

Joint Proposal of Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company to Exempt Certain Qualifying Facilities from Standard Capacity Product Requirements

June 9, 2011

I. Overview of Joint Proposal

Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), and Southern California Edison Company (SCE) (together, the investor-owned utilities or IOUs) recommend that Scheduling Coordinators (SCs) be exempt from the California Independent System Operator's (CAISO) Standard Capacity Product (SCP) Phase II requirements for certain Qualifying Facility (QF) Resource Adequacy (RA) resources operating under contracts executed pursuant to the Public Utility Regulatory Policies Act (PURPA). These certain QF contracts are those currently "grandfathered" from SCP II non-availability charges and availability incentive payments under the CAISO's Tariff (*i.e.*, QF contracts signed before August 22, 2010), as well as extensions of those QF contracts ordered by the California Public Utilities Commission (CPUC).

The IOUs request that the grandfathered QF contracts and CPUC-mandated extensions, including extensions that were put into place by the CPUC after the SCP II grandfathering date, be exempt from SCP II's forced outage reporting requirements. The IOUs also request that the exemption from SCP non-availability charges and availability incentive payments be extended to all CPUC-mandated extensions, and not be limited to those extensions that were put into place by the CPUC before the SCP II grandfathering date. The grandfathered QF contracts and the CPUC-mandated extensions contain contract terms that were drafted and signed prior to the development and approval of the SCP II Tariff provisions and which do not require QFs to provide the type of forced outage information specified in the Tariff to their SCs. Therefore, these contracts merit the same treatment.

II. Background

In its August 20, 2010 order (SCP II Order), the Federal Energy Regulatory Commission (FERC) accepted the CAISO's proposed SCP II Tariff revisions which, in part, extended the CAISO's SCP Tariff provisions to the SCs of QF RA resources. The SCP II provisions include forced outage reporting requirements as well as non-availability charges and availability incentive payments for the SCs of some QF RA resources, the extent of which vary depending upon the category type of QF RA resource.

QF resources can be put into three categories:

- “Grandfathered” (QF resources operating under contracts executed prior to August 22, 2010),
- “CPUC-extended” (QF resources operating under contracts executed prior to August 22, 2010, but extended as required by the CPUC¹ after August 22, 2010², until a date that is at least 120 days after the effective date of the QF Settlement³), and
- “New” (QF resources operating under contracts executed after August 22, 2010.⁴)

Grandfathered QF RA resources are already exempt from the non-availability charges and availability incentive payments per the SCP II Order; the CPUC-extended and New QF RA resources are not. Under the SCP II Order the forced outage reporting requirement still applies to all types of QF RA resources.

The contracts for Grandfathered and CPUC-extended QF RA resources were drafted and signed prior to the development and approval of the SCP II tariff provisions, and they do not include provisions that would require the resources to provide the IOUs, who act as SCs for these resources, with the information mandated by the CAISO SCP II Tariff. As a result, it would be virtually impossible for the IOUs to comply

¹ CPUC Decision 07-09-040, Finding of Fact 46: “It is reasonable to allow QFs with expiring contracts to extend the non-price terms of their agreements and continue to provide service under the pricing set forth in this decision **until such time as the prospective QF Program contracts options are available.**” (Emphasis added.)

² Some of CPUC Decision 07-09-040 contract extensions occurred *prior* to August 22, 2010, as such, those are included in the CAISO’s definition of “grandfathered” contracts. For the purposes of this white paper, the term “CPUC-extended” only applies to extensions which occurred *after* August 22, 2010, which are not exempt from the CAISO’s non-availability charges and availability incentives per the CAISO Tariff.

³ The QF Settlement, which was negotiated by independent energy producers representing the combined heat and power (CHP) QFs, IOUs, and ratepayer/consumer advocate groups, is intended to resolve existing disputes and address future issues associated with CHP. After the QF Settlement becomes effective, there will be four new power purchase agreements that will be used for future CHP and QF purchases. The new contracts comply with the SCP II requirements. The QF Settlement will become effective when two conditions have been met: 1) CPUC Decision 10-12-035, in which the CPUC approved the QF settlement, becomes final and non-appealable, which occurred on April 25, 2011; and 2) FERC issues an order, and it becomes final and non-appealable, approving the FERC application jointly filed by the IOUs on March 18, 2011 requesting termination of their mandatory obligation under PURPA to enter into new contracts with facilities above 20 MW. (Docket No. QM11-2-000) (PURPA Application). FERC is anticipated to issue a decision on the PURPA Application no later than June 16, 2011, which would become final and non-appealable the following month if there is no appeal of the FERC decision.

⁴ “New” QF contracts will have the option of signing one of the four contract forms from the QF Settlement, all of which contain contractual language requiring the counterparty to provide information to the SC in order for them to be able to comply with the CAISO’s SCP requirements, providing they meet the requirements of the individual contract forms.

with the SCP II forced outage reporting requirements.⁵

In light of this, on December 31, 2010, PG&E filed a request with FERC asking for a temporary waiver from SCP II forced outage reporting requirements for the QF resources for which it is the SC until the completion of a CAISO stakeholder process to resolve this issue permanently. On January 14, 2011, SCE filed a request seeking the same temporary waiver.

On March 31, 2011, FERC granted a temporary waiver of CAISO Tariff Sections 40.9.5 and 40.9.6, which include the SCP II forced outage reporting requirements as well as the non-availability charges and availability incentive payments, for all QF RA resources under contract with PG&E and SCE until June 30, 2011. This effectively eliminates forced outage reporting requirements and non-availability charges and availability incentive payments for all of PG&E's and SCE's QF RA resources until June 30, 2011, pending resolution of a CAISO stakeholder process to permanently resolve this issue.

III. Proposal

To address the fact that the contracts for Grandfathered and CPUC-extended QF RA resources do not enable the IOUs to comply with the SCP II forced outage reporting requirements, the IOUs propose that the CAISO modify the Tariff to:

1. Exempt SCs from the forced outage reporting requirements of Section 40.9.5 for Grandfathered and CPUC-extended QF resources, and
2. Exempt SCs from non-availability charges and availability incentive payments of Section 40.9.6 for CPUC-extended QF resources.

IV. Forced Outage Reporting Requirements of the August 2010 Approved CAISO Tariff

In the SCP II Order FERC approved CAISO Tariff revisions to extend the previously adopted SCP framework to RA resources whose Net Qualifying Capacity (NQC) value is determined by historical output (H-NQC). QF RA resources are H-NQC RA resources. Although the SCP II Tariff revisions exempt H-NQC RA resources operating under contracts signed prior to August 22, 2010 from non-availability charges and availability incentive payments, the Tariff revisions do not exempt these resources from forced outage reporting requirements.⁶ As a result, starting January 1,

⁵ The New QF PURPA form contract adopted in the QF Settlement includes provisions to allow the SC to collect forced outage information from the QF and in turn provide it to the CAISO.

⁶ CAISO Tariff Section 40.9.2(2) states that contracts with RA resources whose Qualifying Capacity value is determined by historical output that are signed prior to August 22, 2010 "will not be subject to Non-Availability Charges or Availability Incentive Payments." However, "such contracted RA capacity, except for non Resource-Specific System Resources, will be included in the development of Availability Standards and will be subject to any Outage reporting requirements necessary for this purpose."

2011, the SCs of all H-NQC RA resources were required to supply forced outage data.

The forced outage reporting rules in the CAISO Tariff Section 40.9.5 require RA resources that are greater than 10 MW to provide forced outage data consistent with Section 9.3.10 (*i.e.*, 60 minutes from occurrence), and RA resources under 10 MW to provide forced outage data within three business days after the end of the production month.⁷ Outage information must include “the start and end times of any Outages or derates, the MW availability in all Availability Assessment Hours, and the causes of any Forced Outages.”⁸ Additionally, Section 9.3.10 requires SCs to explain the forced outage and estimated return times, within two business days after a Generator Operator (GO) initially notifies the CAISO of a change in maximum output capability. Explanations must include descriptions of equipment failures and all remedial actions taken by GOs to address outages.

V. Proposal for Exemption for Grandfathered and CPUC-Extended QF Contracts

Forced Outage Reporting

The IOUs propose the CAISO modify the Tariff to permanently exempt Grandfathered and CPUC-extended QF RA resources from the SCP II forced outage reporting requirements in Tariff Section 40.9.5. As discussed further below, the IOUs have no contractual basis to require Grandfathered and CPUC-extended QF RA resources to provide outage data sufficient to meet the current SCP II requirements.

Renegotiation of over 400 contracts associated with Grandfathered and CPUC-extended QF RA resources for the IOUs combined (accounting for approximately 4,000 MW of RA capacity⁹) would involve extensive time, complexity, contentiousness, and require regulatory approval. In this context, the result would provide de minimus value for the CAISO.¹⁰

⁷ See Business Practice Manual on Reliability Requirements Section 8.4.1.1.

⁸ CAISO Tariff Section 40.9.5.

⁹ RA capacity values based upon CAISO August 2011 monthly NQC RA values.

¹⁰ The CAISO recognizes the unique challenges the QF contracts bring with respect to the SCP II reporting requirements. In an August 19, 2010, letter sent by Keith Casey, in his role as the CAISO’s Vice President of Market and Infrastructure Development to the California IOUs, the CAISO states that it “...recognizes that it may not be feasible for the ISO to require forced outage data from IOUs for resources operating under grandfathered QF contracts when those contracts do not require the QF resource owners to provide that data to the respective IOU. Moreover, we believe that the data may not provide sufficient additional value for the ISO in its annual availability calculation to justify this requirement for these resources. As a result, we propose to relax the reporting requirement.”

Non-Availability Charges and Availability Incentive Payments

The IOUs propose the CAISO modify its Tariff to provide a permanent exemption for SCs for CPUC-extended QF RA resources related to the SCP II non-availability charges and availability incentive payments in Tariff Section 40.9.6. This exemption will ensure that CPUC-extended QF RA resources that are granted an exemption from outage reporting requirements will not be eligible to receive availability incentive payments.

Pursuant to Section 40.9.2(2) of the CAISO's Tariff, Grandfathered QF RA resources are exempt from the non-availability charges and availability incentive payments. But for the different expiration date due to a CPUC directive, the contracts associated with CPUC-extended QF RA resources and with Grandfathered QF RA resources are the same and therefore should be treated the same.

New QF Contracts

The IOUs agree the New QF RA resources should be subject to the CAISO's SCP II standards of forced outage reporting and non-availability charges and availability incentive payments. All four of the contract forms from the QF Settlement will include contractual language enabling the SCs to obtain the necessary information.

VI. Reasons Supporting the IOUs' Proposal for Permanent Exemption

A. Data Reported Under Grandfathered QF Contracts, Including CPUC-Extended Grandfathered QF Contracts, Do Not Include Forced Outage Information that Meets CAISO Standards

Contract forms for Grandfathered and CPUC-extended QF RA resources were written prior to the design and implementation of the CAISO and the CAISO's outage requirements and functionality of network communications as they exist today. The contracts were based on IOU operations that existed when QFs started operating during the 1980s and 1990s. At that time, IOUs were vertically integrated and communication with QFs was coordinated through nearby local switching centers. These contract forms predate the existence of the CAISO and the present functionality of network communications. Thus, terms and conditions of these contracts do not obligate the QFs to provide the information that would be needed to satisfy the SCP II forced outage reporting requirements found in the CAISO Tariff (*e.g.*, forced outages of 10 MW or 5% of Pmax) available in real-time (*e.g.*, 60 minutes after forced outages occur) to CAISO.¹¹

¹¹ CAISO Tariff Section 40.9.5 requires "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

While some of these contracts may have provisions that allow the IOUs to obtain some outage data, these provisions do not ensure that the outage information provided will be sufficient for the SC of these resources to comply with the CAISO Tariff requirements. It is also unclear whether the IOUs would be able to properly enforce these provisions, and unclear how accurate any such information would be.

1. Information Reported by QFs Is Not Necessarily Timely

The contracts associated with Grandfathered and CPUC-extended QF RA resources do not compel the resources to provide outage information within the time frame required in the CAISO reporting requirements. Some of these contracts do not contain any deadline by which changes in operations must be reported, while others require the generator to deliver outage information within a specified number of days. Based on this timing issue alone, the IOUs would not be able to provide the outage information in compliance with the CAISO Tariff.

2. Information Reported Under QF Contracts is Not Sufficiently Specific

Although the contracts associated with Grandfathered and CPUC-extended QF RA resources usually require sellers to maintain an operating log with records of changes in operating status and outages, the contracts do not require sellers to monitor operations and report changes in generator capacity availability at the level of detail required in the CAISO Tariff. For example, some of the QF contracts simply state that the generator must maintain an operation log “with records of . . . outages.” There is no differentiation between forced or planned outage. Nor does each contract provide how an outage is defined. Moreover, there is no level of specificity required under the contract provision, or a requirement as to how the generator should maintain such information.

The outage reporting rules specified in Section 9.3.10 translate into requiring IOUs (as the SCs) to explain occurrences, describe causes of failures, communicate *all* remedial actions taken by QFs, and estimate when QFs will be returned to service. Grandfathered and CPUC-extended QF RA resources are not required to provide this information to IOUs and may refuse to do so. Alternatively, these QFs may provide some, but not all, of the required information to IOUs. As a practical matter, it would be

availability calculation for the resource in accordance with Section 40.9.4, including: the start and end times of any Outages or derates, 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.”

impossible under these circumstances for IOUs to comply with forced outage reporting requirements.

3. Information Reported Under QF Contracts is Not Necessarily Reliable or Consistent Across QFs

Even if the IOUs could obtain some outage information from Grandfathered and CPUC-extended QF RA resources, this information may not be reliable. It may not be recorded in real time and would likely be provided in an inconsistent manner across those generators who provide such information.

B. Infeasibility of QF Contract Renegotiation

To the extent that certain terms in the contracts associated with Grandfathered and CPUC-extended QF RA resources contain terms that could be interpreted to require these resources to provide some outage information, IOUs have limited means to enforce additional reporting requirements. The only way to ensure that the IOUs would be able to obtain the required forced outage information would be to amend the contracts. This would be extremely difficult for a number of reasons. First, incorporating provisions to allow for SCP II forced outage reporting requirements would require a global settlement on the scale of the recent QF Settlement. This would involve over 400 contracts associated with Grandfathered and CPUC-extended QF RA resources for the IOUs combined, accounting for approximately 4,000 MW of RA capacity. Modifications to the contracts would require some level of CPUC regulatory approval. Such an effort would take approximately two years.

Second, the QFs potentially would request concessions in exchange for incorporating new forced outage reporting requirements into their contracts.

C. An Exemption from Forced Outage Reporting Requirements Should Include a Corresponding Exemption from Non-Availability Charges and Availability Incentive Payments

As has been explained by the CAISO, if no outage information is reported for certain resources, then the SCP calculation will treat them as 100 percent available each month and eligible to receive availability incentive payments.¹² In order to avoid the unintended consequence of allocating availability incentive payments to resources that are exempt from outage reporting requirements, all such resources should be exempt from the non-availability charges and availability incentive payments of Tariff Section 40.9.6. Grandfathered QF RA resources are already exempt from the non-availability charges and availability incentive payments per the SCP II Order. CPUC-extended QF RA resources should be treated the same as Grandfathered QF RA resources and should also

¹² See Supplemental Comments of the California Independent System Operator Corporation on Request for Temporary Waiver, dated February 4, 2011 (Docket No. ER11-2592-000).

be exempt from the non-availability charges and availability incentive payments of Tariff Section 40.9.6.

VII. Conclusion

The IOUs, as SCs, are unable to comply with SCP II forced outage reporting requirements for Grandfathered and CPUC-extended QF RA resources, as the terms of their contracts do not require or support such reporting to SCs. Therefore, the IOUs request that the CAISO: 1) permanently relieve SCs (whether they be IOUs or others) of any forced outage reporting requirements applicable to these resources, and 2) not include forced outage information from these resources in annual availability calculations. The IOUs also request that the CAISO permanently exempt SCs of CPUC-extended QF contracts from non-availability charges and availability incentive payments for these contracts.

Specifically, the IOUs request the following changes be made to the CAISO Tariff:

1. Exempt SCs for Grandfathered and CPUC-extended QF contracts from the forced outage reporting requirements of Section 40.9.5.
2. Exempt SCs from non-availability charges and availability incentive payments of Section 40.9.6 for CPUC-extended QF resources.