134 FERC ¶ 61,211
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket No. ER11-2256-000

ORDER ON TARIFF REVISIONS

(Issued March 17, 2011)

1. On December 1, 2010, the California Independent System Operator Corporation (CAISO) submitted, pursuant to section 205 of the Federal Power Act (FPA)[1] and part 35 of the Commission's regulations,[2] revisions to its tariff to implement the Capacity Procurement Mechanism (CPM) and to modify certain exceptional dispatch tariff provisions.[3] The CPM is a backstop mechanism that authorizes CAISO to procure capacity to address a deficiency or supplement resource adequacy procurement by load serving entities, as needed, in order to maintain grid reliability. A resource owner's acceptance of a CPM designation is voluntary. The CPM is intended as a replacement for the current Interim Capacity Procurement Mechanism (ICPM), which will expire at midnight on March 31, 2011.

2. For the reasons discussed below, we accept and suspend CAISO's proposed tariff revisions concerning CPM compensation and exceptional dispatch mitigation, effective April 1, 2011, subject to refund and further order by the Commission. To facilitate expeditious resolution of these issues, the Commission directs staff to convene a

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[1] 16 U.S.C. § 824d (2006).

[2] 18 C.F.R. Part 35 (2010).

[3] CAISO December 1, 2010 Update to Capacity Procurement Mechanism and Exceptional Dispatch in Docket No. ER11-2256-000 (CPM Proposal or Proposal). Exceptional dispatch is an involuntary backstop mechanism that enables CAISO to manually commit and/or dispatch resources that are not cleared through its market software in order to maintain reliable grid operations. Exceptional dispatch may also be used for other situations that require dispatch of a resource outside of a market schedule such as testing, addressing transmission-related modeling limitations or providing voltage support, as specified in CAISO Tariff § 34.9.

technical conference. We conditionally accept, subject to modification, the remaining aspects of the CPM Proposal, effective April 1, 2011.

I. Background

3. The evolution of the ICPM and exceptional dispatch has been described at length in previous Commission orders.[4] Thus, only the relevant background details are described briefly here.

4. The Public Utilities Commission of the State of California (CPUC) and other local California regulatory authorities have established resource adequacy programs to ensure that CAISO has sufficient resources offered into its market to maintain reliable grid operation. There may be circumstances, however, when resource adequacy capacity[5] is insufficient to meet CAISO's operational needs. To meet these needs, CAISO relies upon the backstop procurement authority in the ICPM and exceptional dispatch provisions of its tariff.

5. In the ICPM Order, the Commission accepted the ICPM as a temporary backstop procurement mechanism, with an initial sunset date of December 31, 2010. The ICPM authorizes CAISO to designate capacity resources when procurement through the resource adequacy program is insufficient or when a significant event results in the need to supplement resource adequacy capacity in order to maintain reliable grid operation. ICPM designations are made for a minimum term of one-month and require the designated resource to offer its designated capacity into the CAISO markets for the period of the designation. In exchange for these services, resources procured under the ICPM receive a capacity payment of $41/kW-year.[6] The Commission directed CAISO to

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[4] *Cal. Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,053 (2008) (ICPM Order), *order on reh'g*, 134 FERC ¶ 61,132 (2011) (ICPM Rehearing Order); *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,150 (2009) (Exceptional Dispatch Order), *order on reh'g*, 129 FERC ¶ 61,144 (2009).

[5] A resource adequacy resource is a resource that has been procured by a load serving entity in response to resource adequacy requirements implemented by CPUC or a local regulatory authority. Resource adequacy resources operate under a capacity contract, which provides these resources with the opportunity to recover fixed costs. For purposes of this proceeding, non-resource adequacy resources are those resources that are not operating under capacity contracts (i.e., resource adequacy or reliability must-run contracts).

[6] ICPM Order, 125 FERC ¶ 61,053 at P 15.

submit a timely filing to continue its backstop authority beyond that sunset date if needed in order to reliably operate the system.[7]

6. Exceptional dispatch was originally proposed and approved by the Commission, without mitigation measures, as a tool to manually commit and/or dispatch resources that are not cleared through the CAISO market software in order to maintain reliable grid operations that would be "reserved for genuine emergencies."[8] Mitigation measures were not proposed by CAISO until 2008, when it determined that, in order to facilitate timely implementation of the Market Redesign and Technology Upgrade (MRTU), it would need to rely more regularly on exceptional dispatch until it was able to make software enhancements and improve modeling to fully implement MRTU.[9]

7. In the Exceptional Dispatch Order, the Commission rejected CAISO's proposal to apply broad mitigation where there had been no showing of the potential to exercise market power. The Commission explained that it limits mitigation to circumstances in which a "seller has been found to possess … market power."[10] In addition, the Commission stated that it "only accepts mitigation measures that address well-defined structural problems in the market, and has consistently rejected mitigation proposals that are not adequately supported by a showing of the potential to exercise market power."[11]

8. The Commission found that CAISO had justified mitigation measures for only two uses of exceptional dispatch: for the purpose of addressing reliability requirements related to non-competitive constraints and for exceptional dispatches to address the delta

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[7] *Id.* P 117.

[8] *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 266-267 (2006) (MRTU Order), *order on reh'g*, 119 FERC ¶ 61,076 (2007), *aff'd*, *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520 (2010) (*SMUD v. FERC*).

[9] For example, in its June 2008 proposal of the exceptional dispatch mitigation measures in Docket No. ER08-1178-000 (June 2008 Proposal), CAISO stated that it had "become aware that exceptional dispatch may be required more frequently than previously expected, especially during the first few months of MRTU." June 2008 Proposal at 6.

[10] Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 71.

[11] *Id.* (internal quotes omitted).

dispatch.[12] With respect to the mitigation of exceptional dispatches related to non-competitive constraints, the Commission found that CAISO's competitive path assessment, a periodic evaluation performed by CAISO to evaluate the competitiveness of constraints on the system, is "an objective and well-defined methodology that identifies transmission paths, which, if constrained, could enable suppliers to exercise market power."[13] Additionally, regarding the delta dispatch, the Commission found that a particular generator knew with a high degree of certainty that it would be dispatched regularly during the period when an environmental restriction is in place, thereby creating the potential for this unit to exercise market power.[14] The Commission agreed with protestors that a critical ingredient in the potential to exercise market power is knowledge that a resource will be exceptionally dispatched for energy.

9. In the Exceptional Dispatch Order, the Commission also, in relevant part: (1) approved CAISO's proposal to offer a 30-day ICPM designation as an option for compensating non-resource adequacy resources that are exceptionally dispatched to provide capacity-like services, thereby linking the ICPM and exceptional dispatch; (2) specified the situations in which market power mitigation measures could be applied to exceptional dispatches and set a 24-month sunset on the mitigation provisions; and (3) extended the ICPM sunset date to align with the expiration of the exceptional dispatch mitigation measures on March 31, 2011. The Commission specified that if CAISO found a need to extend the ICPM program and/or exceptional dispatch mitigation provisions beyond the 24-month sunset date, it would be required to submit a filing under section 205 of the FPA explaining why an extension is necessary. Further, the Commission informed CAISO that if it still intended to exceptionally dispatch non-resource adequacy resources beyond that sunset date, it would be required to file, no later than 120 days prior to the sunset of exceptional dispatch mitigation and the ICPM, a compensation proposal applicable to such resources that is consistent with the established precedent.[15]

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[12] *Id.* P 74. Delta dispatch is an environmental restriction that affects the operation of specific generators in the Sacramento Delta area during a limited period in the spring and summer, which limits the usage of resources and requires different combinations of resources to be used in certain circumstances.

[13] *Id.*

[14] *Id.* P 75.

[15] *Id.* P 145, 247, 248.

II. CPM Proposal

10. CAISO proposes to implement the CPM as a long-term replacement to the temporary ICPM. Although the proposed CPM retains the majority of the design features of the ICPM, CAISO proposes to implement the following modifications: (1) adding a new CPM designation category to allow CAISO to procure capacity at risk of retirement that will be needed for reliability in the following year; (2) updating the capacity price used to calculate the compensation paid to resources that receive a CPM designation; (3) adding two new criteria for selecting the capacity for CPM designation among potential resources; and (4) proposing the CPM without a sunset date. In addition, CAISO proposes to incorporate the CPM selection criteria into its exceptional dispatch tariff provisions and to retain the current exceptional dispatch mitigation measures beyond the March 31, 2011 sunset date.[16]

11. CAISO asserts that, while use of the ICPM has been limited, the needs that motivated implementation of the ICPM are still relevant today. Moreover, CAISO contends that the operational requirements associated with the integration of large amounts of energy from variable energy resources may increase the need for backstop procurement authority to address potentially diverse and challenging system conditions. Because the ICPM was designed to work in conjunction with the resource adequacy program, CAISO proposes to retain the basic design of the ICPM for the CPM.[17] CAISO asserts that the ICPM has worked effectively within the existing resource adequacy paradigm.[18]

12. CAISO requests an effective date of April 1, 2011, for its proposed tariff revisions.

III. Notice, Intervention, and Responsive Pleadings

13. Notice of the CPM Proposal was published in the *Federal Register*, 75 Fed. Reg. 76,714 (2010), with motions to intervene, comments, and protests due on or before December 22, 2010. Timely motions to intervene, comments, and/or protests were filed

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[16] CPM Proposal at 4-5.

[17] On June 3, 2010, the CPUC adopted a final decision that declined to impose either a multi-year forward capacity procurement requirement for resource adequacy capacity or a centralized capacity market, which essentially leaves the resource adequacy program unchanged. *See* http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/118990.htm (CPUC Decision).

[18] CPM Proposal at 16.

by 20 entities, as listed in Appendix A to this order.[19] The CPUC filed a notice of intervention and protest. Answers were filed by IEP, Six Cities, NRG, and CAISO. IEP filed an answer to CAISO's answer.

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by the parties because they have provided information that assisted us in our decision-making process.

B. CPM Compensation

1. Compensation Methodology and Price

16. CAISO proposes to carry over the existing ICPM compensation methodology, as approved in the ICPM Order, to the CPM. Thus, CAISO proposes that CPM compensation will be based on the going-forward costs of a reference unit, plus a 10 percent adder.[20] Additionally, CAISO states that CPM resources will continue to keep all of the revenues they earn in energy and ancillary services markets. However, CAISO proposes to update the minimum price, based on the most recent California Energy Commission studies, from $41/kW-year to $55/kW-year.[21] CAISO states that resources

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[19] Appendix A also includes short cites of select parties' names.

[20] Going-forward costs are defined as the sum of fixed operations and maintenance (O&M), *ad valorem* costs, and administrative and general costs, which include insurance. As the reference unit, CAISO uses the going-forward fixed costs of a hypothetical 50 MW simple-cycle, gas-fired unit built by a merchant generator, based on comprehensive studies conducted by the California Energy Commission. The 10 percent adder is 10 percent of the going-forward costs. *Id.* at 7.

[21] We note that if a resource believes that its going-forward costs exceed $55/kW-year, it has the option of making a cost justification filing with the Commission to obtain a higher payment. Under the cost-justification option, CPM compensation is still limited to the resource's going-forward costs.

that believe their going-forward costs exceed this amount retain the right to make cost justification filings with the Commission to obtain higher capacity payments.[22]

17. CAISO states that during its stakeholder processes and in selecting a CPM compensation methodology, it considered and rejected the cost of new entry (CONE) as a basis for compensation. CAISO asserts that, due to the short-term nature of a CPM designation, as well as the uncertainty over whether CPM designations will take place for any particular unit, the CPM is not the appropriate vehicle for sending economic signals to incent new generation. Thus, CAISO maintains that CONE pricing is inappropriate for the CPM. Additionally, CAISO suggests that significant increases in CPM compensation could adversely impact bilateral resource adequacy contracts as this could provide an incentive for resources to hold out hopes of receiving a CPM designation.[23]

18. CAISO contends that CONE pricing should only be considered as a possible backstop price when there is a capacity deficiency in a local area or system zone, and the intent of the mechanism is to provide incentive to construct new generation. CAISO states that providing incentive to build new generation is not the intended purpose of the CPM. Further, CAISO states that, based on locational capacity requirement studies, only a few locations on the CAISO grid would warrant high backstop prices if a CONE approach were adopted. However, CAISO explains that most of the capacity in those areas is either owned by investor owned utilities or is under multi-year resource adequacy contracts, indicating that even if a CONE approach were applied in these areas, it would provide no near-term benefits to suppliers. CAISO claims that in the remaining load pockets, there is a surplus of capacity, such that CONE pricing is neither needed nor justifiable.[24]

a. <u>Comments and Protests</u>

19. WPTF and EPSA contend that, due to changed circumstances since the Commission accepted the ICPM, the Commission must engage in a *de novo* examination of the justness and reasonableness of a capacity mechanism that bases compensation on going-forward costs. EPSA and WPTF note that when the Commission approved the ICPM, it predicated its denial of the use of CONE pricing on the pendency of the CPUC long-term capacity procurement proceeding. EPSA and WPTF observe that the CPUC proceeding has now ended in a rejection of proposals to develop a centralized forward

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[22] *Id.* at 22-26.

[23] *Id.* at 23-24.

[24] *Id.* at 24-25.

capacity market or a bilateral market that looks more than a year ahead.[25] In addition, EPSA points out that the ICPM was intended as a temporary mechanism, leading the Commission to conclude in the ICPM Order that an interim mechanism could not be expected to send long-term price signals. Now that CAISO proposes a permanent backstop capacity mechanism, EPSA asserts that this rationale no longer applies.[26]

20. IEP insists that, while not ripe at the time the Commission considered the ICPM, recent developments in California accentuate the importance of pricing backstop capacity to reflect the need for incremental investment in existing resources and CAISO's increased need for capacity from flexible, gas-fired resources.[27] IEP contends that CAISO has not satisfied its burden of demonstrating that its proposed $55/kW-year price, based on going-forward costs, is just and reasonable given present market realities. IEP requests that the Commission address all CPM compensation issues in a separate hearing and settlement procedure.[28]

21. IEP argues that CPM-designated units deserve higher compensation than going-forward costs because they are more than just simply operationally available; CPM-designated units provide reliability services. IEP explains that in order to provide such services, generators assume substantial availability obligations, for which direct costs must be included in the CPM price.[29] IEP contends that including direct costs associated with capacity service obligations in the capacity price is consistent with Commission policy.[30]

22. Further, IEP contends that the proposed CPM price is unjust and unreasonable because, contrary to Commission precedent, it denies existing California resources any

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[25] EPSA December 22, 2010 Protest in Docket No. ER11-2256-000 at 13 (citing ICPM Order, 125 FERC ¶ 61,053 at P 22 (2008) (EPSA Protest); WPTF December 22, 2010 Protest in Docket No. ER11-2256-000 at 7 (WPTF Protest).

[26] EPSA Protest at 13-14.

[27] IEP December 22, 2010 Protest in Docket No. ER11-2256-000 at 20-21 (IEP Protest).

[28] *Id.* at 47-49, 51.

[29] *Id.* at 15.

[30] *Id.* at 17 (citing *Indep. Energy Producers Ass'n v. Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,069, at P 35-36 (2006)).

meaningful contribution toward recovery of full fixed costs.[31] IEP argues that the same reference generator CAISO uses to calculate its capacity price has capital and financing costs of $198.11/kW-year, almost four times its going-forward costs and 16.5 percent of its total fixed costs. IEP argues that when the Commission accepted a lower capacity price in the ICPM proceeding, it did so for only two years, basing its acceptance on the expectation of the growth of a more complete market structure to provide appropriate price signals. Moreover, IEP asserts that existing non-resource adequacy resources have no realistic avenues of fixed cost recovery outside of the CPM.[32]

23. IEP also asserts that fixing a $55/kW-year price in the tariff without making it subject to an automatic inflation adjustment that reflects year-on-year increases in going-forward costs is unjust and unreasonable and inconsistent with the use of indices in other Commission-approved capacity constructs.[33] IEP opines that the inclusion of a two-year review of the overall CPM price in the business practice manuals is an inadequate response to predictable inflation in costs.

24. IEP and WPTF complain that CAISO's proposed CPM compensation methodology fails to provide accurate price signals or investment incentives for existing resources. IEP argues that structuring CPM compensation to provide existing non-resource adequacy resources with price signals and investment incentives is particularly important in light of California's new environmental restrictions, which will increase existing fossil-fuel generators' capital expenditures and operating costs.

25. WPTF contends that the CPM proposal fails to establish the proper economic incentives that would be necessary to ensure the long-term reliability of the CAISO system. WPTF asserts that as a "buyer of last resort" of the capacity needed to reliably operate the CAISO grid, CAISO serves an important function in informing forward-contracting decisions made by those parties that are primarily responsible for capacity

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[31] *Id.* at 44-45 (citing *Indep. Energy Producers Ass'n v. Cal Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,096, at P 70 (2007) (RCST Order) (accepting backstop capacity price of $73/kW-year, finding it within a range of annual fixed cost recovery allowed reliability must-run units); *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,229, at P 75 (2008) (Transitional Capacity Procurement Mechanism (TCPM) Order) (accepting backstop capacity price of $86/kW-year, finding it between the going-forward costs of existing generation and CONE)).

[32] *Id.* at 45-49.

[33] IEP notes that in ISO-NE, NYISO, and PJM, the Commission approved the use of the Handy-Whitman index of power plant construction costs to escalate the CONE value. *Id.* at Attachment A (Stoddard Aff.) ¶ 52.

procurement. However, by proposing to compensate resources procured under CPM at going-forward costs, WPTF argues that CAISO is devaluing what would otherwise be a marginal price signal. Absent meaningful price signals, WPTF predicts that needed new resources will not enter the market and existing market participants will not make the necessary modifications and incremental investments to satisfy CAISO's reliability needs. WPTF asserts that the price signals sent by CAISO's backstop procurement are equally important whether the volume of CPM procured is large or small; otherwise, there is no means of directing investment dollars or providing incentives for load serving entities to procure resources in capacity-scarce areas.[34]

26. EPSA insists that "the very goals of a capacity procurement construct warrant reliance on CONE-based pricing,"[35] and claims that every other capacity construct in the country's organized electricity markets is based on CONE in some way. EPSA states that the Commission has previously held that even short-term, backstop mechanisms influence investment decisions and that such mechanisms must be based off of CONE in order to send the appropriate incentives.[36] Thus, EPSA urges the Commission to reconcile the conflicting methodologies between the CPM Proposal and Commission precedent by requiring CONE as the basis for CPM compensation.

27. Further, EPSA maintains that there can be no question that the price of backstop capacity will also affect how well load serving entities forecast and procure the correct amount of capacity under the resource adequacy program, which in turn affects investment and development decisions. EPSA asserts that basing the cost of CPM on CONE will achieve three important goals: (1) discouraging load serving entities from under forecasting by making it costly to use the backstop mechanism; (2) providing just and reasonable compensation to units that are used to provide backstop capacity; and (3) sending correct price signals to owners and investors in lieu of a forward capacity mechanism.[37]

28. IEP and EPSA also complain that, in its design of the CPM, CAISO has failed to consider the need for its backstop procurement mechanism to fill the gaps in the CPUC's resource adequacy program.[38] IEP argues that the CPUC's decision to retain the resource

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[34] WPTF Protest at 5-9.

[35] EPSA Protest at 5.

[36] *Id.* at 15-16 (citing *Midwest Ind. Sys. Operator, Inc.*, 125 FERC ¶ 61,060, at P 96 (2008)).

[37] *Id.* at 17-20.

[38] IEP Protest at 23-26; EPSA Protest at 5.

adequacy program in its current form reinforces the need for CAISO to engage in a comprehensive analysis of how the CPM will interact with the resource adequacy program and how that interaction affects what constitutes a just and reasonable CPM price. Further, IEP argues that the justness and reasonableness of CPM compensation depends upon the specific reliability services that CAISO will need in future, but alleges that the CPM proposal contains no such needs analysis.[39]

29. IEP refutes CAISO's contention that setting capacity prices higher than going-forward costs could lead to too much reliance on the CPM and too little bilateral resource adequacy procurement, or that it could allow suppliers to exercise market power. IEP concedes that the impact of CPM prices higher than going-forward costs is a relevant issue, but cautions that there is no *a priori* reason to assume adverse impacts on the resource adequacy program. Further, IEP emphasizes that the Commission needs an empirical record to determine whether CPM prices have an undue influence on bilateral contracting. IEP points out that unlike the ICPM proceeding, here CAISO has presented no evidence of prevailing resource adequacy prices.[40]

30. Additionally, WPTF and IEP argue that scarcity pricing is justified for the CPM. WPTF opines that if CAISO must procure services for reliability through the CPM, those services are, by definition, scarce and therefore warrant compensation above going-forward costs. Further, WPTF maintains that restricting capacity payments to going-forward costs yields little incentive for load serving entities to contract bilaterally at prices higher than going-forward costs. Thus, WPTF and IEP urge the Commission to direct CAISO to implement a new-entry/demand-curve based price similar to those employed in other markets so that the needed products and services are explicitly priced in the market and required resources are assured a reasonable opportunity to recover their costs.[41]

31. Additionally, IEP asserts that CAISO offers no reason why CPM pricing should not yield the same price signals as a capacity market. IEP notes that scarcity conditions among thermal resources that may result from the increased penetration of variable resources are not acknowledged or analyzed in the CPM proposal. Thus, IEP argues that in locally-constrained areas, as well as for the purpose of providing the proper incentives to market participants, the CPM should provide price signals well above going-forward

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[39] IEP Protest at 23-26.

[40] *Id.* at 40-42.

[41] WPTF Protest at 9-11; IEP Protest at 34.

costs that would be indicative of price signals that would be expected in competitive capacity markets.[42]

32. Finally, IEP argues that the proposed CPM price is unduly discriminatory because the FPA and Commission policy require that all resources providing similar reliability services receive similar compensation. IEP alleges that the proposed CPM pricing structure violates this principle by capping CPM prices at going-forward prices, while no such cap applies to resource adequacy prices. In addition, IEP expresses concern regarding possible price discrimination within the resource adequacy program and theorizes that if such price discrimination exists, non-resource adequacy resources that receive CPM prices will not obtain payment comparable to that of existing resource adequacy resources. IEP acknowledges that this proceeding is not the appropriate forum to address price discrimination in the resource adequacy program, but maintains that the Commission should find unduly discriminatory the imposition of a going-forward price cap on CPM, but not resource adequacy resources.[43]

33. On the other hand, Six Cities, the CPUC, and PG&E support CAISO's proposal to continue using going-forward costs as the basis for CPM compensation, but contend that the proposed price is too high. Six Cities contend that $55/kW-year is unreasonably high because it is based upon the going-forward costs of a new, "highest cost unit," rather than the going-forward costs of units that are most likely to be designated or dispatched by CAISO. Six Cities note that, to date, no unit has attempted to demonstrate that the current $41/kW-year is insufficient to cover going-forward costs.[44]

34. The CPUC contends that the current $41/kW-year price is in the upper range of resource adequacy prices; therefore, a higher CPM price, as proposed, could affect bilateral contracting and raise bilateral prices.[45] PG&E contends that compensating generators at their going-forward costs, without offsetting peak energy revenues, but including a 10 percent adder for measurement error, will over-compensate resources for non-investment costs. Thus, PG&E proposes that CAISO provide CPM resources with

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[42] IEP Protest at 34, 39.

[43] *Id.* at 51-54.

[44] Six Cities December 22, 2010 Protest in Docket No. ER11-2256-000 at 4-6 (Six Cities Protest).

[45] CPUC December 22, 2010 Protest in Docket No. ER11-2256-000 at 21 (CPUC Protest).

going-forward fixed costs minus peak energy revenues.[46] SoCal Edison and NCPA also support CAISO's proposal to continue to base CPM compensation on going-forward costs, rather than CONE.[47]

b. Answers

35. IEP argues that prevailing resource adequacy prices are not an appropriate litmus test for the proposed CPM price under the FPA. Rather, IEP maintains that the test to be applied in this case is whether CAISO's proposed CPM pricing methodology satisfies the FPA standards of a just and reasonable and not unduly discriminatory rate. IEP asserts that the CPUC's opposition to the proposed $55/kW-year as too high, as compared to resource adequacy prices, is based on the untested assumption that resource adequacy prices are indicative of just and reasonable rates under the FPA.[48]

36. In addition, IEP contends that the CPUC's adherence to resource adequacy prices as a benchmark for CPM pricing ignores substantial evidence that the resource adequacy program has supported extensive price discrimination and has spawned a wide range of capacity prices. IEP suggests that if price discrimination is occurring under the resource adequacy program, the proposed $55/kW-year price may be below prevailing resource adequacy prices. Thus, IEP argues that there is no credible record upon which the Commission can compare proposed CPM prices to putative prevailing resource adequacy prices and questions why the range of past resource adequacy prices should have a bearing on whether CAISO's proposed CPM compensation is just and reasonable and not unduly discriminatory.[49]

37. Furthermore, IEP continues to argue that higher CPM prices would not necessarily interfere with the resource adequacy program. IEP reiterates that CPM prices should incentivize load serving entities to purchase the right type and location of resource adequacy resources that meet CAISO's operational and reliability needs.[50]

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[46] PG&E December 22, 2010 Protest in Docket No. ER11-2256-000 at 8 (PG&E Protest).

[47] SoCal Edison December 22, 2010 Protest in Docket No. ER11-2256-000 at 3 (SoCal Edison Protest); NCPA December 22, 2010 Protest in Docket No. ER11-2256-000 at 4 (NCPA Protest).

[48] IEP January 6, 2011 Answer in Docket No. ER11-2256-000 at 2, 4 (IEP Answer).

[49] *Id.* at 5-7.

[50] *Id.* at 7.

38. NRG argues that the current resource adequacy program does not provide generators with the necessary price signals to guide future investment decisions. Thus, NRG disagrees with the CPUC's evaluation of CAISO's proposed CPM compensation price, arguing that the compensation price must include capacity revenues so that generators have a reasonable chance to earn a profit. Without profit, NRG asserts that resource owners will have to scale back maintenance and incremental capital investments, which will cause the plants to fail.[51]

39. On the other hand, Six Cities contend that the protestors have failed to produce any evidence that would justify a CPM price above the going-forward costs of existing generation. First, Six Cities claim that the protestors' claims about changes in circumstances since the Commission's approval of the ICPM are without merit. In addition, Six Cities assert that the protestors' arguments regarding changed circumstances are fundamentally an attack on the structure of the resource adequacy program. Finally, Six Cities argue that IEP has not adequately supported its claim that a CPM price based on going-forward costs will foster discrimination against existing generation as compared to new generation and note that the Commission has previously rejected such claims.[52]

40. CAISO repeats the arguments made in its proposal that, like the ICPM, the CPM compensation methodology is just and reasonable because it provides fair compensation for the nature of service called for when a resource receives a CPM designation. CAISO contends that protestors raised, and it responded to, many of the same arguments in this proceeding as in the ICPM proceeding. CAISO argues that aside from the references to the interim nature of the ICPM, the arguments in favor of the going-forward cost methodology apply with equal force in this proceeding. CAISO asserts that it cannot see a reason for the Commission to reverse course now and reject the going-forward cost methodology in light of the success of the ICPM, the fact that CAISO has never needed to make an ICPM designation to address a resource adequacy procurement deficiency, and the absence of materially changed circumstances or new factual evidence. Further, CAISO notes that proposals to increase the default backstop capacity rate by 34 percent far outpace the rate of inflation since the ICPM was approved.[53]

41. CAISO argues that focusing on the specific function the CPM is meant to serve, the CPM is remarkably fit for the purpose it is intended to serve, while also providing just

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[51] NRG January 6, 2011 Answer in Docket No. ER11-2256-000 at 7 (NRG Answer).

[52] Six Cities January 6, 2011 Answer in Docket No. ER11-2256-000 at 2-9 (Six Cities Answer).

[53] CAISO Answer at 29-32.

and reasonable compensation for the services CPM resources will provide. CAISO also notes that generators control the decision whether to accept a CPM designation, as CPM designations are voluntary. Any use of CONE-based compensation, CAISO argues, would unravel the proper fit between the intended function and the design of the CPM mechanism.[54]

42. CAISO rejects protestors' arguments that CPM compensation based on going-forward costs does not sufficiently contribute to fixed cost recovery and, thus, does not provide incentives for new entry or incremental investments by existing generation. Further, CAISO argues that none of the arguments raised justify revising the methodology. CAISO explains that the CPM is meant to purchase short-term capacity on a backstop basis from existing non-resource adequacy resources to address specific reliability needs or fill deficiencies in actual resource adequacy procurement. CAISO argues that CONE-based CPM compensation would not serve these goals. CAISO asserts that CPM is not a multi-year forward, centralized capacity market.[55] Additionally, CAISO states that the significant recent new entry of generation capacity belies the argument that going-forward fixed cost compensation in a backstop capacity procurement program has a deleterious impact on entry of new generation.[56]

43. Regarding protestors' claims that CPM pricing should provide incentives for new generation, CAISO states that new entry cannot compete with existing resources to provide CPM capacity because short-term CPM designations will be made as a result of unexpected and transitory events that cannot be remedied in the timeframe it would take for new entry to occur. CAISO contends that given the uncertain and short-term nature of a CPM designation, it would be an unreasonable business decision for a prospective new entrant to base its entry decision on the prospect of possibly receiving a CPM designation for as short as 30 days. Further, CAISO asserts that in reviewing a market, the Commission should consider whether the combination of market elements, taken together, creates incentives for new entry. CAISO rejects the notion that every individual market element must be designed with that function in mind.[57]

44. CAISO argues that comparisons to Midwest Independent System Operator, Inc's (MISO) CONE-based backstop capacity mechanism are unpersuasive. CAISO argues that the fact that the CONE-based deficiency charges in MISO are not a payment to

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[54] *Id.* at 32.

[55] *Id.* at 32-35.

[56] *Id.* at 40.

[57] *Id.* at 36-37.

generators belies the notion that MISO's design involves capacity procurement from generators or a capacity payment to generators based on CONE. On the other hand, CAISO explains, the CPM allows CAISO to procure backstop capacity from generators to fill resource adequacy deficiencies. CAISO asserts that it would make no sense for it to propose a penalty scheme along the lines of MISO because the CPUC's resource adequacy program already levies fines against load serving entities that are deficient in their resource adequacy procurement.[58]

45. CAISO asserts that its proposed CPM price is sufficient because, among other reasons, it estimates that the annual fixed revenue requirement (not just the going-forward costs) of the units in the fleet that are eligible to receive CPM payments is below the default CPM capacity payment of $55/kW-year. Finally, CAISO notes that because the CPM does not include a deduction of peak energy revenues, all revenues that suppliers earn in the markets are additive to the CPM capacity payment they would receive. CAISO also refutes arguments that other opportunities to recover full fixed costs are extremely limited, explaining that its revenue analysis does not account for resource adequacy contracts, which will be the primary means for new generation investment. Regarding IEP's argument that CPM compensation should include the opportunity costs associated with the obligations of a CPM designation, CAISO notes that the CPM is voluntary, so the supposed opportunity costs are merely the trade-off made when deciding to accept the CPM designation.[59]

46. CAISO maintains that arguments that CAISO has failed to consider the impact that renewable integration and other environmental programs will have on future cost recovery are entirely speculative. CAISO states that such conditions can be addressed within CPM when they actually arise. However, CAISO projects that in all likelihood, it will be adding new products that will provide generators with additional revenue earning opportunities.[60]

47. In response to arguments regarding the impact of CPM compensation on bilateral resource adequacy contracting, CAISO contends that these arguments constitute a collateral attack on a prior Commission order and, as such, must be rejected. In addition, CAISO rejects the notion that low CPM prices create incentives for load serving entities to be deficient in the resource adequacy process so that they can pay the CPM price. CAISO contends that this line of reasoning ignores the penalties incurred for deficient

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[58] *Id.* at 37-40.

[59] *Id.* at 41-43.

[60] *Id.* at 43.

resource adequacy procurement, as well as the fact that CAISO has never had to designate backstop capacity to fill a resource adequacy deficiency.[61]

48. With respect to arguments that CAISO failed to consider compensation methodologies other than going-forward costs and CONE, CAISO asserts that this criticism fundamentally misapprehends the nature of the Commission's review under section 205 of the FPA. CAISO argues that the Commission does not consider whether a proposal is the best possible proposal or whether a proposed rate schedule is more or less reasonable than alternative rate designs, just whether the one proposed is just and reasonable.[62]

49. Further, CAISO notes that its proposed compensation methodology is not a pure going-forward costs scheme because it is (1) using the most expensive gas-fired unit upon which to base the default going-forward cost price, (2) proposing a 10 percent adder to the cost associated with that unit, and (3) including property taxes for all units which is not typically a going-forward cost for all units. Thus, CAISO contends that the CPM Proposal is in the middle ground between CONE and going-forward costs.[63]

50. CAISO responds to arguments that the CPM does not fill the gaps in the CPUC's resource adequacy program by pointing out that the purported shortcomings of the resource adequacy program are reserved for the CPUC's authority to determine long-term resource adequacy requirements. CAISO asserts that it is not its responsibility to either render public judgment on the purported gaps in the CPUC-administered resource adequacy process nor is it CAISO's obligation to design a comprehensive program to address those purported deficiencies.[64]

51. CAISO also rejects protestors' arguments that the CPM fails to account for changed circumstances since the Commission approved the ICPM. CAISO contends that such assertions defy logic because the CPUC decided to retain the same resource adequacy program that was in place when the Commission approved the ICPM. CAISO contends that it is illogical to claim that essentially the same backstop mechanism is no longer just and reasonable under essentially the same resource adequacy framework. Further, CAISO claims that the protestors "cherry pick" general language from the ICPM

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[61] *Id.* at 45-47.

[62] *Id.* at 47-48.

[63] *Id.* at 49.

[64] *Id.* at 49-50.

Order while ignoring other key findings, such as the Commission's finding that CONE-based pricing would not encourage new investment.[65]

52. CAISO rejects arguments that the proposed CPM compensation is too high. CAISO points out that no party has alleged that CAISO has incorrectly applied the going-forward fixed cost methodology to the figures contained in the California Energy Commission's most recent report. CAISO explains that the higher default compensation level for the CPM, as compared to the ICPM, is simply the result of plugging more accurate numbers into the identical formula that was used for the ICPM; it is not an attempt by CAISO to deliberately impose a price increase.[66]

53. CAISO contends that Six Cities' suggestion that the CPM payments should be based on the going-forward fixed costs of the units most likely be designated under CPM is undesirable because it is speculative and because it would force units whose going-forward costs are legitimately above the costs of the reference class of unit to make cost-based justifications with the Commission. CAISO states that while it believes that option should be open to units, it does not wish to create incentives for parties to have to make such filings. Further, CAISO maintains that PG&E's proposal to offset compensation by peak energy revenues should also be rejected because it would mitigate energy market revenues unnecessarily.[67]

54. In its answer to CAISO's answer, IEP claims that CAISO introduces new and unsupported factual assertions in its answer. IEP complains that CAISO fails to meaningfully respond to IEP's protest or to the new "facts on the ground" that make this proceeding different from the prior ICPM proceeding. IEP contends that CAISO mischaracterizes the importance of the changes since the Commission approved the ICPM and offers supplemental arguments to support its position that the Commission's approval of the ICPM does not control the outcome of this proceeding. IEP maintains that CAISO has not met its burden of proof to establish that a CPM price based on going-forward costs is just and reasonable and not unduly discriminatory and that the Commission must review the CPM Proposal *de novo*.[68]

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[65] *Id.* at 51-54.

[66] *Id.* at 54-56.

[67] *Id.* at 56.

[68] IEP February 3, 2011 Answer in Docket No. ER11-2256-000 at 2-31 (IEP February 3, 2011 Answer).

c. Commission Determination

55. As discussed below, we find that CAISO has failed to demonstrate that the proposed long-term, fixed price CPM, which is based on a resource's going-forward costs plus a 10 percent adder, is just and reasonable compensation for the capacity procured to maintain reliable operations, and find that it may be unjust and unreasonable. Accordingly, pursuant to section 205 of the FPA,[69] we accept and suspend for a nominal period CAISO's proposed CPM compensation methodology to become effective April 1, 2011, subject to refund and further order by the Commission. To expeditiously explore issues related to the pricing of the CPM and to buttress the existing record, we direct Commission staff to convene a technical conference within 45 days following the date of issuance of this order.[70] The details of such conference will follow in a subsequent notice. An opportunity to comment will be provided following the technical conference.

56. At the outset, we highlight two factors we find relevant here that were not present when we approved the ICPM which CAISO uses as a template for the CPM: (1) the CPUC's decision to retain the existing framework of the resource adequacy program; and (2) the proposed long-term duration of the CPM. First, at the time of the ICPM Order the Commission was "not inclined to modify the proposed [ICPM] capacity price" due to the pendency of a CPUC proceeding regarding a long-term capacity procurement mechanism.[71] However, as protestors point out, the CPUC subsequently decided not to change the existing resource adequacy program. Therefore, the potential for a change in the CPUC resource adequacy program is no longer a basis for declining to modify CAISO's proposed capacity price. Consequently, the Commission must now evaluate the justness and reasonableness of the proposed CPM within the context of a resource adequacy construct that does not face possible pending changes. Second, when the Commission approved the ICPM as a temporary backstop procurement mechanism that would sunset after 24 months, it found that an interim mechanism could not be expected to send long-term price signals.[72] In this proceeding, however, CAISO proposes the CPM as a mechanism of indefinite duration. Given the long-term nature of the proposed CPM, it is critical to evaluate not only whether the CPM appropriately compensates non-

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[69] 16 U.S.C. § 824.

[70] Additionally, we remind the parties that the Commission's Dispute Resolution Service (DRS) is available to convene the parties to explore alternative dispute resolution process options to facilitate agreement on the matters at issue. DRS can be reached at 1-877-337-2237.

[71] ICPM Order, 125 FERC ¶ 61,053 at P 42.

[72] *Id.* P 42.

resource adequacy resources for short-term transitory events but also whether it provides a just and reasonable long-term backstop to the CPUC's ongoing resource adequacy program.

57. The Commission is concerned that CAISO's proposal to pay going forward costs may create the potential for distorted pricing signals and deny resources a reasonable opportunity to recover fixed costs. CAISO, in this filing, has not explained how the use of going-forward costs for CPM compensation will provide incentives or revenue sufficiency for resources to perform long-term maintenance or make improvements that may be necessary to satisfy new environmental requirements or address reliability needs associated with renewable resource integration. On the other hand, we also are not persuaded that parties have provided sufficient evidence that pricing backstop capacity compensation on the basis of CONE will yield a just and reasonable capacity rate for non-resource adequacy resources.

58. Furthermore, and significantly, we find the continuation of a fixed going-forward cost price has not been shown to be just and reasonable because of the likelihood that market conditions, which can affect the price of capacity, will fluctuate over time. As the Commission has previously explained, compensation for a backstop capacity mechanism should recognize that non-resource adequacy resources are providing similar services as resources procured under the CPUC's resource adequacy program.[73] Resource adequacy compensation has the potential to fluctuate over time based on changes in system conditions and the amount of capacity available to meet reliability needs. The proposed fixed-price CPM, however, does not take into account these potential fluctuations over time. The long-term nature of the proposed CPM warrants consideration of prospective changes in the conditions it is designed to address. Because the record in this proceeding is deficient regarding how CPM compensation will reflect future resource adequacy price changes in response to system changes, the technical conference will address the potential long-term changes that may be important to the pricing of a CPM of indefinite duration. Additionally, consistent with precedent, the technical conference will discuss compensation methodologies that are just and reasonable and provide non-resource adequacy resources appropriate compensation for the services they provide.

59. At the technical conference, staff will seek additional information on CPM compensation methodologies that would provide, at a minimum, a meaningful opportunity for CPM resources to recover additional fixed costs. The technical conference will explore options for structuring CPM compensation that would take into account such things as future variances in price and potential shortages of supply. The technical conference will consider methodologies that include using a mechanism that responds to changing market conditions, e.g., through use of a demand curve;

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[73] *Id.* P 41.

establishing a CPM pricing methodology that supports incremental investment by existing resources; and providing appropriate compensation to resources to ensure that CAISO has the resources it needs to reliably operate its transmission grid.

2. Proration of CPM Compensation for Outages

60. Under the currently effective ICPM tariff provisions, the monthly ICPM capacity payment calculations include adjustments based on the resource's actual availability net of forced outages. CAISO proposes to implement an additional adjustment factor to account for maintenance outages and non-temperature related ambient de-rates. CAISO explains that as a result of this change, a resource procured under CPM that takes a maintenance outage during its procurement period would have its compensation reduced pro rata. CAISO contends that resources should not be paid a capacity payment during periods when they are not available to provide the service for which they have been designated. Further, CAISO asserts that a maintenance outage is fundamentally in the control of the resource owner, so it is up to the resource owner to make the trade-off between postponing a maintenance outage and receiving a prorated CPM capacity payment. CAISO states that it considered an approach that would permit a resource owner to provide substitute capacity during the time of a maintenance outage, but rejected that option as unnecessarily complex.[74]

a. Comments and Protests

61. IEP opposes CAISO's proposal to reduce CPM compensation for maintenance outages and non-temperature related ambient de-rates. IEP argues that the ICPM did not contain such a deduction provision and asserts that CAISO has not shown that the absence of such a provision contributed to untimely outages or derates. Further, IEP complains that resource adequacy resources are not subject to a similar tariff-based deduction. Finally, IEP contends that the proposed deduction takes away generators' operational flexibility without materially adding to reliability.[75]

62. NCPA supports CAISO's proposal to reduce compensation to account for maintenance outages, arguing that resources should not be compensated for periods when they are not providing capacity services dues to maintenance outages.[76]

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[74] CPM Proposal at 27-28.

[75] IEP Protest at 50.

[76] NCPA Protest at 5-6.

b. Commission Determination

63. Regardless of the CPM compensation methodology ultimately accepted by the Commission, we agree with CAISO that prorating CPM compensation to account for maintenance outages and non-temperature related ambient de-rates, in addition to forced outages, is just and reasonable and, therefore, accept this element of the CPM Proposal. The fact that such a provision was not part of the ICPM is not dispositive in this proceeding. However, we note that under the ICPM, CAISO adjusts compensation based on periods of unavailability due to forced outages. The Commission has previously found that availability provisions provide economic incentives for resources procured under CAISO's backstop authority to be available.[77] The Commission finds that the rationale supporting our acceptance of availability provisions in prior orders applies equally here.[78] We continue to find that resources procured as backstop capacity should not get paid a capacity payment during periods in which they are unavailable and, thus, unable to provide the service for which they have been procured. We note that although resource adequacy resources may not be subject to an identical reduction in compensation, they are subject to non-availability penalties under other tariff provisions.[79]

64. We disagree with IEP that the proration unreasonably reduces generators' operational flexibility. Because the CPM, like the ICPM, is voluntary, a resource owner must consider factors such as maintenance outages when deciding whether to accept a CPM designation. The Commission finds such a business decision, and therefore the proposed compensation adjustment, to be just and reasonable, and not unduly discriminatory. Thus, the Commission accepts CAISO's proposal to add this adjustment to its compensation methodology.

C. Exceptional Dispatch Mitigation

65. Under the currently effective tariff provisions, CAISO applies market power mitigation measures to exceptional dispatches to address congestion on non-competitive

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[77] RCST Order, 118 FERC ¶ 61,096 at P 98.

[78] *See, e.g., Cal. Indep. Sys. Operator Corp.*, 127 FERC ¶ 61,298 (2009) (Standard Capacity Product Order), *order on reh'g*, 131 FERC ¶ 61,149 (2010).

[79] *See* CAISO Tariff § 40.9.6, et seq. (Standard Capacity Product Non-Availability Charges And Availability Incentive Payment); *see also* Standard Capacity Product Order, 127 FERC ¶ 61,298 at P 40-43.

paths and those made under delta dispatch.[80] As discussed above, the mitigation provisions sunset on March 31, 2011. Here, CAISO proposes to eliminate the sunset date and make permanent the tariff provisions regarding the mitigation of these two instances of exceptional dispatch. CAISO notes that the number of exceptional dispatches that have been subject to bid mitigation has been relatively low in proportion to all exceptional dispatches and in proportion to all bid mitigation. Thus, CAISO states that it determined that mitigation should continue to apply in the limited set of circumstances where there is the "potential for the exercise of locational market power."[81]

1. Comments and Protests

66. IEP contends that CAISO has not met its burden to justify the permanent extension of mitigation measures for exceptional dispatch on non-competitive transmission paths and in the delta dispatch. First, IEP argues that CAISO's testing and modeling for non-competitive paths is inadequate, asserting that CAISO tested less than three percent of the 4,800 transmission paths during the first two years of MRTU. IEP finds this analysis to be problematic because the small number of paths that were tested have overwhelmingly been found to be competitive, whereas all non-tested paths are deemed non-competitive. Second, IEP notes that CAISO classifies paths that qualify as non-competitive for only one hour as non-competitive for the entire season. IEP argues that it is not just and reasonable to allow CAISO to permanently mitigate exceptional dispatch units for non-competitive paths given the deficiencies in CAISO's testing and modeling process.[82]

67. Further, IEP contends that the exceptional dispatch mitigation measures suppress energy market prices in times of scarcity. IEP claims that CAISO has not demonstrated why scarcity rents earned by non-resource adequacy units that are compelled to provide capacity services should be reduced or eliminated through mitigation. Finally, IEP maintains that CAISO has never demonstrated that the absence of mitigation measures would lead to strategic bidding by units that could potentially be subject to exceptional dispatch. Therefore, IEP asks the Commission to reject the permanent extension of mitigation measures for exceptional dispatch. Alternatively, IEP requests that if the Commission finds a continued need for exceptional dispatch, it should require the

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[80] Bids subject to mitigation will generally be paid the higher of the default energy bid or locational marginal price.

[81] CPM Proposal at 35.

[82] IEP Protest at 63-65.

mitigation provisions to sunset after one year and direct CAISO to complete its study and implementation of new modeling and testing procedures to identify non-competitive paths.[83]

68. WPTF also opposes CAISO's proposal to continue the existing exceptional dispatch mitigation measures. WPTF contends that unless the affected units are provided another means of recovering their fixed costs, the continuation of exceptional dispatch mitigation measures results in unjust and unreasonable rates. WPTF asserts that, contrary to CAISO's proffered rationale, the limited use of mitigation for exceptional dispatches militates against the need to continue the practice. Additionally, WPTF argues that continued mitigation of exceptional dispatches for non-competitive paths is inappropriate given CAISO's overly conservative competitive path assessment process whereby all untested paths are deemed non-competitive. Indeed, WPTF notes that CAISO's Department of Market Monitoring has concluded that the current competitive path assessment creates a significant number of false positives, meaning that it mitigates when such mitigation is unwarranted.[84]

69. WPTF insists that it is unjust to continue to withhold market-based prices for exceptionally dispatched resources when there is no evidence of the ability to exercise market power. WPTF asserts that applying mitigation under the circumstances perpetuates market pricing distortions and unreasonably suppresses market payments. WPTF claims that there is no reason to believe that CAISO will, of its own initiative, modify its competitive path assessment to yield more just outcomes, and requests that the Commission direct CAISO to pursue implementation of an alternate software system by the end of 2011.[85]

70. CAISO contends that its modifications to retain the two mitigation measures are consistent with the Exceptional Dispatch Order because, in that order, the Commission made clear that it only accepts mitigation measures that address well-defined structural problems in the market. CAISO states that the Commission found that CAISO had met its burden of showing the potential to exercise market power in both of the situations for which mitigation now applies. CAISO asserts that the same structural problems exist today as formed the basis for the Commission's findings in the Exceptional Dispatch

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[83] *Id.* at 65-66.

[84] WPTF Protest at 18-19. WPTF notes that out of a total 4,860 paths, only 154 were tested and only one of those failed the screen, leaving 4,706 untested paths deemed non-competitive. *Id.* at Attachment A, p. 7 (citing CAISO Competitive Path Assessment for Summer 2010, *available at* http://www.caiso.com/27c5/27c57f0c5bdf0.pdf).

[85] *Id.* at 20.

Order and argues that the on-going nature of these structural problems justify continuing exceptional dispatch mitigation.[86]

71. In its answer to CAISO's answer, IEP contends that CAISO fails to respond to IEP's arguments regarding deficiencies in CAISO's testing and modeling of non-competitive paths. IEP maintains CAISO bears the burden of proof to justify permanent exceptional dispatch mitigation measures and reiterates its position that CAISO has failed to do so.[87]

2. Commission Determination

72. We find that CAISO has failed to provide sufficient justification for retaining its current exceptional dispatch mitigation provisions beyond the sunset date. Further, we find that the record in this proceeding does not contain sufficient information regarding the current operating conditions in the CAISO markets and how those conditions relate to CAISO's use of exceptional dispatch to determine whether exceptional dispatch mitigation remains just and reasonable. Nonetheless, the Commission's rationale behind its prior acceptance of exceptional dispatch mitigation may continue to apply in the limited circumstances where there is a well-defined structural problem in the market.[88] For these reasons, staff will hold a technical conference, as directed above, to supplement the record on continuing exceptional dispatch mitigation, and also to discuss CPM compensation.[89] Accordingly, pursuant to section 205 of the FPA, we conditionally accept and suspend for a nominal period CAISO's proposed continuation of exceptional dispatch mitigation for non-competitive constraints and delta dispatch, effective April 1, 2011, subject to refund and further order by the Commission.

73. The Commission's prior approval of the two narrow uses of mitigation for exceptional dispatch was premised on CAISO's proposal that the exceptional dispatch mitigation measures would sunset 24 months after MRTU implementation "due to uncertainties surrounding the frequency and predictability of exceptional dispatch and the nature of ICPM designations, along with the ongoing evolution of the resource adequacy program."[90] The Commission stated its expectation that CAISO would take steps to reduce its use of exceptional dispatch, explaining that, "as the CAISO gains operational

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[86] CAISO Answer at 61-64.

[87] IEP Answer at 35-36.

[88] *See* Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 71.

[89] *See infra* P 55.

[90] June 2008 Proposal at 17.

experience and implements enhancements to the MRTU software and full network model, the need for exceptional dispatch will decrease, thereby eliminating the need for mitigation measures beyond the automated mitigation process already available in the MRTU software."[91] The Commission directed CAISO, if it saw a need to extend exceptional dispatch mitigation beyond the sunset date, to submit a filing under section 205 of the FPA explaining why an extension is necessary.[92]

74. Here, we find that CAISO has not provided sufficient justification to show that the exceptional dispatch mitigation provisions will remain necessary into the indefinite future. Since MRTU was implemented on April 1, 2009, CAISO has continued to add functionality to its software and make improvements in its modeling capabilities. Further, CAISO has filed quarterly reports with the Commission, documenting among other things, information relating to the nature of exceptional dispatch instructions and CAISO's efforts towards reducing its reliance on exceptional dispatch. This is consistent with the Commission's expectation that exceptional dispatches would be a last resort reliability measure to be "reserved for genuine emergencies."[93] In light of these developments and the Commission's expectations, CAISO fails to explain in this proceeding how the use of exceptional dispatch remains frequent and predictable enough for resources to utilize specific bidding strategies that would enable them to exercise market power.

75. Moreover, WPTF and IEP have raised concerns that CAISO's competitive path assessment may not be an accurate indicator of whether an exceptionally dispatched resource is able to exercise market power. While the alleged deficiencies in CAISO's competitive path assessment are beyond the scope of this proceeding, the reliance on this assessment as a justification for exceptional dispatch mitigation is a relevant issue. The Commission relied on this assessment process as the justification for accepting CAISO's proposal to mitigate exceptional dispatches to address contingencies on non-competitive transmission paths. Thus, if, as WPTF and IEP claim, CAISO's competitive path assessment process leads to a substantial number of "false positives," the results of the competitive path assessment may not be a reliable indicator of the need for exceptional dispatch mitigation. In this regard, the technical conference will address whether CAISO's software and modeling developments have changed or require change for the circumstances utilized for exceptional dispatch mitigation.

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[91] Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 83.

[92] *Id.* P 248.

[93] MRTU Order, 116 FERC ¶ 61,274 at P 267.

76. In its answer, CAISO recites the rationale given by the Commission in the Exceptional Dispatch Order for approving each of the two uses of mitigation and states generally that the "on-going nature of these structural problems justify including the mitigation measures in the ISO Tariff."[94] CAISO presents no new evidence or analysis of continuing structural problems presented by non-competitive transmission paths or whether these problems continue to be sufficiently significant to justify on-going mitigation permanently for exceptional dispatches related to those paths.

77. The technical conference will examine CAISO's support for its request for continuing the mitigation of exceptional dispatches, including data and evidence explaining how a lack of viable alternatives for procuring the required energy or capacity would reasonably be expected to result in the potential to exercise market power. If no such data is available, detailed and specific scenarios that establish a plausible potential to exercise market power may be discussed.

78. In the case of the delta dispatch, the technical conference will discuss any information since the ICPM Order about whether the specific resource can predict that it will be needed to address the environmental restriction, or whether changes over the past two years have resulted in a larger number of possible resources to select among, such that no single resource has market power. CAISO has not demonstrated why the Commission should base its approval of market power mitigation measures on the mere suspicion of the potential for abuse.[95] Thus, the technical conference will elicit evidence of a real problem or a concrete concern with respect to exceptional dispatch and the potential to exercise market power.

D. Scope of CPM Authority

1. New Voluntary Designation Category

79. The existing ICPM tariff provisions permit CAISO to designate ICPM capacity to address the following situations: (1) instances where a scheduling coordinator fails to show that it has procured sufficient local capacity area resources in an annual or monthly resource adequacy plan; (2) to correct a collective deficiency in local capacity area resources in the annual resource adequacy plans of applicable scheduling coordinators after the opportunity for load serving entities to cure the deficiency has been exhausted;

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[94] CAISO Answer at 64.

[95] *See, e.g., National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831, 841-45 (2006) (vacating and remanding to the Commission certain standards of conduct because the Commission failed to present evidence of "a real problem with respect to pipelines' relationships with non-marketing affiliates" or even to articulate a concrete concern).

(3) in response to a scheduling coordinator's failure to show sufficient resource adequacy resources in an annual or monthly resource adequacy plan to comply with each load serving entity's annual and monthly demand and reserve margin requirements; (4) to address the occurrence of an ICPM significant event that creates a need to supplement the already-established resource adequacy requirements; and (5) when a non-resource adequacy resource is exceptionally dispatched for capacity-like services.[96]

80. CAISO proposes to add a new category of procurement that will permit CAISO to procure the capacity of non-resource adequacy units that have requested this designation and who have demonstrated that they will shut down in the current year because it will be uneconomic for the resource to remain in service, but whose operation is projected by CAISO to be needed to meet operational or reliability needs in the year following the year in which the resource would shut down. CAISO affirms that it intends this new category of procurement to be used as "a last resort backstop measure, akin to breaking the glass in case of emergency."[97]

81. CAISO explains that the risk of retirement designation will be issued only when a resource requests the designation and meets the following requirements: (1) the resource is not needed for reliability purposes in the current year; (2) the unit did not receive a CPM designation from CAISO in the current year due to any individual or collective deficiency in the load serving entities' annual plans; (3) technical assessments project that the resource will be needed for reliability purposes in the following year due to some type of changing system conditions; (4) technical assessments project that no new generation will be operational in time to meet the identified reliability need; (5) the resource owner requests a risk of retirement CPM designation at least 180 days prior to terminating its participation in the CAISO markets;[98] and (6) CAISO reaches a determination that the expectation of financial losses and decision to retire the resource are reasonable and supported by the facts.[99]

82. CAISO states that before issuing a risk of retirement CPM designation, it will prepare a report explaining the basis and need for the designation and post the report on its website. CAISO proposes to allow no less than seven days for stakeholders to review and submit comments on the report and no less than 30 days for a load serving entity to

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[96] CPM Proposal at 6-7; *see also* ICPM Order, 125 FERC ¶ 61,053 at P 15.

[97] *Id.* at 18.

[98] CAISO states that the request must include an affidavit attesting to the resource's financial condition.

[99] *Id.* at 18-19.

procure capacity from the resource as an alternative to proceeding with the designation. CAISO notes that the designation may occur prior to or during the pendency of the review of the resource's affidavit and financial information, in which case the designation will be subject to refund and will remain in effect until its term ends or until otherwise ordered by the Commission. CAISO states that the designation may have a term ranging from one month to one year, but may not extend into the following year, and will be rescinded for any month in the current year during which the resource is procured to provide resource adequacy capacity.[100]

83. CAISO submits that this new category of backstop capacity is a necessary and reasonable addition to its tariff, which will ensure the generation fleet capability needed to meet changing operational requirements and to integrate renewable energy into the CAISO grid. In support of its position, CAISO asserts that the Commission has previously granted similar authority to other regional transmission organizations (RTO) and independent system operators (ISO).[101] Moreover, CAISO contends that there is no duplication or conflict between the CPUC process for approving long-term resource status changes and CAISO's proposed risk of retirement mechanism because CAISO can only act if the CPUC fails to use its authority to take the actions necessary to render a CPM designation unnecessary.

84. Further, CAISO claims that its proposed risk of retirement designation is consistent with the distinction between state and federal jurisdiction, as set forth by the United States Court of Appeals for the District of Columbia in *Connecticut Department of Public Utility Control v. FERC*.[102] CAISO states that in *Connecticut v. FERC*, the court stressed that state and municipal authorities retain control over generation facilities without direct interference from the Commission, but conceded that the Commission retains its direct authority over practices that affect wholesale rates. Thus, the court concluded that the Commission's authority to set rates implies its authority to "do so indirectly by setting a target for capacity demand and using a market mechanism to locate

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[100] *Id*. at 19.

[101] CAISO points to section 38.2.7 of the MISO tariff, which provides a mechanism for the transmission provider to enter into a pro forma agreement with generating units that are needed for system reliability, but which are uneconomic to remain in service. CAISO also references the Commission's approval of a deactivation and retirement proposal by PJM Interconnection, LLC (PJM) that allows PJM to compensate units that wished to retire but agreed to remain in service because PJM needs them for reliability reasons. *See PJM Interconnection, LLC*, 110 FERC ¶ 61,053, *order on reh'g*, 112 FERC ¶ 61,031 (2005).

[102] 569 F.3d 477 (D.C. Cir. 2009) (*Connecticut v. FERC*).

the price appropriate to that quantity."[103] According to CAISO, the reasoning in *Connecticut v. FERC* supports its position that while the CPUC, through General Order 167,[104] has the authority to apply and enforce operating and maintenance standards on generators, CAISO may, through its backstop authority, set the level of compensation appropriate to maintain capacity in service that will be needed for reliability.[105]

85. Finally, CAISO maintains that reliability must-run contracts do not provide the flexibility needed by CAISO because reliability must-run resources are limited to local reliability needs, whereas the CPM carries a must-offer obligation, which would increase market liquidity, and may be called upon by CAISO for a variety of reliability needs.[106]

86. CAISO proposes to allocate the cost of risk of retirement CPM designations using the same approach it currently uses for significant event designations.[107] Thus, costs will be allocated to all scheduling coordinators for the load serving entities in the area where the need for the designation arose, based on each scheduling coordinator's percentage of actual load in that area. CAISO states that this allocation is appropriate because cost responsibility for the CPM designation will be spread to those entities that will benefit from CAISO's backstop procurement. In addition, in order to recognize the additional capacity subject to a risk of retirement CPM designation, CAISO proposes that each scheduling coordinator that is allocated the costs of the designation also receive credit towards demand and margin reserve requirements in an amount equal to the affected load serving entity's pro rata share of the designated CPM capacity.[108]

a. Comments and Protests

87. The CPUC, CMUA, SoCal Edison, Six Cities, NCPA, SDG&E, and PG&E oppose the risk of retirement category and argue that the new category is unnecessary to

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[103] CPM Proposal at 22 (quoting *Connecticut v. FERC*, 569 F.3d at 482).

[104] General Order 167 requires any generator in California to notify the CPUC 90 days in advance of any planned retirements or changes in operating status. CPUC Protest at 10-11.

[105] CPM Proposal at 22.

[106] *Id.* at 19-22.

[107] CAISO notes that for those CPM categories that are a straight forward carryover of the ICPM categories, CAISO will retain the existing ICPM cost allocation provisions. *Id.* at 10.

[108] *Id.* at 29-30.

maintain system reliability.[109] The CPUC asserts that there is substantial evidence to demonstrate that expanding the CPM is unnecessary given the minimal use of the ICPM, the adequacy of statewide procurement reserve margins, the pending stakeholder processes addressing renewables integration, the sufficiency of the existing generation fleet, and the existing mechanisms for ensuring long-term reliability.[110]

88. SDG&E, PG&E, the CPUC, CMUA, SoCal Edison, and NCPA argue that the proposed creation of the risk of retirement CPM designation duplicates or interferes with the CPUC's primary jurisdiction over the resource adequacy program and long-term procurement process. SDG&E contends that CAISO's backstop authority should be limited to curing short-term deficiencies in meeting resource adequacy requirements or to address major unforeseen events. Further, SDG&E contends that CAISO has not demonstrated a need to focus on the operating characteristics of specific units when forecasting future capacity needs and asserts that any attempt to do so would constitute a major change to the CPUC's current methodology, which does not differentiate net capacity beyond locational attributes. If CAISO can forecast future capacity needs that are specific to individual generators, SDG&E argues that CAISO should offer these assessments to the CPUC so that load serving entities – not CAISO – can procure the necessary resources.[111]

89. CMUA asserts that California's resource adequacy program is mature and effective, provides for cost-effective resource procurement, and has been refined over time to encompass more granular requirements. CMUA asserts that CAISO's proposal to create new authority to make risk of retirement designations outside the state and locally directed resource adequacy programs is neither just nor reasonable.[112]

90. The CPUC contends that CAISO's proposal goes beyond the conventional, short-term backstop mechanism and maintains that the CPM Proposal interferes with its jurisdiction over resource adequacy and integrated resource planning due to the fact that CAISO's proposal designates reliability capacity in the following resource adequacy compliance year. The CPUC asserts that CAISO's backstop procurement authority is a

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[109] CPUC Protest at 17, CMUA December 22, 2010 Protest in Docket No. ER11-2256-000 at 3-4 (CMUA Protest), SoCal Edison Protest at 4, Six Cities Protest at 7, NCPA Protest at 6-8, SDG&E December 22, 2010 Protest in Docket No. ER11-2256-000 at 2-3 (SDG&E Protest), PG&E Protest at 3.

[110] CPUC Protest at 17-18.

[111] SDG&E Protest at 3-4.

[112] CMUA Protest at 3.

temporary mechanism intended to complement, not substitute, the CPUC's resource adequacy program. The CPUC maintains that expansion of CAISO's authority is unnecessary because the resource adequacy program and the long-term planning process already address long-term reliability needs, preferred resource requirements, and the retirement of generation facilities.[113]

91. Further, PG&E, CMUA, Six Cities, SoCal Edison, and NCPA claim that the proposed risk of retirement designation is not needed because it duplicates CAISO's current reliability must-run process, whereby CAISO provides out-of-market payments to revenue constrained resources that are needed to meet reliability needs not addressed through the resource adequacy program.[114] PG&E rejects CAISO's argument that CPM is preferable to reliability must-run because CPM resources have a must-offer obligation, thereby increasing market liquidity. PG&E argues that the use of a reliability-based mechanism to address market liquidity issues is inappropriate. PG&E also objects to CAISO's claim that reliability must-run is inadequate because it is limited to local reliability needs, whereas CAISO may need a unit with specific operating characteristics that would not qualify for reliability must-run. PG&E contends that the CPM mechanism should not provide CAISO a backdoor method for procuring resources that are more to its liking than those provided to it under the resource adequacy program.[115]

92. Finally, PG&E and the CPUC contend that the proposed risk of retirement designation interferes with the CPUC's planning authority under General Order 167. The CPUC states that in the past, it has worked with CAISO to ensure that resources do not retire prematurely and are adequately compensated. Therefore, the CPUC finds CAISO's proposed tariff language to be conflicting and duplicative. PG&E asserts that the CPUC's requirement that generators give 90-day notice of retirement allows the CPUC to review retiring generators' reliability needs and ensure that appropriate compensation mechanisms are put into place if the unit is needed. Though the CPUC cannot force generators to sign capacity contracts with investor-owned utilities, PG&E argues that such authority is irrelevant to the question of whether CAISO has demonstrated a need

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[113] CPUC Protest at 10-11. The CPUC notes that CAISO has recently submitted a motion to expand the scope of the resource adequacy program to consider including operating characteristics into resource adequacy procurement requirements in the CPUC Proceeding R.09-10-032.

[114] *See, e.g.*, PG&E Protest at 3.

[115] *Id.* at 4.

for the risk of retirement designation because CAISO's proposed tariff provisions concern generators that want, but cannot afford, to stay operational.[116]

93. The CPUC argues that in addition to being unnecessary, CAISO's proposal to create the risk of retirement CPM designation is unsupported by precedent or by practice in other RTOs and ISOs. The CPUC argues that CAISO's reliance on *Connecticut v. FERC* as support for its proposal is misplaced. According to the CPUC, *Connecticut v. FERC* stands for the principle that the Commission can indirectly establish a capacity price by setting a capacity requirement and using a market mechanism to locate the price. The CPUC asserts that unlike the case in *Connecticut v. FERC*, which involved the question of whether the Commission has the jurisdiction to review capacity requirements, the issue presented in this case is whether CAISO can use its backstop authority to pay generators not to retire. The CPUC maintains that the issues in this proceeding are not analogous with the issues regarding capacity demand targets that were the subject of the aforementioned proceeding. The CPUC argues that CAISO's proposal goes beyond setting a price for capacity or requirements and directly implicates generation facilities by requiring procurement from and capacity payments to a specific resource that would otherwise retire.[117]

94. The CPUC also argues that CAISO's references to the MISO and PJM tariffs are misplaced because the MISO and PJM policies differ significantly from CAISO's proposal. First, the CPUC asserts that both the MISO and PJM tariffs determine if a resource's retirement will adversely affect reliability based on current conditions and established reliability criteria, as opposed to the ambiguous standards proposed by CAISO. Also, the CPUC asserts that the MISO and PJM tariffs compensate resources based on their actual costs of service, rather than using an administratively pre-determined price.[118]

95. Several parties oppose various procedural aspects of CAISO's risk of retirement proposal. NRG states that it strongly supports the concept behind multi-year procurement, but contends that the CPM proposal does not provide at-risk generators with the necessary level of certainty or information to decide whether to shut down their facilities. NRG maintains that the CPM proposal includes neither the correct market

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[116] *Id.* at 5.

[117] CPUC Protest at 11-13.

[118] *Id.* at 14.

incentives to keep endangered generating units in the market, nor a reasonable process for such generators to receive sufficient revenue.[119]

96. Specifically, regarding proposed section 43.2.6(5) of CAISO's tariff, which would require a generator to commit to retirement prior to requesting a CPM designation, NRG argues that CAISO cannot expect financially responsible generators to play "regulatory chicken" with billion dollar assets. NRG claims that the decision to retire a generating unit is complex, involving financial projections, employee notification, and community outreach. Therefore, due to the fact that retiring a unit is not an instantaneous decision, NRG holds that this process of "running to failure" is irrational if the generator is needed for system reliability.[120]

97. Instead, NRG contends that CAISO must provide at-risk generators with the reasonable hope of recouping the additional investment needed to operate on a long-term, reliable basis if CAISO wishes to use the units for CPM procurement in the future. NRG suggests that CAISO allow generators who are considering retirement to undergo reliability review prior to making a binding decision. NRG asserts that the problem could be mitigated somewhat by permitting generators to seek a determination from CAISO as to whether they would qualify for the CPM designation before making a binding decision to retire. NRG asserts that such a process would enable a resource to make an educated decision as to whether to continue operating the unit, seek a CPM designation, or retire the unit.[121]

98. In addition, NRG contends that CAISO's proposed financial disclosure requirement is untenable, as it would require a plant to make public that it is considering retirement prior to accepting a CPM designation. NRG claims that such a declaration would be likely to trigger a number of adverse reactions, including triggering defaults on existing contracts and collateral posting requirements, alarming investors, and creating situations where employees would learn that their facility may shut down via a CAISO bulletin. NRG asserts that this public disclosure is unnecessary, and suggests that CAISO should instead revise its process as follows: (i) evaluate the unit's reliability needs in advance of any public announcements or binding declarations; (ii) eliminate the seven-day stakeholder review; (iii) provide opportunity for load serving entities to offer the

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[119] NRG Protest at 5.

[120] *Id.* at 6.

[121] *Id.* at 7.

affected unit a resource adequacy contract at any point after the CPM designation; and (iv) provide for confidential treatment of the financial information.[122]

99. NRG also protests CAISO's proposal to make CPM designations subject to refund. NRG argues at risk of retirement generators who accept CPM designations will detrimentally and irrevocably rely on CAISO's decision to offer the designation. Therefore, NRG asserts that subjecting such units to refund introduces an unacceptable level of regulatory risk.[123]

100. The CPUC objects to the seven-day comment period CAISO gives to stakeholders following notice of a CPM designation due to the fact that resources must give CAISO 180 days notice. The CPUC states that this period does not allow time for adequate consideration of alternatives, in contrast to previously approved backstop mechanisms that did not permit lengthy designations without consideration of alternatives.[124] Similarly, Six Cities request that if the Commission accepts risk of retirement designations, it should require CAISO to post a market notice of a resource's request for a risk of retirement designation within five days after the request is submitted, in order to allow stakeholders a meaningful opportunity to review the request and pursue alternative possibilities for procurement of the needed capacity. In addition, Six Cities request that the Commission require CAISO to conduct a cost/benefit review of the alternatives on a resource-specific, case-by-case basis, prior to awarding a risk of retirement designation, and to select the lowest cost method that will meet CAISO's reliability needs.[125]

101. The CPUC asserts that it is unclear how CAISO will determine that a specific resource is needed for reliability purposes in the next resource adequacy year. The CPUC argues that proposed tariff section 43.2.6.3(3) lacks objective standards and is too vague. The CPUC contends that CAISO's proposal does not rely on the CPUC's resource adequacy assessment, and fails to explain the applicable standards in CAISO's technical assessment. Concerning a generator's demonstration of financial documentation, the CPUC argues that CAISO will not evaluate the affidavit or documentation subject to identified criteria, or require the generator to demonstrate a good faith effort to obtain a bilateral resource adequacy contract instead of CPM designation. For these reasons, the CPUC argues that the proposal gives CAISO the

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[122] *Id.* at 9.

[123] *Id.* at 10.

[124] CPUC Protest at 17.

[125] Six Cities Protest at 6-9.

ability to exercise designation authority in a non-transparent manner, which is not rectified by the fact that designations are subject to refund.[126]

102. Additionally, the CPUC objects to CAISO's proposal for risk of retirement compensation. The CPUC asserts that CAISO has not met its burden to justify paying the same price to at risk of retirement units, which are not needed for reliability until the next year, as units that provide CPM and exceptional dispatch capacity in the current year. The CPUC expresses concern that once CAISO identifies a particular resource as needed for future reliability, that resource will be unlikely to agree to a price lower than $55/kW-year through a bilateral contract. Thus, the CPUC argues that increasing the CPM payment to $55/kW-year, particularly for the risk of retirement designation, may inappropriately raise bilateral contract prices. The CPUC requests that if the Commission approves some form of compensation to address resources at risk of retirement, that CAISO be required to use a more transparent and cost-based contracting process like PJM, MISO, and the reliability must-run process.[127]

103. SWP opposes CAISO's proposed allocation of costs associated with the risk of retirement CPM designation and claims that it is inconsistent with CAISO cost allocation precedent. According to SWP, CAISO precedent calls for allocating capacity procurement costs associated with advance planning to pro rata coincident peak load share rather than to total load. SWP argues that CAISO's extension of the cost allocation for significant event and exceptional dispatch capacity procurement is misplaced because, in both those instances, the procurements relate to sudden, unanticipated needs, whereas the proposed risk of retirement CPM designation aligns more closely with local capacity shortfalls whose cost is allocated based on contribution to coincident peak.[128]

104. In addition, SWP states that if CAISO issues risk of retirement designations to fossil fuel generators in order to account for an increase in variable energy resources, the Commission should consider who will benefit from such designations. SWP argues that under those circumstances, CAISO's intent to spread costs to those entities that benefit most from the backstop procurement could be satisfied by allocating some of the costs to the intermittent resources causing the need for duplicative backstop generation, and profiting from participation in CAISO markets. Further SWP asserts that loads present in off-peak periods, which often consume over-generation associated with nighttime wind

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[126] CPUC Protest at 15-17.

[127] *Id.* at 21-22.

[128] SWP Protest at 3 (citing CAISO Tariff §§ 40.3.2(a) and 43.7.3).

production, should receive appropriate price signals, not unjust allocation of capacity costs intended for peak loads and variable generation management.[129]

105. SoCal Edison, Six Cities, and CMUA express concern that granting CAISO the authority to provide generators with contracts to preclude retirement has the potential to create significant costs and market distortions. CMUA asserts that CAISO has not shown that the operational advantage of CPM designations outweighs the cost considerations.[130] Accordingly, SoCal Edison and CMUA assert that the host of complex issues related to the proposed risk of retirement designation, such as gaming opportunities, cost allocation, timing, and coordination with existing authorities and the resource adequacy program, should be carefully and comprehensively addressed through a separate stakeholder initiative.[131]

106. The CPUC also contends that CAISO's risk of retirement proposal presents an opportunity for gaming. The CPUC claims that resources may be able to predict their importance to the grid, threaten to retire in order to receive the higher CPM price, and then withdraw their notice of intent to retire if they do not receive a CPM designation.[132] SDG&E posits that any action by CAISO to participate in the forward capacity market as a buyer could distort seller behavior and potentially harm ratepayers.[133] NCPA requests that if the Commission accepts the risk of retirement designation, the Commission must also accept the qualification requirements proposed by CAISO for this designation type in order to ensure that the requirements for the designation are clear and limit the potential for generation owners to game the system.[134]

b. <u>Answers</u>

107. IEP refutes the CPUC's jurisdictional challenges and argues that the CPUC misapprehends the reach of the Commission's jurisdiction over capacity procurement. IEP asserts that the Commission's exercise of such authority is limited only by the FPA's prohibition against the direct regulation of generation facilities, not by a state's exercise of concurrent authority over resource adequacy, long-term resource planning, or unit

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[129] *Id.* at 4-5.

[130] CMUA Protest at 4.

[131] SoCal Edison Protest at 4-5; CMUA Protest at 5-6.

[132] CPUC Protest at 19.

[133] SDG&E Protest at 3.

[134] NCPA Protest at 7-8.

maintenance and retirement. IEP contends that *Connecticut v. FERC* clearly supports this proposition. IEP maintains that the risk of retirement designation and compensation authority are no more the direct regulation of generation facilities than other CPM authority, and, as such, fits squarely within the Commission's jurisdiction over practices affecting wholesale rates.[135] IEP argues that nothing in the FPA prohibits the Commission from approving a multi-year or advance procurement of capacity in California.[136]

108. In addition, IEP disagrees with parties that suggest the issues related to the risk of retirement designation should be addressed in a separate proceeding. IEP points out that although current and future stakeholder proceedings and regulatory proceedings at the CPUC may address the integration of renewables on a more comprehensive basis, CAISO requires the authority, as of April 1, 2011, to make CPM designations to procure capacity with the needed operating characteristics that may not be available under the resource adequacy program. Thus, IEP asserts that the Commission should approve CAISO's proposed risk of retirement CPM designation to procure CPM capacity from non-resource adequacy resources, including those at risk of retirement, which provide CAISO with valuable operating characteristics and reliability services, and should ensure that compensation paid to such non-resource adequacy resources reflects the value to CAISO of those operating characteristics and reliability services.[137]

109. NRG contends that CAISO's proposal to designate risk of retirement resources under the CPM is critical to the safe and reliable operation of California's bulk power system. NRG also disagrees with protestors who claim that the CPUC, and not the Commission, retains sole authority to govern resource adequacy and capacity procurement. NRG asserts that such a position is neither consistent with the FPA nor the Commission's duty to ensure that CAISO maintains reliable operations.[138] NRG contends that the FPA provides the Commission with plenary jurisdiction over wholesale energy markets such that the approval of the risk of retirement designation category is appropriate.[139]

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[135] IEP Answer at 8-9 (citing *Connecticut v. FERC*, 569 F.3d at 481, 485).

[136] *Id*. at 10.

[137] *Id*. at 13-14.

[138] NRG Answer at 2-3.

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

110. NRG contends that nothing in CAISO's proposal prevents or discourages the CPUC from addressing future reliability concerns on its own. NRG suggests that the new backstop designation should speed up the CPUC's consideration of underlying reliability issues. NRG asserts that as long as the CPUC satisfies CAISO's capacity needs, there will be no risk of retirement designations.[140]

111. Further, NRG opposes the use of ad hoc reliability must-run designations in place of the CPM, arguing that reliability must-run contracts are expensive, economically inefficient, and less operationally flexible. NRG also disagrees that the CPUC's long-term procurement plan can sufficiently and quickly resolve local reliability issues likely to occur within the next two years, as the CPM risk of retirement designation will be able to do. NRG contends that it is particularly important to address such reliability issues due to the additional financial burdens, decreased energy revenues, and increased operation, maintenance, and environmental capital costs likely to occur as a result of the state's new "once-through cooling" restrictions and 33 percent renewable energy target.[141]

112. CAISO reiterates that this last resort, backstop mechanism is imperative to enable it to procure capacity that is needed to maintain reliability, especially under circumstances where the configuration of the grid could be much different a year from now than it is today due to the substantial amount of variable energy resources that is expected to come on line in the interim, along with the potential retirement of other resources. CAISO confirms that it will issue this CPM designation only in very limited circumstances, subject to the ability of the resource requesting the designation to meet stringent requirements, and following a robust process that allows for stakeholder discussion of CAISO's finding of need for the resource and an opportunity for load serving entities to contract bilaterally with the resource and thereby obviate the need for a CPM designation.[142]

113. In response to arguments that existing mechanisms, such as the resource adequacy program and reliability must-run contracts, make this CPM designation unnecessary, CAISO explains that the risk of retirement designation was carefully designed to address a narrow situation, where a resource at risk of retirement that is needed for reliability in the following resource adequacy compliance year (year 2) is not procured for the current or imminent compliance year (year 1), that none of the existing measures can address. In such a situation, CAISO explains, the resource does not meet the reliability must-run eligibility requirements, as the reliability must-run structure is designed for current year

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[140] *Id.* at 3-4.

[141] *Id.* at 4-6.

[142] CAISO Answer at 4-7.

procurement only, and the resource has not been procured in the bilateral resource adequacy market. Moreover, CAISO states, because the resource is not needed in the current year, it would not qualify under the existing ICPM authority. Finally, CAISO notes that a resource that qualifies for the risk of retirement designation will not be replaced with new generation through the most recent long-term planning process in time to meet the following year's need, and is not deemed to be needed for reliability purposes by the CPUC under its General Order 167 operating standards.[143]

114. CAISO refutes protestors' claims that the risk of retirement designation category will either duplicate or conflict with the CPUC's processes. CAISO affirms that it will engage in backstop procurement as a failsafe measure only if the at-risk unit is not procured through the resource adequacy program or under other CPUC authority.[144]

115. Further, CAISO contends that the CPUC's argument conflicts with the FPA, which gives the Commission plenary jurisdiction over the nation's wholesale energy markets. CAISO notes that the Commission has previously asserted jurisdiction over centralized capacity markets, as well as other backstop procurement mechanisms that provide RTOs and ISOs with the authority to compensate units that are needed for reliability, but are at risk of retirement.[145] CAISO acknowledges that elements of the MISO and PJM provisions differ from the CPM Proposal. However, CAISO states, differences in the structure of such provisions do not nullify the fact that the Commission has the authority and has exercised such authority to approve the concept of risk of retirement backstop procurement as a just and reasonable way to keep uneconomic units needed for reliability in operation.[146]

116. CAISO reiterates its argument that the Commission's exercise of this plenary authority is limited only by the prohibition in the FPA against direct regulation of generation facilities and argues that the CPUC fails to explain how this proposed backstop procurement mechanism constitutes direct regulation of generation facilities. CAISO explains that because the risk of retirement CPM designation is voluntary, the CPUC is incorrect that the risk of retirement provision is an impermissible direct regulation of generation facilities, as resource owners must request the designation and are free to decline it. CAISO agrees with IEP that its proposed risk of retirement

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

[144] *Id.* at 11.

[145] *Id.* at 11-12 (referencing PJM's , MISO's, and ISO- NE's backstop procurement mechanisms).

[146] *Id.* at 12-13.

designation authority is no more a direct regulation of generation facilities than the other CPM categories that the Commission has already approved, including exceptional dispatches, which are mandatory.[147]

117. In response to allegations that this designation could result in gaming, CAISO asserts that parties ignore the multi-layered safeguards against the gaming potential that already exist in the tariff and that CAISO has built into the CPM Proposal. Specifically, CAISO points to the stringent requirements that a resource must meet in order to be eligible for consideration as an at-risk resource, as set forth in proposed section 43.2.6, as well as the review of the financial information by CAISO's Department of Market Monitoring.[148]

118. In response to process, transparency, and qualification requirement concerns raised by the CPUC, Six Cities, SDG&E, and NCPA, CAISO offers several clarifications of its process and technical analysis. First, CAISO provides extensive details regarding the technical analysis it will perform to determine whether an at-risk resource is needed for reliability and states that further information about the technical analysis and study process will be included in the business practice manuals.[149] CAISO states that the business practice manuals will also discuss the specific information that a resource owner must submit to CAISO in support of a request for a risk of retirement CPM designation. CAISO disagrees with the CPUC that the required information should be specified in the tariff rather than the business practice manuals, and contends that it is appropriate, and consistent with CAISO practice, to include these details in the business practice manuals.[150]

119. In response to concerns about the timeline for processing risk of retirement CPM designation requests, CAISO states that it reasonably balances over a 12-week period the time needed by CAISO to perform its analysis and determine whether the requesting resource is needed for reliability, with the opportunity for stakeholders to provide input on the matter and load serving entities to engage in procurement. Due to the 90-day

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[147] *Id.* at 12.

[148] *Id.* at 13-14.

[149] *Id.* at 16-17. CAISO outlines a multi-step process whereby the generating facility is studied for its impact on local reliability and operational flexibility given the best available information regarding grid conditions and resource availability. CAISO adds that the analysis will consist of power flow and voltage stability analysis, transient stability analysis, and dynamic and reactive margin studies. *Id.* at 16.

[150] *Id.* at 17.

notice requirement for terminating a participating generator agreement, CAISO asserts that the end of the period cannot be extended. CAISO explains that the 12-week period will end coincident with the date on which a generator must give notice that it is terminating its participating generator agreement. Given this time constraint, CAISO believes that its proposed timeline reasonably and fairly allocates time among the numerous activities that will occur during the 12-week period.[151]

120. CAISO rejects Six Cities' assertion that four weeks does not afford a realistic opportunity for procurement to avoid the need for a risk of retirement CPM designation to take place. CAISO argues that Six Cities has offered no explanation why procurement is not possible within a four-week timeframe or why it would be either beneficial or cost effective for load serving entities to undertake procurement before CAISO has completed its evaluation of a risk of retirement request and assessment of the reliability need.[152]

121. Further, in response to Six Cities' suggestion that CAISO perform a cost/benefit analysis of the alternatives to the risk of retirement designation, CAISO states that under tariff section 43.4(2), CAISO is required to consider the capacity costs of the eligible capacity in making CPM designations, including those for at-risk units. CAISO states that it will include in the business process manuals a description of the cost analysis it will undertake for risk of retirement CPM designation requests.[153]

122. In response to SoCal Edison's and CMUA's suggestion that CAISO convene a stakeholder process in coordination with the CPUC to consider tariff-based mechanisms instead of this CPM designation, CAISO responds that it will undertake such discussion during various stakeholder processes, which could occur over an extended period of time. CAISO notes, however, that the risk of retirement designation has already been considered in a lengthy and rigorous stakeholder process during which stakeholders availed themselves of numerous opportunities to express their views about CAISO's proposal.[154]

123. CAISO disagrees with SWP's recommendation to modify the allocation of risk of retirement CPM costs. CAISO argues that there is no reason to assume that the need for the resource in question will be driven exclusively or even primarily by peak-load conditions. CAISO states that the analytical findings that indicate need for a CPM

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[151] *Id.* at 19.

[152] *Id.* at 18-19.

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

[154] *Id.* at 20.

designation for risk of retirement would be more akin to the reliability issues that lead to exceptional dispatches, which are not necessarily tied to peak load. CAISO maintains that cost allocation also will spread cost responsibility for CPM designation to those entities that will benefit most by CAISO's backstop procurement. CAISO also rejects SWP's implication that resource adequacy shortfall would exist as a result of a generator retirement and thus should be settled accordingly. CAISO contends that this characterization does not accurately reflect the timing of a risk of retirement CPM, which looks beyond the current year and, therefore, does not respond to resource adequacy procurement shortfall.

c. Commission Determination

124. We conditionally accept, subject to modification, CAISO's proposal to add a new CPM category to procure resources at risk of retirement. Because CAISO is responsible for ensuring the reliable operation of the transmission system under its control, it must have adequate resources available to do so, which we find includes resources that may be needed subject to a risk of retirement CPM designation. While the resource adequacy program provides the primary means for CAISO to ensure that needed resources are available, we believe that the risk of retirement category will provide CAISO with an additional, last resort tool to address reliability needs, particularly as the makeup of generation resources changes over time.

125. CAISO explains that the risk of retirement CPM authority was carefully designed to address a narrow situation that none of the existing measures can address. Specifically, the risk of retirement designation is designed to address a situation where a resource is needed for reliability beyond the current resource adequacy compliance year. As a result, we find that neither CAISO's reliability must-run authority, nor the resource adequacy program or other CPM designation categories can address this need. Further, CAISO has specified in its proposed tariff language that in order for a resource to qualify for this designation, CAISO technical assessments must project that the resource will be needed for reliability purposes and that no new generation will be operational in time to meet the identified reliability need.[155] Finally, CAISO avers that resources offered risk of retirement CPM designations are those that have not been identified as needed for reliability purposes by the CPUC under its General Order 167 operating standards. Thus, we find that CAISO has shown that the risk of retirement CPM designation is necessary due to the inability of existing mechanisms to address the specific reliability need

[155] CPM Proposal at 21-22 ("The CAISO may issue this risk of retirement CPM designation in the event that … CAISO technical assessments project that the resource will be needed for reliability purposes, either for its locational or operational characteristics, by the end of the calendar year following the current [resource adequacy] compliance year." CAISO Proposed Tariff § 43.2.6(3)).

identified by CAISO. As such, we disagree with protestors' contentions that CAISO has failed to demonstrate a need for the proposed risk of retirement CPM category.

126. Further, the Commission finds that the risk of retirement CPM category will not duplicate or interfere with the CPUC or other local regulatory agencies' jurisdiction. Instead, we find that the purpose of the risk of retirement category is to allow CAISO to procure needed capacity, as a last resort, in the event that state or local procurement plans do not meet CAISO's operational and reliability needs. As such, we find no conflict or overlap of jurisdiction; CAISO's authority to offer a risk of retirement CPM designation will not be triggered until a determination has been made that a reliability need exists, even after all other long-term procurement options have been exercised. Moreover, we reject the CPUC's contention that the risk of retirement designation is inconsistent with the distinction between state and federal jurisdiction established by *Connecticut v. FERC*. In *Connecticut v. FERC*, the Court found that the Commission can take into account "concerns about system adequacy" in considering fairness of wholesale rates and is limited in this context only by the FPA's prohibition against direct regulation of generating facilities.[156] We find that CAISO's proposal to issue voluntary CPM designations for resources at risk of retirement will address system adequacy concerns that arise when other processes do not provide the resources CAISO needs to maintain reliable operations at just and reasonable rates, and in no way constitutes the direct regulation of generating facilities. Thus, we find no jurisdictional problem with CAISO's requested authority.

127. The Commission's jurisdiction in this matter is well established. For example, we note that the Commission has approved CAISO's backstop procurement authority under the ICPM and its predecessor, the TCPM, and that since its inception, CAISO has also had authority to procure reliability must-run generation to address local reliability needs.[157] Accordingly, we dismiss the CPUC's request to reject tariff provisions related to the risk of retirement CPM designation. We find that the risk of retirement feature of CPM is an appropriate extension of CAISO's existing and past backstop procurement authority. As committed by CAISO, this limited, last resort tool will defer to existing procurement processes.

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[156] *Connecticut v. FERC*, 569 F.3d at 481.

[157] *See also* MRTU *Order*, 116 FERC ¶ 61,274 at P 1113 (finding that, "in situations where one party's resource adequacy decisions can cause adverse reliability and costs impacts on other participants in a regionally operated system, it is appropriate for us to consider resource adequacy in determining whether rates remain just and reasonable and not unduly discriminatory."), *order on reh'g*, 119 FERC ¶ 61,076 (2007), *aff'd*, *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520 (2010) (*SMUD v. FERC*).

128. The Commission also rejects protestors' assertions that the risk of retirement category is duplicative of CAISO's authority to contract with at-risk resources under its reliability must-run authority. The risk of retirement CPM designation provides more flexibility to address reliability needs beyond local constraints. In addition, we note that reliability must-run contracts only apply for the current year, whereas CAISO proposes to use the risk of retirement category to designate resources needed in the following year. Therefore, a situation may arise in which a resource at risk of retirement, but needed for reliability, is deemed ineligible for a reliability must-run contract. For these reasons, the Commission finds that CAISO has demonstrated a need for the risk of retirement category that is not met by CAISO's reliability must-run procurement authority.

129. Further, the CPUC argues that differences exist between CAISO's proposed risk of retirement authority and similar procurement authority in other RTOs and ISOs. We find that while structural differences exist between the tariffs, any such differences do not nullify the Commission's authority to approve CAISO's proposal. The Commission has previously rejected requests to require a one size fits all approach to resource adequacy and does so again in this proceeding.[158]

130. However, we find that CAISO's proposed tariff language does not fully reflect its stated intention to use the risk of retirement designation category as a limited, last resort procurement mechanism.[159] Therefore, we direct CAISO to file tariff language to clarify that the risk of retirement CPM designation will be exercised only if all other available procurement measures fail to procure the resources needed for reliable operation within 30 days of the date of this order. The Commission finds that this tariff clarification should assure protestors that CAISO will not issue CPM designations in order to circumvent existing procurement mechanisms that could adequately resolve reliability needs.

131. We reject arguments that offering risk of retirement CPM designations may create significant market distortions, such as the opportunity for gaming. We find that, as modified, CAISO's proposal contains multi-layered safeguards and stringent requirements that will adequately protect against the possibility that resource owners will manipulate the system to receive CPM designations. Not only does CAISO's proposal provide stakeholders and CAISO's Department of Market Monitoring with the opportunity to review all risk of retirement applications,[160] but CAISO market

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[158] *Midwest Ind. Sys. Operator, Inc.*, 127 FERC ¶ 61,054, at P 30 (2009) ("we continue to reject a one-size fits all approach to resource adequacy in the various RTOs and reaffirm the need to allow for regional differences …").

[159] CAISO Answer at 8-9.

[160] CAISO Proposed Tariff §43.2.6.

participants are bound by rules prohibiting the submission of false or misleading information.[161] Thus, we find that CAISO has adequately addressed any potential for gaming.

132. Regarding CAISO's proposal to review a resource's financial condition as a further deterrent against attempts at gaming, we find that CAISO has not explained why an assessment of the resource's financial condition is necessary.[162] Further, we note that CAISO proposes to require an affidavit stating that it will be uneconomic for the unit to remain in service in the current year and committing to retire the unit if a CPM designation is not offered. Based on the fact that a market participant is prohibited from submitting false or misleading information to CAISO, the affidavit should be sufficient to establish that a resource cannot continue to operate economically. If the Department of Market Monitoring has reason to suspect that a resource submitted false, inaccurate, or otherwise misleading information in its affidavit, the CAISO tariff requires such a suspected violation to be referred to the Commission for appropriate sanction.[163] Thus, we find CAISO's proposal to conduct financial assessments of resources requesting risk of retirement CPM designations to be unjust and unreasonable and hereby reject it.[164]

133. Further, regarding CAISO's proposal to make risk of retirement CPM designations subject to refund, pending any investigation, it is well established that the Commission's

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[161] For example, the prohibitions of market manipulation in the CAISO tariff and the Commission's rules and regulations. Both provisions make it unlawful for entities to: (i) use or employ any device, scheme, or artifice to defraud; (ii) make any untrue statements or omissions of material fact; or (iii) to engage in any act, practice, or course of business that operates or would operate as fraud or deceit. CAISO Tariff § 37.7; 18 C.F.R. Part 1c, § 1c.2 (2010).

[162] We note that CAISO does not perform such a review as part of its reliability must-run process. *See* CAISO Tariff §§ 41.2, 41.3. Further, financial assessments are not part of the process for procuring resources at risk of retirement in other RTOs/ISOs. *See* PJM Tariff, Attachment G, Part V and MISO Tariff § 38.2.7.

[163] CAISO Tariff § 37.7.

[164] In light of our rejection of this requirement, we need not address NRG's request to require the confidential treatment of financial information.

discretion is at its zenith when fashioning remedies.[165] The Commission is not required to order refunds where there are appropriate equitable reasons not to do so.[166] However, the CPM Proposal appears to improperly shift the decision about whether or not to require refunds to CAISO, despite the Commission's well-established discretion on this issue. Accordingly, we find CAISO's proposal to make risk of retirement CPM designations subject to refund to be unjust and unreasonable and hereby reject it. Thus, we direct CAISO to file within 30 days of the date of this order a compliance filing that deletes proposed tariff sections 43.2.6(6) (which pertains to CAISO review of financial information) and 43.2.6.1 (which pertains to refunds).

134. The Commission disagrees with CPUC that CAISO should incorporate into the tariff additional information detailing the technical analysis CAISO will perform when assessing risk of retirement designation requests. Instead, we find that CAISO's proposal to include these details in its business practice manuals is just and reasonable. The Commission has previously explained that utilities must file "those practices that affect rates and service significantly, that are realistically susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous."[167] We do not find that the precise details of CAISO's technical assessment constitute a practice that will significantly affect rates and service. Thus, we will not require these details to be included in the tariff. We note that we have not required

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[165] *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 ("Finally, we observe that the breadth of agency discretion is, if anything, at zenith when the action assailed relates primarily not to the issue of ascertaining whether conduct violates the statute, or regulations, but rather to the fashioning of policies, remedies and sanctions, including enforcement and voluntary compliance programs in order to arrive at maximum effectuation of Congressional objectives."); *see also Towns of Concord v. FERC*, 955 F.2d 67, 76 (D.C. Cir. 1992) (citing *Moss v. Civil Aeronautics Board*, 521 F.2d 298, 308-09 (D.C. Cir. 1975) ("Because the 'equitable aspects of refunding past rates are … inextricably entwined with the [agency's] normal regulatory responsibility,' … absent some conflict with the explicit requirements or core purposes of a statute, we have refused to constrain agency discretion by imposing a presumption in favor of refunds.")); *Consol. Edison Co. of N.Y., Inc. v. FERC*, 510 F.3d 333 (D.C. Cir. 2007); *CPUC*, 462 F.3d at 1053; *Connecticut Valley Elec. Co. v. FERC*, 208 F.3d 1037, 1043 (D.C. Cir. 2000); *La. Pub. Serv. Comm'n. v. FERC*, 174 F.3d 218, 225 (D.C. Cir. 1999).

[166] *Trunkline Gas Co.*, 69 FERC ¶ 61,047, at 61,183 (1994).

[167] *See, e.g., KeySpan Ravenswood v. FERC*, 474 F.3d 804, 811 (citing *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985)); *see also Cal. Indep. System Operator Corp.*, 131 FERC ¶ 61,280, at P 60 (2010); *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271 (2008).

details of other types of technical studies performed by CAISO (e.g., reliability must-run studies) to be in its tariff. CPUC has not provided any information to persuade us to take a different approach here. While we believe that the requirement to conduct technical assessments prior to offering a risk of retirement CPM designation is a necessary component of the tariff, we find that the specific details of such evaluation are more appropriately outlined in the business practice manuals.[168]

135. The Commission rejects NRG's recommendations for revising CAISO's risk of retirement CPM evaluation process. NRG argues that retiring a unit is complex, involving financial projections, employee notifications, and community outreach; thus, retiring a unit is not an instantaneous decision and CAISO's proposed process is irrational if the generator is needed for system reliability.[169] We disagree with regard to CAISO's proposed process. Specifically, we find that if a facility is truly uneconomical and at risk of retirement, the many "complex" steps that NRG refers to should have already been taken, prior to requesting a CPM risk of retirement designation.

136. Further, regarding NRG's recommendation that CAISO conduct reliability studies before resources commit to retirement, we find that CAISO's requirement that resources make a binding commitment to retire upon requesting the CPM designation is just and reasonable. The Commission expects that a resource owner would have explored all other options for selling its capacity prior to seeking a CPM designation, consistent with CAISO's stated intention to use the risk of retirement designation as a tool of last resort, and would thereby be able to determine that it should retire its facility unless it receives a CPM designation. Regarding NRG's request that CAISO be required to provide load serving entities the opportunity to offer the affected unit a resource adequacy contract at any point after CPM designation, we find that CAISO already allows for this possibility. As specified in proposed tariff section 43.3.7, CAISO proposes to rescind the CPM designation for any month during which the resource is procured to provide resource adequacy capacity. Thus, we find NRG's request for this revision to be unnecessary.

137. We also reject NRG's recommendation that the Commission eliminate the seven-day period CAISO proposes to give stakeholders to review and comment on pending risk of retirement designations. Due to the fact that risk of retirement designations may involve capacity purchases for up to one year, which may result in substantial costs to entities allocated the costs of the designation, the Commission finds that stakeholders must be given fair notice and a reasonable opportunity to comment. However, we also

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[168] The Commission similarly approved CAISO's commitment to include planning details in its business practice manuals in accepting CAISO's Revised Transmission Planning Process. *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,224, at P 159 (2010).

[169] NRG Protest at 6.

disagree with the CPUC and Six Cities that CAISO should be required to extend the period for stakeholder review and comment. As CAISO has explained, its entire review process, including the time allotted for stakeholder review and alternate procurement arrangements, must be complete by the 90-day deadline for terminating a participating generator agreement. Given the 90-day requirement in the *pro forma* participating generator agreement, we will not require CAISO to extend the end of its review period.

138. We likewise reject Six Cities' suggestion that CAISO post a market notice and allow stakeholder review to commence within five days after the request is submitted. We find that until CAISO performs its technical analysis to determine whether a resource is even qualified for the designation, stakeholder review and comment would not be appropriate or beneficial. Thus, the Commission will not require CAISO to revise its timeline for evaluating requests for a risk of retirement CPM designation.

139. Similarly, while several protestors challenge CAISO's proposal to allow 30 days for load serving entities to contract with the resource requesting the designation, we find that protestors have not explained why a 30-day procurement period is insufficient. Further, we find that until CAISO completes its review of the request and its assessment of the reliability need, attempts by load serving entities to contract to procure capacity from the affected resource would not be cost effective.

140. We also reject Six Cities' recommendation that the Commission direct CAISO to conduct a cost/benefit review of the alternatives for each risk of retirement designation. We find that tariff section 43.4(2) sufficiently requires CAISO to conduct cost analyses. Further, we find that the requirements, as modified, for receiving a risk of retirement CPM designation ensure that the reliability need cannot be met by any existing, potentially cheaper procurement mechanism.[170] Finally, we note that CAISO has stated its intention to include additional information regarding cost studies in its business practice manual. The combination of the relevant tariff language and the additional details to be provided in the business practice manuals should ensure that CAISO administers the risk of retirement CPM process in a transparent and cost-effective manner.

141. Regarding the allocation of costs related to the risk of retirement CPM designation, we find that SWP has not demonstrated that the need for the resource in question will be driven primarily by peak-load conditions. Instead, we find that the cost allocation methodology proposed by CAISO will spread the cost responsibility for the CPM designation to those entities that will benefit most from CAISO's backstop procurement, akin to the cost allocation for significant event or exceptional dispatch

[170] CAISO Proposed Tariff § 43.2.6.

designations.[171] Further, we note that CAISO will provide a reserve requirements credit to an affected load serving entity based on its pro rata share of the designated CPM capacity.[172] The Commission finds CAISO's proposed cost allocation and crediting provisions to be just and reasonable and consistent with cost causation principles. Thus, we accept this element of CAISO's proposal.

142. We are also not persuaded by SWP's suggestion that a risk of retirement CPM designation should be settled as though the generator retirement that was forestalled by the designation would have resulted in a resource adequacy shortfall. We agree with CAISO that such a characterization does not accurately reflect the timing of a risk of retirement CPM designation; the designation looks beyond the current resource adequacy year so it is not responsive to resource adequacy procurement deficiencies.

143. Regarding protestors' concerns that resources receiving the risk of retirement CPM designation should not be compensated in the same manner as other CPM resources, we note that the Commission has found that CAISO's proposal for CPM compensation may be unjust and unreasonable, and has directed staff to convene a technical conference to discuss these issues. We note that our concerns related to compensation described above are exacerbated where the CPM designation period will potentially be longer term. Accordingly, we will address the specific issue of pricing the risk of retirement CPM designation at the technical conference, as part of the larger discussion regarding CPM compensation.

144. Finally, we also reject requests that the Commission direct CAISO conduct a separate stakeholder process in coordination with the CPUC to consider tariff-based mechanisms as an alternative to issuing risk of retirement designations under the CPM. We agree with CAISO that this issue has already been thoroughly vetted through the CAISO stakeholder process, and will continue to be deliberated through various stakeholder discussions in the future.

2. Use of Significant Event Designation

145. Under the ICPM, CAISO has the authority to designate ICPM capacity to provide service on a prospective basis following an ICPM significant event, in order to maintain reliability. An ICPM significant event is defined as:

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[171] We note that for those CPM categories that are a direct carry-over of the ICPM categories, CAISO proposes to retain the existing ICPM cost allocation methodologies. The Commission continues to find these methodologies to be just and reasonable.

[172] CAISO Proposed Tariff § 43.9(d).

> A substantial event, or combination of events, that is determined by the CAISO to either result in a material difference from what was assumed in the resource adequacy program for purposes of determining the [r]esource [a]dequacy [c]apacity requirements, or produce a material change in system conditions or in CAISO [c]ontrolled [g]rid operations, that causes, or threatens to cause, a failure to meet [r]eliability [c]riteria absent the recurring use of a non-[r]esource [a]dequacy [r]esource(s) on a prospective basis.[173]

146. In the CPM Proposal, CAISO states that it considered expanding the circumstances for procuring CPM capacity to allow transmission and/or generation maintenance outages to occur or to address situations where the output of variable energy resources is lower than their resource adequacy capacity values that had previously been under consideration. However, CAISO states that upon review of the existing ICPM and exceptional dispatch provisions of its tariff, it determined that both of these circumstances are already covered under its existing significant event procurement authority.[174]

a. Comments and Protests

147. SoCal Edison, the CPUC, and WPTF object to CAISO's assertion that the existing ICPM significant event designation includes the authority to address underperforming variable energy resources. The CPUC argues that additional backstop authority is not necessary. The CPUC maintains that it is unlikely that individual or aggregate variable energy resources will perform significantly under their resource adequacy net qualifying capacity values for the duration of a full 30-day CPM designation. In addition, the CPUC asserts that resources' net qualifying capacity values already account for the historical production of variable energy resources and de-rate net qualifying capacity values as required. Thus, unless the underperformance of a variable energy resource results in a material change from the CPUC resource adequacy assessment, it does not constitute a significant event for which backstop capacity procurement is permitted. Moreover, the CPUC points out that underperforming variable energy resources are not a major concern because CAISO's renewables integration study shows that the existing fleet is capable of supporting a 20 percent renewable scenario. Thus, the CPUC argues that the issue of integrating variable energy resources can be more appropriately and comprehensively addressed in separate stakeholder processes.[175]

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[173] CAISO Tariff, Appendix A.

[174] CPM Proposal at 12-13.

[175] CPUC Protest at 20.

148. WPTF objects to CAISO's proposal to expand the use of the existing ICPM significant event designation to address maintenance outages or variable resource integration. WPTF contends that CAISO has failed to provide any rationale that explains how or when CPM procurement for these transitory uses are actually necessary, given existing reserve margin requirements. However, WPTF alleges that CAISO has never thoroughly analyzed the current 15 percent planning reserve margin to determine what uncertainties it does and does not cover. WPTF urges the Commission to direct CAISO to explicitly define and quantify its operational reliability requirements so that the needed products or services can be explicitly priced in the CAISO markets and factored into procurement decisions.[176]

149. In addition, WPTF argues that CAISO conflates capacity requirements with specific ancillary services that should be priced in the market. WPTF contends that the development of market-based mechanisms to maintain reliability while integrating variable energy resources should not be deferred to a future stakeholder process. WPTF alleges that CAISO has repeatedly deferred the creation of reliability integration services and still has no concrete plans to do so. WPTF points out that approval of the CPM proposal would result in out-of-market procurement of these products and services and posits that without the development of transparent price signals, the needed new resources will not enter the market and existing resources will not make the necessary investments to maintain or retool their equipment to provide such services. WPTF requests that the Commission order CAISO to promptly develop the market based products and services necessary to satisfy its operating requirements.[177]

150. SoCal Edison states that to date, CAISO has made no significant event ICPM designations. As a result, SoCal Edison cautions that stakeholders have not had an opportunity to evaluate the significant event procurement process. Thus, SoCal Edison requests that the Commission instruct CAISO to ensure that its process is sufficiently robust and transparent to facilitate stakeholder evaluation. Further, SoCal Edison requests that the Commission require CAISO to submit quarterly reports on this issue.[178]

b. <u>Answers</u>

151. CAISO defends its interpretation of its significant event authority by explaining that it is possible that for periods of time under certain circumstance such as a prolonged weather event, a variable energy resource will be unable to produce energy reflecting its

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[176] WPTF Protest at 12-13.

[177] *Id.* at 13-17.

[178] SoCal Edison Protest at 6.

full resource adequacy capacity requirement. CAISO contends that this reduced output could adversely impact reliability.[179]

152. CAISO disagrees with the CPUC's interpretation of the tariff and maintains that underperformance of a variable resource constitutes a significant event. CAISO also rejects WPTF's contention that CPM procurement for underperforming resource is not necessary, given the 15 percent planning reserve margin requirement. CAISO asserts that although the CPUC methodology for determining qualifying capacity takes historical performance into account, there nonetheless could be weather conditions that cause wind or solar facilities to perform so far below their resource adequacy capacity value for an extended period of time that it would represent a material difference from the assumptions used to calculate the qualifying capacity value. Similarly, CAISO contends, such underperformance by variable energy resource adequacy resources could lead to a threat or failure to meet applicable reliability criteria unless backstop procurement occurs. Thus, CAISO states that both of these circumstances fall clearly within the definition of a CPM significant event and justify backstop procurement.[180]

153. CAISO argues that SoCal Edison's suggestion to require quarterly reports is unwarranted because CAISO tariff section 43.5 already contains comprehensive reporting requirements about all CPM designations.[181]

c. Commission Determination

154. CAISO has proposed no tariff revisions with respect to its interpretation of its significant event CPM authority and the Commission has no specific facts or circumstances with which to evaluate the definition of a CPM significant event. Thus, depending on the specific facts, the Commission may or may not agree with CAISO's interpretation. However, we remind CAISO that CPM is only intended to be used as a backstop mechanism and exceptional dispatch is to be "reserved for genuine emergencies."[182] Parties that believe CAISO is abusing these mechanisms should file a complaint with the Commission under section 206 of the FPA.[183]

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[179] CAISO Answer at 22.

[180] *Id.* at 24.

[181] *Id.* at 25-26.

[182] MRTU Order, 116 FERC ¶ 61,274 at P 267.

[183] 16 U.S.C. § 824d (2006). *See, e.g.*, *SMUD v. FERC*, 616 F.3d at 542 (noting that section 206 actions may be used as a means for policing compliance with Commission directives).

155. We reject WPTF's requests to require CAISO to reassess its reserve requirements and set specific deadlines for the development of new ancillary service products. In the instant proceeding we are not addressing whether reserve requirements should be modified; rather, we are addressing only whether the CPM is a reasonable mechanism to provide a backstop to the resource adequacy program. Therefore, we find that WPTF's request that CAISO be required to define and quantify its operational reliability requirements is beyond the scope of this proceeding.

156. Similarly, while WPTF has raised issues in this proceeding indicating a potential need for new market-based products and services to address reliability needs related to the integration of variable energy resources, we reject WPTF's request that CAISO be required to develop such products and services as part of this proceeding. As WPTF acknowledges, CAISO has indicated that it will address the possibility of new market-based mechanisms as part of it renewable integration market and product review.[184] Thus, we find that the stakeholder process initiated by CAISO for the purpose of addressing renewable integration is a more appropriate forum for WPTF to present its requests. We recognize that CAISO is working with stakeholders to address the challenges of integrating renewable resources into the transmission grid.

157. Finally, we deny SoCal Edison's request that CAISO submit quarterly reports on significant event designations. The CAISO tariff already contains comprehensive reporting requirements for all CPM designations. We find that SoCal Edison has failed to demonstrate that the existing reporting requirements are inadequate. Further, we find that although CAISO has not made any significant event ICPM designations, the Commission has no reason to believe that CAISO will not administer the process according to the tariff, in an unduly discriminatory manner when or if such a circumstance arises. Accordingly, we see no reason to require reevaluation of the significant event designation category at this time.

E. New Selection Criteria

158. Under the ICPM, CAISO must consider the following factors when selecting a resource to offer an ICPM designation: (1) the effectiveness of the eligible capacity; (2) the capacity costs associated with the eligible capacity; and (3) the quantity of a resource's available eligible capacity relative to the amount of capacity needed. For certain ICPM designations, CAISO may also consider the effectiveness of the eligible capacity in meeting local and/or zonal constraints.[185] CAISO proposes to add the following two new criteria to use in selecting from among eligible resources once CAISO

[184] WPTF Protest at 14.

[185] CAISO Tariff § 43.4.

has determined that a CPM designation is necessary: (1) the operating characteristics of the resource, such as dispatchability, ramp rate, and load-following capability; and (2) whether the resource is subject to restrictions as a use-limited resource.[186]

159. CAISO states the proposed new criteria enable CAISO to identify and select the optimal capacity to address the underlying reliability need, once the determination of the need for a CPM designation has been made. To that end, CAISO states that it will prefer non-use-limited resources to use-limited resources. CAISO claims that it would not be able to rely on the availability of use-limited resources to the same extent it would on non-use-limited resources because use-limited resources are exempt from the must-offer obligation, which is required of all resources receiving a CPM designation. CAISO notes that a preference for non-use limited resources would also protect ratepayers from the potential of double capacity payments in circumstances where a CPM designated, use-limited resource is not available on a given day and CAISO is forced to procure additional capacity to address the reliability problem. However, CAISO maintains that this criterion will not prohibit use-limited resources from receiving CPM designations; "it will simply add an additional factor … to the [CA]ISO's selection process."[187]

160. In addition, CAISO proposes to make tariff revisions to apply the existing and proposed selection criteria to exceptional dispatch as well as to CPM designations. CAISO states that such revisions are necessary because a CPM designation can be triggered by an exceptional dispatch of non-resource adequacy capacity.[188]

1. Comments and Protests

161. NCPA and Six Cities support CAISO's proposal to incorporate the two new CPM selection criteria because it will allow CAISO to select the resource that will best meet the need that triggered the CPM designation in the first place.[189]

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[186] CPM Proposal at 30-31. A "use-limited resource" is a resource that "due to design considerations, environmental restrictions on operations, cyclical requirements, such as the need to recharge or refill, or other non-economic reasons, is unable to operate continuously on a daily basis, but is able to operate for a minimum set of consecutive [t]rading [h]ours each [t]rading [d]ay." CAISO Tariff, Appendix A.

[187] CPM Proposal at 31.

[188] *Id.* at 32. CAISO notes that all ICPM designations to date have been triggered by exceptional dispatches.

[189] NCPA Protest at 6; Six Cities Protest at 3.

162. SoCal Edison does not support CAISO's proposal to add selection criteria regarding operational characteristics. SoCal Edison contends that further discussion of issues related to procurement on the basis of operational attributes is required to avoid inefficient and duplicative backstop procurement.[190]

163. WPTF suggests that permitting CAISO to procure backstop capacity on the basis of special characteristics to manage outages and reliably integrate renewable resources may result in the unnecessary over-procurement of resources. WPTF contends that CAISO has not explained how or when CPM procurement for these transitory uses is necessary.[191]

2. Answers

164. IEP argues that SoCal Edison has not supported their arguments to reject CPM selection criteria based on resources' operating characteristics. IEP argues that SoCal Edison raises broader program design issues that apply to generic CPM capacity as well as capacity with uniquely valuable operating characteristics. IEP contends that rather than deferring consideration of these broad design issues to a future proceeding, the Commission should act on the proposal before it and approve the proposed selection criteria, taking into account the value of operating characteristics in determining a just and reasonable CPM price.[192]

165. CAISO contends that SoCal Edison and WPTF seem to misunderstand the modifications CAISO is proposing to the selection criteria. In response, CAISO clarifies that the selection criteria do not expand the basis for CAISO to issue a CPM designation; they merely allow consideration of resource-specific traits to aid CAISO in selecting the optimal resource to receive the designation. CAISO states that this will ensure that it selects the resource that most effectively meets CAISO's needs and maximizes benefits to ratepayers.[193]

166. Further, CAISO disagrees with SoCal Edison that adding resource operating characteristics to the list of selection of criteria will be inefficient, duplicative, or increase costs. CAISO explains that the scheduling coordinator that is allocated the cost of a CPM

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[190] SoCal Edison Protest at 5-6.

[191] WPTF Protest at 11-12.

[192] IEP Answer at 13.

[193] CAISO Answer at 26-27.

designation will receive credit toward margin requirements or resource adequacy obligations. CAISO contends that this credit should offset the duplication or increased costs of concern to SoCal Edison.[194]

3. Commission Determination

167. We conditionally accept CAISO's proposed new selection criteria for the CPM and exceptional dispatch and find that they will help CAISO to identify the resources that maximize its ability to address reliability needs. We also find CAISO's proposal to incorporate the CPM selection criteria for resources designated as CPM resources into its process for selecting resources under its exceptional dispatch authority to be reasonable because exceptional dispatches can trigger an offer of a CPM designation. We find that the selection criteria for the two backstop mechanisms should be consistent. We agree with CAISO that the additional selection criteria will protect ratepayers from additional costs that may be incurred if a resource is designated under CPM but is not available to be dispatched when it is needed, forcing CAISO to procure more backstop capacity.

168. However, we find that the new selection criteria fundamentally alter the granularity of the analysis CAISO will perform when choosing among available resources. As proposed, we find that these changes have the potential to create an advantage for certain types of resources, given that CAISO provides no explanation as to how it will balance the six selection criteria when it selects a resource for a CPM designation. Thus, we find that additional transparency regarding the selection process is necessary to ensure that the criteria are applied in a just, reasonable and not unduly discriminatory manner. CAISO has not provided details on its selection process, particularly with regard to the proposed new selection criteria. Therefore, we direct CAISO to submit a compliance filing within 30 days of the date of this order that specifies how CAISO will apply the CPM selection criteria.

169. In particular, the Commission is concerned that CAISO has not defined in its tariff how it will consider whether to offer CPM designations to use-limited resources. CAISO states in its transmittal letter that "[t]he ISO will prefer non-[u]se-[l]imited resources, as they offer ISO operations and [m]arket [p]articipants the most value for the cost of a CPM designation."[195] CAISO states in the CPM Proposal that this criterion will not prohibit use-limited resources from receiving CPM designations. The Commission finds that CAISO should clarify in the tariff that, to the extent that use-limited resources are capable of performing the required service for the duration of the CPM designation or exceptional dispatch, CAISO will not unduly discriminate in favor of non-use-limited

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

[195] CPM Proposal at 31.

resources when applying the selection criteria in CAISO Tariff section 43.4 to resources available for a CPM designation or exceptional dispatch. We direct CAISO to submit a compliance filing, within 30 days of the date of this order, to reflect this clarification.

170. Because issues related to CPM compensation will be considered at the technical conference, we will not further address at this time IEP's request that the Commission account for operating characteristics in determining a just and reasonable CPM price. IEP, or any other party, will have the opportunity to present alternative compensation options at the technical conference.

171. Further, we reject SoCal Edison's concerns and find that CAISO has sufficiently supported its proposal to add the new selection criteria, as modified. We find that adding these selection criteria will not result in inefficient and duplicative procurement, leading to an increase in costs to consumers. As CAISO has explained, the new selection criteria will not form the basis for the decision to engage in backstop procurement, but will only assist CAISO in determining which resource is best suited for meeting the identified reliability need.

F. Term and Amount of Designation

172. For the categories of CPM designations that will carry over directly from the ICPM, CAISO proposes to retain the existing tariff provisions regarding term of CPM designations. Thus, CPM designations to address resource adequacy procurement deficiencies will continue to be subject to a one-month minimum designation. Likewise, significant event CPM designations will be offered with a minimum commitment term of thirty days. For the proposed risk of retirement designation, CAISO proposes a minimum commitment term of one month and a maximum commitment term of one year, based on the number of months for which the capacity will be procured in the current resource adequacy compliance year. However, CAISO notes that the term of the risk of retirement designation may not extend into a subsequent resource adequacy compliance year and will be rescinded for any month during which the resource is operating under a capacity contract.[196]

173. CAISO also proposes to add a tariff provision to establish that the term of an exceptional dispatch CPM designation shall be 30 days. CAISO states that the existing tariff sets forth terms for all categories of ICPM designations except those resulting from an exceptional dispatch and notes that the proposed 30-day term is consistent with CAISO's current practice.[197]

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[196] CAISO Proposed Tariff § 43.3.7; CPM Proposal at 19.

[197] CPM Proposal at 33.

174. Finally, under the ICPM, CAISO may offer a designation for only a portion of a resource's available non-resource adequacy capacity.[198] When CAISO offers an ICPM designation as the result of an exceptional dispatch, the amount of capacity covered by the designation is equal to the greater of the resource's minimum operating level or the amount of energy or capacity specified in the exceptional dispatch instruction.[199] CAISO proposes to continue this partial designation authority under the CPM, unchanged from the ICPM.

1. Comments and Protests

175. IEP objects to CAISO's proposal to limit the amount of capacity eligible for CPM compensation to the amount of energy used for exception dispatch. IEP contends that under this proposal, CAISO will be able to obtain the reliability benefits of a generator's full capacity while only paying the capacity price for the minimum load amount that is dispatched. IEP cites an example in which CAISO designated two separate generators at minimum load levels of 20 MW each, instead of dispatching one of the generators for 40 MW. IEP asserts that by dispatching both units, CAISO obtained access to both generators' full capacity while only paying the CPM price for minimum load. According to IEP, dispatching two units at minimum load increases start up costs and reduces the generators' efficiency. IEP argues that even when a resource is committed at minimum load under an exceptional dispatch, that resource becomes subject to "indivisible reliability obligations," that "expressly or effectively bind a CPM-designated unit's full capacity."[200]

176. Additionally, IEP argues that the exceptional dispatch of units to minimum load levels is not comparable to resource adequacy contracts for partial unit capacity. IEP contends that partial resource adequacy contracts tend to be near the full unit output level, or involve small sales with energy service providers with less predictable load requirements. IEP maintains that partial resource adequacy contracts are not used to procure capacity at a resource's minimum load level. Therefore, IEP asks the

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[198] *See* ICPM Order, 125 FERC ¶ 61,053 at P 94; ICPM Rehearing Order, 134 FERC ¶ 61,132 at P 44-45.

[199] CAISO Tariff § 43.1.5; Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 187-191.

[200] IEP Protest at 58 (quoting Theaker Aff. ¶ 27).

Commission to reject these provisions as unjust and unreasonable, and instead modify the proposal so that exceptional dispatch CPM resources receive compensation for their full available capacity.[201]

177. IEP also opposes the 30-day minimum term for CPM designations, including those resulting from exceptional dispatches. IEP points out that the Commission accepted the 30-day minimum term because it is consistent with the resource adequacy program. However, IEP asserts that in practice, almost all resource adequacy capacity is procured under annual or seasonal terms. IEP claims, based on its analysis of CAISO's exceptional dispatch reports, that none of CAISO's reliability needs arose from the insufficiency of a resource adequacy resource procured under a monthly contract and concludes that CPM designations will likely fill gaps left by seasonal or annual resource adequacy procurement. IEP contends that CPM-designated generators are at a disadvantage when given only one month to recover fixed costs, as opposed to the year given to resource adequacy resources. Further, IEP argues that the 30-day minimum CPM term is inconsistent with planning, operation, and investment timeframes. IEP asserts that such planning is done on an annual basis, and observes that even the resource adequacy program is built on annual requirements. Thus, IEP argues that the CPM term that would be most consistent with the resource adequacy program is an annual term. [202]

178. EPSA urges the Commission to mandate annual CPM designations for the full output of the designated resource. EPSA objects to designations for less than a resource's full capacity because partial unit designations may leave capacity providers with capacity ready and waiting, but which is never compensated. EPSA contends there is little to no incentive for units to commit any amount of forward availability if they will only be compensated for the actual energy produced in real time. Similarly, EPSA asserts that rejecting annual designations in favor of monthly results in significantly lower compensation for CPM units than those offering the exact same service under reliability must-run and resource adequacy contracts. Moreover, EPSA contends that annual designations would put CPM compensation on par with reliability must-run and resource adequacy programs and would also make CPM consistent with CPUC protocol that dictates year-ahead procurement for system peak capacity.[203]

179. IEP and NRG object to CAISO's proposed maximum term for risk of retirement CPM designations. IEP additionally requests that the Commission extend the minimum designation term for at risk of retirement units to be the balance of the current year plus

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[201] *Id.* at 55-59.

[202] *Id.* at 59-62.

[203] EPSA Protest at 21-22.

the following year in which their reliability services will be needed. IEP argues that because CAISO's planning horizon is for the future year and the balance of the current year, the unit's prospective availability across that entire period is providing value to CAISO.[204] NRG argues that providing at risk of retirement generating units with a maximum two-year designation is not sufficient to deter retirements, given the potentially large capital expenditures that are likely required to keep the unit in service and the low level of compensation available under the CPM. NRG posits that, due to the timing of resource adequacy process and the 180-day notification period required by CAISO, a unit at risk of retirement will likely receive a CPM designation for only 18 months. Thus, NRG proposes that CAISO extend the minimum designation period to three years, following the examples of ISO-NE and PJM. NRG contends that a three-year period will provide at risk of retirement units with adequate short-term stability to make investment and operation decisions. [205]

180. NCPA supports CAISO's proposal to retain the 30-day minimum designation for the existing designation categories because it is consistent with both the resource adequacy program and also prior Commission action.[206]

2. **Answers**

181. Six Cities note that the ICPM Order rejected arguments for a longer minimum designation period and a requirement that backstop capacity designations should apply to the entire available capacity of a designated unit. Six Cities argue that nothing has changed since the ICPM Order to justify expanded designation requirements under the CPM and contend that expanding the requirements would require CAISO's customers to pay for unneeded capacity and result in excessive charges.[207]

182. CAISO states that IEP's claim that CAISO is proposing a minimum thirty-day term for all CPM designations is misleading. CAISO reiterates that it is not proposing to change the minimum one-month term or the maximum term for each category of CPM designation and the only term provisions being proposed are to reflect the 30-day term for exceptional dispatch CPM designations and to set the term for the new CPM category of resources at risk of retirement.[208]

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[204] IEP Protest at 62-63.

[205] NRG Protest at 8.

[206] NCPA Protest at 5 (citing ICPM Order, 125 FERC ¶ 61,053 at P 89).

[207] Six Cities Answer at 10-11.

[208] CAISO Asnwer at 57-58.

183. In addition, CAISO contends that IEP's argument is based on a factually incorrect assumption that exceptional dispatch CPM designations result from insufficient seasonal or annual resource adequacy capacity procurement. To the contrary, CAISO asserts, exceptional dispatch is a means to address unanticipated and short-term reliability problems that could not have been anticipated during the normal resource adequacy process. Thus, CAISO asserts that the requirements for issuing exceptional dispatch CPM designations do not support a term longer than thirty days. Further, CAISO states, since the ICPM authority became effective, CAISO has issued only 23 ICPM designations for 703 MWs, all of which were exceptionally dispatched. CAISO posits that if IEP were correct that the exceptional dispatch ICPM designations are necessary to address insufficient seasonal or annual resource adequacy procurement, then its use of exceptional dispatch ICPM designations would have been far more frequent and for larger amounts of capacity.[209]

184. Lastly, CAISO argues that suggestions that the term for risk of retirement CPM designations should be extended are unfounded and at odds with the resource adequacy program construct. CAISO explains that, as proposed, resources at risk of retirement in the current year would receive a CPM designation for the remainder of the current resource adequacy compliance year. CAISO contends that at-risk resources needed for reliability in the following year should be procured through a bilateral arrangement during the annual procurement cycle for the next resource adequacy compliance year, thereby obviating the need to extend the term for this designation beyond the end of the current year.[210]

185. In its answer to the CAISO Answer, IEP argues that CAISO mischaracterizes CPM as a voluntary program, and argues that all ICPM designations have been from compulsory exceptional dispatches. Specifically, IEP argues that the alternative to a CPM payment for non-resource adequacy resources is no capacity payment at all, and therefore IEP argues that the economics of the CPM designation offers is not the result of a voluntary or fair exchange.[211]

186. IEP again argues that the minimum 30-day designation period is unjust and unreasonable. IEP argues that the resource adequacy program commits capacity for an annual or seasonal term and therefore, CPM capacity should be given the same term for compensation as is given to resource adequacy capacity, especially due to the involuntary nature of the dispatches that have resulted in ICPM designations. IEP argues that

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[209] *Id.* at 59-61.

[210] *Id.* at 61.

[211] IEP February 3, 2011 Answer at 21.

CAISO's answer confuses the procurement of capacity (which is reserved through resource adequacy contracts but may never be called on) and the short term nature of exceptional dispatches and highlights that it is the resource adequacy capacity committed for longer terms that is insufficient to meet CAISO's operational and reliability needs.[212]

187. IEP argues that CAISO has not denied IEP's assertion that resources it is exceptional dispatching to procure the capacity of entire units by exceptionally dispatching the units at their minimum load levels, and continues to insist that this practice results in inadequate compensation for the reliability services being provided.[213] IEP points out that CAISO does not dispute the affidavit submitted in IEP's comments that determined that CAISO was procuring capacity far in excess of the output levels dispatched but paid the ICPM price only on the amount of minimum load capacity for each resource, and therefore argues that CAISO concedes to this assertion.[214]

3. Commission Determination

188. We accept CAISO's proposal to retain the tariff provisions for the term of designations for categories of CPM designations that were also included in the ICPM. We also accept CAISO's proposed minimum and maximum term for CPM designations under the new risk of retirement category, as well as for resources that receive CPM designations as a result of exceptional dispatch. Further, we accept CAISO's proposal to retain, under CPM, the authority to offer a designation for only a portion of a resource's available non-resource adequacy capacity, including designations for the amount of capacity equal to or greater than the resource's minimum operating level or the amount of energy or capacity specified in the exceptional dispatch instruction.

189. As the Commission has explained in prior proceedings, the CPM is, in part, designed to fill a gap between resource adequacy requirements and actual reliability needs.[215] Therefore, it is appropriate to base the reasonableness of CPM procurement rules on whether they result in just, reasonable, and not unduly discriminatory or preferential treatment of non-resource adequacy resources that are procured to address insufficient resource adequacy requirements. As noted by Six Cities in its answer, the CPUC's resource adequacy program has not been modified and the conditions have not

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[212] *Id.* at 32-35.

[213] *Id.* at 20.

[214] *Id.* at 32.

[215] ICPM Order, 125 FERC ¶ 61,053 at P 94, ICPM Rehearing Order, 134 FERC ¶ 61,132 at P 44-45.

changed to justify changing the CPM designation requirements. The resource adequacy program permits monthly contracting and requires a monthly procurement demonstration. The Commission has previously found that "it is likely that certain resource adequacy resources operate under monthly arrangements."[216] Therefore, consistent with the ICPM and TCPM proceedings,[217] we find that a minimum 30-day or one-month designation term is consistent with the resource adequacy program, and reject IEP's contention otherwise.

190. We note that, as the CPM is a voluntary procurement mechanism, resources may decline CPM designations and pursue other avenues to recover their fixed costs.[218] IEP notes that the voluntary nature of CPM designations for resources that are exceptionally dispatched is different than the voluntary nature of other CPM designations if an exceptionally dispatched resource desires a capacity payment for a service it is required to perform. However, we do not find that the involuntary nature of exceptional dispatches justifies offering a longer minimum term of designation for exceptionally dispatched resources that choose to be designated under CPM. Moreover, we find that a longer minimum term of designation for any CPM resources would potentially result in discrimination, as compared to a resource adequacy resource. Therefore, we reject protestors' arguments that the Commission should require CAISO to modify the proposed and existing minimum term of designation for resources designated under CPM.

191. IEP asserts that the term of designation should be reevaluated because: (a) CPM designations, including those arising from exceptional dispatches, are filling the gap left by insufficient seasonal or annual resource adequacy procurement; and (b) that the term of designation is inconsistent with planning, operation and investment timelines. We reject these assertions. First, we note that exceptional dispatches are intended primarily to address unanticipated, short-term reliability problems. Resources may elect to accept a CPM designation when they are exceptionally dispatched to perform any capacity-type service. As the Commission determined in the Exceptional Dispatch Order, capacity-type services can comprise many uses of exceptional dispatch, including responding to transmission or generator outages, addressing capacity-based constraints due to modeling limitations, providing voltage support, accommodating forbidden operating regions, and responding to environmental constraints. Given the diverse array of capacity-type services that can trigger an exceptional dispatch CPM offer, the Commission disagrees with IEP's assertion that CPM designations, particularly those resulting from exceptional

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[216] ICPM Order, 125 FERC ¶ 61,053 at P 89.

[217] *Id.*; TCPM Order, 123 FERC ¶ 61,229 at P 59.

[218] ICPM Order, 125 FERC ¶ 61,053 at P 41.

dispatches, are filling gaps in seasonal or annual resource adequacy procurement. Further, the Commission finds that CAISO's limited use of the exceptional dispatch ICPM designation does not serve as evidence that CPM designations will solely fill the gaps left by seasonal or annual resource adequacy procurements. We find that extending the term of designation based on such limited experience may result in excessive costs to ratepayers when resources are dispatched to respond to short-term problems.

192. Second, we reject IEP's arguments that the term of designation should be consistent with investment and planning timelines. The Commission has previously considered and rejected nearly identical arguments on this issue.[219] Although we agree with IEP that we are not necessarily bound by our findings in the ICPM Order, we find, on this particular issue, that the changes in the facts since approval of the ICPM have not persuaded us to reconsider our position. We continue to find that a minimum 30-day or one month designation period adequately addresses reliability needs in a cost-effective manner.

193. The Commission finds that IEP and NRG have not supported the need for a longer maximum term of designation for resources at risk of retirement. We find that the maximum commitment term for resources at risk of retirement, as defined in the tariff, is just and reasonable and not unduly discriminatory.[220] The Commission finds that the proposed term of designation will asses the reliability need for a resource at risk of retirement and assign a term of designation that is appropriate for the need. We find that this term accounts for resources that may be needed in the following year without resulting in excessive costs to ratepayers. If those resources continue to be needed, they will become resource adequacy resources; if they are not needed for such purposes, we find that requiring a longer procurement term could result in consumers paying for excess capacity that may no longer be needed in a subsequent resource adequacy compliance year.

194. Further, we are not persuaded to require a longer minimum term by NRG's contention that the term of designation will result in compensation that is not sufficient to deter retirements. We note that risk of retirement compensation, along with all issues related to CPM compensation, will be considered at the technical conference. If NRG believes that resources will not receive compensation sufficient to deter retirement due to the term of the designation, NRG will have the opportunity to present alternative

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[219] *See id.* P 84, 89.

[220] Proposed Tariff Section 43.3.7 states that the maximum commitment term is one year, based on the number of months for which the capacity is to be procured within the current resource adequacy compliance year. The term of designation may not extend into a subsequent resource adequacy compliance year.

compensation options at the technical conference. However, the term of such designations, independent of the ultimate compensation outcome, will be 30-days or one month, as discussed herein.

195. In addition, we continue to find just and reasonable CAISO's authority to offer CPM designations for only a portion of a resource's available non-resource adequacy capacity and to set the level of compensation for exceptional dispatch CPM designations at the level of the exceptional dispatch. The Commission has previously determined that partial unit procurement is consistent with the procurement rules under the resource adequacy program and that the ICPM is reasonably tailored to ensure comparable treatment of resources providing reliability capacity services.[221] The Commission finds that requiring full resource designations for all resources is inconsistent with the procurement rules present under the resource adequacy program, and such an inconsistency could result in consumers having to pay for capacity in excess of CAISO's short-term system reliability needs and provide a disincentive for suppliers to participate in the resource adequacy program.[222]

196. Likewise, we are not persuaded that partial designations are unjust, unreasonable, or unduly discriminatory by IEP's allegation that CAISO is designating resources at minimum load but relying on the resources' full capacity or designating multiple resources where one resource could be dispatched. Consistent with previous findings, we continue to disagree with arguments that commitment to a resource's minimum operating level effectively gives CAISO access to the exceptionally dispatched resource's entire available capacity. As the Commission has previously noted, the amount of capacity included in a designation is increased to reflect any incremental energy dispatched during the 30-day designation period.[223] We continue to find that the amount of capacity covered by the designation represents the amount that CAISO needs for reliability. Further, protestors do not attempt to quantify the amount of capacity that CAISO allegedly relies on in excess of the amount exceptionally dispatched.

197. With regard to IEP's concern that CAISO is designating multiple resources at minimum load, where one resource could be dispatched, we find that CAISO should not

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[221] *Id*. P 94 ("The ICPM, like the pre-MRTU backstop capacity mechanisms, is, in part, intended to ensure comparable treatment of resources providing reliability capacity services. By proposing to allow resources to be partially designated as ICPM capacity resources, the ICPM accomplishes this objective by implementing designation rules comparable to the resource adequacy program.").

[222] ICPM Rehearing Order, 134 FERC ¶ 61,132 at P 21.

[223] Exceptional Dispatch Order, 126 FERC ¶ 61,150 at P 191.

offer partial designations to multiple resources when one could be designated at the full amount. However, we deny protestors requests to require full designations under all circumstances. Instead, CAISO merely has a requirement to designate the amount of capacity that is required to meet the reliability need that triggers the need for an exceptional dispatch or CPM designation. To the extent one resource can meet that need through a full or partial CPM designation, CAISO should designate one resource, rather than splitting the needed capacity between the minimum load of multiple resources.

198. However, as noted above, for partially-designated resources, CAISO must compensate CPM resources for capacity above the initial CPM commitment, if CAISO dispatches the unit for any amount greater than the initial designation amount during the 30-day designation period. CAISO cannot rely on capacity or reliability services of CPM resources beyond the capacity amount that CAISO has designated under CPM. We find that CAISO's proposed tariff language makes clear that CPM designations are only for the amount required to meet the reliability need and reiterate that CAISO may not depend on capacity beyond the designated amount, without increased compensation. Any allegations that CAISO is currently violating such provisions under the ICPM, however, are beyond the scope of this proceeding. Here, we find that CAISO's partial designation proposal is just, reasonable, and not unduly discriminatory.

199. Accordingly, we reject the requests to require that exceptional dispatch CPM resources receive compensation for their full available capacity. However, we reiterate that CAISO should not rely on any services from partially designated resources beyond the designated amount (e.g., to meet reliability requirements) and find that CAISO should not offer partial designations to multiple resources when one could be designated at the full amount needed, but we deny protestors requests to require full designations under all circumstances.

G. CPM Sunset Provisions

200. Under the existing CAISO tariff, the ICPM tariff provisions expire on March 31, 2011.[224] Here, CAISO proposes the CPM without a sunset date. CAISO states the ICPM was proposed as a temporary measure because, at the time, the CPUC had a rulemaking underway to consider the long-term design of the resource adequacy program and because CAISO lacked experience with a locational marginal price-based market design. CAISO states that the June 3, 2010 CPUC Decision essentially maintained the status quo of the resource adequacy program,[225] thus obviating the need to significantly modify the design of the backstop mechanism. In addition, CAISO states that during the 18 months

[224] CAISO Tariff §§ 43.1.

[225] *See supra* n.12.

since the ICPM was implemented, CAISO has acquired experience with its new market design and asserts that the ICPM has operated very successfully. Therefore, CAISO states that it sees no ongoing reason for the backstop mechanism that replaces the ICPM to have a sunset date. However, in response to stakeholder concerns, CAISO states that it has committed to stakeholders to include in its business process manuals a process to review the level of CPM payments every two years to ensure that CPM compensation remains appropriate.[226]

1. Comments and Protests

201. The CPUC argues that the ongoing significant changes in market conditions and market design warrants revisiting the entire CPM in two years. The CPUC asserts that the review should not be limited to the level of the CPM price, as CAISO proposes. Moreover, the CPUC asserts that the burden to establish that the CPM remains just and reasonable should be on CAISO, not on the consumers. Thus, the CPUC contends that the CPM should sunset in two years.[227]

202. Six Cities concur with CAISO's proposal to implement the CPM for an indefinite term. However, in light of planned market design changes and anticipated new policies and procedures for the integration of renewable resources, Six Cities request that the Commission direct CAISO to review the appropriateness of the CPM elements on a periodic basis.[228]

2. Answers

203. CAISO contends that both the CPUC and Six Cities base their recommendation for mandatory review of the CPM provisions on the expectation that CAISO's market structure will change significantly over the coming year. Although CAISO agrees that policy initiatives like convergence bidding and the integration of renewable resources will result in market design changes, it disagrees that these changes justify limiting the CPM to an interim status. CAISO states that neither Six Cities nor the CPUC has explained what affect the market changes they reference are expected to have on backstop procurement. Thus, CAISO asserts that there is no valid reason to make the CPM subject to a sunset date or mandatory review cycle. [229]

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[226] CPM Proposal at 33-34.

[227] CPUC Protest at 22.

[228] Six Cities Protest at 4.

[229] CAISO Answer at 65.

204. In response to stakeholder concerns about ensuring that the CPM price does not become stale, CAISO notes that it has committed to include in its business process manuals a process to review the level of the CPM payment through a stakeholder initiative to be conducted every two years. CAISO states that it will address any issues identified during that review process through a stakeholder initiative and/or FPA section 205 filing.[230]

3. Commission Determination

205. The Commission accepts CAISO's proposal to implement the CPM without a sunset date. We agree that CAISO has demonstrated a need for the continuation of its backstop capacity procurement authority. However, we also agree with protestors that changes in market conditions may affect how CAISO uses CPM and what may be a just and reasonable price for CPM capacity. Furthermore, as discussed above, the need for continued mitigation of certain types of exceptional dispatches has not been justified and may be unjust and unreasonable. Thus, as discussed above, these two issues will be subject to a further order and discussion at the technical conference.

H. Other Issues

206. CAISO states that because the ICPM will automatically expire on March 31, 2011, there could be ICPM designations in effect as of that date that need to be carried over under the CPM regime. CAISO proposes tariff revisions that will allow such carry over until the term of the designation expires. In the event that an ICPM designation extends beyond March 31, 2011, CAISO proposes to subject such capacity to the CPM provisions on a going-forward basis as of the effective date of the CPM provisions, including the provisions concerning compensation, cost allocation, and settlement. CAISO asserts that application of the CPM provisions to any carry over ICPM capacity will eliminate the unnecessary complexity of having both ICPM and CPM provisions in operation at the same time. However, CAISO notes that no capacity designated under the ICPM would be permitted to carry over into the subsequent resource adequacy compliance year.[231]

207. In addition, CAISO proposes a number of minor, ministerial revisions to add conforming language, number a subsection that was left unnumbered as a result of an

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[230] *Id.* at 66.

[231] CPM Proposal at 35-36.

oversight in a previous tariff revision, and delete the phrase "within 30 days of the effective date of this section" from several tariff sections because that time period has lapsed.[232]

1. Comments and Protests

208. NRG does not comment on any of the ministerial modifications requested by CAISO, but asks that CAISO substitute the term "generating unit" for "resource" in section 43.2.6, because "resource" is not a defined term in the tariff. NRG holds that this term will clarify that CAISO conducts unit-by-unit analyses that do not include an entire generating station.[233]

2. Commission Determination

209. The Commission accepts CAISO's proposed carry over provisions. The Commission finds that applying the CPM provisions to any carry over designations will eliminate unnecessary complexity that would likely result from having the ICPM and CPM provisions in effect concurrently until all carry over ICPM designations expire.

210. The Commission also accepts the ministerial provisions proposed by CAISO. We find that the proposed revisions are necessary to update the tariff and provide the required conforming language to reflect expiration of the ICPM and implementation of the CPM. The Commission rejects NRG's request to require CAISO to substitute the term "generating unit" for "resource" in section 43.2.6. We find that NRG has not demonstrated that CAISO's proposed tariff language is unjust and unreasonable. Further, we do not find any potential confusion regarding the scope of CAISO's risk of retirement analyses due to the use of the word "resource," instead of the term "generating unit."

211. Finally, we note that CAISO does not explicitly address in its Proposal how demand resources will participate in the CPM. Order No. 719 required RTOs and ISOs to "study whether further reforms are necessary to eliminate barriers to demand response in organized markets."[234] Because it is important for demand response providers to understand how they may participate in the CPM, we find it appropriate to include this

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[232] CAISO Proposal at 36.

[233] NRG Protest at 10.

[234] *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281, at P 3 (2008), *order on reh'g*, Order No. 719-A, 74 Fed. Reg. 37,776 (Jul. 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

issue as part of the technical conference directed herein. Thus, the technical conference will include discussion of how demand resources can participate in the CPM.

The Commission orders:

(A) Commission staff is hereby directed to convene a technical conference, within 45 days following the date of issuance of this order, to further explore CAISO's CPM compensation methodology and the continuation of exceptional dispatch mitigation, as discussed in the body of this order.

(B) CAISO's proposals to base CPM compensation on going-forward costs and to continue exceptional dispatch mitigation are hereby accepted for filing and suspended for a nominal period, to become effective April 1, 2011, subject to refund and the outcome of the technical conference, as discussed in the body of this order.

(C) The remainder of the CPM Proposal is hereby conditionally accepted, subject to the modifications discussed in the body of this order, effective April 1, 2011.

(D) CAISO is hereby directed to submit a compliance filing to address the modifications to the CPM discussed herein, within 30 days of the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Timely Motions to Intervene and Short Citations for Select Parties

Alliance for Retail Energy Markets	
The California Department of Water Resources State Water Project	SWP
California Municipal Utilities Association	CMUA
Calpine Corporation	
Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California	Six Cities
City of Santa Clara, California and the M-S-R Public Power Agency	
Dynegy Morro Bay, LLC, Dynegy Moss Landing, LLC, and Dynegy Oakland, LLC	
Electric Power Supply Association	EPSA
GenOn Energy Management, LLC, GenOn Delta, LLC, and GenOn West, LP	GenOn
Golden State Water Company	
Independent Energy Producers Association	IEP
J.P. Morgan Ventures Energy Corporation and BE CA LLC	
Modesto Irrigation District	
Northern California Power Agency	NCPA
NRG Companies	NRG

Pacific Gas & Electric Company	PG&E
Powerex Corp.	
San Diego Gas & Electric Company	SDG&E
Southern California Edison Company	SoCal Edison
Western Power Trading Forum	WPTF