

132 FERC ¶ 61,148
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator
Corporation

Docket No. ER10-1524-000

ORDER ACCEPTING TARIFF REVISIONS SUBJECT TO A COMPLIANCE FILING

(Issued August 20, 2010)

1. On June 22, 2010, pursuant to section 205 of the Federal Power Act (FPA),¹ the California Independent System Operator Corporation (CAISO) filed proposed revisions to its tariff² to implement the second phase of its Standard Capacity Product (SCP) provisions, thereby extending SCP to those resources that were temporarily exempted by the Commission. As discussed below, the Commission accepts the amended tariff sheets effective January 1, 2011, as requested, except for sections 40.9.2(2), 40.9.2(3), 40.9.4.1, and 40.9.4.2.1(1) of the CAISO Tariff, which will become effective on August 22, 2010, and section 40.9.6.3 to be effective June 22, 2010, as requested, subject to a compliance filing.

I. Background

2. In an order issued by the Commission on June 26, 2009,³ the Commission approved CAISO's initial SCP proposal, with modifications, which developed a standard resource adequacy (RA) capacity product to facilitate the selling, buying and trading of

¹ 16 U.S.C. § 825d (2006).

² California Independent System Operator Corporation, FERC Electric Tariff, Fourth Replacement Volume No. 1 (CAISO Tariff).

³ *Cal. Indep. Sys. Operator Corp.*, 127 FERC ¶ 61,298 (2009) (June 26 Order), *order on reh'g*, 131 FERC ¶ 61,149 (2010).

capacity to meet RA requirements.⁴ Under the SCP, the RA capacity subject to SCP is tracked by CAISO for availability during specified availability assessment hours of each month (i.e., the extent to which the total amount of a resource's RA capacity is available and not on a forced equipment outage or de-rate). The resource's calculated availability is subject to non-availability charges or availability incentive payments depending on the extent by which the actual availability of the resources deviates from the monthly SCP availability standard. These provisions became effective on January 1, 2010.

3. In the June 26 Order, the Commission approved a temporary exemption from SCP rules of those RA resources whose qualifying capacity is determined by the California Public Utilities Commission (CPUC) or a local regulatory authority based on historical output data rather than based on maximum or nameplate capacity.⁵ In approving this exemption, the Commission relied on CAISO's explanation that applying the SCP provisions to these resources could subject these resources to an unreasonable double counting of any forced outages they experience. More specifically, CAISO stated that the CPUC bases the qualifying capacity values for wind, solar and qualifying facility (QF) resources on the historical hourly energy each such resource has delivered to the CAISO grid. To the extent these resources experience forced outages or de-rates, such outages or de-rates will affect the resources' hourly energy deliveries, which the CPUC methodology reflects in reduced qualifying capacity values for these resources for the following RA compliance year. CAISO argued that if these resources were also subject to SCP, in addition to having their qualifying capacity values reduced for the following year, they would also be assessed an SCP unavailability charge in the current year for underperformance caused by the same forced outage or de-rate, essentially resulting in a double penalty. To prevent this result, the Commission permitted exemptions of these resources from the SCP rules. However, the Commission emphasized that the exemptions were temporary and directed CAISO to work with stakeholders, the CPUC, and local regulatory authorities toward ending the exemptions in a timely manner.⁶

4. In accordance with this directive, CAISO states that it participated in a proceeding at the CPUC to eliminate the double counting issue so that the resources with qualifying capacity based on historical data could be included in SCP. The CPUC recently issued a

⁴ The RA program was implemented by CAISO to ensure that adequate resources are available when and where needed to serve load, meet appropriate reserve requirements, and support reliable operation of CAISO-controlled grid. In the year-ahead and month-ahead timeframes, load serving entities are required to identify the specific resources with which they have contracted for RA capacity. CAISO Filing at 5.

⁵ June 26 Order, 127 FERC ¶ 61,298 at P 56.

⁶ *Id.* P 58.

decision eliminating forced outages and de-rates from the qualifying capacity calculation for these RA resources, for the same hours as those included in the SCP availability calculation, and replaced these hours with proxy data.⁷ Thus, CAISO asserts that this decision eliminates the potential of the double penalty.

5. CAISO states that, consistent with the Commission's directive, the CPUC's proposed decision, and CAISO's stakeholder process, it submits the instant proposed tariff amendments to implement a second phase of SCP (SCP II), which would end the temporary exemption for RA resources with qualifying capacity determined by historical output. In addition, CAISO's proposed revisions would modify several existing SCP provisions in order to better accommodate extending SCP to the currently-exempt RA resources.⁸ Finally, CAISO proposes to clarify and correct certain other existing SCP provisions, in response to input received from its stakeholder process.⁹

II. Notice of Filing and Responsive Pleadings

6. Notice of CAISO's filing was published in the *Federal Register*, 75 Fed. Reg. 37,787 (2010), with interventions and protests due on or before July 13, 2010. The CPUC filed a notice of intervention. Timely motions to intervene, raising no substantive issues, were filed by NRG Companies; Pacific Gas and Electric Company (PG&E); Golden State Water Company; Modesto Irrigation District; Alliance for Retail Energy Markets; and the Cogeneration Association of California. Timely motions to intervene, comments, and protests were filed by the California Wind Energy Association (CalWEA); Calpine Corporation and Dynegy Morro Bay, LLC, Dynegy Moss Landing, LLC, Dynegy Oakland, LLC, and Dynegy South Bay, LLC (collectively, Dynegy, and, together with Calpine, Calpine/Dynegy); and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California (Six Cities); Southern California Edison

⁷ See California Public Utilities Commission, *Decision Adopting Local Procurement Obligations for 2011 and Further Refining the Resource Adequacy Program* (Decision 10-06-036), at 34-35 (June 25, 2010).

⁸ The relevant CAISO Tariff sections are: (1) sections 40.9.2(2) and 40.9.2(3) (to extend a grandfathering provision to these resources); (2) section 40.9.4.2 (to establish a methodology for calculating available RA capacity for these resources); and (3) section 40.9.6 (to establish three month advisory period for non-availability charges and availability incentive payments for these resources).

⁹ The relevant CAISO Tariff sections are: (1) sections 40.9.4.2, 40.9.5, and 40.9.6.1(3) (to eliminate an outage category from reporting requirements and in determining RA resource availability); and (2) section 40.9.6.3 (to allocate excess non-availability charge funds to all metered CAISO demand).

Company (SoCal Edison); California Department of Water Resources State Water Project (SWP); the City of Santa Clara, California, d/b/a Silicon Valley Power and the M-S-R Public Power Agency (together SVP/M-S-R). PG&E, CAISO, and SoCal Edison filed answers to comments and protests.

III. Discussion

A. Procedural Matters

7. 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.

8. 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 PG&E's, CAISO's, and SoCal Edison's answers because they have provided information that assisted us in our decision-making process.

B. Ending the Exemption from SCP of RA Resources with Qualifying Capacity Determined by Historical Output

1. CAISO's Proposal

9. CAISO proposes deleting language in section 40.9.2(4) that currently exempts RA resources with qualifying capacity determined by historical output from the SCP availability standards, non-availability charges and availability payments, and the additional reporting requirements of section 40.9.¹⁰ CAISO points to the Commission's determination in the June 26 Order that these exemptions were temporary and its direction to work toward ending the exemptions in a timely manner. CAISO asserts that the rationale for creating the exemption will no longer exist (i.e., the potential of a double penalty for outages and de-rates) because the CPUC will now replace energy output data for the historical outage and de-rate hours, from these resources' qualifying capacity calculation, with proxy data that reflects average output under non-outage/de-rate conditions. Further, CAISO submits that ending the exemption will increase the amount of RA capacity that is available to the CAISO system and is a step towards creating a uniform availability standard applicable to all RA resources.

¹⁰ As a result, CAISO states that these resources will be fully subject to the existing SCP provisions in the CAISO Tariff, which were adopted and applied to non-exempt RA resources in the first phase of SCP. CAISO Filing at 12.

2. Comments

10. CalWEA states that CAISO's proposal to remove the SCP exemption will continue to result in duplicative penalties for the non-availability of intermittent renewable resources. CalWEA explains that a substantial amount of wind generators operate under power purchase agreements approved by the CPUC through the state's renewable portfolio standard (RPS) program. CalWEA claims that these contracts create strong financial incentives to ensure that these resources maintain high availability, explaining that, under these contracts, intermittent renewable projects provide both energy and capacity but are paid a single price purely based on energy delivered.

11. As a result, the energy payment rate includes a project's full compensation for its capacity value. To the extent that wind or sun is available but the wind turbines or solar receivers are unavailable due to a forced outage, the project receives no payment, i.e., it loses the equivalent of its capacity payment for that hour. In contrast, CalWEA claims that the SCP availability incentive does not apply to every forced outage and provides a far weaker availability incentive than the payment-only-for-performance incentive in RPS contracts.¹¹

12. Therefore, CalWEA believes that removing forced outages from the calculation of an intermittent resource's RA capacity does not remedy the double penalty problem because an intermittent resource with a forced outage will still lose revenue under its off-take agreement in addition to being penalized by CAISO under SCP.

13. CalWEA requests the Commission to continue the exemption granted in the June 26 Order and reject CAISO's proposal to extend SCP to intermittent renewable resources. CalWEA claims that this issue does not have to be resolved now and can be reviewed in the future, when more intermittent resources are on-line and after experience has been gained in trading RA capacity using the SCP.

3. CAISO's Answer

14. CAISO asserts that CalWEA's argument that the proposed extension will result in duplicative penalties for non-availability of the resource amounts to a collateral attack on

¹¹ CalWEA states that a typical all-in price for wind or solar generation under an RPS contract is \$100 per MWh. Thus, if a wind or solar project loses production as a result of a forced outage, its revenues drop by approximately \$100 for each MWh not produced. This loss of revenues occurs for every MWh not produced, without a dead band around a target availability in which there is no penalty. In contrast, CAISO's SCP availability incentive penalty of \$41 per kW-year, which, on a comparable energy payment basis, amounts to \$33 per MWh. CalWEA Protest at 6-7.

the June 26 Order that approved CAISO's initial SCP proposal. CAISO states that if CalWEA objects to extending SCP to renewable intermittent RA resources, it should have challenged the June 26 Order's determination that such resources would only be temporarily exempt from the SCP provisions.

15. CAISO reiterates that ending the exemption for these resources is just and reasonable because it will: (1) ensure that there is no undue discrimination among or unduly preferential treatment for certain types of RA resources; (2) move toward the ultimate development and implementation of a long-term RA framework in which there is a uniform availability standard applicable to all RA resources; (3) align with a fundamental principle underlying both the RA program and SCP that the full amount of every resource's RA capacity should be available to CAISO, unless the resource is on a forced equipment outage or de-rate that diminishes its ability to provide the full amount of its RA capacity; (4) improve the availability of RA capacity by applying SCP, as a financial incentive measure, to these currently exempt RA resources; and (5) be consistent with the Commission's June 26 Order that made clear that the exemptions were temporary.

16. CAISO also submits that, to the extent the RPS purchase power agreements contain availability incentive measures similar to SCP, then the appropriate remedy for the resources is to seek grandfathering of those contracts, not a total exemption from SCP. CAISO states that under SCP II, the purchased power contracts for the resources with qualifying capacity based on historical data may be grandfathered from application of the SCP non-availability charges and availability incentive payments, provided that they meet criteria set forth in existing and proposed tariff provisions.

4. Commission Determination

17. The Commission will accept CAISO's proposal to end the exemption from SCP rules for RA resources with qualifying capacity determined by historical data. In the June 26 Order, we stated:

To be clear, we find CAISO's proposal to exempt these resources to be just and reasonable and not unduly discriminatory because these issues are being addressed in ongoing CAISO and CPUC proceedings and the exemptions are, therefore, temporary. To that end, we direct CAISO to work with stakeholders, the CPUC, and local regulatory authorities to determine when the proposed exemptions should ultimately sunset, and CAISO and stakeholders should diligently work toward a sunset in a timely manner.¹²

¹² June 26 Order, 127 FERC ¶ 61,298 at P 58.

18. The Commission accepted the exemption for such resources as *temporary* and gave CAISO further direction to work with the local regulatory authorities to eliminate the possibility of double penalties for wind, solar, and QF resources before ending the exemption. CAISO has complied with this directive by working with the CPUC to change the way qualifying capacity is determined for RA resources with qualifying capacity based on historical output. Specifically, CAISO recommended, and the CPUC recently adopted, an elimination of forced outages and de-rates from the calculation of qualifying capacity for wind, solar, and QF resources, and the use of proxy data for the hours in which a resource was de-rated or experienced a forced outage. Thus, with the possibility for double penalties now eliminated, it is now just and reasonable to end the exemption from SCP availability rules for RA resources with qualifying capacity determined by historical data.

19. Accordingly, we will not grant the relief sought by CalWEA. We agree with CAISO that CalWEA's comments represent a collateral attack on the June 26 Order, which specifically found that it was appropriate to subject RA resources with qualifying capacity determined by historical output to SCP availability incentives once the potential for double penalties was eliminated. We continue to find that it is important that the SCP rules apply to all types of resources and do not unduly discriminate or provide preferential treatment for one group of resources. The temporary exemption provided to wind, solar, and QF resources was appropriate only because such resources would have been subject to unjust and unreasonable results under the SCP rules in combination with the CPUC's methodology of calculating qualifying capacity, *not* because of the variable characteristics of their fuel supplies or the pre-existing terms of their RA contracts.

20. Further, as CAISO points out in its answer, the contractual requirements that CalWEA references in explaining the potential for being penalized twice for the same forced outage would be eligible to be considered for grandfathered status. Indeed, the very contract proffered by CalWEA in its comments – excerpts from SoCal Edison's 2009 pro forma contract¹³ – already meets the deadline for grandfathered status, as it was executed before the grandfathering deadline date described below. The purpose of grandfathering existing RA contracts is to prevent subjecting resources to potentially duplicative or conflicting availability standards that would be introduced under SCP. So long as the resource meets the other requirements for grandfathered status, those resources will not be subject to double penalization for the same forced outage, as CalWEA asserts. Thus, we deny the relief sought by CalWEA.

¹³ See CalWEA Protest at Appendix A.

C. Grandfathering of Resource-Specific Contracts

1. CAISO's Proposal

21. CAISO explains that existing sections 40.9.2(2) and 40.9.2(3) of the CAISO Tariff include a grandfathering provision that allows resource specific RA capacity under a contract, which was executed prior to June 28, 2009, to request exemption from the SCP availability standards and incentives for the remainder of that contract's term. Upon expiration of its term, the grandfathered contract would then no longer be eligible for grandfathering and would be fully subject to the SCP requirements. Under SCP II, CAISO proposes to extend the same grandfathering provision to apply to those RA resources whose qualifying capacity is determined by historical output, proposing to change only the June 28, 2009, deadline date to the date of the Commission order approving the SCP II proposal in this proceeding.¹⁴ CAISO states that this revision is consistent with the June 26 Order and the Commission's statutory notice requirements under FPA section 205.¹⁵ CAISO states that this revision will also allow sufficient time before the 2011 compliance year for CAISO to review the grandfathering requests by these resources and determine which of their power supply contracts are eligible for grandfathering.

2. Comments

22. SWP supports grandfathering contracts associated with wind, solar and QF resources so that the maximum MW amount of technically-qualified RA resources can be made available for grid reliability. However, SWP asserts that CAISO should expand grandfathering of contracts for all technically-qualified RA resources, not only "resource specific" power supply contracts. SWP states that it makes no sense to deny grandfathered status to CAISO-qualified RA capacity from non-resource specific resources. SWP states that if a non-resource specific power supply contract is used as a RA resource, such a contract should also be grandfathered on the similar ground as for resource specific contracts. To do otherwise discriminates against resources under longstanding contracts, denies CAISO potentially important reliability resources, and creates unnecessary penalties for CAISO market participants who responsibly contracted for resources to meet reliability needs long before the SCP rules were implemented.

¹⁴ CAISO states that for the purposes of this filing, it uses August 23, 2010, in the tariff sheets as the placeholder for the date of the order but will file revised tariff sheets that contain the correct date once the order is issued and the date is known. CAISO Filing at 13.

¹⁵ See June 26 Order, 127 FERC ¶ 61,298 at P 65.

23. SoCal Edison asserts that by extending section 40.9.2(2) to RA resources whose qualifying capacity is determined by historical output, CAISO would require scheduling coordinators of these resources to report outage data, regardless of whether the contract has been grandfathered. SoCal Edison states that this provision would apply to most of the QF resources currently under contract with SoCal Edison and that most of these contracts do not contain provisions that would compel a QF to make its outage data available. SoCal Edison states that although it will do its best to solicit this data, these QF resources are under no obligation to provide such data. Accordingly, SoCal Edison seeks a Commission determination that the scheduling coordinators for these resources should not face any consequences for failure to provide this data.

3. CAISO's Answer

24. In response to SoCal Edison, CAISO answers that SoCal Edison is essentially requesting the Commission give scheduling coordinators an advance pass either to ignore or to violate the outage reporting requirements of the CAISO Tariff for QF RA resources and then waive any applicable penalties or sanctions for such non-compliance. CAISO states that, although contractual obligations may not exist in SoCal Edison's contracts that can compel QFs to disclose outage information to SoCal Edison as the scheduling coordinator, there are provisions in the CAISO Tariff that establish general qualifications for RA resources to supply net qualifying capacity, which include the submission of designated information by all RA resources.¹⁶ CAISO submits that these provisions establish sufficient obligation for all RA resources, including QF RA resources, to provide the outage information required by CAISO. CAISO states that, as experience is gained following implementation of the SCP II proposal, if it appears to CAISO that QF RA resources are not submitting required outage information, CAISO will consider remedial action, which could include tariff amendments suspending availability incentive payments to the non-compliant units or terminating their eligibility as RA resources.

25. CAISO also stresses that participation in the RA program is voluntary, and thus if a resource voluntarily chooses to participate as a RA resource, it must bear both the burdens and the benefits of that decision.

¹⁶ Specifically, CAISO states that section 40.4.3 requires all RA resources included in a RA plan to provide any information requested by CAISO in order for CAISO to apply performance criteria for RA resources. In addition, section 40.4.3 requires all RA resources to be subject to sanctions for non-performance as specified in CAISO Tariff. CAISO Answer at 15.

4. Commission Determination

26. We will accept CAISO's proposal to modify sections 40.9.2 (2) and 40.9.2 (3) to allow for the grandfathering of resource-specific power supply contracts entered into with RA resources whose qualifying capacity is based on historical data. CAISO's extension of this grandfathering provision is consistent with the June 26 Order, which permitted grandfathered contracts for resource specific RA resources to be exempt from SCP rules. As CAISO explained in its initial SCP proposal, the purpose of this exemption was to recognize that until the SCP rules were well-defined, parties did not have the ability to reflect SCP requirements in their RA contracts; thus, a grandfathering provision would respect existing contractual arrangements to ensure that such contracts would not be subject to duplicative or conflicting availability standards.

27. The Commission finds that a similar rationale supports extending the grandfathering provision to resources whose qualifying capacity is based on historical data that have resource specific RA contracts in place. Until now, such resources did not have certainty as to the eventual requirements by which they must adhere under SCP, thus preventing them from accounting for those standards in negotiating their RA contracts. We will accept extension of these grandfathering provisions with a grandfathering deadline date of August 22, 2010, consistent with the Commission's notice requirements.¹⁷ We deny CAISO's request that the cut-off date for grandfathering these contracts be the date of issuance of this order. Notice, for purposes of the FPA, was provided by CAISO to the Commission and to the public on June 22, 2010, the date on which the SCP II proposal was filed with the Commission. We will allow the grandfathering provision to become effective on August 22, 2010 to permit a full 60 days' notice. CAISO is directed to submit revised tariff sheets that contain the correct grandfathering deadline date in a compliance filing no later than 30 days from the date of this order.

28. We will deny SWP's request to extend this grandfathering provision to all resources with non-resource specific RA contracts. SWP ignores the impetus for the grandfathering provision, i.e., to prevent undue harm to RA resources by subjecting them to potentially duplicative or conflicting availability standards. Resource specific RA resources, or individual resources with contracts for capacity that may only be met by the availability of that specific resource, face less flexible contractual requirements than non-resource specific RA resources, or resources with contracts for capacity that may be met by a number of other resources in a portfolio of resources under the same, non-resource specific contract. RA resources subject to non-resource specific contractual arrangements enjoy flexibility in meeting their availability requirements, allowing them to avoid potentially conflicting or duplicative availability standards contained in the SCP

¹⁷ 18 C.F.R. § 35.3 (2010).

rules by offering RA capacity from one of the other resources under the contract. Thus, we agree that it is unnecessary to extend the grandfathering provision to all RA resources with non-resource specific contracts.

29. We will also deny the relief requested by SoCal Edison. As CAISO points out in its answer, *all* RA resources, including QF RA resources, are subject to the terms of CAISO Tariff. Those terms include the obligation to provide any information to CAISO related to performance criteria,¹⁸ as well as the possibility of sanctions for non-performance.¹⁹ Thus, SoCal Edison is incorrect in asserting that QF RA resources are under no obligation to provide accurate outage information. Further, the contracts referenced by SoCal Edison, i.e., contracts that lack a provision requiring QF RA resources to provide outage data to their scheduling coordinators, may be eligible for grandfathered status, thereby exempting those resources from SCP rules. Nevertheless, it is essential that all otherwise non-exempt resources that are subject to SCP rules are held accountable for the availability of their qualified capacity.

D. Available RA Capacity Calculation for RA Resources Whose Qualifying Capacity is Based on Historical Output

1. CAISO's Proposal

30. In section 40.9.4.2, CAISO proposes to add a new subsection that provides a separate method for calculating hourly available RA capacity for RA resources whose qualifying capacity is based on historical output.²⁰ The proposed method considers three variables for determining hourly available RA capacity in each availability assessment hour: (1) the actual amount of energy the resource delivered to the CAISO grid during that hour (actual energy); (2) the resource's RA capacity as designated in its supply plan for the month (RA capacity in supply plan); and (3) the resource's net qualifying capacity as reduced for that hour by the percentage for which any forced outages or temperature-related ambient de-rates reduced the resource's capacity from its maximum or nameplate

¹⁸ See CAISO Tariff §§ 40.4.3 (2), 40.4.5.

¹⁹ See CAISO Tariff § 40.4.3 (5).

²⁰ CAISO notes that existing section 40.9.4.2 describes the methodology for calculating the monthly performance of an individual RA resource against the monthly SCP availability standards. CAISO does not revise this language and intends that it applies to resources covered under SCP II as well as the initial SCP proposal. CAISO Filing at 13-14.

capacity (proportional de-rated capacity).²¹ CAISO believes that this new provision is necessary because, for RA resources whose qualifying capacity is calculated based on their maximum or nameplate capacity, a partial de-rate of the resource's maximum capacity may not impact its ability to fully deliver its RA commitment.²² However, the RA qualifying capacity of the resources covered by SCP II is based on energy produced when their nameplate capacity is fully available.²³ CAISO believes that the proposed methodology best reflects the impact of a forced outage or de-rate on the ability of the resource to fully deliver its net qualifying capacity. CAISO notes that it has added consideration of the resource's RA capacity as designated in its supply plan for the month to specifically recognize the hours in which the actual energy delivered to the CAISO grid equals or exceeds the RA capacity value designated in the resource's supply plan.

2. Comments

31. Calpine/Dynegy object to the proposal to consider actual energy output in the calculation of hourly availability of a resource whose RA capacity is determined by its historical output. Calpine/Dynegy state that this “better of energy or capacity” approach, which takes the higher of a resource's proportional de-rated capacity or its actual energy output, improperly conflates energy with capacity and introduces a systemic bias into the availability calculation. As a result, Calpine/Dynegy argue that this calculation will provide for undue preferential treatment of the resources to which it applies. Calpine/Dynegy support measuring the availability of resources whose capacity is determined by historical output by using the proportional de-rate measure exclusively.

32. Calpine/Dynegy assert that the actual energy output metric is not appropriate because capacity is not the measure of the amount of energy that a resource produces at

²¹ The proposed formula is as follows: Hourly available RA capacity = Min [RA capacity designated in the supply plan, Max (actual energy, proportional de-rated capacity)]. *Id.* at 14.

²² As an example, CAISO states that a 200 MW fossil fuel power plant that contracts to provide 150 MW of RA capacity may experience a partial de-rate from 200 MW down to 150 MW and would still be fully capable of providing 150 MW of RA capacity. *Id.* at 15.

²³ As an example, CAISO states that a 200 MW wind farm may only qualify for 40 MW of RA capacity because, during the hours for which its qualifying capacity was calculated and its 200 MW of capacity were fully available, it produced on average 40 MWh of energy. If this resource then experiences a de-rate from 200 MW down to 150 MW of capacity, it would be expected to produce on average only 30 MWh of energy during that hour. *Id.*

any given time but is a resource's ability to produce energy upon demand. They argue that if availability equated to real-time energy production, CAISO would not need to have generating units report outages because CAISO measures via telemetry the amount of energy the unit is producing in real-time.

33. Calpine/Dynegy claim that under CAISO's "better of energy or capacity" proposal, an intermittent resource receives preferential treatment by being considered fully available in hours in which it delivers no energy but is fully mechanically available *and* in hours in which it produces energy but is not fully mechanically available. For example, Calpine/Dynegy state that a resource with a proportional de-rated capacity of 10 MW that produces 0 MW in half of all operating hours and 20 MW in all other operating hours, will receive undue preferential treatment under SCP rules. That is because, for all operating hours in which the resource was producing 0 MW, its calculated availability would be 10 MW (i.e., its proportional de-rate amount), and in all other hours, its calculated availability would be 20 MW (i.e., its actual energy output). Calpine/Dynegy state that this would yield an average SCP availability of 15 MW for the resource, even though it only produced 10 MW on average.

34. Calpine/Dynegy thus request that, for the purpose of calculating SCP availability incentives, the availability of resources whose RA capacity is determined based on historical output should be based on RA availability as captured in the proportional de-rate metric, and not based on actual energy output. According to Calpine/Dynegy, not only would such an approach remove the bias inherent in CAISO's currently proposed approach, but it would also make the calculation of availability for the relevant resources similar to the calculation of availability for conventional resources, achieving the Commission's objective of subjecting all resources providing RA capacity under CAISO's SCP to a uniform set of availability standards.

3. CAISO's Answer

35. In its answer, CAISO argues that the purpose of the "better of energy or capacity" approach is to recognize the fundamental difference between the calculation of qualifying capacity for a thermal generating unit and that of an intermittent resource. CAISO explains that a thermal generating unit experiencing a partial outage below the capacity level of its RA commitment will be mechanically unable to provide the full RA capacity requirement for the duration of the de-rate (i.e., it will be impossible for the resource to deliver more energy in an hour than its de-rated capacity allows). An intermittent resource experiencing a partial outage, on the other hand, may or may not be able to deliver actual energy to grid that exceeds the resource's RA capacity designated in its supply plan, depending on several factors. The most important of these factors is the availability of the primary energy resources (e.g., wind or solar radiation for an intermittent renewable resource) or, for a QF, the energy requirements of the generating resource's host facility. CAISO states that, for such resources, the proportional de-rate calculation is the best estimate of the RA capacity that the resource is capable of

delivering, consistent with the methodology and assumptions that went into the resource's qualifying capacity calculation, in particular the use of historical output data for hours when the resource's nameplate capacity was fully operational. CAISO states that it is appropriate to augment this calculation, however, by comparing it to the resource's actual energy delivery for the hour because the proportional de-rate is only an estimate of the resource's capability, not a definitive limitation as it is for the thermal resource. Thus, CAISO states that the proportional de-rate for the RA resources with qualifying capacity based on historical output and the capacity de-rate for thermal resources are two conceptually different measures based on, and consistent with, two fundamentally different approaches to calculating qualifying capacity.

4. Commission Determination

36. We will accept CAISO's formula applied to determine the SCP availability of RA resources with qualifying capacity based on historical output. CAISO's proposed methodology for determining SCP availability for such resources appropriately considers the unique nature by which their qualifying capacity is determined and does not compromise the comparable treatment of these types of resources vis-à-vis thermal resources.

37. Hourly availability depends on the qualifying capacity of each resource, and that calculation is based in part on the availability of fuel for the resource. Calculating availability of a thermal resource is a simple exercise that assumes, appropriately, that the resource has a readily-available fuel supply. Thus, its qualifying capacity is often equal to an amount close to its nameplate capacity, or "Pmax." Accordingly, the qualifying capacity of a thermal resource is not an estimate but is an accurate, precise upper-limit number.

38. For RA resources with qualifying capacity determined by historical output, however, calculation of qualifying capacity is an estimate. The reason for this difference from thermal resources is the variability of these resources' fuel supplies (i.e., whether or not sun or wind is available). Because of the variability of these resources' fuel, their qualifying capacity is typically less than their nameplate capacity. Thus, a solar, wind, or QF resource's qualifying capacity is not a restrictive upper-limit on the resource's output, but instead is simply an estimate of that resource's output potential. Such resources can actually provide energy to the grid in an amount greater than their qualifying capacity depending on weather.

39. CAISO's proposal accounts for this fundamental difference between thermal resources and resources with qualifying capacity based on historical output. CAISO's proposal introduces necessary flexibility to the hourly availability calculations for resources with qualifying capacity based on historical output, allowing those resources to meet their availability requirements through actual energy production and not limiting them to qualifying capacity estimates, which can be uniquely impacted by the weather.

40. We disagree that CAISO's proposal provides undue preference for resources whose qualifying capacity based on historical output. The Commission has determined that discrimination is undue when there is a difference in rates or services among similarly situated customers that is not justified by some legitimate factor.²⁴ Prior Commission precedent has recognized the unique circumstances of particular types of generators and has concluded that dissimilar treatment of dissimilar resources does not constitute undue discrimination.²⁵ Here, CAISO has explained the fundamental difference between thermal RA resources and RA resources with qualifying capacity based on historical output. Specifically, the variability of fuel for resources with qualifying capacity determined by historical output requires an imperfect estimate of those resources' qualifying capacity, while thermal resources are subject only to a precise upper limit equal to their nameplate capacity. This difference justifies a more flexible availability determination for resources with qualifying capacity determined by historical output.

²⁴ *El Paso Natural Gas Co.*, 104 FERC ¶ 61,045, at P 115 (2003) (citing Order No. 436, FERC Stats. & Regs. ¶ 30,655, at 31,541 (1985)).

²⁵ See *Cal. Indep. Sys. Operator Corp.*, 131 FERC ¶ 61,087, at P 43 (2010) (allowing CAISO to apply more stringent outage reporting requirements to intermittent resources); *Westar Energy Inc.*, 130 FERC ¶ 61,215, at P 35-36 (2010) (allowing Westar to assess different generator regulation charges for intermittent resources); *Southwest Power Pool, Inc.*, 127 FERC ¶ 61,283, at P 29 (2009) (allowing the Southwest Power Pool to modify its eligibility requirements and corresponding cost allocation methodology in order to designate wind resources as network resources); *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,061, at P 69, *order on reh'g*, 120 FERC ¶ 61,244 (2007) (accepting a CAISO proposal with special rate treatment for the costs of interconnection facilities for location-constrained resources).

E. Three-Month Advisory Period for Non-Availability Charges and Availability Incentive Payments

1. CAISO's Proposal

41. In section 40.9.6, CAISO retains the existing methodology that describes how non-availability charges and availability incentive payments are assessed,²⁶ but proposes to establish a three-month advisory period as a transitional measure for the RA resources that will become subject to SCP as a result of this filing. In other words, for the RA resources whose qualifying capacity is determined by historical output, the non-availability charges and availability incentive payments will be calculated and published on settlement statements but will not be actually assessed on invoices for a three-month advisory period following the effective date of SCP II. CAISO believes that the three-month advisory period will help facilitate the transition to SCP II by these RA resources, some of which are not currently participating generators in CAISO markets, and will allow these resources to observe how their management and reporting of forced outages and de-rates affects the SCP availability calculation, without incurring financial consequences during the transition. CAISO also argues that the three-month advisory period will provide an opportunity for CAISO to put a proactive monitoring team in place, to identify activity that is producing non-availability charges and to work with the scheduling coordinator of those resources to avoid the assessment of charges due to inadvertent errors. CAISO claims that the proactive monitoring team should detect problem areas early and allow them to be corrected during the advisory period, thereby reducing the number of settlements disputes that CAISO receives.

2. Commission Determination

42. We will accept CAISO's proposal to establish a three-month advisory period to observe the impact of the SCP rules on resources with qualifying capacity based on historical output. We agree with CAISO that the three-month advisory period will serve as a useful transitional tool for resources brought under the SCP rules by the instant proposal.

²⁶ More specifically, an RA resource with a monthly availability calculation: (1) of more than 2.5 percent *below* the monthly availability standard is subject to a non-availability charge for that month; (2) of more than 2.5 percent *above* the monthly availability standard is eligible for an availability incentive payment for that month; and (3) *within* 2.5 percent above or below the monthly availability standard is not be eligible for either an incentive payment or an unavailability charge for the month. CAISO Filing at 15-16.

F. Elimination of the “Non-Ambient De-Rate” Outage Category**1. CAISO’s Proposal**

43. CAISO also proposes to revise sections 40.9.4.2, 40.9.5, and 40.9.6.1(3). These sections currently refer to the following three categories of outages with respect to outage reporting requirements and the consideration of outages in determining the availability of RA resources: (1) Forced Outages; (2) non-ambient de-rates; and (3) temperature-related ambient de-rates. CAISO notes that during the stakeholder process, it was advised that these categories created uncertainty about which category a forced outage or de-rate would fit. CAISO subsequently determined that two outage categories would suffice for the purposes of these sections and, accordingly, proposes here to remove the “non-ambient de-rate” category. CAISO contends that this category can be eliminated as redundant because the definition of “outage” in the CAISO Tariff includes a reduction in capacity, which is the same as a de-rate. CAISO believes that this modification will not change the types of outages and de-rates to be reported nor affect the availability calculation.

2. Commission Determination

44. We will accept CAISO’s proposal to eliminate “non-ambient de-rates” from sections 40.9.4.2, 40.9.5, and 40.9.6.1(3) as a category of outages to be reported to CAISO. Importantly, we agree with CAISO that the term “non-ambient de-rates” has become redundant given the definition of “Outage” in the CAISO Tariff, and thus the deletion of “non-ambient de-rates” from these tariff sections will not have any impact on the types or numbers of outages reported to CAISO. We also agree that elimination of the term “non-ambient de-rates” will provide clarification to market participants.

G. Allocation of Excess Non-Availability Charge Funds to All Metered CAISO Demand**1. CAISO’s Proposal**

45. Finally, CAISO proposes to amend section 40.9.6.3, which describes how RA resources can receive availability incentive payments. Under this section, availability incentive payments are funded through the monthly non-availability charges collected and are capped at three times the non-availability charge rate. Any non-availability charge funds in excess of the cap are not distributed to eligible RA resources but are instead credited against the real-time neutrality charge for that trade month in accordance with section 11.5.2.3, which governs the revenue neutrality charge for load aggregation point load distribution factors. CAISO claims that the existing process limits allocation of these funds to metered CAISO demand that is settled at one of the three default load aggregation points, while funds should be allocated to all metered CAISO demand. Accordingly, it proposes to eliminate the reference to section 11.5.2.3 and to replace the

language so that these funds would be credited against the real-time neutrality charge for that trade month “to metered CAISO demand.” CAISO argues that this revision is appropriate because the SCP provisions apply to the RA resources procured by all load in the CAISO balancing authority area, regardless of whether that load is settled at one of the default load aggregation points. For that reason, it believes that any excess funds should be allocated back to all metered CAISO demand.

2. Comments

46. SVP/M-S-R state that while they support CAISO’s proposal, they note that the CAISO Tariff does not include a definition for “metered CAISO Demand.” SVP/M-S-R ask the Commission to clarify that demand included within metered sub-systems is eligible to receive a portion of any surplus revenues under section 40.9.6.3.

3. CAISO’s Answer

47. In response to SVP/M-S-R’s requested clarification, CAISO confirms that the demand of metered sub-systems is included in metered CAISO demand as that term is proposed in Section 40.9.6.3 and that metered sub-systems are eligible to receive an allocation of non-availability charge funds distributed under that tariff provision. CAISO states that since metered CAISO demand is used in other existing tariff provisions, CAISO believes that this clarification adequately responds to SVP/M-S-R’s comments and that a further tariff revision is not warranted.

4. Commission Determination

48. We accept CAISO’s proposal to amend section 40.9.6.3 to specify that excess non-availability funds will be credited against the real-time neutrality charge to “metered CAISO Demand,” instead of allocating any excess revenue pursuant to section 11.5.2.3, because the SCP provisions apply irrespective of whether load is settled at a default load aggregation point. CAISO’s SCP proposal applies to all RA resources in the CAISO balancing authority area, and thus any excess revenues should also be spread across all CAISO demand, not just the three default load aggregation points.

49. Additionally, we grant clarification requested by SVP/M-S-R to make clear that the term “metered CAISO demand,” as used in section 40.9.6.3, includes the demand within metered sub-systems. However, we also agree with CAISO that this explicit clarification is sufficient, and thus we do not require CAISO to make any revisions to its proposal to reflect this clarification.

H. Clarifying Edits to Tariff Language

1. Comments

50. SoCal Edison points out a few instances of grammatical errors, missing words, and undefined capitalized terms in CAISO's proposed tariff language in sections 40.9.2(2) and 40.9.2(3),²⁷ section 40.9.6,²⁸ and section 40.9.4.2.²⁹

51. In addition, SoCal Edison argues that CAISO should separate existing language in section 40.9.4.2 concerning conversion of forced outages from the proposed availability calculation in subsection (2) because the current format creates confusion as to whether this existing language applies to all resources or only to RA resources whose qualifying capacity is determined by historical output.

2. CAISO's Answer

52. CAISO agrees that the following changes are appropriate: (1) all of SoCal Edison's requested revisions to sections 40.9.2(2) and 40.9.2(3); (2) clarification to section 40.9.6 so it provides that "For Resource Adequacy Resources whose Qualifying Capacity is determined by their historical output, CAISO will calculate but not apply through the settlements process the Non-Availability Charges or Availability Incentive Payments to Trading Days within three months of the effective date of the tariff provisions that apply SCP to those Resources"; and (3) revisions to section 40.9.4.2 to de-capitalize "Each," capitalize "hour," and correct a clerical error that inadvertently included duplicate language in that provision.

²⁷ Specifically, CAISO's proposed language provides, "For a Resource Adequacy Resources..." and should be revised to read "For a Resource Adequacy Resources..." In addition, the term "Capacity" in both proposed sections is not defined in the CAISO Tariff and should not be capitalized. SoCal Edison Comments at 3.

²⁸ SoCal Edison proposes to replace the term "Resources" with "Resource Adequacy Resources" and to replace the language "within three months of the effective date that SCP applies to those Resources" with "in the months of January, February, and March of 2011." SoCal Edison notes that "SCP" is not defined in the CAISO Tariff. *Id.* at 5-6.

²⁹ SoCal Edison requests that the section be revised to de-capitalize "Each;" capitalize "hour;" modify the term "Adequacy Capacity" to read "Resource Adequacy Capacity;" modify the term "Availability Hour" to read "Availability Assessment Hour;" and to delete duplicate language. *Id.* at 3-5.

53. CAISO states that it does not agree with SoCal Edison that section 40.9.4.2 should be amended to reconfigure the paragraphs in that section. CAISO states that, as proposed, the paragraph placement and numbering is consistent with CAISO's Tariff structure. Further, CAISO states that when viewed in that format, the structure does not substantiate SoCal Edison's concern that subsection (2) may not be distinguishable from the subsequent paragraph.

3. Commission Determination

54. We agree that the proposed revisions to the language in 40.9.2(2) and 40.9.2(3) are appropriate. We also agree with CAISO that the paragraphs in section 40.9.4 do not need to be reconfigured in order to make subsection (2) distinguishable from the subsequent paragraph. Although we generally agree with CAISO's clarification to section 40.9.6, we note that the term "SCP" is not defined in the CAISO Tariff. For that reason, we direct CAISO to submit revised language to either provide such a definition or rephrase its clarification.

55. With respect to section 40.9.4.2, CAISO has not demonstrated why it has chosen to accept some but not all of SoCal Edison's requested clerical revisions. Because we find the remaining revisions (i.e., "Adequacy Capacity" to read "Resource Adequacy Capacity" and "Availability Hour" to read "Availability Assessment Hour") to be consistent with existing tariff language, we direct CAISO to revise this section accordingly.

56. CAISO is directed to submit a compliance filing incorporating these revisions in accordance with this order, within 30 days of the date of issuance of this order.

I. Effective dates

1. CAISO's Proposal

57. CAISO requests a waiver of the Commission's regulations to allow its proposed tariff sheets, with the exception of sections 40.9.2(2), 40.9.2(3), 40.9.4.1, and 40.9.4.2.1 (1), to become effective more than the 120-days after they were submitted, on January 1, 2011.³⁰ CAISO states that a January 1, 2011 effective date will be consistent with the start of the 2011 RA compliance year and that it will provide CAISO with sufficient time to change its systems, software, and business manuals. However, because proposed sections 40.9.2(2), 40.9.2(3), 40.9.4.1, and 40.9.4.2.1 (1) of the CAISO Tariff

³⁰ CAISO requests waiver of the Commission's requirement that rate schedules and tariffs be submitted to the Commission for filing no more than 120 days prior to their proposed effective date. 18 C.F.R. § 35.3 (2010).

contemplate potential action by CAISO or market participants prior to January 1, 2011, CAISO requests that these sections become effective upon issuance of the order.³¹

2. Comments

58. Six Cities states that despite CAISO's recognition that existing section 40.9.6.3 will result in an unintended and improper limitation on the distribution of excess availability charge revenues, it proposes to defer the effective date of the proposed revision to January 1, 2011. Six Cities urges the Commission to make the proposed section 40.9.6.3 effective as of June 22, 2010, the date of CAISO's filing in this proceeding.

3. CAISO's Answer

59. CAISO states that it is not opposed to an earlier implementation of the revision to section 40.9.6.3, whether that effective date be the date of CAISO's SCP II filing or the date of the Commission's order in this proceeding, which would coincide with the early effectiveness of specified tariff changes requested by CAISO.

4. Commission Determination

60. We deny CAISO's request that tariff sections 40.9.2(2), 40.9.2(3), 40.9.4.1, and 40.9.4.2.1(1) become effective upon issuance and instead find that these tariff sections will become effective on August 22, 2010, following the expiration of the 60-day prior notice requirement set forth in the FPA. We accept the proposed tariff sheets for section 40.9.6.3 to be effective June 22, 2010, as requested. For all remaining proposed tariff sections, we find good cause to grant waiver of the 120 days' advance notice requirement to allow these sections to become effective January 1, 2011, in order to coincide with the start of the 2011 RA year.

The Commission orders:

(A) CAISO's proposed tariff sheets are hereby accepted, subject to a compliance filing, as discussed in the body of this order;

(B) The Commission hereby grants waiver of the 120-day advance notice requirement to permit the proposed tariff sheets (except tariff sections 40.9.2(2),

³¹ CAISO requests that the Commission issue an order on the instant proposal by August 23, 2010. CAISO further requests that tariff sections 40.9.2(2), 40.9.2(3), 40.9.4.1, and 40.9.4.2.1(1) be effective upon the date of issuance in order to facilitate negotiation of RA contracts for the 2011 year.

40.9.2(3), 40.9.4.1, and 40.9.4.2.1(1)) to become effective on January 1, 2011, as requested by CAISO;

(C) The Commission rejects CAISO's proposal that its proposed tariff sheets concerning tariff sections 40.9.2(2), 40.9.2(3), 40.9.4.1, and 40.9.4.2.1(1) be effective on the date of issuance and accepts these tariff sheets to be effective on August 22, 2010, following 60 days' notice;

(D) The Commission hereby grants waiver of the 60-day prior notice requirement to permit the proposed tariff sheets concerning tariff section 40.9.6.3 to become effective on June 22, 2010, as requested;

(E) The Commission hereby rejects CAISO's proposed cutoff date for grandfathering contracts to be the date of issuance of this order, and directs that the cut-off date for grandfathering contracts will be August 22, 2010, following 60 days' notice; and

(F) CAISO is hereby directed to submit a compliance filing within 30 days of the date of this order that includes tariff revisions consistent with the directives in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.