

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**California Independent System Operator) Docket No. ER12-2669-000
Corporation)**

**MOTION FOR LEAVE TO FILE ANSWER
AND ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

On September 20, 2012, the California Independent System Operator Corporation (“ISO”) submitted proposed tariff modifications to implement a replacement requirement as a new resource adequacy (“RA”) and outage management procedure. The replacement requirement is designed to ensure there will be sufficient, available RA capacity to reliably operate the grid and meet the load obligations of the load serving entities while minimizing ISO procurement of capacity through a backstop mechanism.¹

Pursuant to the Commission’s Combined Notice of Filing published on September 21, 2012, 14 entities submitted motions to intervene in this proceeding,² most with comments and/or protests with respect to the ISO’s filing.³

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

² Interventions were filed by the Alliance for Retail Energy Markets; the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California; Dynegy Morro Bay, LLC, Dynegy Moss Landing, LLC, Dynegy Oakland, LLC and Dynegy Marketing and Trade; GenOn Energy Management, LLC, GenOn Delta, LLC and GenOn West, LP; and M-S-R Public Power Agency.

³ Interventions with comments and/or protests were filed by the California Department of Water Resources, State Water Project (“SWP”); the City of Santa Clara DBA Silicon Valley Power (“SVP”); Cogeneration Association of California (“CAC”); Energy Producers and Users Coalition (“EPUC”); J.P. Morgan Ventures Energy Corp. and BE CA LLC (“J.P. Morgan”); Northern California Power Agency (“NCPA”); NRG Power Marketing LLC, Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Power LLC, High Plains Ranch II, LLC, Long Beach Generation LLC, NRG Solar Alpine LLC, NRG Solar Borrego I LLC, NRG Solar Blythe LLC, NRG Solar Roadrunner LLC and Avenal Solar Holdings LLC (“NRG”); Pacific Gas & Electric Company (“PG&E”); and San Diego Gas & Electric Company (“SDG&E”).

The ISO does not object to any of the interventions filed in this proceeding. In this Answer, the ISO will respond to the comments and protests, and explain why they provide no valid basis for the Commission to reject or significantly modify the ISO's proposal.

I. MOTION TO FILE ANSWER

The ISO recognizes that, unless authorized by the Commission, the Commission's Rules of Practice and Procedure preclude an answer to protests. Accordingly, pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212. and 385.213 (2010), the ISO respectfully requests leave to file its answer to the protests filed in this proceeding.

The ISO submits that good cause for the requested waiver exists because, *inter alia*, parties raise a number of specific, new arguments. This answer will allow the ISO to address these new arguments. The answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help ensure a complete and accurate record in the case.⁴ In particular, the ISO believes that this answer will aid understanding and inform the decision-making process by providing additional explanation and support for three aspects of the ISO's proposal – the need for and purpose of the replacement requirement, the structure and function of the components of the replacement determination, and the term length of the resource adequacy maintenance outage backstop capacity designation -- that were the focus of the comments and protests.

⁴ See, e.g., *Entergy Services, Inc.*, 116 FERC ¶ 61,286 at P 6 (2006); *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,124 at P 11 (2006); *High Island Offshore System, L.L.C.*, 113 FERC ¶ 61,202 at P 8 (2005); *Entergy Services, Inc.*, 101 FERC ¶ 61,289, at 62,163 (2002); *Duke Energy Corp.*, 100 FERC ¶ 61,251, at 61,886 (2002); *Delmarva Power & Light Co.*, 93 FERC ¶ 61,098, at 61,259 (2000).

For these reasons, the ISO respectfully requests that the Commission accept the ISO's answer on this date.

II. ANSWER

A. REPLACEMENT REQUIREMENT

The ISO has proposed a resource adequacy and outage management replacement procedure that ensures there will be sufficient, available capacity to reliably operate the grid and meet the load obligations of the load serving entities while minimizing ISO procurement of capacity through a backstop mechanism. The proposed tariff modifications establish a replacement requirement for RA capacity that is scheduled for a maintenance outage and that will not be operationally available to the ISO for all or a portion of the month that the resource is on outage, but which has been listed as RA capacity in both a load serving entity's RA plan and a supplier's supply plan for the month. The replacement requirement apportions responsibility for replacement between the load serving entities and the suppliers, depending on the timing of the outage request.

1. The ISO Has Justified Its Proposal

PG&E opposes adoption of the ISO's proposal unless the ISO demonstrates that the level of reserves it requires to be available in every hour of the month do not add excessive cost and burdens to participants and justifies the introduction of RA maintenance outage backstop procurement.⁵

The ISO submits that it has provided clear justification for its proposal in its initial

⁵ PG&E Motion to Intervene and Comments, pp. 3-4.

filing in this docket, as the ISO explained throughout the transmittal letter.⁶ In short, with the expiration of the CPUC replacement rule, the proposed tariff modifications are necessary to ensure that the ISO has sufficient available RA capacity during each month given the maintenance outages of RA resources that are scheduled to occur. Maintenance outages are not otherwise covered by the planning reserve margin.

The ISO's proposal covers these outages through a replacement requirement that minimizes procurement costs by limiting both the need for replacement RA capacity and the need for the ISO to procure RA maintenance outage backstop capacity. The proposal establishes criteria for replacement that will require unavailable RA capacity be replaced by load serving entities only for those specific days when the ISO's analysis shows that system total available RA capacity is expected to be less than the RA reliability margin. This approach will avoid over-procurement of replacement capacity for an entire month, or even for the duration of the scheduled maintenance outage, if the criteria show that system reliability is below the expected need for only one day.

Following submission of the monthly RA plans and supply plans, the responsibility for replacing outages shifts to the supplier, and, although suppliers are not required to replace capacity when they seek a maintenance outage, to the extent they do that will help ensure that they will be granted a requested intra-month maintenance outage.

By limiting the need for replacement and backstop procurement in this manner, the ISO's proposal will not cause excessive costs to be incurred, as PG&E contends. The replacement requirement and the RA maintenance outage backstop authority will not increase the load serving's entity's RA obligation. The sum of the available RA

⁶ ISO transmittal letter, pp. 2, 4-5, 6, 7-8, 12-19, 20, 21-22, 22-23, 25-26, 29-31, 33-34, 36-37, 38, 39, 40-42, 44-45,.

capacity that the load serving entity includes in its monthly RA plan and the capacity procured under these replacement provisions will always be equal to or less than its monthly RA obligation (depending on the extent the ISO's analysis determines that replacement is necessary). These replacement provisions essentially fill in "gaps" in the monthly RA plans where the load serving entity included capacity that will not be operationally available to the ISO because of a scheduled maintenance outage. The ISO's proposal to replace capacity in an RA plan that will not be operationally available, in the amount and for the duration of the reliability need identified in the ISO's analysis is eminently reasonable.

The ISO also notes that its proposed replacement requirement is more cost conscious than existing provisions. The predecessor CPUC rule allows a seasonal threshold for planned outage replacement, but once that threshold was met, the rule requires replacement of the RA resource on outage for the entire month, not just those days the RA capacity is scheduled for a planned outage. In instances where the CPUC replacement rule results in insufficient RA capacity being available to the ISO, the ISO's option is to issue a CPM designation with a term no less than one month, depending on the type of designation. The argument about the costs associated with the replacement requirement ignore the potential costs under the existing provisions that will be avoided.

2. The ISO's Proposal Is Just And Reasonable

SDG&E stridently opposes adoption of the ISO's proposal. While SDG&E's "generic" opposition invokes the Federal Power Act's "just and reasonable" standard, its specific arguments do not highlight any meaningful deficiency in the ISO's proposal that would render it unjust and unreasonable.

SDG&E fundamentally misapprehends the nature of the Commission's review under Section 205 of the Federal Power Act. *Cities of Bethany v. FERC* firmly establishes the principle that the Commission's review of a proposed rate, term, or condition need only be just and reasonable.⁷ The Commission does not consider whether a proposal is the best possible proposal. As the Commission has explained:

[t]he courts and this Commission have recognized that there is not a single just and reasonable rate. Instead, we evaluate [proposals under Section 205] to determine whether they fall into a zone of reasonableness. So long as the end result is just and reasonable, the [proposal] will satisfy the statutory standard.⁸

The ISO's proposal falls well within the zone of reasonableness for the reasons just discussed – it will cover planned outages at RA resources in the absence of the CPUC replacement rule (outages which are not otherwise accounted for in reserve margins), it will ensure that there will be sufficient, available capacity to reliably operate the grid and meet the load obligations of the load serving entities, it will follow procedures that minimize replacement costs for load serving entities and provide flexibility in scheduling outages for RA resources, and it will minimize ISO procurement of capacity through a backstop mechanism.

3. The Replacement Requirement Does Not Impose Additional Obligations on Load Serving Entities

PG&E and SDG&E claim that the proposal imposes additional obligations on load serving entities without justification that the increased cost and burden are

⁷ *Cities of Bethany, et al. v. FERC*, 727 F.2d 1131,1136 (D.C. Cir. 1984) (utility needs to establish that its proposed rate design is reasonable, not that it is superior to all alternatives).

⁸ *Calpine Corp. v. California Independent System Operator Corp.*, 128 FERC ¶ 61,271, at P 41 (2009) (citations omitted). See also *New England Power Co.*, 52 FERC ¶ 61,090, at 61,336 (1990), *aff'd*, *Town of Norwood v. FERC*, 962 F.2d 20 (D.C. Cir. 1992) (rate design proposed need not be perfect, it merely needs to be just and reasonable).

necessary to meet the reliability need.⁹

The contention that the ISO's proposal will significantly increase the obligations of load serving entities ignores the fundamental purpose of the CPUC RA program and the requirements that already apply to load serving entities and RA resources under the existing provisions in the ISO tariff. The purpose of the CPUC RA program is to provide sufficient RA capacity to the ISO "when and where needed" to support the safe and reliable operation of the ISO Controlled Grid in real time. "When and where needed" is not a promise to provide only part of the RA capacity needed for reliability or only provide RA capacity for part of the month. Even SDG&E's own comments acknowledge that it is required to deliver RA capacity in an amount equal to its RA requirement.¹⁰

The proposal strengthens the existing CPUC replacement rule from a reliability perspective by ensuring that there are no "gaps" in the amount of RA capacity made available to the ISO. Under the existing CPUC rule, planned outages of RA capacity only have to be replaced if they are longer than one or two weeks depending on the season. However, the undeniable fact is that reliability problems can arise when RA units are on planned maintenance outages of less than one or two weeks. The ISO's proposal remedies this deficiency and ensures that the RA program meets its intended objectives.

The ISO Tariff provisions build on the RA program commitment and on the CPUC replacement rule. ISO Tariff Sections 40.2.2.4 and 40.2.3.4 require the

⁹ *Ibid*; SDG&E Motion to Intervene and Protest, p. 1.

¹⁰ "Generally, as a load serving entity, SDG&E is required to make annual and monthly filings demonstrating it has procured and will deliver, at minimum, a quantity of supply resources equal to the coincident contribution of its customer loads to the monthly system peaks forecasted for the California ISO system, plus a fifteen percent (15%) increment representing a prudent planning reserve margin." SDG&E Motion to Intervene and Protest, pp. 3-4.

scheduling coordinators for load serving entities to submit monthly RA plans to the ISO that identify all resources the load serving entity will rely upon to satisfy its applicable peak hour demand for the month as determined by the load forecasts and applicable reserve margin. Section 40.4.7.1 requires the scheduling coordinators for RA resources to submit monthly supply plans that verify their agreement to provide the RA capacity during the RA month. Further, Sections 40.6.1 and 40.6.2 impose a must offer obligation on RA resources to submit bids or self schedules for their RA capacity and bids or self provision of all RA capacity certified to provide ancillary service that is around the clock. Except for use limited resources, there is nothing in these provisions that limits the obligation of the vast majority of RA resources to provide RA capacity for only part of the day or during certain hours.

Contrary to the arguments of PG&E and SDG&E, the ISO's proposal does not increase the obligations of load serving entities to provide RA capacity. Under the RA program, load serving entities are required to procure and pay for a specified amount of RA capacity each month. The ISO's proposal does not require them to procure more than their requisite RA quantity in any month. As discussed above, the ISO's proposal is carefully tailored to ensure that an RA unit can still count as RA for the portion of the month that it is on a planned outage, and that LSE's are only required to replace capacity for those days the unit is on planned outage. Thus, there is no overlap or procurement of duplicative or excessive capacity.

4. The Replacement Requirement Does Not Establish Procedures That Will Lead to Arbitrary and Discriminatory Replacement Obligations

SDG&E opposes adoption of the replacement requirement on the grounds that

the procedures to be followed will place load serving entities at risk to arbitrary and discriminatory replacement obligations.¹¹ While this may be an attention-grabbing statement, in actuality, it is the load serving entity itself that creates the replacement risk if it voluntarily includes in its monthly RA plan any RA capacity that is scheduled to take a maintenance outage during the month. As long as a load serving entity files an RA plan that includes its required amount of RA capacity and that capacity is available for all days of the month, the load serving entity need not worry about a replacement requirement.

It is solely up to the LSE to determine what capacity it lists as RA in a given month. A load serving entity that does its due diligence with suppliers to obtain information about their planned outages and that relies on only operationally available capacity in its plan will avoid all replacement risk. It is only if the load serving entity includes capacity in its plan that is scheduled to take a maintenance outage that the load serving entity is at risk that the shortfall will be caught and be subject to replacement.

Moreover, the procedures the ISO has developed for calculating the replacement determination and performing the outage replacement are objective measures. The replacement determination itself is mathematic. Under new Tariff Section 9.3.1.3.2.3, in advance of the operating month, the ISO will calculate for each day the system total available RA capacity provided in the monthly RA plans and compare that MW amount to the 115 percent RA reliability margin. When the system total available RA capacity provided in the RA plans is less than the ISO system RA reliability margin, the ISO may require the load serving entity to replace the RA capacity scheduled to take an

¹¹ Id. at p. 6.

approved maintenance outage that day. When replacement is required, the ISO will identify the RA capacity to be replaced based on the dates of the outage requests, which is an objective analysis. The RA capacity scheduled to take an approved maintenance outage will be replaced in the reverse order of the dates on which the outage requests were received. The ISO will identify the load serving entities responsible for the replacement by mathematic calculation. The ISO will identify the load serving entities responsible for replacement by calculating which did not include in their RA plans available RA capacity for the day in a MW amount equal to or greater than the applicable forecasted monthly demand and reserve margin for that load serving entity.

These objective measures are not *per se* arbitrary, discriminatory, or random. Indeed, SDG&E offers no specific evidence showing that they are, except to make a conclusory allegation, and ignores the ability of load serving entities to avoid any replacement requirement.

5. Improving Outage Coordination Will Not Eliminate The Need to Adopt The Replacement Requirement

SDG&E suggests that, rather than implementing a replacement requirement, the ISO should instead improve its coordination of maintenance outages and exercise its discretion to cancel previously approved outages when necessary to protect system reliability.

The ISO is certainly amenable to enhancing its outage coordination systems and procedures at any time. However, the ISO does not believe that this will eliminate the need for the replacement requirement as SDG&E presumes. The problem is timing. The ISO receives many requests for maintenance outages up to 18 months before the

planned outage date. At the time the ISO processes those requests, the relevant annual or monthly RA plans may not have been provided. As a consequence, at the time the ISO determines whether the requested outages should be approved, the ISO likely does not know whether the resource will be included as RA capacity on any load serving entity's RA plan and cannot assess the impact approving the outage will have on the available RA capacity during the given RA month. However, load serving entities must procure, or select from a portfolio of resources they have already procured, the capacity they intend to use as RA capacity before they file their RA plans for the month so they do have the opportunity to account for maintenance outages of that capacity or to use other RA capacity, which can minimize or eliminate a replacement determination.

6. The Replacement Requirement Should Not Be Modified To Place The Obligation Solely On Suppliers

SDG&E recommends that the Commission reject the ISO's proposal and direct the ISO to develop an alternative approach that places a replacement obligation solely on the resource requesting the maintenance outage and that can be effectuated by the ISO and the resource, without involvement by the load serving entity.¹²

For the reasons just discussed, the ISO urges the Commission to reject this recommendation. The RA requirement is an obligation that local regulatory authorities impose on load serving entities, not on suppliers. Under the ISO's RA framework, the various RA programs are established and maintained by the CPUC and local regulatory authorities. They do not have jurisdiction over wholesale suppliers. Further, there is no precedent for imposing RA obligations on suppliers, and they do not serve load. In any event, the ISO has demonstrated that the replacement requirement proposal overall,

¹² SDG&E Motion to Intervene and Protest, p. 15.

and each of the contested components, is just and reasonable. The proposed replacement requirement appropriately apportions responsibility for replacement between the load serving entities and the suppliers, depending on the timing of the outage request. That is the appropriate demarcation because load serving entities can control their forward procurement, whereas, generators are better positioned to address intra-month changes to their availability (and there is no intra-month RA obligation for load serving entities). Further, as discussed in the transmittal letter, the ISO early in the stakeholder initiative process considered placing the replacement obligation on suppliers but the suggestion was met with such significant opposition that the ISO instead developed the reasonable division of responsibility reflected in its filing. The ISO proposal establishes a uniform replacement requirement, without restricting the options open to buyers and sellers on how to address planned outages, which allows for the various parties to contract to provide replacement capacity in what they believe is the most efficient manner.

7. The CPUC Replacement Rule Should Not Be Adopted

PG&E recommends that the ISO either rely on the outage management authority and CPM backstop authority it already has or adopt the CPUC's replacement rule.¹³ J.P. Morgan claims that the CPUC replacement rule has been effective at maintaining reliability and supports adopting the CPUC replacement rule, at least for a one-year transition period to enable market participants to rely on the provisions of their existing RA contracts.¹⁴

The ISO urges the Commission to adopt its proposal and reject the

¹³ PG&E Motion to Intervene and Comments, pp. 3-4.

¹⁴ J.P. Morgan Motion to Intervene and Comments, pp. 4-5.

recommendations of PG&E and J.P. Morgan that the CPUC replacement rule instead be incorporated into the ISO Tariff . For the reasons described above in Section II.A.1, the ISO's proposal better serves the resource adequacy goal of maintaining reliability throughout the entire month, and ensures there are no gaps in available RA capacity during the month that could jeopardize reliability. Also, the ISO's proposal is more reasonably balanced and more fairly allocates responsibility for outage replacement between load serving entities and suppliers. As discussed in the transmittal letter, pp. 15-16, the ISO considered adopting the CPUC replacement rule but declined to do so because the rule has several flaws. The major flaw in the replacement rule is that it has not ensured that capacity counted as RA capacity each month is operationally available to the ISO. The rule allows RA resources to be unavailable due to a planned outage up to one week in a summer month (25 percent of the month) and up to two weeks in a winter month (50 percent of the month) without requiring any replacement capacity for the outage. Further, the rule contains no provision that limits the amount of time or MWs of capacity that may be on a planned outage at the same time during the month. While not a likely occurrence, this means that If every load serving entity's RA plan called for all of their RA capacity to be on a maintenance outage during the same six days of the month, the existing replacement rule would not trigger a replacement requirement. These flaws call for the replacement rule to end rather than be continued in the ISO tariff.

B. REPLACEMENT DETERMINATION

Under the proposed process for determining the replacement requirement for each load serving entity's monthly RA plan, the ISO will first review each monthly RA

plan pursuant to new Tariff Section 9.3.1.3.2.1 and replace unavailable capacity in the plan with specified RA replacement capacity pursuant to new Tariff Section 9.3.1.3.2.2, to the extent that the load serving entity has elected to provide a list of specified RA replacement capacity with its plan and the ISO verifies that the capacity is available. The ISO will then follow a sequential, multi-step process set forth in new Tariff Section 9.3.1.3.2.3 to determine whether the load serving entity is required to replace any unavailable capacity remaining in its plan.

1. The Replacement Determination Should Be Made By Day And Not Limited To The Availability Assessment Hours

Two steps in the replacement determination process are the subject of comments in this proceeding. One step involves the ISO's calculation of the system total RA capacity provided in the RA plans for each day of the month and comparison of that daily MW amount to the ISO system RA reliability margin. On each day where the system total available RA capacity provided in the RA plans is less than the ISO system RA reliability margin, the ISO may require replacement of RA capacity scheduled for an approved maintenance outage, as provided in new Tariff Sections 9.3.1.3.2.3 and 9.3.1.3.2.4.

PG&E asserts that the ISO's proposal is unjust and unreasonable because it assesses whether system total RA capacity meets the RA reliability margin for each day of the month. PG&E requests that the Commission modify the replacement determination process to provide that the ISO will calculate the system total RA capacity provided in the RA plans and compare that MW amount to the ISO system RA reliability margin only for the availability assessment hours, rather than on a daily basis as

proposed.¹⁵

The ISO disagrees with PG&E's suggested modification. It is premised on a string of assertions that are unexplained or unsupported. PG&E asserts that using a daily evaluation has "the potential to overstate actual operational reliability needs" but provides no support for the contention. PG&E asserts that the replacement requirement "should be focused on the hours that peak load is likely to occur," but provides no explanation why it believes that an outage management tool should focus on peak hours to the exclusion of off-peak periods when planned outages are more likely to occur. PG&E also asserts that using the availability assessment hours "would require less replacement capacity in some circumstances" and would "still provide the ISO with the necessary reserves on an operational basis" when needed, again without explanation or support.

PG&E's suggested modification is neither principled nor supported. It fails to recognize that forced outages and planned maintenance outages have different scheduling characteristics and that applying the availability assessment hours to planned maintenance outages would not be consistent with their outage pattern.

Forced outages happen when they happen. They are random. Under the ISO's standard capacity product provisions, an RA resource's availability is measured during the availability assessment hours net of forced outages. The availability assessment hours are defined in Section 40.9.3 as a period of five consecutive hours on peak days each month that correspond to the operating periods when high demand conditions typically occur and when the availability of RA capacity is most critical in maintaining system reliability. The standard capacity product provisions, which focus on forced

¹⁵ PG&E Motion to Intervene and Comments, p. 5.

outages during the peak hours, were adopted when the CPUC replacement rule that focused on planned outages throughout the month was in effect.

The ISO's proposed replacement requirement is an outage management tool, not an hourly or daily operating requirement. The replacement requirement determination is made between 25 and 45 days in advance of the month and only ensures that, at that time before the operating month, the established level of RA capacity is expected to be available to the ISO. Under the replacement requirement, the ISO will determine an RA resources expected availability at the daily level. The daily level is the more appropriate time period to assess the operational availability of RA resources because planned outages are typically scheduled during off-peak hours or during off-peak months. Further, while the approach advocated by PG&E might result in less replacement capacity being required, it would provide no assurance of system reliability during the off-peak hours when many planned outages are taken. PG&E simply ignores the fact that reliability problems can and do arise in non-peak hours. Assuming that they will not occur is unreasonable and unsustainable, and that is why PG&E's suggested modification should be rejected.

2. A Requested Change To An Approved Maintenance Outage That Increases The Capacity Or Duration Of The Outage Should Be Treated As a New Outage Request

The other step at issue involves the ISO's identification of which RA capacity scheduled for an approved maintenance outage requires replacement, based on the reverse order of the dates on which the outage requests were received. The RA capacity subject to the most recently requested approved maintenance outages will require replacement before the RA capacity subject to approved maintenance outages

that were requested on earlier dates. Any request for a change to an approved maintenance outage that extends the scheduled duration of the outage or increases the MW amount of capacity subject to the outage will be treated as a new outage request.¹⁶

In its comments, PG&E contends that the ISO should not treat a requested change to an approved maintenance outage as a new outage request in instances where the change will increase the MW of capacity on outage or the duration of the scheduled outage. PG&E contends that converting the change to a new outage request would cause the load serving entity to replace the entire outage even if the initial request had been approved. PG&E suggests that the Commission modify the proposal so that only the incremental change to the outage requires replacement capacity.¹⁷

PG&E misunderstands the ISO's proposal. Under proposed new Section 9.3.1.3.2.3(d), the request for the change to an approved maintenance outage that increases the MW amount or length of the outage will be treated as new outage request for purposes of determining the order of outage replacement. This language applies **only** to a request for an incremental change to the outage that was submitted in advance of the RA plan. The underlying request for the approved maintenance outage is unaffected by the proposal, and will be considered for outage replacement based on the date that the initial outage request was submitted. Therefore, the modification PG&E proposes to the ISO's proposal is unnecessary.

¹⁶ The proposed process for determining the replacement requirement for each load serving entity's monthly RA plan is described in detail in the ISO's transmittal letter, pp. 26-31.

¹⁷ PG&E Motion to Intervene and Comments, pp. 4-5.

3. The Replacement Requirement Will Not Cause Uncertainty Due To Last Minute Replacement Determinations

SDG&E criticizes the ISO's proposal "first and foremost" because it believes the proposed tariff modifications will "render the sufficiency and/or costs of SDG&E's resource-adequacy procurement activities and demonstrations utterly uncertain." SDG&E asserts that the sufficiency of its RA demonstrations will be subject to last minute replacement determinations made by the ISO and caused by supplier-requested maintenance outages.¹⁸

SDG&E's assertions are not correct. Under new Tariff Sections 9.3.1.3.1.1 and 9.3.1.3.1.2, a load serving entity's responsibility for replacing capacity in a monthly RA plan extends only to the RA capacity included in its plan that is scheduled to take a maintenance outages during the month or has a pending request for a maintenance outage, as of the time the plan is submitted, which must be at least 45-days in advance of the RA month. The load serving entity is not responsible to replace any maintenance outages at RA resources that are requested by suppliers after the plans have been submitted. Under revised Section 40.7, the ISO must evaluate the monthly RA plans and perform its replacement determination, and provide notification whether outage replacement is required at least 25 days in advance of the first day of the month covered by the plan. Accordingly, SDG&E will know at least 25 days in advance of the RA month whether any of the RA capacity in its RA plan is subject to an outage replacement requirement. If the ISO determines that there is a replacement requirement SDG&E will have an opportunity up to 11 days in advance of the month to demonstrate that the outage replacement requirement has been cured. If replacement

¹⁸ SDG&E Motion to Intervene and Protest, pp. 5-6.

has not been made, the ISO may thereafter procure RA maintenance outage backstop capacity.

The ISO submits that the proposed timeline under which SDG&E will be notified whether it has a replacement requirement at least 25 days in advance of the RA month hardly rises to the last minute rush and heightened level of uncertainty that SDG&E postulates. The ISO also notes that the proposed timeline will provide significantly earlier notice than is provided today if the CPUC determines that a unit included in the RA showing requires replacement

4. The Replacement Requirement Does Not Apply The Planning Reserve Margin As An Hourly or Daily Operating Requirement

SDG&E finds fault with the ISO's proposed use of the RA reliability margin to assess resource adequacy. SDG&E claims that the ISO has transmuted the 115 percent planning reserve margin into an hourly and daily operating requirement.¹⁹ J.P. Morgan is concerned that the ISO's proposal is an indirect attempt to increase the reserve margin in order to ensure that additional capacity is available to operate the system.

Those concerns are neither the intent nor the effect of the ISO's proposal. The RA reliability margin represents the ISO system forecast monthly peak demand, plus a reserve margin of 15 percent of the forecast monthly peak demand, based on the forecast prepared by the California Energy Commission. That is the standard the CPUC uses to establish the RA requirement for each jurisdictional load serving entity. The ISO proposes to continue using that standard in its replacement determination as an objective measure to ensure in advance of the RA month that each load serving

¹⁹ SDG&E Motion to Intervene and Protest, pp. 9-10.

entity has met its CPUC RA requirement with operationally available RA capacity. The standard is not used as an hourly or daily operating requirement. If it were applied as a firm operating requirement, there would be little room to accommodate off-peak opportunity outages or short-notice opportunity outages, or to exercise its discretion in procuring RA maintenance outage backstop capacity.

5. The Option For Load Serving Entities To Submit A List Of Specified and Non-Specified RA Replacement Capacity Should Be Retained

SDG&E's next complaint is aimed at the option in the ISO's proposal for load serving entities to submit a list of specified replacement capacity and non-specified replacement capacity for the ISO's use to replace the unavailable RA capacity of the load serving entity that submitted the list. SDG&E claims this option suggests load serving entities should procure RA resources in excess of their RA requirements, which evidences a lack of appreciation by the ISO for the compliance burdens it is creating for load serving entities.²⁰

SDG&E mischaracterizes this option. The ISO offered the option for load serving entities to provide specified replacement capacity and non-specified replacement capacity as a cost saving measure. Based on input from certain load serving entities, the ISO understands that some load serving entities manage a portfolio of possible RA resources they have already procured but not designated as RA capacity in a particular month, and that they would prefer to use such resources as replacement capacity rather than be forced to procure additional RA replacement capacity or have the ISO procure backstop capacity. Accordingly, this option is cost-effective and promotes cost savings by eliminating unnecessary procurement.

²⁰ SDG&E Motion to Intervene and Protest, p. 13.

Additionally, the capacity included on the lists of specified and non-specified capacity does not subject that capacity to must offer rules and potential non-availability charges unless it is actually selected as replacement capacity, which should help load serving entities better manage their RA portfolios and costs.

If this option does not fit SDG&E, it may chose not to submit any specified or non-specified replacement capacity. The option should be eliminated from the replacement requirement provisions.

6. The Replacement Requirement Will Not Cause Outage Replacement Because Too Many Maintenance Outages Have Been Approved

SDG&E offers further criticism of the replacement requirement on the grounds that it will obligate load serving entities to replace RA capacity on a maintenance outage in instances when the ISO has approved maintenance outages to such a level that total available system resources for the day fall below the 115 percent planning reserve margin for that month.²¹

Once again, SDG&E's criticism is misplaced. The ISO will not base its daily replacement determination on total available system resources in comparison to 115 percent of the peak demand for the month. Under new Section 9.3.1.3.2.3, the replacement determination is mathematic, but the comparison is limited to RA capacity. For each day, the ISO will calculate the system total available RA capacity provided in the monthly RA plans and compare that MW amount to the 115 percent RA reliability margin. When the system total available RA capacity provided in the RA plans is less than the ISO system RA reliability margin, the ISO may require replacement of the RA

²¹ SDG&E Motion to Intervene and Protest, pp. 7-8.

capacity scheduled to take an approved maintenance outage that day.

Further, as the operating month gets closer, and it is possible to have more accurate forecasts and a better knowledge of expected outages of generation and transmission, the ISO proposal includes provisions for allowing some outages even if the system level of resources might dip below the 115 percent RA reliability margin -- off-peak opportunity outages and the short-term opportunity outages. Both of these provisions recognize that closer to the operating day it may be possible to relax the 115 percent for certain days and/or hours.

7. The Replacement Requirement Will Not Undermine Development Of A Tradable Standard Capacity Product

SDG&E additionally complains that the ISO's proposal will undermine development of the standard capacity product and the benefits it might otherwise deliver. It views the division of the replacement requirement between load serving entities and suppliers as an impediment to achieving a tradable capacity product and a complication in the negotiation of RA contracts.²²

The ISO does not agree that the replacement requirement proposal, which is primarily an outage management tool to help maintain grid reliability, will slow progression toward a tradable RA capacity product. Indeed, the ISO believes that the converse is true. While the CPUC replacement rule placed all of the responsibility on the load serving entities, the ISO's proposal divides responsibility between the load serving entities and the suppliers. Under the proposal, the responsibility for outage replacement rests with the load serving entity only until its RA plan is submitted 45 days in advance of the RA month. Thereafter, responsibility shifts to the supplier for any

²² SDG&E Motion to Intervene and Protest, pp. 6, 12-14.

additional requests to schedule or change a maintenance outage through the end of the RA month. This shift should enable the RA obligation to be more fungible because, regardless of which load serving entity may purchase the resource's service, the supplier remains responsible for outages that occur intra-month. This is a definite step toward greater tradability of RA capacity.

C. RA MAINTENANCE OUTAGE BACKSTOP CAPACITY PROCUREMENT

1. RA Maintenance Outage Backstop Procurement Does Not Conflict With The Capacity Procurement Settlement

NRG protests the ISO's proposed RA maintenance outage backstop procurement authority on the grounds that it "abandons" the capacity procurement mechanism ("CPM") that the parties agreed to in the settlement and that the Commission approved by order issued on February 16, 2012.²³ In particular, NRG claims that the proposal to designate RA maintenance outage backstop capacity for a period from one day to one month replaces the CPM provisions and is a collateral attack on the 30-day term for an exceptional dispatch CPM designation for a system reliability need and 60-day term for a non-system exceptional dispatch CPM designation that were approved as part of the settlement.²⁴

NRG's argument lacks any factual support or legal foundation. It is not supported by the plain language of the settlement documents that were approved in the CPM proceeding, nor by the fact that engaging in short-term backstop procurement to replace RA capacity on a maintenance outage was not proposed or considered in the CPM proceeding. Further, the proposed RA maintenance outage backstop authority

²³ NRG Motion to Intervene and Protest (October 11, 2012), p.1.

²⁴ *Id.* at p. 4.

does not replace the existing CPM provisions; it is a new backstop procurement tool in addition to the CPM designation categories that existed at the time of the CPM Settlement. .

In that regard, on December 23, 2011, the ISO filed an uncontested Offer of Settlement in *California Independent System Operator Corporation*, Docket No. ER11-2256-000, that resolved all issues raised by the parties in that proceeding²⁵ with regard to the ISO's proposed tariff modifications to implement CPM procurement authority and retain market mitigation measures applicable to certain types of exceptional dispatches.²⁶ The Explanatory Statement that accompanied the Offer of Settlement contained express language to prohibit any change, during the four-year term of the settlement, to the price, quantity, and term provisions in the settlement for capacity procurement that was subject to Tariff Section 43 as it existed at the time the Commission approved the settlement.²⁷ The Explanatory Statement also contained express language to make clear that the ISO could propose new capacity procurement during that four-year period and that the terms of the new capacity procurement could be same or different than the CPM provisions agreed to in the settlement.²⁸ The

²⁵ NRG was a party in the CPM proceeding and was identified in the Offer of Settlement as a party that either supported or did not oppose the settlement.

²⁶ *Cal. Indep. Sys. Operator Corp.*, 138 FERC ¶ 61,112 (2012).

²⁷ Specifically, the Explanatory Statement provided that: . . . "nothing in this Offer of Settlement is intended to prejudice or limit the CAISO's authority to make a filing with the Commission pursuant to section 205 of the Federal Power Act ("FPA"), or other parties' exercise of their rights under FPA section 205 or 206, regarding any capacity procurement that is not subject to Section 43 of the CAISO Tariff, as it exists as of the Settlement Order Date, and to propose for such new CPM Capacity procurement any compensation or other provisions, which may be the same as or different from the Revised Tariff Provisions." (Emphasis added.)

²⁸ *Ibid.*

Commission's February 16, 2012 order²⁹ approved the settlement in its entirety, without modification.

The RA maintenance outage backstop procurement proposed in the instant filing falls squarely within the language and intent of the Explanatory Statement, as approved by the Commission. RA maintenance outage backstop procurement did not exist in Tariff Section 43 at the time the settlement was approved. This is a request by the ISO for new backstop authority. As such, the Explanatory Statement is quite clear that the CPM settlement does not limit the ISO's rights pursuant to Federal Power Act Section 205 for new backstop capacity procurement, nor dictate the price, quantity, or term of the new backstop mechanism.

In addition, given that the RA maintenance outage backstop proposal is for a new type of backstop authority, it is difficult to construe how the ISO's proposal represents a collateral attack on the term length of an exceptional dispatch CPM designation that the Commission approved in CPM settlement decision. A collateral attack is an attempt by party to reverse a prior decision through a subsequent proceeding rather than a direct appeal.³⁰ That doctrine does not apply here. The ISO's proposal does not assail the previous decision. The decision does not discuss a replacement requirement for RA resources with a planned outage during the RA month nor backstop authority for the ISO to procure capacity to replace RA capacity on a maintenance outage. This is an entirely new category of backstop and provides potential additional capacity payments for suppliers that did not exist heretofore.

²⁹ *Cal. Indep. Sys. Operator Corp.*, 138 FERC ¶ 61,112 (2012).

³⁰ *New England Conf. of Pub. Utils. Comms. v. Bangor Hydro-Electric Co.*, 135 FERC ¶ 61,140, at P 27 (2011); *Wall v. Kholi*, 131 S. Ct. 1278, 179 L. Ed. 2d 252, 2011 U.S. LEXIS 1906 at *12 (2011).

In sum, NRG is in effect arguing that the ISO's proposed term length for the new RA maintenance outage backstop mechanism represents a collateral attack on a decision that did not address such authority and that expressly recognized the ISO's 205 rights to propose new backstop capacity procurement with a price, quantity, or term different than the provisions that were approved in the decision. This argument lacks any basis in fact, law, or logic and must be rejected.

2. Procuring RA Maintenance Outage Backstop Capacity Only For The Duration Of The Replacement Need Is Appropriate And Will Avoid Over Procurement

The ISO has proposed new Tariff Section 43.10.1 to establish authority for the ISO to procure RA maintenance outage backstop capacity services on each day during the resource adequacy month where the ISO determines that the applicable replacement criteria have not been met.³¹ Under new Tariff Section 43.10.3, the term of an RA maintenance outage backstop capacity designation will be a minimum commitment of one day and a maximum commitment of 31 days, based on the replacement requirement determined by the ISO.

The purpose of the proposed RA maintenance outage backstop procurement is to replace RA capacity on an approved maintenance outage, as needed each day, in order to ensure that ISO system total available RA capacity meets the RA reliability margin. By defining the replacement requirement based on a daily reliability need determination, the horizon of the backstop is the short-term. The ISO's proposal aligns

³¹ Proposed Section 43.10.1 states that the criteria are: "(i) the CAISO determines that the criteria set forth in Section 9.3.1.3.2.3(b) is not met, (ii) the Load Serving Entity's monthly Resource Adequacy Plan includes Resource Adequacy Capacity scheduled to take an Approved Maintenance Outage, (iii) such unavailable capacity was not replaced with RA Replacement Capacity pursuant to Sections 9.3.1.3.1 or 9.3.1.3.2, and (iv) the Load Serving Entity's monthly Resource Adequacy Plan fails to demonstrate operationally available Resource Adequacy Capacity equal to or greater than the Load Serving Entity's applicable forecasted monthly Demand and Reserve Margin."

the term of the designation with that short-term horizon. This alignment is appropriate to ensure that operationally available backstop capacity is procured to meet the otherwise unreplaced reliability need each day, while avoiding over-procurement of RA capacity on days where the reliability criteria have already been met. The ISO intends that limiting the backstop procurement to the narrow outage replacement need will control and minimize procurement costs.

NCPA supports the backstop term proposed by the ISO. NCPA believes that backstop capacity procurement should occur infrequently, but when necessary should minimize costs to customers while maintaining the reliability of the grid. NCPA believes that the term of backstop procurement should be limited to the replacement period for the outage.³² NCPA recognizes that allowing the ISO to procure backstop capacity by day will avoid the cost of over-procuring backstop capacity for an entire RA month when only a single day of backstop capacity is needed to support reliable operations.³³

NRG and J.P. Morgan oppose the term of this backstop designation being based on a daily replacement need. They instead favor the 30-day term (system reliability need) and 60-day term (non-system reliability need) that apply to an exceptional dispatch CPM designation as approved in the CPM settlement. The ISO submits that their arguments do not hold up under scrutiny.

NRG asserts that proposed Tariff Section 43.10.3 would authorize the ISO to procure replacement capacity from “a resource without an RA contract” for a period as short as a single day, which “effectively forces a non-RA resource to provide

³² NCPA Motion to Intervene and Comments, p. 5.

³³ *Id.* at p. 2.

emergency backstop capacity without compensation.”³⁴ NRG’s assertions are incorrect, and completely overlook the new revenue opportunity that the proposed RA maintenance outage backstop service will provide. The RA maintenance outage backstop will be a new service, in addition to the existing CPM designation categories. To the extent an approved RA maintenance outage must be replaced, in whole or part, through backstop procurement in order to maintain the RA reliability margin, the resource that receives the designation will be compensated for the service. This constitutes a new opportunity for suppliers to earn capacity payments. Also, their acceptance of a designation remains voluntary. To the extent they decline, they potentially could receive an exceptional dispatch CPM designation if the reliability conditions arise that warrant such a dispatch.

NRG is not correct that the backstop capacity must be procured from a resource without an RA contract. Under proposed Section 43.10.2, the ISO must designate RA maintenance backstop capacity from operationally available capacity, for example, the capacity is not already under an RA obligation, an RMR contract, or a CPM designation during the replacement period. This language does not prohibit a resource that is a partial RA resource from receiving an RA maintenance outage backstop designation. There is a difference between a non-RA resource and non-RA capacity. A partial RA resource with net qualifying capacity of 400 MW and an RA contract for 100 MW of capacity is eligible to receive an RA maintenance outage backstop designation for its remaining 300 MW of non-RA capacity.

NRG is also not correct that a resource is forced to provide backstop capacity.

³⁴ NRG Motion to Intervene and Protest, p. 4.

Under proposed Section 43.10.4, the decision to accept an RA maintenance outage backstop capacity designation is voluntary for the scheduling coordinator of the resource. The scheduling coordinator is free to exercise its judgment and discretion in deciding whether to accept or decline the proffered designation believes, and take into account whatever factors it considers relevant to making that decision, including the adequacy of the compensation

NRG argues that the proposal to determine the term of the designation by day is inconsistent with the ISO's requirement that load serving entities provide RA replacement capacity in their RA plans for an entire month.³⁵ NRG's argument mischaracterizes the ISO's proposal.

The RA requirement established by the CPUC is monthly, however, there is no requirement in the ISO's proposal that load serving entities provide RA replacement capacity in their RA plans for the entire month. The ISO's expectation is that the monthly RA plans will include resources that, at the time the load serving entity makes its filing, are expected to be operationally available to the ISO throughout the month. To the extent that a resource included in a monthly RA plan as RA capacity is scheduled for an approved maintenance outage for all or portion of its capacity during the resource adequacy month, the proposed tariff language indicates that the capacity scheduled for outage is not operationally available to the ISO and may be required to be replaced with capacity from another resource that is operationally available in the amount and for the duration of the scheduled outage during that month, as discussed in Sections 9.3.1.3.2.2 through 9.3.1.3.2.5. Since there is no requirement for monthly replacement, the inconsistency NRG alleges between the replacement requirement for load serving

³⁵ NRG Motion to Intervene and Protest, p. 6.

entities and the term of the backstop designation is does not exist.

It is important to note that the ISO is not treating the designation term for backstop replacement CPM capacity any differently than it is treating the designation term for load serving entities that provide their own replacement capacity. To meet their RA obligations, load serving entities are only required to provide replacement capacity for the number of days the original RA unit is on a planned outage; similarly, when the ISO procures backstop capacity for replacement, it will only procure such capacity for the expected duration of the planned outage. Thus, there is symmetry between the treatment of RA capacity and non-RA backstop capacity procured by the ISO. Non-RA capacity should not be treated more favorably than RA replacement capacity because that potentially could create a disincentive for non-RA units to seek partial month RA contracts, knowing they might get a better deal by holding out for a full month of backstop replacement. That would be inconsistent with FERC's prior orders that RA and backstop capacity be treated comparably under similar circumstances.³⁶ Further, the ISO stresses that no other supplier has objected to the fact that backstop replacement capacity is only for the expected term of the outage. This is an additional opportunity for suppliers to earn capacity payments, and they are not obligated to accept a designation if they do not so desire.

NRG further argues that the RA maintenance outage backstop authority is unnecessary because the ISO has other mechanisms to obtain replacement capacity during a scheduled outage. NRG suggests that the lists of specified and non-specified replacement capacity that a load serving entity may include with its plan and the opportunity to cure any deficiency in an RA plan make it unlikely that the ISO will ever

³⁶ *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,211 (2011), P124-144.

have to use less than 30-day backstop procurement so setting the term of the designation at 30 days would not impact the effectiveness of the proposal nor impose unnecessary costs on load serving entities.³⁷

The ISO does not agree with NRG's logic. The ISO included the opportunity for load serving entities to offer specified and non-specified replacement capacity and the opportunity to cure deficiencies in its proposal in an effort to minimize the instances in which the ISO may need to exercise RA maintenance outage backstop procurement. However, the ISO does not believe that minimizing the frequency that backstop procurement may occur justifies a term length for the designation that is longer than the replacement requirement determined necessary by the ISO. This is a non sequitur in NRG's argument that NRG failed to explain.

J.P. Morgan's comments express concern that the shorter term of an RA maintenance outage backstop designation may undermine the balance of burdens and benefits reached in the CPM settlement and cause the ISO to inappropriately rely on this backstop mechanism rather than the existing CPM provisions in the tariff.³⁸ NRG's comments allege that the proposed RA maintenance outage backstop authority and the existing CPM provisions do not differ enough to warrant different designation lengths.³⁹

The ISO's response to these contentions is the same. As discussed above, the RA maintenance outage backstop is a new and totally distinct category of backstop, in addition to the existing CPM designation categories. The RA maintenance outage backstop, as its name implies, is limited in scope and can only be used when the ISO

³⁷ NRG Motion to Intervene and Protest, p. 8.

³⁸ J.P. Morgan Motion to Intervene and Comments, pp. 8-9.

³⁹ NRG Motion to Intervene and Protest, p. 6.

determines, in advance of the RA month and under criteria set forth in the tariff, that there is a replacement need for all or part of an approved RA maintenance outage that is scheduled to be taken during the month. The existing CPM designations do not already cover the replacement requirement for RA maintenance outages; otherwise there would be no need for the proposed backstop authority.

Without an overlap between the backstop mechanisms, the implementation of the RA maintenance outage backstop authority will not present the opportunity J.P. Morgan postulates where the ISO could rely on that designation to address a reliability need that rightfully falls under the existing CPM designation categories. With the distinct differences between the designation types, NRG's argument for identical terms is unsupported. Stated differently, there is no possibility that the ISO can rely on this new and limited backstop authority to displace CPM designations under the existing CPM designation categories.

D. APPLICATION OF REPLACEMENT REQUIREMENT TO CHP RESOURCES

EPUC and CAC claim that the ISO is imposing a replacement obligation on combined heat and power ("CHP") resources, and this alleged obligation would impose an onerous burden and be unjust and unreasonable. They request that the Commission exempt from the proposed tariff requirements resources that have unit contingent contracts or that are subject to the *pro forma* contracts the CPUC recently approved as part of the global settlement reached between the utilities and the CHP

and qualifying facilities.⁴⁰ The ISO does not believe that the requested exemption is warranted.

1. The Proposed Tariff Amendments Are Not Unjust and Unreasonable As Applied to CHP Resources

In support of their request, EPUC and CAC first argue that the ISO's proposal is unjust and unreasonable as applied to CHP resources. They claim that the ISO is imposing a replacement obligation on them and that such a requirement is inconsistent with the global settlement contracts which purportedly prohibit a CHP generator from replacing its energy while in an outage state and require six-month advance notice of major outages, one-week advance notice of outages longer than 24 hours, and 24-hour notice of outages less than 24 hours.⁴¹

To support their claim that the ISO is imposing a replacement obligation on them CAC and EPUC cite the proposed language in new Tariff Section 9.3.1.3.3.1, which they claim "requires a generator requesting CAISO approval of a planned outage to accompany that request with 'RA Replacement Capacity in an amount no less than the Resource Adequacy Capacity designated for the duration of the scheduled outage....'" EPUC and CAC misunderstand and misrepresent the ISO's proposal.⁴² The tariff section upon which EPUC and CAC base their argument (as well as related tariff sections) do not mandate suppliers to provide replacement capacity when they request

⁴⁰ *Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Procurement Obligations*, CPUC Decision 10-06-036 (June 24, 2010), pp. 31-35; and *Application of Southern California Edison Company (U338E) for Applying the Market Index Formula and As-Available Capacity Prices Adopted in D.07-09-040 to Calculate Short-Run Avoided Cost for Payments to Qualifying Facilities Beginning July 2003 and Associated Relief, and Related Matters*, CPUC Decision 10-12-035 (December 16, 2010).

⁴¹ EPUC Motion to Intervene and Protest and CAC Motion to Intervene and Protest, pp. 5-6.

⁴² *Id.* at 2-3.

a maintenance outage. Indeed, the tariff section to which CAC and EPUC cite is titled *RA Maintenance Outage Requirements With Replacement*. That tariff section only applies in instances in which the supplier seeks a maintenance outage and opts to provide replacement capacity with its request. However, as that tariff section and other sections immediately following it expressly recognize, suppliers may also request a maintenance outage without providing replacement capacity. For example, new Tariff Section 9.3.1.3.3.2 expressly provides that suppliers may seek off-peak opportunity RA maintenance outages “without a requirement to provide RA replacement capacity for the unavailable capacity during the term of the outage.” Likewise, new Section 9.3.1.3.3.3 expressly recognizes that suppliers may submit a request for a short-notice opportunity RA maintenance outage that “does not provide replacement capacity.”.

Thus, there is no requirement that suppliers submit replacement capacity with their outage requests. That is merely one option available to suppliers to facilitate ISO approval of their maintenance outage request. If a supplier fails to provide replacement capacity with an outage request, that does not mean their maintenance outage request will be automatically denied. The ISO Outage Coordination Office will review each opportunity outage request and determine whether and when it can be accommodated

Accordingly, the proposed tariff amendments do not cause suppliers to lose any current opportunities they have to request maintenance outage requests. The only relevant changes that the ISO is proposing is to re-define the timing and the outage request opportunities, and relaxing the standard that the ISO will apply to determine whether an opportunity RA maintenance outage can be granted. In their protest, EPUC and CAC do not object to that new standard or to the re-defined outage request

opportunities. Therefore, there is no basis for the Commission to grant EPUC's and CAC's request for an exemption.

The proposed tariff provisions are more than sufficient and flexible to accommodate these outage requests without any financial consequences to the CHP resource. Under the ISO's proposal, if a CHP resource schedules its major maintenance outages six months in advance of the outage start, the outage replacement responsibility would fall to the load serving entity. If the CHP resource schedules a short-notice opportunity outage or an off-peak opportunity outage for the remainder of its maintenance outages, those outage types have no replacement requirement. The ISO will endeavor to accommodate such outages upon request by any RA resource, including a CHP generator. The claim by EPUC and CAC that there would be additional and potentially significant cost burdens on CHP generators is, therefore, not correct. The CHP resources, like other RA resources, can avoid any replacement obligation by effectively managing how and when they schedule maintenance outages.

2. The Replacement Requirement Is Based On Maintenance Outages, Not Unit Contingency Characteristics

EPUC and CAC next assert that the replacement requirement will impose a resource adequacy product on CHP resources that is different than the service contemplated under the ISO Tariff. They claim that the replacement requirement fails to recognize their nature as unit contingent resources, which do not have an obligation to deliver energy separate from the energy delivered to the host and provide RA capacity as part of that generation.⁴³

⁴³ EPUC Motion to Intervene and Protest and CAC Motion to Intervene and Protest, pp. 6-7.

Again, EPUC and CAC have not accurately portrayed the ISO's proposal. There is nothing in the proposal that would obligate a unit contingent resource to replace RA capacity in instances where its output is reduced because the industrial host reduces energy consumption or changes production periods. The unit contingent nature of the resource is not a factor in determining a CHP's availability for purposes of providing replacement capacity. The ISO's proposal addresses only maintenance outages, where the RA capacity will be unavailable to the ISO because the resource is scheduled to take a maintenance outage during the RA month. In this regard, there is no difference in the operational characteristics between CHP resources and all other RA resources – they all take maintenance outages.

3. The Proposed Tariff Revisions Do Not Impose Undue Financial and Operational Burdens on Generators

EPUC and CAC further argue that the proposal would impose significant financial and operational burdens on generators, and should instead be placed on load serving entities. EPUC and CAC state that their global settlement contracts have penalties for maintenance outages, and that the ISO's purported imposition of a replacement obligation will impose duplicative expenses on them. EPUC and CAC also state that their global settlement contracts have provisions regarding maintenance outages and the amount of notice that the seller must provide to the buyer under such contracts.

These claims are misplaced. First, as indicated above, the ISO is not requiring CHPs, or any other supplier, to replace their capacity. Second, no "duplicative" standard capacity product charges are being imposed on CHPs or any other supplier. Under the existing tariff, SCP charges only apply to forced outages, and the ISO is not proposing to change that structure in this tariff amendment. To the extent that CAC and

EPUC are suggesting that the ISO is proposing to impose SCP charges for maintenance outages, they misstate the ISO proposal. Because the charges CHPs allegedly face under their contracts apply to maintenance outages, and SCP applies only to forced outages, there is no duplication.

In support of their claims, CAC and EPUC refer to one resource which purportedly reported a 40 percent reduction to monthly revenues due to a four-day outage under the standard capacity product.⁴⁴ Not only does that claim fail to mention the name of the resource or provide any supporting data, it is wholly irrelevant for purposes of evaluating the instant tariff amendment proposed by the ISO. The Commission has already found that it is just and reasonable to impose SCP charges on CHP resources that do not perform due to forced outages. Further, CAC's and EPUC's example is based on a mischaracterization of the ISO's proposal because the ISO is not proposing any non-availability charges for maintenance outages.

Thus, the ISO's proposal does not impose new undue financial charges on suppliers. Interestingly, CAC and EPUC are the only suppliers that even attempt to raise these unsupported claims.

In addition, although the global settlement contracts may include certain provisions for providing notice of maintenance outages to the buyer, that does not remove those CHP suppliers that are providing RA capacity and participating in the ISO's markets from following the ISO's maintenance outage tariff provisions. Stated differently, a party cannot avoid compliance with the ISO tariff by simply executing a contract with a third-party that purportedly eliminates any obligation to follow the ISO tariff. In any event, the Pro Forma Agreement for CHP Facilities Request for Offers

⁴⁴ EPUC Motion to Intervene and Protest and CAC Motion to Intervene and Protest, p. 7.

Program that EPUC and CAC provided to the ISO for review during the stakeholder initiative obligates them to follow the ISO tariff. For example, with respect to its RA capacity, Section 3.02 requires the seller to “take all reasonable actions (including *complying with all current and future CAISO tariff provisions...*” (emphasis added). Similarly, in Section 3.06 of the *pro forma* global settlement contract, which governs the seller’s relationship with the ISO, the Seller agree that “throughout the Term, Seller shall comply with all applicable provisions of the ISO tariff.” Under these circumstances, there is no basis for CAC and EPUC to claim that the ISO’s proposal violates their settlement contracts or imposes some undue, unanticipated or impermissible burden on them.

Finally, as discussed above, generators can avoid any financial consequences through effective management and scheduling of their maintenance outages. Judicious outage management will obviate the concern that EPUC and CAC raise that CHP resources will need to establish a procurement department or enter the market in search of replacement capacity.

4. The ISO’s Decision Not To Exempt CHP Resources From The Proposal Is Appropriate

EPUC and CAC admit that they “diligently pursued” their request for an exemption from the replacement requirement “throughout the stakeholder process” but in their protest complain that they were denied effective participation because the ISO’s decision not to grant the exemption was made during the portion of the process related to tariff language development.⁴⁵ The ISO assures EPUC and CAC that it received and considered their comments during the stakeholder process. The ISO discussed and

⁴⁵ EPUC Motion to Intervene and Protest and CAC Motion to Intervene and Protest, pp. 8-10.

resolved the issue whether to grant or deny the requested exemption during the phase of the stakeholder process in which tariff language was developed. This issue, along with other stakeholder issues and implementation questions, was discussed during stakeholder conference calls, in EPUC's and CAC's written comments, and in additional conversations between the ISO and EPUC and CAC. The issue was fully aired and EPUC and CAC fully participated in the discussion.

EPUC and CAC accuse the ISO of engaging in rhetoric in attempting to minimize the impact of the proposal on CHP resources.⁴⁶ The ISO does not agree with that characterization. The ISO's transmittal letter accurately describes the components of its proposal and how those components will impact RA resources, including CHP generators. The proposal simply does not have the onerous consequences or financial burden that EPUC and CAC portray.

More importantly, however, EPUC and CAC have failed to provide sufficient justification for CHP resources to be exempt from the proposed tariff provisions. Neither the unit contingent nature of their operation nor the provisions (or absence of provisions) in their settlement contracts justify treating the CHP resources differently than other RA resources. The ISO's proposal in general, and the options offered for RA resources to schedule maintenance outages without providing replacement capacity, are not inconsistent with the outage provisions in the settlement contracts. Importantly, CAC and EPUC raise no objections regarding the ISO's proposal with respect to the scheduling of maintenance outages where no replacement capacity is provided. EPUC and CAC fail to even acknowledge the existence of these outage request opportunities that do not require replacement capacity, and make no attempt to argue that they are

⁴⁶ EPUC Motion to Intervene and Protest and CAC Motion to Intervene and Protest, p. 9.

inadequate. Similarly, EPUC and CAC raise no objections to the ISO's proposed standard for evaluation maintenance outage request. Under these circumstances, the exemption should be denied.

III. CONCLUSION

For the reasons discussed above, the ISO requests that the Commission accept the replacement requirement tariff amendment without change.

Respectfully submitted,

/s/Beth Ann Burns

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Dated: October 22, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service lists in the above-referenced proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 22nd day of October 2012.

1st Anna Pascuzzo

Anna Pascuzzo