

157 FERC ¶ 61,002  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, and Colette D. Honorable.

La Paloma Generating Company, LLC

Docket No. EL16-88-000

v.

California Independent System Operator Corporation

ORDER DENYING COMPLAINT

(Issued October 3, 2016)

1. On June 17, 2016, La Paloma Generating Company, LLC (La Paloma) filed a complaint pursuant to sections 206 and 309 of the Federal Power Act (FPA)<sup>1</sup> requesting that the Commission direct the California Independent System Operator Corporation (CAISO) to grant La Paloma a reliability must-run (RMR) designation for the portion of its generating capacity not currently designated as resource adequacy capacity. As discussed below, we deny La Paloma's complaint.

**I. Background**

2. La Paloma owns a 965.4 MW four-unit combined cycle natural gas-fired generating facility located in McKittrick, California, that commenced operation in 2003 and is directly interconnected to Pacific Gas and Electric Company's (PG&E) Midway Substation.<sup>2</sup> Currently, 42 MW of Unit Two of the facility's total capacity is under a resource adequacy contract. As such, La Paloma is required to bid energy generated from this capacity into CAISO's energy market.<sup>3</sup>

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<sup>1</sup> 16 U.S.C. §§ 824e, 825h (2012).

<sup>2</sup> Complaint at 3. The Midway Substation is the northern entry point to Path 26, which forms the interface between northern California and southern California.

<sup>3</sup> CAISO Answer at 3.

3. In March 2016, La Paloma submitted an outage request to CAISO for Unit Two for a period of June 18, 2016 through June 26, 2016 to perform a required maintenance inspection. While the outage request was initially approved by CAISO, an impending heat wave led CAISO to cancel all discretionary outages on June 17, 2016, including La Paloma's requested outage.<sup>4</sup> Subsequently, La Paloma submitted a request to reschedule its canceled outage to perform the required inspection. That request was approved by CAISO.<sup>5</sup>

4. La Paloma explains that despite bidding energy from all four of its facility's units into CAISO's market, it has seen a substantial decline in its market revenues.<sup>6</sup> La Paloma has determined that continued economic operation of its facility is not justified, at least in the short to medium term. La Paloma further explains that because its efforts to enter into agreements to sell its non-resource adequacy capacity had failed, it submitted maintenance outage requests to CAISO for Unit One, Unit Three, and Unit Four of its facility on May 13, 2016, in the interest of reducing economic losses to the greatest extent possible.<sup>7</sup> La Paloma's requested outages included the period July 1, 2016 to November 30, 2016 for each unit.<sup>8</sup>

5. In its May 13 outage requests, La Paloma states the reason for requesting the outages as: "No resource adequacy procured from unit, and operation is expected to be uneconomic with Path 26<sup>9</sup> internal transfer reservations and online constraints."<sup>10</sup> On June 6, 2016, CAISO denied La Paloma's outage requests for Unit One, Unit Three, and Unit Four because La Paloma requested the outages for economic reasons, which CAISO found to be inconsistent with its tariff.<sup>11</sup> In rejecting the outage requests, La Paloma

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<sup>4</sup> CAISO Answer at 3.

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

<sup>6</sup> Complaint at 6.

<sup>7</sup> Complaint at 8; CAISO Answer at 3.

<sup>8</sup> CAISO Answer at 3.

<sup>9</sup> Path 26 consists of transmission lines that connect PG&E's system to Southern California Edison's system, forming an important interface between northern and southern California. *Id.* at 3.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> CAISO Answer at 4.

states that CAISO advised that its tariff does not have a procedure for entertaining economic outages, and that maintenance must be underway for the entire outage period to obtain a maintenance outage.<sup>12</sup>

## II. Complaint

6. La Paloma asserts that by denying its requests for economic outages for Unit One, Unit Three, and Unit Four of the La Paloma facility, CAISO has prevented La Paloma from mitigating its financial losses and has compelled La Paloma to maintain operations without providing an appropriate mechanism for recovering costs.<sup>13</sup> This, La Paloma argues, interferes with its investment-backed expectations and is harmful to the public interest.<sup>14</sup> La Paloma also states that CAISO's representatives have indicated that the La Paloma facility is not needed for reliability purposes. La Paloma states that if it is compelled to maintain operations without adequate financial compensation, losses are estimated to exceed \$39 million annually.<sup>15</sup> La Paloma argues that if the Commission does not intervene, La Paloma will have suffered a regulatory taking.<sup>16</sup>

7. La Paloma asserts that its facility is critically important to the reliability of CAISO. La Paloma states that its assertion is based upon findings in privately-commissioned studies, its location at the Midway Substation, the frequency and level of dispatch by CAISO, and the natural gas supply shortage at Aliso Canyon. La Paloma asserts that third party studies indicate that power flow on Path 26 would be restricted to approximately half of its maximum rating without La Paloma's units, and that retiring the units could result in line restrictions.<sup>17</sup> La Paloma also asserts that the cancellation of its originally scheduled outage for Unit Two, as well as the denial of its outage requests for

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<sup>12</sup> Complaint at 9.

<sup>13</sup> *Id.* at 18.

<sup>14</sup> *Id.* at 17 (citing *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124 (1978) (*Penn Central*)).

<sup>15</sup> *Id.* at 21.

<sup>16</sup> *Id.* at 9.

<sup>17</sup> *Id.* at 13, Exh. A, Affidavit of James Maiz on Behalf of La Paloma Generating Company, LLC at 8.

Unit One, Unit Three, and Unit Four is indicative of CAISO's need for La Paloma's facility.<sup>18</sup>

8. La Paloma argues that the Commission has recognized that a regional transmission organization (RTO) or independent system operator (ISO) cannot compel a generator to maintain operations for an indefinite period of time, and that an RTO or ISO must compensate a generator if it desires to keep the unit in service when the generator has stated its intent to take the unit out of service.<sup>19</sup> La Paloma states that the Commission has already found that the CAISO market must provide appropriate financial incentives to generators where their output is needed, but that CAISO has failed to do so.<sup>20</sup> According to La Paloma, since the Commission rejected CAISO's proposed Flexible and Reliability Resource Retention mechanism and ordered a technical conference in 2013, CAISO has failed to develop a market-based mechanism that provides needed resources with the requisite incentive to remain in the market.<sup>21</sup> La Paloma argues that to avoid the occurrence of a regulatory taking, the Commission should determine that appropriate compensation should be provided for La Paloma's continued operation. La Paloma proposes that this could be achieved through an annual RMR agreement or another compensatory contract.<sup>22</sup>

### **III. Notice of Complaint and Responsive Pleadings**

9. Notice of La Paloma's complaint was published in the Federal Register, 81 *Fed. Reg.* 41,970 (2016) with answers, interventions, and protests due on or before July 7, 2016. CAISO submitted a timely answer. Timely motions to intervene were filed by: Western Power Trading Forum, NRG Power Marketing LLC and GenOn Energy

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<sup>18</sup> *Id.* at 9.

<sup>19</sup> *Id.* at 18 (citing *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,112, at P 42 (2004); *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,053, at P 137 (2005)).

<sup>20</sup> *Id.* at 10-11 (citing *Cal. Indep. Sys. Operator Corp.*, 142 FERC ¶ 61,248, at P 64 (2013)).

<sup>21</sup> *Id.* at 12. In the order rejecting CAISO's proposed tariff revisions to implement the Flexible and Reliability Resource Retention mechanism, the Commission noted that "the most effective course of action would be for CAISO and its stakeholders to focus on the development of a durable, market-based mechanism to provide incentives to be sure that the reliability needs are met," before directing staff to convene a technical conference. *Cal. Indep. Sys. Operator Corp.*, 142 FERC ¶ 61,248 at P 2.

<sup>22</sup> *Id.* at 2.

Management LLC, Sierra Club, Inland Empire Energy Center, LLC, Cogentrix Energy Power Management LLC, Diamond Generating Corp., Powerex Corp., the city of Azusa, California, the city of Santa Clara, California, Northern California Power Agency, Modesto Irrigation District, the Alliance for Retail Energy Markets, and San Diego Gas and Electric Company. Timely motions to intervene and comments were filed by: Southern California Edison Company (SoCal Edison), Calpine Corp. (Calpine), NRG Companies and Dynege Moss Landing, LLC (collectively, NRG), Pacific Gas and Electric Company (PG&E), Dynege Oakland LLC (Dynege Oakland), California Department of Water Resources State Water Project (SWP), the California Municipal Utilities Association (CMUA), and the cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, Six Cities). The California Public Utilities Commission (CPUC) filed a timely notice of intervention. The Electric Power Supply Association (EPSA) and Sentinel Energy Center, LLC (Sentinel) filed motions to intervene out of time. On July 18, 2016, La Paloma filed an answer to CAISO's answer. On July 20, 2016, CAISO and the CPUC, respectively, filed answers to commenters. On July 28, 2016, CAISO filed an answer to La Paloma's July 18 answer.

**A. CAISO Answer**

10. CAISO asserts that the denial of La Paloma's outage requests for Units One, Three, and Four does not amount to an impermissible taking, and that La Paloma's complaint should be denied.<sup>23</sup> CAISO first argues that the denial of La Paloma's outage requests cannot amount to a regulatory taking because CAISO is not authorized by a governmental entity to take property, and that no Commission precedent would support such a takings claim based on a utility action. Even if the Commission's inaction could result in a regulatory taking, CAISO states that it would not be possible for La Paloma to establish a takings claim under United States Supreme Court precedent.<sup>24</sup>

11. CAISO asserts that La Paloma could not succeed on a *per se* takings claim because the right to earn a profit, which La Paloma claims to have been denied, is not a tangible property right. Furthermore, CAISO argues that La Paloma has not been denied all beneficial use of its property simply because La Paloma is not making what it

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<sup>23</sup> CAISO July 7 Answer at 4.

<sup>24</sup> *Id.* at 4-6 (citing *Lingle v. Chevron U.S.A.*, 544 U.S. 528, 538 (2005); *Palazzolo v. Rhode Island*, 533 U.S. 606, 630-631 (2001) (affirming Rhode Island Supreme Court determination that no taking occurred because "all economically beneficial use was not deprived" as a result of the challenged regulation); *Goldblatt v. Town of Hempstead, N.Y.*, 369 U.S. 590, 592 (1962); *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470 (1987) (finding no taking where regulation allowed property owner to mine 50 percent of the value of its coal)).

considers to be sufficient profits in CAISO's day-ahead market.<sup>25</sup> CAISO states that La Paloma is free to enter into bilateral contracts or pursue a long-term capacity designation pursuant to CAISO's tariff provisions concerning resources at risk of retirement. In addition, CAISO states that La Paloma could seek approval for a "cold lay-up" of the unit from the CPUC or retire the unit altogether and devote the property to another use, and that courts have allowed substantial diminution of value without finding that a taking of property has occurred.<sup>26</sup>

12. CAISO also argues that La Paloma has not shown that the denial of its outage requests has interfered with distinct investment-backed expectations. CAISO asserts that unexpected losses are part of a competitive market and that when La Paloma decided to employ market-based rates, it understood that its profitability would be determined by the market.<sup>27</sup> CAISO states that La Paloma voluntarily signed a participating generator agreement, under which it agreed to comply with the CAISO tariff, which does not provide for outages for economic reasons.<sup>28</sup> CAISO asserts that an investor that enters a

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<sup>25</sup> *Id.* at 5-6.

<sup>26</sup> *Id.* at 8. CPUC Generator Asset Owner (GAO) Operation Standard 26 permits a GAO to "submit to the Commission plans and procedures for storage, reliable restart, and operation" of a generation unit if the GAO plans to make "a change in the long-term status of an electric generation unit, other than permanent shutdown and/or decommissioning." CPUC, *Operations Standards and Recommended Guidelines for Generation Asset Owners*, Operation Standard 26: Planning for Long-Term Unit Storage, at 40, at <http://www.cpuc.ca.gov/general.aspx?id=2689>. Operation Standard 26 states that changes to long-term status include, among other things, retirement, cold layup, and mothballing. *Id.*

<sup>27</sup> CAISO July 7 Answer at 8.

<sup>28</sup> *Id.* at 11 (citing CAISO, Tariff, § 9.3.2, Requirement for Approval). Section 9.3. states:

Operator or Scheduling Coordinator shall not take: (i) facilities that comprise the CAISO Controlled Grid or (ii) Generating Units of Participating Generators out of service for the purposes of planned maintenance or for new construction or other work except as approved by the CAISO Outage Coordination Office; except that final approval may not be required for a Transmission Maintenance Outage as provided in Section 9.3.9.1.

competitive market cannot reasonably expect a non-market bailout if market conditions do not materialize as hoped.<sup>29</sup>

13. CAISO asserts that even if the denial of the outage requests is deemed a Commission action, it is not the type of governmental action that would amount to a taking. CAISO states that it has not prevented La Paloma from taking the unit out of service, and it has not required La Paloma to bid its non-resource adequacy capacity into the market. CAISO further asserts that its denial of La Paloma's outage requests was required by its Commission-approved tariff, and states that the Commission has held that what has been found to be just and reasonable is not a taking in the context of setting rates, terms, and conditions for jurisdictional service.<sup>30</sup> CAISO states that it rejected La Paloma's requested outages for Units One, Three, and Four because La Paloma requested the outages for purely commercial reasons rather than for maintenance, new construction, or other work—as its tariff requires. Therefore, CAISO argues that La Paloma has made no showing that CAISO's actions were inconsistent with the Commission-approved tariff or that CAISO's outage approval authority, in effect in some form since CAISO began operations in 1998, is no longer just and reasonable.<sup>31</sup>

14. Finally, CAISO asserts that even assuming that it improperly denied the requested outages and that doing so constitutes a regulatory taking, the requested relief of an annual capacity contract bears no relationship to the alleged harm.<sup>32</sup> CAISO states that its tariff provides for capacity contracts under certain circumstances when units are committed or dispatched out-of-market or when CAISO needs non-resource adequacy capacity to respond to a capacity procurement mechanism significant event. CAISO states that in those instances, only 30-day or 60-day designations would be granted, not an annual RMR contract, as La Paloma seeks. CAISO adds that its most recent local capacity technical study did not show a need for CAISO to execute an RMR agreement with La Paloma. Further, CAISO stresses that it has not needed to exceptionally dispatch La Paloma to meet a reliability need, nor has it needed to declare a significant event that would require designating La Paloma as a capacity resource.<sup>33</sup>

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<sup>29</sup> *Id.* at 8.

<sup>30</sup> *Id.* at 10.

<sup>31</sup> *Id.* at 12.

<sup>32</sup> *Id.* at 13.

<sup>33</sup> *Id.* at 14.

**B. Other Comments**

15. Commenters encourage the Commission to deny La Paloma's complaint.<sup>34</sup> PG&E states that a rejected outage request that is not permitted by CAISO's tariff does not amount to a regulatory taking, and that La Paloma has failed to follow the established CAISO tariff process for acquiring an RMR agreement or a capacity procurement mechanism (CPM) designation for resources at risk of retirement.<sup>35</sup> Six Cities argue that application of CAISO's Commission-approved tariff in denying La Paloma's requested economic outage does not amount to a regulatory taking, and that La Paloma does not have a right to be compensated at its desired level.<sup>36</sup> Six Cities add that the complaint contravenes CAISO's tariff provisions governing RMR and CPM designations, and that La Paloma has previously requested that the Commission provide it with a CPM designation in a proceeding concerning CAISO's Aliso Canyon filing, which the Commission rejected.<sup>37</sup>

16. CMUA similarly asserts that La Paloma's requested relief is contrary to CAISO's tariff and associated agreements, and adds that the complaint is devoid of a detailed and factual showing of costs and revenues.<sup>38</sup> SWP states that La Paloma has not presented sufficient evidence to show that its facility is necessary to maintain reliability, nor has La Paloma demonstrated that it deserves out-of-market compensation. SWP further argues that if CAISO finds La Paloma necessary for reliability, then the existing CAISO tariff mechanisms should be employed to procure La Paloma's capacity.<sup>39</sup>

17. While protesters support rejecting La Paloma's complaint, some suggest that the Commission take additional action to address revenue shortfalls for conventional generators in California's energy markets or direct CAISO to amend certain provisions of its tariff. Calpine asserts that the Commission should reject the complaint and instead convene a technical conference to address what it describes as the continuing, systemic failure of California's wholesale markets to ensure that competitive generation has a

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<sup>34</sup> Dynegy Oakland states that it takes no position on the merits of the complaint.

<sup>35</sup> PG&E Comments 3-5.

<sup>36</sup> Six Cities Comments at 5, 10-11.

<sup>37</sup> *Id.* at 21-22. (citing *Cal. Indep. Sys. Operator Corp.*, 155 FERC ¶ 61,224, at P 70 (2016)).

<sup>38</sup> CMUA Comments at 3-4.

<sup>39</sup> SWP Comments at 5.



reasonable opportunity to recover fixed costs.<sup>40</sup> Though Dynegy Oakland takes no position on La Paloma's complaint, it argues that CAISO's continued reliance on out-of-market solutions such as RMR designations for units needed for reliability undermines effective market performance.<sup>41</sup> Dynegy Oakland asks the Commission to direct CAISO to conduct a thorough review of its market rules and to propose modifications that would result in clearing prices that will incent new generation and retain existing resources that are necessary for reliability, and that will also permit uneconomic resources to retire.<sup>42</sup>

18. While arguing that La Paloma's requested relief is unjustified and unduly preferential and discriminatory, NRG asserts that if the Commission acts in this proceeding, it should require CAISO to address compensation shortfalls through a market-wide approach that evaluates the need for capacity on more than just a year-forward basis and, where needed, provides compensation over more than a single year. NRG also asserts that the Commission should require CAISO to allow units without resource adequacy designations to request "economic outages" in situations where it is uneconomic for the unit to incur the additional expense of being available to run. If CAISO denies an economic outage request from a non-resource adequacy unit, NRG adds, the Commission should require CAISO to provide a CPM designation for that resource.<sup>43</sup>

### **C. CAISO Answer to Commenters**

19. CAISO states that the Commission should deny NRG's and Dynegy Oakland's requests to modify the tariff to allow for economic outages and to provide CPM designations if CAISO denies outage requests from units that do not have resource adequacy contracts.<sup>44</sup> However, CAISO states that it agrees that it is appropriate to consider whether economic outages should be allowed and what form of compensation, if any, CAISO should provide if it denies a generator's maintenance or economic outage request. Accordingly, CAISO states that it will commence a stakeholder process in the first quarter of 2017 to address these issues.<sup>45</sup>

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<sup>40</sup> Calpine Comments at 12.

<sup>41</sup> Dynegy Oakland Comments at 6-8.

<sup>42</sup> *Id.* at 9.

<sup>43</sup> NRG Comments at 8.

<sup>44</sup> CAISO July 20 Answer at 5.

<sup>45</sup> *Id.* at 5.

20. While CAISO argues that NRG's request that the Commission order CAISO to adopt a multi-year forward capacity construct is outside the scope of this proceeding, it states that it recognizes the importance of conventional generation resources in integrating renewable resources, and is actively pursuing market rule changes that compensate generators for the needed characteristics.<sup>46</sup> Therefore, CAISO states that it does not object to a Commission-directed technical conference in a new docket concerning the questions raised by Calpine.<sup>47</sup> Lastly, CAISO requests that the Commission reject Dynegy Oakland's request that the Commission order CAISO to modify its tariff as beyond the scope of this proceeding, and states that it continues to work to reduce its reliance on reliability must-run units.<sup>48</sup>

#### **D. CPUC Answer to Commenters**

21. In its answer to certain commenters, CPUC states that general criticisms of California's wholesale energy markets are beyond the scope of the complaint.<sup>49</sup> CPUC argues that Calpine's and NRG's protests do not warrant instituting a review of CAISO's market because they do not identify any specific tariff provisions alleged to be unjust and unreasonable.<sup>50</sup> In response to Dynegy Oakland's assertion that CAISO has over-relied on RMR agreements to ensure resources needed for reliability remain in the market, CPUC points out that only two facilities remain under RMR contracts within CAISO: Dynegy Oakland's generating units and AES Huntington Beach, LLC's synchronous condensers.<sup>51</sup> Lastly, CPUC states that it continues to work collaboratively with CAISO to monitor and review resource adequacy requirements for system, local, and flexible resources, as well as California's planning and procurement framework.<sup>52</sup>

#### **E. La Paloma Answer to CAISO Answer**

22. La Paloma argues in its July 18 Answer that CAISO has, in effect, implied the need for La Paloma's Unit Two for reliability purposes by denying the requested

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<sup>46</sup> *Id.* at 7.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 7-8.

<sup>49</sup> CPUC Answer at 4.

<sup>50</sup> *Id.* at 8.

<sup>51</sup> *Id.* at 12.

<sup>52</sup> *Id.* at 9-10.

maintenance outage.<sup>53</sup> La Paloma asserts that CAISO has also not explicitly denied a need for La Paloma's other three units. La Paloma asserts that CAISO has highlighted its need to the Commission for flexibility on Path 26 in light of the natural gas shortage at the Aliso Canyon Storage Facility.<sup>54</sup> La Paloma argues that, given its facility's direct interconnection to the Midway Substation, it is able to support maximum level flows on Path 26.<sup>55</sup>

23. La Paloma also states that it cannot avoid financial losses by simply not bidding energy from its non-resource adequacy capacity into the CAISO market because it is required to maintain operations to ensure that it is available for real-time exceptional dispatch. La Paloma asserts that despite CAISO's and commenters' suggestion that it could seek a CPM designation, the frequent solicitations for resource adequacy with very little advance notice make it difficult for La Paloma to estimate its resource adequacy obligations in advance of the annual CPM process.<sup>56</sup>

24. La Paloma asserts that, despite CAISO's claim, it properly alleged a regulatory taking on the basis of the factors set forth in *Penn Central*,<sup>57</sup> and reiterates that CAISO's actions have interfered with its investment-backed expectations. Lastly, La Paloma agrees with commenters who urge the Commission to pursue market-wide reforms, and notes that there is broad consensus among generators of the need for CAISO to overhaul an unjust and unreasonable compensation structure.<sup>58</sup>

#### **F. CAISO Answer to La Paloma Answer**

25. In response to La Paloma's July 18 Answer, CAISO states that under its tariff, it is authorized to enter an RMR contract with a unit only after technical studies show that the unit is required for the reliability of the CAISO grid. CAISO further states that no studies conducted by CAISO have shown a need for continued operation of La Paloma's units.<sup>59</sup>

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<sup>53</sup> La Paloma Answer at 4.

<sup>54</sup> *Id.* at 7 (citing CAISO, Transmittal, Docket No. ER16-1649-000, at 1 (filed May 9, 2016)).

<sup>55</sup> *Id.* at 8.

<sup>56</sup> *Id.* at 13.

<sup>57</sup> *See Penn Central*, 438 U.S. at 124.

<sup>58</sup> La Paloma Answer at 20.

<sup>59</sup> CAISO July 28 Answer at 2-3.

CAISO explains that, contrary to La Paloma's assertion, the denial of outage requests were not indicative of a continued need for La Paloma's units. CAISO states that it denied the outage requests for Units One, Three, and Four of La Paloma's facility because they were economic outages unauthorized by the tariff, and it canceled the maintenance outage request for Unit Two as part of a broader cancellation of discretionary outages due to the impending heat wave. CAISO states that its tariff does not permit granting an RMR contract on the basis of La Paloma's failure to obtain resource adequacy commitments. CAISO also argues that it is not aware of any case in which a taking was found to arise because of a governmental failure to act, and that La Paloma has not identified case law in support of this notion.<sup>60</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2016), the Commission will grant EPSA's and Sentinel's motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure 18 C.F.R. § 285.214(a)(2) (2016), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they provided information that assisted us in our decision-making process.

##### **B. Commission Determination**

28. We deny La Paloma's complaint. First, we find that La Paloma's complaint fails to identify, as required by Rule 206 of the Commission's Rules of Practice and Procedure, any "action or inaction which is alleged to violate applicable statutory standards or regulatory requirements."<sup>61</sup> In denying La Paloma's economic outage request, CAISO properly applied the outage-related provisions of Section 9.3 of its tariff, as discussed below. Therefore, La Paloma cannot succeed on its complaint by merely asserting that CAISO's denial of its economic outage request has adverse financial ramifications; rather, it must also identify the action or inaction that allegedly violated the

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<sup>60</sup> *Id.* at 6.

<sup>61</sup> 18 C.F.R. § 385.206(a)(1) (2016).

FPA or regulations thereunder. La Paloma, however, has failed to do so. La Paloma did not argue that the relevant tariff provisions are unjust and unreasonable or unduly discriminatory,<sup>62</sup> nor did it support any assertion that CAISO's actions were otherwise contrary to the FPA or any regulation or order of the Commission.

29. As noted above, we find that CAISO reasonably denied La Paloma's economic outage requests for Units One, Three, and Four of its facility. Currently effective section 9.3.2 of CAISO's tariff requires generators to seek CAISO's approval for outage requests, and states in pertinent part: "An Operator or Scheduling Coordinator shall not take...Generating Units of Participating Generators out of service for the purposes of planned maintenance or for new construction or other work except as approved by the CAISO Outage Coordination Office."<sup>63</sup> CAISO's tariff includes no other provision governing the approval of maintenance outage requests by participating generators and contains no language regarding the type of economic outage request that La Paloma sought. Thus, based on the most reasonable construction of the tariff, the only permissible reasons for seeking an outage from CAISO include planned maintenance, new construction, or other work.<sup>64</sup> The tariff thus does not permit CAISO to grant requests for outages for economic reasons, such as those at issue here. Therefore, although La Paloma does not challenge the outage-related tariff provisions as unjust and unreasonable or unduly discriminatory, we find that CAISO administered its tariff properly when it denied La Paloma's outage request.

30. Further, even if La Paloma had asserted a valid claim against CAISO, the relief it requests is not available under the CAISO tariff. RMR contracts are designed to keep resources available that are needed for reliability purposes,<sup>65</sup> and CAISO tariff section 41.3 governs the process for resource RMR designation, which includes a requirement that a local reliability study show a need for the resource. CAISO states that its most recent local reliability study did not show a reliability need for La Paloma's units.<sup>66</sup> La

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<sup>62</sup> The Commission accepted currently effective section 9.3.2 of CAISO's tariff as just and reasonable well over a year before La Paloma submitted its economic outage request to CAISO. *See Cal. Indep. Sys. Operator Corp.*, 148 FERC ¶ 61,168 (2014).

<sup>63</sup> CAISO, Tariff, § 9.3.2, Requirement for Approval.

<sup>64</sup> *See* CAISO, *Business Practice Manual for Outage Management* (May 2016), § 5.3.1, Scheduling Requirements, <https://bpmcm.caiso.com/Pages/BPMDetails.aspx?BPM=Outage%20Management>.

<sup>65</sup> CAISO, Tariff, § 41.1, Procurement of Reliability Must-Run Generation by CAISO.

<sup>66</sup> CAISO Answer at 14.

Paloma does not assert that this tariff provision is unjust and unreasonable, but rather asserts that its facility is needed for reliability purposes, despite CAISO's finding to the contrary.<sup>67</sup> While La Paloma commissioned private studies that purport to show otherwise, we find that the RMR designation process set forth in CAISO's tariff requires that a reliability need be demonstrated in CAISO's local reliability study. We therefore find that directing CAISO to grant La Paloma an RMR designation would contravene the RMR designation process outlined in CAISO's tariff. We also find that La Paloma has failed to show how the denial of a five-month economic outage request bears any relationship to the revenue provided by a yearly RMR designation.<sup>68</sup>

31. Furthermore, nothing in the complaint indicates that La Paloma sought opportunities to mitigate financial losses beyond submitting economic outage requests. For example, La Paloma does not state whether it sought a CPM designation as a resource at-risk for retirement, pursuant to CAISO's tariff.<sup>69</sup> To the extent that La Paloma believes it would not have received such a designation – and we make no finding on this record whether that is the case – we note that La Paloma did not challenge this Commission-accepted tariff provision as unjust and unreasonable, just as it failed to challenge the outage-related provisions as unjust and unreasonable, as noted above. La Paloma also has the option to retire its facility either temporarily or permanently under CAISO's rules, if it has determined that the facility might remain uneconomic.<sup>70</sup> Because we find that La Paloma has not demonstrated that it is entitled to any additional compensation under the facts presented here, or that it has exhausted other possibilities outlined in CAISO's tariff and business practice manuals to address its concerns, we find that it is not necessary to address La Paloma's regulatory taking argument.<sup>71</sup>

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<sup>67</sup> See Complaint at 17-20.

<sup>68</sup> We note that La Paloma asks that the Commission direct CAISO to enter into an RMR agreement or another compensatory agreement with La Paloma. However, La Paloma fails to explain what other type of agreement under CAISO's tariff framework exists or how it differs from RMR contracts. Accordingly, we are focused here on La Paloma's request for an RMR contract and not for other undefined agreements.

<sup>69</sup> CAISO, Tariff, § 43.2.6, Capacity At Risk Of Retirement Needed For Reliability.

<sup>70</sup> See CAISO, Business Practice Manual for Generator Management (May 2016) § 11, Retirement, <https://bpmcm.caiso.com/Pages/BPMDetails.aspx?BPM=Outage%20Management>.

<sup>71</sup> Although we decline to address La Paloma's takings claim here, we note that the Commission has held that, in the context of setting rates, terms, and conditions for  
(continued ...)

32. Finally, we find commenters' requests that the Commission order CAISO to amend its tariff and convene a technical conference on CAISO's market to be beyond the scope of La Paloma's complaint and, therefore, will not further address those comments here. We note that CAISO states it will commence a stakeholder process on economic outages and potential related compensation, and we encourage them to do so.

The Commission orders:

La Paloma's complaint is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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jurisdictional service, what is found to be just and reasonable is not a taking. *See, e.g., New York Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,075, at P 63 (2015). In undertaking whether to accept a provision as just and reasonable, the Commission balances the respective rights and obligations of the parties—including whether compensation is due. *Id.*

Document Content(s)

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