

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Oversee)	
the Resource Adequacy Program, Consider)	Rulemaking 11-10-023
Program Refinements, and Establish Annual)	
Local Procurement Obligations.)	

**RESPONSE OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO APPLICATION FOR REHEARING OF DECISION 14-06-050**

On July 30, 2014, the Cogeneration Association of California (“CAC”) and the Energy Producers and Users Coalition (“EPUC”) filed an application for rehearing of Decision 14-06-050 (June 26, 2014) issued in this proceeding. Pursuant to Rule 16.1 of the Commission’s Rules of Practice and Procedure, the California Independent System Operator Corporation (“CAISO”) submits its response to that rehearing request. The CAC and EPUC rehearing request fails to show that Decision 14-06-050 contains legal error or is otherwise unlawful or unreasonable.

I. The Application Fails to Meet the Requirements for Granting Rehearing.

In their application for rehearing, CAC and EPUC request that the Commission make two clarifications to Decision 14-06-050. First, they ask the Commission to clarify that, unless the parties to an existing resource adequacy contract agree otherwise, the resource adequacy capacity provided under the contract should count as generic resource adequacy capacity, not flexible resource adequacy capacity. Second, they ask the Commission to “clarify” a sentence in the decision by adding language stating that CPUC decisions are applicable to the outage replacement obligation. The Decision

states that the CAISO tariff and FERC orders apply to the outage replacement obligation.

Under Rule 16.1 of the CPUC rules of practice and procedure, an application for rehearing must state “specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law.” In addition, Rule 16.1 provides that “[t]he purpose of an application for rehearing is to alert the Commission to a legal error so that the Commission may correct it expeditiously.”

CAC and EPUC’s rehearing request fail to meet these requirements. It does not allege that the Decision is any way unlawful or erroneous, or that the requested changes are needed to correct legal error. Instead, CAC and EPUC’s application characterizes the requested changes only as a clarification. Such clarification does not constitute correction of a legal error, as required by Rule 16.1, and should be rejected.

II. The Decision’s Rejection of CAC’s and EPUC’s Proposed Clarification of the Replacement Requirement is Based on Substantial Record Evidence and Is Not Unlawful or Unreasonable.

In their application for rehearing, CAC and EPUC request that the Commission modify one part of the decision that pertains to the replacement obligation of resources under the CAISO tariff. The language adopted in the decision states that: “for scheduled outages that are approved after the compliance filing due date, the Scheduling Coordinator for the resource will still be responsible for outage replacement to the extent required by the CAISO tariff rules and FERC orders.”¹ The CAISO submits that the language in the decision is supported by the record developed during the

¹ CAC and EPUC Application for Rehearing (July 30, 2014), pp. 3-4.

workshops and in comments, and is not unlawful or unreasonable.

The language in question is based on discussion in staff's revised proposal about how the responsibility for outage replacement is divided between the scheduling coordinators for load serving entities and the scheduling coordinators for resources under the replacement provisions in the CAISO tariff. Staff's revised proposal explains that, consistent with the CAISO tariff, the responsibility for outage replacement is on the scheduling coordinator of a load serving entity if a resource adequacy resource schedules a maintenance outage before the monthly resource adequacy showings are submitted and is on the scheduling coordinator of the resource if it schedules a maintenance outage for resource adequacy capacity after the monthly resource adequacy showings are submitted. The pertinent language from the revised staff proposal is as follows:

Additionally, the IOUs will be given the authority to recover scheduled outage replacement costs, associated with replacement that falls on responsibility of the SC for the LSE, through a balancing account mechanism. For scheduled outages that are approved after the compliance filing due date, the SC of the resource will still be responsible for outage replacement as specified in the CAISOs replacement rule.²

In their April 18, 2014 comments on the staff proposals, CAC and EPUC requested that staff change the foregoing language to provide that the scheduling coordinator of a resource is responsible for replacement only to the extent required by the contract between the parties, by FERC order, and by CAISO tariff and rules.³

In reply comments, the CAISO urged the Commission not adopt the CAC's and EPUC's suggested changes to staff's proposal. The CAISO explained that, although

² Revised RA Implementation Staff Proposals (April 3, 2014), p. 6.

³ CAC and EPUC Comments on Staff Proposals (April 18, 2014), p. 4.

the QF/CHP settlement contracts may include provisions for providing notice of maintenance outages to the buyer, this does not excuse the combined heat and power suppliers that are providing resource adequacy capacity and participating in the CAISO's markets from adhering to the CAISO maintenance outage tariff provisions. A party cannot avoid compliance with the CAISO Tariff by executing a third party contract. In fact, CHP facilities' *pro forma* agreement requires CHP facilities to comply with the CAISO Tariff.⁴

The CAISO's reply comments further explained that a CHP resource is not obligated to replace resource adequacy capacity in instances where its output is reduced because the industrial host reduces energy consumption or changes production periods. The CAISO's replacement requirement addresses only maintenance outages where the resource adequacy capacity, including CHP resources, will be unavailable because the resource is scheduled to take a maintenance outage during the resource adequacy month. In approving the CAISO's outage replacement tariff provisions, FERC found that "...CAC and EPUC have not identified an operational difference for CHP resources that would require an exemption from the Replacement Requirement."⁵ FERC also stated "[w]e disagree that the CHP resources should be exempt from the Replacement Requirement because of penalties or obligations contained in their contracts. Provisions negotiated as part of a third party contract should not exempt CHP resources from their obligations under the Tariff."⁶

⁴ ISO Reply Comments (April 25, 2014), p. 9.

⁵ *California Independent System Operator Corporation*, 141 FERC ¶61, 135 at P 56 (2012).

⁶ *Id.* at 18.

The CAISO's reply comments supported a clarification to the Energy Division Staff's proposal to provide 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 to the extent required by the CAISO tariff rules and FERC orders."⁷

The Proposed Decision adopted the language the CAISO recommended. The Proposed Decision agreed with the CAISO that CHP resources are not exempt from the replacement rule and found that including the language "to the extent required by contract" would erroneously imply to the contrary that an exemption may exist. The Proposed Decision accordingly declined to revise the staff proposal as requested by CAC and EPUC.

CAC and EPUC filed comments on the Proposed Decision again requesting that the Commission clarify the replacement obligation for resource adequacy capacity for unit contingent contracts. Specifically, they proposed that the Commission modify the language to state that:

For planned Maintenance Outages that are approved after the monthly Supply Plan has been submitted, 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.⁸ (emphasis original)

The Commission did not adopt this change in Decision 14-06-050, and it should not grant rehearing to do so now. The issues raised by CAC and EPUC and the language changes they suggest were thoroughly vetted and considered during the course of this proceeding, through workshops and in comments. The Proposed Decision expressly took this record into account in rejecting CAC's and EPUC's

⁷ ISO Reply Comments (April 25, 2014), p. 10.

⁸ CAC and EPUC Comments on Proposed Decision (June 16, 2014), p. 6.

proposal. This process resulted in a well-developed record with substantial support for the Commission's Decision and the accuracy of the language it includes to describe the replacement obligation of scheduling coordinators for resources that provide resource adequacy capacity. CAC and EPUC's rehearing request fails to demonstrate, or even allege, that the decision is unlawful or reasonable, and offers no grounds upon which rehearing could be justified. The Commission should accordingly reject CAC and EPUC's rehearing request.

III. CONCLUSION

For the foregoing reasons, the CAISO respectfully requests that the CPUC reject the application for rehearing submitted by CAC and EPUC.

Respectfully submitted,

By: /s/ Beth Ann Burns

Roger E. Collanton
General Counsel
Anthony Ivancovich
Deputy General Counsel
Anna A. McKenna
Assistant General Counsel
Beth Ann Burns
Senior Counsel
California Independent System
Operator Corporation
250 Outcropping Way
Folsom California 95630
Tel.: (916) 608-7146
Fax.: (916) 608-7222
bburns@caiso.com

Attorneys for the California Independent
System Operator Corporation

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