BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Local Procurement Obligations	Rulemaking 11-10-023 (Filed October 20, 2014)

COMMENTS OF THE COGENERATION ASSOCIATION OF CALIFORNIA ON STAFF PROPOSALS ON RESOURCE ADEQUACY AND THE JANUARY 27, 2014 WORKSHOP

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The Cogeneration Association of California[1] provide these comments on the *Resource Adequacy* (*RA) Implementation Staff Proposals* dated January 16, 2014.

The Staff Proposals contain two provisions related to Combined Heat and Power (CHP) resources. These proposals are objectionable on several grounds detailed in these comments. Staff should withdraw or dramatically modify these recommended actions as inconsistent with Commission decisions and the multi-party QF/CHP Program Settlement. Moreover, the proposals are discriminatory, apparently arbitrary as between identical CHP resources providing generic or system RA, and lack a showing of need to remedy a material RA or cost allocation problem. In short, it seems Staff's "remedies" are answers in search of a problem. These proposed "remedies" would only create problems with the established resolution of issues embraced by the CHP Settlement and related Commission decisions.

Significantly, a key participant in the January 27, 2014 workshop – Commissioner Florio – missed none of these reservations regarding the Staff proposals relative to CHP. The Commissioner's observations reinforce the objections raised by the CHP Parties in these comments.

[1] CAC represents the combined heat and power and cogeneration operation interests of the following entities: Coalinga Cogeneration Company, Mid-Set Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company, Midway Sunset Cogeneration Company and Watson Cogeneration Company.

The two objectionable Staff provisions are:

- The proposal on page 4 of the RA Implementation Staff Proposals dated January 16, 2024, that

  > *[t]he utility procuring the CHP or other resource outside of its TAC area would not be allocated the RA capacity credit of that resource to meet its system RA obligations.*[2]

- The statements on page 5 of the January 16, 2014 Staff proposals regarding imposition of economic bids for "the full capacity" of CHP resources relied upon as RA and as flexible capacity:

  > *the IOUs responsible for procuring CAM and CHP resources will be required to include the full capacity of those CAM and CHP resources in their RA plans (either the CAM units or the replacement units) and to manage the facilities as Flexible RA capacity. The IOUs will be required to bid the facilities as Flexible RA, meaning submission of economic bids into the ISO market to the fullest extent possible.*

I. Introductory Comment – Staff's Proposals Violate Established Commission Decisions both Substantively and Procedurally

Candidly, it appears that Staff is proposing a rather blunt instrument with global repercussions to address a detail of the Cost Allocation Mechanism. The issue to be addressed is how the costs of CHP capacity procured in one TAC area to solve an RA need in another TAC area are allocated through the CAM. A solution to this issue could be addressed by fine-tuning the CAM mechanism, not by severely limiting the capacity benefits of CHP. If the issue is limited to how the Path 26 counting constraint is applied to CHP, then there are ways to revise the application of the constraint so that it can be applied to all RA capacity allocated through the CAM mechanism. Staff's proposal appears to address this issue of local RA capacity by limiting the use of all RA capacity, procured from any area.

This approach substantively violates the terms of the QF/CHP Settlement, which allows utilities to procure and count RA from CHP resources located in any service

[2] Staff refers to the Transmission Access Charge (TAC) area as a region roughly equivalent to the IOU service territory.

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territory.[3] The issue of how the cost of CHP resources would be allocated through the CAM was addressed by the Commission in its approval of the Settlement. Staff's proposal would collaterally attack an established Commission decision.

Moreover, from a procedural perspective, the Staff proposal also violates an express Commission order. The Commission addressed the procedural process for raising any future proposal to revise the CAM allocation of CHP costs. In the course of approving CHP contracts pursuant to the Settlement, the Commission specifically addressed claims concerning cost recovery treatment. These claims, brought by the Community Choice Aggregation and Direct Access Customers, prompted the following holding from the Commission:

> *The proper vehicle for seeking to apply future potential changes to the QF/CHP Settlement, D.10-12-035, or the CHP Program to the PPAs and/or PG&E's recovery of costs incurred under them is by petition to modify this decision approving the PPAs.*[4]

The import of this holding is significant. The proper procedural vehicle for seeking changes to the Settlement adopted in D.10-12-035 is through a petition for modification of that decision. Neither the cited Commission holding nor the California Public Utilities Code[5] permit a collateral revision of RA rules by a Staff proposal and workshop.

II. Comments on Restricting Generic or System RA Capacity from another TAC Area as though all RA Must be Local RA

Staff's first proposal eliminates RA benefits of capacity procured outside the TAC area of the utility. This proposal is discriminatory, unnecessary and unreasonable. CHP resources provide RA value, both generic and local RA depending on location. A utility that procures a CHP resource reasonably expects to rely upon that resource as RA. Staff upsets this reliance. Under the Staff's proposal, only local RA would "count"

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[3] *Decision Adopting Proposed Settlement*, D.10-12-035 (December 21, 2010).

[4] Conclusion of Law 5, Decision 11-03-010, issued March 15, 2011; A.10-10-005, *Application of Pacific Gas and Electric Company for Approval of Four Power Purchase Agreements With Westside Qualifying Facilities and Associated Cost Recovery*.

[5] Public Utilities Code §1709; *see*, MCI Telecommunications Corporation v. Pacific Bell, D.98-05-020, Case 97-04-008, 1998 Cal PUC LEXIS 357, 80 CPUC2d 245, May 7, 1998.

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as RA from a procured CHP resource. This would render generic or system RA provided by CHP meaningless. The position is untenable.

Under this proposal, the utility would be required to purchase additional, unnecessary capacity to provide the accounting value, while the CHP unit is actually providing useable RA capacity. Further, not allowing the value of a CHP resource to be fully utilized could impact the price to be paid for that resource, contrary to the State's policies mandating further development of CHP.[6]

The proposal is also unnecessary. As was discussed during the January 27 workshop, there are alternatives that would allow the Path 26 counting constraint to be applied to all RA capacity imported across that boundary, including CHP capacity. CHP capacity need not be artificially discounted and limited.

It is also unfair and unreasonable to impose any such limitation on the use of CHP capacity after the Commission recently approved the use by PG&E of RA capacity from Calpine's Los Medanos and Gilroy plants. After the CHP Parties contested that use of RA capacity as contrary to the terms of the Settlement, it is manifestly unfair to impose this restriction, which is clearly inconsistent with the letter and intent of the Settlement. The discriminatory feature of this aspect of the Staff's proposal is particularly problematic for CHP parties who are eligible for and awaiting the opportunity to secure contracts under the CHP Settlement. Without justification, Staff's proposal would undermine the value of these to-be-procured CHP resources.

III. Comments on Staff's Proposal Relative to Effective Flexible Capacity from CHP Resources

The second Staff proposal related to CHP interests relates to the treatment of CHP capacity from a facility that is offering some limited or partial capacity as flexible capacity. At the outset, Staff should recognize that only in relatively limited circumstances will CHP facilities have flexible capacity. However, the State's need for such capacity should be a reason to support programs to induce or encourage participation in the flexible capacity program. Staff's proposal is a clear disincentive for any CHP resource, and should be withdrawn.

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[6] D.10-12-035, *supra*, p. 7.

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Furthermore, the proposal presents significant problems for CHP operations that rely on assured base load operations to support industrial thermal needs of host facilities. The CAISO Tariff recognized and incorporated the needs of these CHP operations. (See, CAISO Tariff provisions on Regulatory Must Take Generation, and the features of the Net Scheduled Generator Agreement (formerly the QF Participating Generator Agreement)). Staff's proposal appears to contravene these critical protections relative to CHP. At the very least, the Staff proposal requires clarification regarding its scope and intent relative to the level of CHP capacity in excess of any flexible capacity offered by the CHP embraced by the proposal.

Assuming Staff seeks to prosecute its CHP flexible capacity proposal, at least two limitations are necessary. First, any CHP-provided flexible capacity must be limited to the Effective Flexible Capacity value set by the election of the CHP resource and accepted by the CAISO. Second, the flexible capacity must be limited to whatever the CHP resource has elected to and contracted to provide as Effective Flexible Capacity. The IOU cannot be allowed to economically bid in flexible capacity either that the resource is not capable of producing or that the resource has chosen not to offer. For example, if economically bid there could be a claim that the resource may no longer be self-scheduled under the CAISO Tariff. This rather draconian result would cause the CHP resource to lose the essential deliverability provisions contemplated under the CAISO Tariff.

The language states that the IOUs will be required to include "the full capacity" of CHP resources in their RA plans. The word "full" requires clarification. The capacity to be included in an RA showing should be limited to the amount of RA capacity agreed to be provided under the contract, not some other amount.

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Finally, the implementation of the proposal must be confined by the provisions of the CAISO Tariff relative to CHP resources under the Regulatory Must Take Generation and the Net Scheduled PGA provisions applicable to CHP.

Respectfully submitted,

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