

**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 BY
THE ENERGY PRODUCERS AND USERS COALITION,
THE COGENERATION ASSOCIATION OF CALIFORNIA AND
THE CALIFORNIA COGENERATION COUNCIL
ON THE PROPOSED DECISION**

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SUBJECT INDEX

I.	THE REVISIONS TO THE PATH 26 COUNTING CONSTRAINT SHOULD ENSURE THAT NETTING BENEFITS CHP RESOURCES.....	3
A.	Increased Capacity from Netting Should Be Devoted to Delivery of CHP Capacity.....	3
B.	Transfers of CHP Capacity in Excess of the Netted Amount Should Be Grandfathered from the Path 26 Constraint.....	4
II.	REPLACEMENT OBLIGATION FOR UNIT CONTINGENT CONTRACTS SHOULD BE CLARIFIED.....	5
III.	THE COUNTING RULES FOR CHP ARE REASONABLE; HOWEVER, RULES SHOULD PROVIDE FOR EXPLICIT DIFFERENTIATION OF GENERIC AND FLEXIBLE CAPACITY IN EXISTING, AS WELL AS NEW, CONTRACTS.....	7
IV.	CONCLUSION.....	9

TABLE OF AUTHORITIES

FERC Decisions

Order Conditionally Accepting Tariff, ER12-2669, 141 FERC ¶ 61,135 (November 19, 2012).....	6
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CPUC Decisions

Order Approving Proposed Settlement, D.10-12-035, Docket A.08-11-001 (December 16, 2010).....	2
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These comments are pursuant to Rule 14.3 of the California Public Utilities Commission's Rules of Practice and Procedure on the Proposed Decision of Administrative Law Judge Gamson issued in this matter on May 27, 2014. The comments are on behalf of the Cogeneration Association of California (CAC),¹ the Energy Producers and Users Coalition (EPUC),² and the California Cogeneration Council³ (the CHP Parties). The CHP Parties appreciate efforts by Staff to respond to comments on the initial informal proposals. Those Staff

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 CCC is an *ad hoc* association of companies with 30 cogeneration projects located throughout California, in the service territories of all three of California's major investor-owned electric utilities.

proposals attempted to design solutions that meet the needs of CHP resources. Further, the Staff's efforts reflected an intention to honor the CPUC's (and state's) commitments to these preferred resources.

The objective of these comments is to clarify the Proposed Decision to meet apparent objectives favoring CHP resources and sustaining the policies and commitments inherent in the QF/CHP Settlement Program. The comments address the following issues:

- On treatment of RA capacity from outside an IOU's TAC area, the CHP Parties generally support the Proposed Decision's adoption of Staff's revised proposal. That revised proposal would allow netting of CHP capacity across Path 26, and increase the total capacity of Path 26 by that netting. However, to honor the state's commitment to encouraging CHP development and to be consistent with the QF/CHP Settlement,⁴ the additional capacity provided by netting of CHP resources can be separately identified and should be dedicated to ensuring delivery of those resources. Additionally, any excess capacity from existing contracts over that netted amount should be grandfathered and delivered.
- On the obligation to replace RA capacity in case of an outage, the decision should be consistent with FERC precedent and not require replacement of unit contingent capacity. The essence of a CHP resource is that it must support the thermal demands of its industrial host, which could be subject to modification due to changing industrial host operational needs on shorter than 45 days' notice. The CPUC has undertaken a policy to support CHP and its operation. The proposed resolution in this decision converts unit contingent capacity to firm capacity and undermines the very basis of operation of a CHP facility.
- On flexible capacity counting rules, the CHP Parties support the basic resolution to use the ISO metric. The process by which a resource owner can designate a revised EFC should be more explicit. Further, it is important to resolve the issue of how generic and flexible capacity will be differentiated, particularly in existing contracts. Generating resources should have the ability to contract for generic capacity and flexible capacity as two distinct products with product-specific performance obligations. It is also important to clarify that a portion of a resource's EFC can be sold or designated as generic RA capacity and another portion as flexible capacity.

⁴ *Order Approving Proposed Settlement*, D.10-12-035, Docket A.08-11-001 (December 16, 2010).

I. THE REVISIONS TO THE PATH 26 COUNTING CONSTRAINT SHOULD ENSURE THAT NETTING BENEFITS CHP RESOURCES

Staff revised its proposal to allow an LSE to count the RA capacity of CHP and CAM resources procured from outside its TAC area. The revised proposal allows netting of such resources across the Path 26 constraint and to increase the total transfer capability of Path 26 by that netted amount.

The CHP Parties support the adoption of this revised staff proposal by the Proposed Decision. However, two refinements should be made to the Proposed Decision:

1. The additional capacity created by the netting of CHP Resources can and should be separately identified and used to ensure delivery of the capacity from these facilities.
2. The refinements to the RA program should ensure that any capacity provided under existing contracts by CHP resources in excess of that netted should be grandfathered and its delivery ensured across the Path 26 constraint.

A. Increased Capacity from Netting Should Be Devoted to Delivery of CHP Capacity

Transfers of CHP capacity have historically been exempted from the Path 26 counting constraint. This Proposed Decision would eliminate that exemption and include those transfers in the counting methodology. As the Proposed Decision notes, the counting methodology has included netting of all other resources. This proposal would provide for the first time for netting of transfers of CHP resources. Because it is a new process and because CHP transfers can be easily identified and segregated, the increased capacity from netting CHP resources can be easily reserved to benefit those resources. It would not be

improperly discriminatory to use that increased capacity to ensure the delivery of CHP energy. The Proposed Decision suggests otherwise, and that suggestion warrants revision. The dedication of the increased capacity to delivery of the CHP resources would be a faithful implementation of California’s statutory and regulatory commitments to CHP.⁵

The Proposed Decision would impose a new constraint on the delivery of CHP energy. To the extent that the netting of these contracts will facilitate their delivery, the increased capacity from netting should be dedicated to CHP resource delivery.

B. Transfers of CHP Capacity in Excess of the Netted Amount Should Be Grandfathered from the Path 26 Constraint

The QF/CHP Settlement Program approved by this Commission facilitated the solicitation and procurement of CHP resources by IOUs, regardless of the respective location of the CHP seller or IOU buyer in the state. The Settlement sought to maximize the opportunities available to CHP resources, and the IOUs have entered into contracts to meet their procurement targets for the Settlement’s First Program Period.

⁵ Those commitments include:

- California Public Utilities Code Section 372 (a):
“It is the policy of the state to encourage and support the development of cogeneration as an efficient, environmentally beneficial, competitive energy resource that will enhance the reliability of local generation supply, and promote local business growth.”
- Energy Action Plan II (and updates) –California’s energy supply must be: reliable, affordable, technologically advanced, environmentally sound (i.e. meet AB 32 goals), and safe.
- CARB 2008 Scoping Plan goal of 4 GW of new CHP by 2020.
- Governor Jerry Brown’s energy goals include:
 1. Develop 12 GW of new distributed generation.
 2. Install 6.5 GW of new CHP over 20 years.

The new application of the Path 26 constraint to these existing contracts is improper and unreasonable for CHP resources in light of the completed procurement and committed contract performance. Contracts entered into in good faith, fulfilling this state's priority given to CHP development, will be unreasonably impaired under the Proposed Decision's treatment. The Commission's decision should clarify and address the allocation of increased capacity created by netting. If that capacity is inadequate to provide for delivery of all existing CHP contracts, the Commission should provide for grandfathering of those transfers. The contracts should continue to be treated as they have been, exempt from the Path 26 constraint.

II. REPLACEMENT OBLIGATION FOR UNIT CONTINGENT CONTRACTS SHOULD BE CLARIFIED

The Commission should clarify the replacement obligation for RA capacity as it applies to unit contingent contracts, *i.e.*, particularly including the CHP unit contingent agreements. A unit contingent contract, regardless of the resource's technology, provides a sale of energy only from the identified generating unit resource. There are no other facilities committed beyond the unit contingent generating resource. Accordingly, the seller under a unit contingent agreement appropriately is not obligated to replace the energy from the unit contingent resource in case of an outage.

Requiring the seller to replace the capacity and associated obligation to submit energy bids with another resource would render the capacity more firm than the parties intended. As FERC ruled:

We note 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.⁶

In that FERC docket, CAC and EPUC did present other arguments why a replacement obligation should not apply to CHP resources, and FERC denied those arguments. However, FERC's resolution of other arguments does not diminish the explicit exclusion of unit contingent contracts from the application of the ISO tariff related to replacement power. The obligations of unit contingent resources, including CHP resources, should be consistent with FERC's recognition of the limitations for those resources.

The Proposed Decision adopts alternative language suggested by the ISO, which would make the replacement obligation subject to exceptions under either the ISO Tariff or FERC orders. That is a positive step. However, it arguably does not include contractual language in the *pro forma* contracts under the QF/CHP Settlement approved by the CPUC.

The Commission should modify the proposed language to state:

For planned Maintenance Outages that are approved after the monthly Supply Plan has been submitted,⁷ the Scheduling Coordinator of the resource will still be responsible for outage replacement to the extent required by the CAISO tariff rules, FERC orders, and CPUC decisions.

⁶ *Order Conditionally Accepting Tariff*, ER12-2669, 141 FERC ¶ 61,135 (November 19, 2012).

⁷ The defined terms "Maintenance Outage" and "monthly Supply Plan" should be used to be consistent with the ISO Tariff.

III. THE COUNTING RULES FOR CHP ARE REASONABLE; HOWEVER, RULES SHOULD PROVIDE FOR EXPLICIT DIFFERENTIATION OF GENERIC AND FLEXIBLE CAPACITY IN EXISTING, AS WELL AS NEW, CONTRACTS

The Proposed Decision would adopt the counting rule for available Flexible Capacity from CHP resources proposed by the ISO. The CHP Parties support this resolution as a reasonable first step approach to estimating a CHP resource's capability to supply flexible capacity. However, it is particularly important to include the alternative included in the ISO's proposal of allowing individual CHP facilities to designate a self-determined EFC, set at some capacity less than the NQC. Conclusion of Law #9 should be expanded to fully reflect the conclusion on this issue.⁸ Conclusion of Law # 9 should read:

9. The CAISO recommendation for counting the effective flexible capacity of a CHP resource as the minimum of the net qualifying capacity, or P_{max} minus P_{min} , as may be adjusted downward based on the resource owner's assessment of the resource's obligations and capability, is reasonable.

With regard to how EFC is determined and used for CHP resources, there are three clarifications to be included the final Decision in this matter.

First, a CHP resource can determine how much, if any, of its EFC to offer in the market. It can sell a portion of EFC as generic RA capacity, which it can self-schedule. It can sell a portion of its EFC as flexible capacity, which must be economically bid into the ISO markets. This is an important distinction to make between the traditional RA product and the new product called flexible capacity. Any capacity, part of EFC or not, that is sold or designated to satisfy an LSE's generic RA obligation can be self-scheduled and satisfy the must-offer obligation

⁸ This clarification should also be added on page A-5 of Appendix A.

for generic RA capacity. The ability of a CHP resource to participate in the generic RA market by self-scheduling allows it to participate in that market while continuing to meet its obligations to its industrial host. Any capacity that is sold to satisfy an LSE's flexible capacity obligation must be economically bid in order to satisfy a must-offer obligation. That makes it a very different product, which imposes different considerations for a CHP resource's participation. The decision in this matter should recognize that a CHP resource retains the right to self-schedule any capacity that it has not explicitly sold or designated as flexible capacity.

Second, the Commission should clarify the process by which an individual resource designates its Effective Flexible Capacity. The process should allow parties to proceed in a commercially reasonable and expeditious manner to contract once the resource designates an EFC. The applicable rules should provide that once a resource submits to the ISO an EFC with justification, that designated EFC becomes immediately effective for that resource unless and until the CAISO objects.

Third, for existing contracts, the CPUC rules should provide some explicit differentiation of generic RA capacity from a flexible product, where such identification is not clear from the parties' contract. The Proposed Decision addresses this issue with regard to new contracts, but not existing contracts. Existing contracts that require continued provision of "RA capacity" after the implementation date of the flexible capacity obligations raise a very real issue about characterization of the RA capacity. Such contracts require a resource to

continue to supply RA capacity, but do not specify whether it is the traditional generic RA product or a new product distinct from RA. Flexible capacity attributes were clearly not contemplated when the parties entered into the contract.

The Proposed Decision relies on the parties' bilateral negotiations to resolve this issue for new contracts, but that commercial process may not be available for existing contracts. The CHP Parties propose that unless parties to an existing contract otherwise agree, any RA capacity provided or implied under an existing contract should be deemed to be generic RA capacity for which a resource can satisfy any associated must-offer obligation with self-scheduled generation.

Further, it does not seem prudent to rely on bilateral negotiations between a utility and a generator to always produce an agreement that resolves all issues. The Commission should provide an alternative in case the issue is not addressed in a new procurement contract.

IV. CONCLUSION

The CHP Parties appreciate the efforts made to match the rules for RA and flexible capacity programs to meet the requirements of CHP resources. The Proposed Decision should be revised as follows:

- Provide that increased capacity from netting CHP transfers across Path 26 should be dedicated to delivery of those resources.
- Provide that any transfers of CHP energy in excess of those netted would be grandfathered and exempt from the Path 26 constraint.

- The ISO's proposed language governing replacement obligations should include compliance with CPUC orders.
- The counting rules for EFC for CHP resources should be corrected to include the right of the individual resource to designate its EFC, which shall be effective unless and until challenged by the ISO.
- The RA rules should provide that RA capacity provided under existing contracts will be deemed generic capacity unless explicitly characterized as flexible by the parties.

Respectfully submitted,



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APPENDIX

PROPOSED REVISIONS TO FINDINGS OF FACT

None.

PROPOSED REVISIONS TO CONCLUSIONS OF LAW

9. The CAISO recommendation for counting the effective flexible capacity of a CHP resource as the minimum of the net qualifying capacity, or Pmax minus Pmin, as may be adjusted downward based on the resource owner's assessment of the resource's obligations and capability, is reasonable.

New. A regulatory must-take resource retains the right to self-schedule any capacity which it has not explicitly sold as flexible.

New. Resource Adequacy Capacity provided under any agreement existing as of the date of the decision shall be characterized as generic RA capacity unless the parties otherwise agree. Capacity provided in any agreement entered into after the date of this agreement shall be deemed to be generic RA capacity unless the parties explicitly characterize it as flexible capacity.

21. The Energy Division proposal that CHP resources procured outside of an IOUs' north or south zone be required to be included in the Path-26 netting process is reasonable. Any additional transfer capacity produced by the netting of CHP resources should be dedicated to their delivery over Path 26. Any transfers of CHP energy from existing contracts in excess of the netted amount should be grandfathered and delivered across Path 26.

24. It is reasonable that the replacement costs associated with the scheduled outage replacement rule, when the replacement obligation falls on the scheduling coordinator for the LSE, be recoverable through the CAM or CHP resources balancing account. It is not reasonable that the Scheduling Coordinator for the resource or the contract counterparty also be able to recover replacement cost. Where the resource provides capacity through a unit contingent contract, the LSE retains the responsibility to procure replacement capacity.