Id.* at 29.

⁸⁰ CAISO Rehearing Request at 30.

⁸¹ *Id.* at 20.

32. We continue to reject these proposed tariff revisions, as they have not been shown to be severable from the market values proposal. With respect to the design capability values tariff revisions, in particular, we find that CAISO has not presented sufficient evidence for us to determine whether these provisions are severable from the market values tariff revisions. For the reasons stated in the June 2018 Order, we continue to conclude that the ramp rates proposal and CAISO's other tariff clarifications are not severable from the market values proposal.⁸² We also again emphasize that CAISO's failure to provide sufficient evidentiary support for the market values proposal – the primary subject of CAISO's rehearing request and this order – does not preclude it from proposing changes under FPA section 205 to market rules and tariff provisions that it perceives as ambiguous.

The Commission orders:

CAISO's rehearing request is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁸² June 2018 Order, 163 FERC ¶ 61,211 at P 53.