

**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

R.11-10-023

**COMMENTS ON STAFF PROPOSALS BY
THE ENERGY PRODUCERS AND USERS COALITION AND
THE COGENERATION ASSOCIATION OF CALIFORNIA AND
THE CALIFORNIA COGENERATION COUNCIL**

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Pursuant to the Assigned ALJ's oral ruling during the workshop on April 9, 2014, the Cogeneration Association of California¹ and the Energy Producers and Users Coalition² and the California Cogeneration Council³ (the CHP Parties) provide these comments on two Staff proposals. The proposals are the *Revised RA Implementation Staff Proposal* dated April 3, 2014, and the *Staff Proposal on the Implementation of the Flexible Capacity Procurement Framework* dated April 9, 2014.

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.

² EPUC is an ad hoc group representing the electric end use and customer generation interests of the following companies: Aera Energy LLC, BP West Coast Products LLC, Chevron U.S.A. Inc., Phillips 66 Company, ExxonMobil Power and Gas Services Inc., Shell Oil Products US, THUMS Long Beach Company, and Occidental Elk Hills, Inc.

³ The CCC is an *ad hoc* association of natural gas-fired cogenerators located throughout California, in the service territories of all three of California's major investor-owned electric utilities (IOUs) - Pacific Gas & Electric Company, Southern California Edison, and San Diego Gas & Electric. CCC member facilities are certified as qualifying facilities (QFs) pursuant to the Public Utility Regulatory Policies Act of 1978. In aggregate, CCC members' 30 different cogeneration projects in California generate about 1,300 megawatts (MWs), most of which is sold under long-term contracts to the California IOUs.

The CHP Parties appreciate the revisions made by Staff to facilitate the continued participation of CHP resources in the resource adequacy programs and to preserve the value of these resources. There remain several issues that require clarification or revision:

- CHP resources with unit contingent contracts do not have an outage replacement obligation, and the Staff proposals should not suggest one;
- The capability to provide Effective Flexible Capacity should be differentiated from any contractual obligation to supply capacity;
- The RA proposals on flexible capacity should specify the treatment of existing RA contracts; and
- Some minor clarifications are required to properly differentiate flexible capacity actually sold from the mechanical capability denoted by EFC.

I. THE NETTING PROPOSAL SHOULD BE CLARIFIED TO REFLECT THE PRIORITY OF CHP RESOURCES AND TO ENSURE THEIR FULL DELIVERY

The netting proposal increases the transfer capability of Path 26 to the extent of offsetting transfers of energy from CHP resources in both directions. As was discussed at the workshop, the augmentation only occurs because of the delivery of energy from CHP resources, and the proposal should be clarified that the increased transfer capability will be used exclusively to ensure the delivery of those resources.

There remains, however, an issue of the treatment of any deliveries in one direction on the path that exceed, or are not offset by, deliveries in the other. These excess deliveries will be very small in comparison to the 4,000 MW Path 26 transfer capacity. Under the *pro forma* QF Settlement contracts, there is an obligation on the part of the IOUs to take delivery of power produced under the

contracts. The proposed imposition of new counting constraints on those deliveries should not interfere with those deliveries. The IOUs should not be unfairly constrained in their performance under these contracts. The CHP Parties propose that such excess quantities be exempted from the imposition of the Path 26 counting constraint. This would be consistent with the must-take obligation under the QF Settlement contracts and with the loading order that identifies CHP as a preferred resource. Priority should be given to the delivery of these resources in fulfillment of all of the state policies to encourage the development and use of CHP resources.

II. THE OUTAGE REPLACEMENT OBLIGATIONS FOR CHP RESOURCES IN THE REVISED RA IMPLEMENTATION PROPOSALS SHOULD BE CORRECTED

Under the QF/CHP Settlement,⁴ the power purchase agreements with CHP resources are unit contingent. Under these agreements, the CHP resource has no obligation to deliver capacity separate and distinct from the energy it delivers. In approving the CAISO's outage replacement protocols, FERC ruled that "*unit contingent resources do not have an obligation to deliver energy separate from the energy delivered to the host and provide resource adequacy capacity as a part of that generation.*"⁵ The current Staff proposal states that "*[f]or scheduled outages that are approved after the compliance filing due date, the SC of the resource will still be responsible for outage replacement as*

⁴ Order Adopting Proposed Settlement, D.10-12-035, December 21, 2010.

⁵ Order Conditionally Accepting Tariff Revisions, 141 FERC ¶ 61,135, Docket ER12-2669, November 19, 2012, ¶ 56.

*specified in the CAISO's replacement rule.*⁶ To the extent that the buyer is the SC for the CHP resource, this statement is true. However, where the SC for the resource is an entity other than the buying utility, the statement is not true. If a CHP resource must plan an outage in less than 45 days because its industrial host is suspending operations, that outage is permitted under the terms of the *pro forma* PPAs; the CHP resource does not have an obligation to supply replacement capacity to the buyer during that period. The quoted sentence should be revised to read:

For scheduled outages that are approved after the compliance filing due date, the SC of the resource will be responsible for outage replacement to the extent required by the contract between the parties, by FERC order, and by CAISO tariff and rules.

III. IT IS IMPORTANT TO DIFFERENTIATE EFC FROM CAPACITY ACTUALLY SOLD

The discretion of a resource to voluntarily participate in the flexible capacity markets and to limit its obligation to supply flexible capacity must be clear. As the discussion during the workshop demonstrated, there must be a differentiation between a resource's capability to supply flexible capacity, labeled EFC, and the amount of flexible capacity it actually contracts to provide.

To use the example from the workshop, a CHP resource may have an EFC of 10 MW, but it may have contracted to deliver only 3 MW. On page 8 of the proposal, in the paragraph that begins "In order to facilitate ...", the term "full capacity" could be interpreted to refer to the resource's EFC. That would require the resource to provide 10 MW. But in this voluntary program, the resource is

⁶ *Revised RA Implementation Staff Proposal, at 7.*

only required to deliver 3 MW, and so the IOU should be required to include only the 3 MW in its resource plans. The term “full capacity” should be changed to “full contracted amount.”

In addition, to clarify and be very specific about the impact of the flexible capacity program on CHP resources, the following statements from the Staff Proposal on the Flexible Capacity Procurement Framework should be included in this paragraph:

The flexible capacity program is not intended to diminish a CHP resource’s ability to self-schedule into the ISO’s Day-Ahead and Real Time markets. A resource owner will have discretion in the sale of generic and flexible capacity. A resource owner may sell the flexible and inflexible capacity in separate transactions and to different purchasers. A resource owner may elect to sell any portion of qualified flexible capacity as inflexible, and to self-schedule that capacity.

IV. CAPACITY SHOULD BE CHARACTERIZED, BOTH IN NEW AND IN EXISTING CONTRACTS

The RA program rules should require all new contracts for RA capacity to specify whether the capacity is generic or flexible and how it is to be scheduled. Existing contracts may effectively specify or limit how the capacity is to be utilized, so as to resolve its availability as flexible capacity. For instance, energy that is to be self-scheduled could not be offered as flexible capacity. For those existing contracts or RA confirms that do not otherwise provide, the RA capacity should be classified and utilized as generic capacity, unless the parties otherwise agree. This explicit provision would prevent the retroactive imposition of

obligations that resources cannot satisfy or did not contemplate in agreeing to the terms and conditions of the agreement.

V. A SUGGESTED CLARIFICATION TO THE RA PROPOSAL

The first sentence under the *Revised RA Staff Proposal* seems ambiguous. Based on assumptions about the intent of the sentence, perhaps it would be clearer to state:

Staff proposes that the utility responsible for procuring the CAM and CHP resource(s) will serve as the SC for each LSE that receives benefit of the CAM or CHP resource.

VI. THE EFC PROPOSAL IS APPROPRIATE

The CHP Parties appreciate the addition to the *Staff Proposal on the Implementation of the Flexible Capacity Procurement Framework* of the provisions for determining EFC for CHP resources. As the Staff Proposal recognizes, each CHP resource can be unique, both in its technology and operating characteristics, and in its obligations to its industrial host. The ability to set an individual EFC will allow each unit to maximize its contribution to the grid consistent with those constraints. The imposition of NQC as a upper bound for the EFC determination provides assurance to the CAISO that the EFC can be physically produced, while contractual obligations and CAISO penalties provide further assurance that the resource will not commit to sell more than it can produce.

The CHP Parties have no further comment on the Staff Proposal at this time, but reserve the opportunity to address additional issues and respond to other parties' comments in reply comments.

VII. CONCLUSION

The CHP Parties appreciate the efforts Staff made to match the rules for RA and flexible capacity programs to meet the requirements of CHP resources. The proposed changes discussed above would clarify and improve the implementation of these programs, and the CHP Parties request that they be incorporated.

Respectfully submitted,



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