

and accurate matter.¹ The waiver SCE requests is the same as that requested by Pacific Gas and Electric Company (“PG&E”) in its December 31, 2010 filing in Docket No. ER11-2592-000.

II. COMMUNICATIONS

The ISO requests that all communications and notices concerning this motion and these proceedings be provided to:

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III. MOTION TO INTERVENE

The ISO is a non-profit public benefit corporation organized under the laws of the State of California, with a principal place of business at 250 Outcropping Way, Folsom, CA 95630. The ISO is the Balancing Authority Area operator responsible for the reliable operation of the electric grid comprising the transmission systems of a number of utilities, including PG&E, San Diego Gas & Electric Company, SCE, the Cities of Vernon, Pasadena, Anaheim, Azusa, Banning, and Riverside, California, of Atlantic Path 15, LLC and Startrans IO, L.L.C. and, with regard to the Path 15 transmission lines in California, the Western Area Power Administration, Sierra Nevada Region. As the Balancing Authority, the ISO coordinates the ancillary services and electricity markets within its Balancing Authority Area.

¹ Capitalized terms not otherwise defined herein have the same meaning as set forth in the ISO Tariff, Appendix A, Definitions.

The ISO operates under the terms of the ISO Tariff, which is on file with the Commission. SCE's request seeks waiver from ISO Tariff Section 40.9.5, which provides that:

Scheduling Coordinators for Generating Units or Resource-Specific System Resources that are also Resource Adequacy Resources with a maximum output capability of one (1) MW or more, but which do not meet the requirement to provide information on Forced Outages in accordance with Section 9.3.10, shall provide equivalent availability-related information in the form and on the schedule specified in the Business Practice Manuals. This information shall identify all Forced Outages, non-ambient de-rates, and temperature-related ambient de-rates that have occurred over the previous calendar month and shall contain all relevant details needed to enable the CAISO to perform the availability calculation for the resource in accordance with Section 40.9.4, including: the start and end times of any Outages or de-rates, the MW availability in all Availability Assessment Hours, and the causes of any Forced Outages or de-rates. Scheduling Coordinators for Resource Adequacy Resources whose maximum output capability is ten (10) MW or more shall report Outage-related information in accordance with the reporting obligations in Section 9.3.10.

The requested waiver from this Tariff provision will temporarily relieve SCE from the obligation to report forced outage information for the QFs that are resource adequacy ("RA") resources for which SCE is a Scheduling Coordinator, until such time as the ISO has completed a stakeholder process to address the issues related to the scope, timing, and logistics of submitting of this information to the ISO. ISO Tariff Section 40.9.4.2 contemplates that this forced outage information will be used in the calculation of each QF RA resource's availability each month for purposes of the standard capacity product ("SCP"). ISO Tariff Section 40.9.4.1 contemplates that the information will also be included in the calculation of the availability standard for the fleet of RA resources for the following compliance year. The waiver of the obligation to provide forced outage information for QFs will affect the ISO's calculation of the

availability standard and determination of availability for each QF RA resource.

Accordingly, the ISO has an interest in this proceeding that no other party can represent and the Commission should permit the ISO to intervene.

IV. COMMENTS

On April 28, 2009, the ISO filed its initial proposal to apply SCP to all RA capacity that is confirmed through supply plans, as an availability incentive mechanism that would assess non-availability charges to RA resources that failed to meet the availability standard each month or would identify RA resources eligible to receive an availability incentive payment if they exceeded the availability standard. In this initial proposal, the ISO did not apply SCP to RA resources whose qualifying capacity is determined by the California Public Utilities Commission (“CPUC”) or a local regulation authority based on historical output data rather than maximum or nameplate capacity² because the application of SCP to those resources could have resulted in a double counting of the impact of the forced outages.

On June 26, 2009, the Commission issued an order that, *inter alia*, conditionally accepted SCP and approved the exemption for the wind, solar, and QF facilities.³ The order emphasized that the exemptions were temporary and directed the ISO to work with stakeholders, the CPUC, and local regulatory authorities toward ending the exemptions in a timely manner.⁴

On June 22, 2010, the ISO filed its SCP Phase II proposal to apply SCP to the temporarily exempt RA resources with qualifying capacity determined by historical

² The resources subject to this historical determination of qualifying capacity include wind and solar resources, as well as QFs that are non-dispatchable cogeneration, non-dispatchable biomass and non-dispatchable geothermal facilities.

³ *Cal. Indep. Sys. Operator Corp.*, 127 FERC ¶ 61,298 (2009)(“June 26 Order”).

⁴ *Id.* at P. 56-58.

output, establish a three-month advisory period for the settlement of non-availability charges and availability incentive payments applicable to these resources, and extend to the RA resources with historical qualifying capacity the grandfathering provision in ISO Tariff Sections 40.9.2(2) and 40.9.2(3) that allows them to request an exemption from SCP for the initial term of the contract.

On August 20, 2010, the Commission issued an order that accepted the ISO's proposed tariff modifications to end the exemption for the RA resources with historical qualifying capacity.⁵ In the August 20 Order, the Commission also determined that the deadline for contracts eligible for grandfathering should be August 22, 2010.⁶ The SCP Phase II provisions became effective on January 1, 2011.

Based on the Commission's orders, the ISO has no objection to the temporary waiver SCE has requested of the forced outage reporting requirements for the QF RA resources for which it is the Scheduling Coordinator to the extent that the contracts for these resources are grandfathered from application of the SCP under ISO Tariff Sections 40.9.2(2) or 40.9.2(3). If the requested waiver is granted, SCE as the Scheduling Coordinator will be temporarily relieved of the obligation to submit forced outage information for these QF RA resources. However, the absence of this forced outage information will not impact the assessment of SCP non-availability charges and availability incentive payments. As a result of having a grandfathered contract, these QF RA resources are not subject to those financial incentives.

⁵ *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,148 (2010) ("August 20 Order").

⁶ *Id.* at P. 26-27.

In addition, the ISO has no objection to the requested waiver for non-grandfathered QF RA resources for the period of January 1, 2011 through March 31, 2011. Under ISO Tariff Section 40.9.6, the first three months following the January 1, 2011 effective date of SCP Phase II are an advisory period as a transitional measure for the RA resources that became subject to SCP. The intent of the advisory period is to allow these resources to observe how their management and reporting of forced outages affected the SCP availability calculation, without incurring financial consequences during the transition. Temporarily waiving the reporting requirements for the non-grandfathered QF RA resources will diminish the intended value of the advisory period but will not have actual financial impact on the assessment of the SCP incentive payments or charges.

Further, the ISO does not object to continuing the temporary waiver beyond the end of the transition period for a specific subset of non-grandfathered QF RA resources, namely, those QFs under contracts with SCE where the initial contract term was extended by order of the CPUC. The ISO supports continuing the temporary waiver beyond March 31, 2011 for these resources provided that the Commission also grants a corresponding temporary waiver of ISO Tariff Section 40.9.6 that applies SCP availability incentive payments and non-availability charges to such resources.

In April 2004, the CPUC initiated two rulemakings, Docket Nos. R.04-04-003 to review the long-term procurement plans of the investor owned utilities ("IOUs") and R.04-04-025 to address pricing terms for QF contracts. Due to the complexity of the issues, the duration of these proceedings became protracted and the CPUC issued a series of decisions to extend the contract term of QF contracts that would have

otherwise expired before a deliberative order was reached.⁷ The most recent decision in the series extended the terms of expired or expiring contracts from January 1, 2006 until there is a final order in the rulemaking proceedings and directed the IOUs to continue to purchase power under those agreements.⁸ On December 16, 2010, the CPUC issued a decision adopting a comprehensive settlement of QF issues that will lead to the closure of the two rulemaking proceedings in the near future and to the use of newly formed QF contracts that contain outage reporting requirements.⁹

As a result of these CPUC decisions, the QF contracts that otherwise would have expired have remained in effect and the related QF RA resources became subject to SCP on January 1, 2011. In this circumstance, where regulatory orders extended the effectiveness of the QF contracts, the ISO believes that it is appropriate to grant a temporary waiver of the SCP outage reporting requirements that now apply to the QF RA resources associated with those contracts.

If the outage reporting requirements are waived, the assessment of SCP availability incentive payments and non-availability charges under ISO Tariff Section 40.9.6 should also be temporarily waived for this subset of non-grandfathered QF resources after the end of the advisory period. As SCE notes in its request, the Commission has granted temporary waivers from tariff requirements if they are limited in scope, do not have undesirable consequences, and are of benefit to customers. Absent waiver of Section 40.9.6, SCE's request as it pertains to this subset of non-grandfathered QF RA resources beyond March 31, 2011 fails to meet the second criteria – it will have undesirable consequences. As of April 1, 2011, the advisory period

⁷ CPUC Decisions D.02-08-071, D.03-12-062, D.04-01-050, and D.05-12-009.

⁸ CPUC Decision D.05-12-009 (September 20, 2007).

⁹ CPUC Decision D.10-12-035 (December 16, 2010).

will end and the ISO will financially apply the SCP non-availability charges and availability incentive payments to these resources. If SCE reports no forced outage information for these resources, the SCP calculation will treat them as 100 percent available each month and eligible to receive availability incentive payments. The ISO will not have sufficient data to determine the actual availability of these resources. As a result, any potential availability incentive payments will be allocated to these resources, which may exceed their actual availability and which will decrease the amount of the any potential availability incentive payments that will be allocated and made to the remainder of eligible RA resources. This financial impact on the other RA resources would clearly be an undesirable consequence of the requested waiver. Granting the temporary waiver of Section 40.9.6, in conjunction with the outage reporting requirement for this subset of non-grandfathered QF RA resources, is necessary to avoid this detrimental result.

Finally, the ISO does object to SCE's requested waiver for the remainder of the non-grandfathered QF RA resources beyond the end of the advisory period. Unlike the resources just discussed, there are no regulatory orders or other basis that would justify waiving application of the outage reporting requirements, or SCP availability incentive payments and non-availability charges under ISO Tariff Section 40.9.6, to the remaining non-grandfathered QF RA resources after March 1, 2011. Further, SCE has been aware since issuance of the June 26 Order that the exemption of the QF RA resources from SCP was only temporary. It has also been aware since issuance of the August 22 Order that the temporary exemption was ending January 1, 2011.

The ISO urges the Commission to deny the requested waiver for the remainder of the non-grandfathered QF RA resources beyond the end of the advisory period. Without grounds for the requested waiver, and given the length of time SCE has had to develop a process to accommodate the reporting requirements, a waiver beyond March 31, 2011 is unwarranted.

V. CONCLUSION

For the foregoing reasons, the ISO requests that the Commission grant in part and deny in part SCE's requested waiver as discussed above.

Respectfully submitted,

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Dated: February 4, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-captioned docket, in accordance with the requirements of Rule 2010 of the Commission Rules of Practice and Procedure (18 C.F.R. §385.2010).

Dated this 4th day of February, 2011 at Folsom, California.

/s/ Susan L. Montana

Susan L. Montana