

Gas and Electric Company (“PG&E”) as it would apply to the Qualifying Facilities (“QFs”) that are Resources Adequacy (“RA”) resources subject to the ISO’s standard capacity product whose contract terms were extended by order the California Public Utilities Commission (“CPUC”).²

I. SUPPLEMENTAL COMMENTS

On December 31, 2010, PG&E submitted a request for a temporary waiver of the forced outage reporting requirements contained in the ISO Tariff that apply to QF power purchase agreements for which PG&E is the Scheduling Coordinator. PG&E claims that it lacks the contractual ability under the QF power purchase agreements to obtain forced outage information from the QFs in order to meet the outage reporting requirements of ISO Tariff Section 40.9.5.

As explained in the ISO’s initial comments in this matter, the ISO has no objection to the requested temporary waiver to the extent that the contracts for the QF RA 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, PG&E 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 because the QF RA resources with a grandfathered contract are not subject to those financial incentives.

² Capitalized terms not otherwise defined herein have the same meaning as set forth in the ISO Tariff, Appendix A, Definitions.

As further explained in initial comments, 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, those months are an advisory period during which the non-availability charges and availability incentive payments will be shown on settlement statements as a monitoring tool but will not be financially assessed. As a result, 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.

In these supplemental comments, the ISO clarifies that it also 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 PG&E 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.³ 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.⁴ 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.⁵

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 PG&E 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, PG&E's request as it pertains to this subset of non-grandfathered QF RA resources

³ CPUC Decisions D.02-08-071, D.03-12-062, D.04-01-050, and D.05-12-009.

⁴ CPUC Decision D.05-12-009 (September 20, 2007)..

⁵ CPUC Decision D.10-12-035 (December 16, 2010).

beyond March 31, 2011 fails to meet the second criteria – it will have undesirable consequences. As of April 1, 2011, the advisory period will end and the ISO will financially apply the SCP non-availability charges and availability incentive payments to these resources. If PG&E 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 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 continues to object to PG&E'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.

II. CONCLUSION

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

Respectfully submitted,

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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

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