



California ISO
Your Link to Power

California Independent
System Operator Corporation

June 3, 2009

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: Filing to Establish Resource Adequacy Standard Capacity Product
and Ancillary Services Must Offer Obligation in Docket No. ER09-
1064-000.**

Dear Secretary Bose:

Enclosed for filing is the California Independent System Operator Corporation's Motion for Leave to File Answer and Answer to Motions to Intervene, Comments, and Protests in the above-captioned proceeding.

Thank you for your assistance in this matter.

Respectfully submitted,

/s/ Anthony Ivancovich

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will help ensure that CAISO Balancing Authority Area (“BAA”) and CAISO Tariff Ancillary Service requirements are met.²

Pursuant to the Commission’s May 5, 2009 notice of filing, motions to intervene, comments and protests were due to be filed on May 19, 2009. On May 19, 2009, collectively twenty-five entities submitted motions to intervene, motions to intervene and comment, or motions to intervene and protest.³

II. MOTION TO FILE ANSWER

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2008), the CAISO hereby requests leave to file this answer to the comments, protests and motions to intervene submitted in the above-referenced proceeding. To the extent necessary, the CAISO requests waiver of Rule 213(a)(2) (18 C.F.R. § 385.213(a)(2)) to permit it to answer the protests. Good cause for this waiver

² See Transmittal Letter to April 28 Filing at 7-8 (“Filing Letter”).

³ The following nine entities submitted only motions to intervene: Alliance for Retail Energy Markets (“AReM”); Cogeneration Association of California (“CAC”) and the Energy Producers and Users Coalition (“EPUC”) (collectively “CAC/EPUC”); Macquarie Cook Power Inc.; Mirant Energy Trading, LLC (“MET”), Mirant Delta, LLC (“Mirant Delta”) and Mirant Potrero, LLC (“Mirant Potrero”) (collectively, the “Mirant Parties”); Modesto Irrigation District; Northern California Power Agency (“NCPA”); Pacific Gas and Electric Company (“PG&E”); Power and Water Resources Pooling Authority (“PWRPA”); RRI Energy, Inc..

The following nine entities submitted motions to intervene and comments: California Public Utilities Commission (“CPUC”); Calpine Corporation (“Calpine”); City and County of San Francisco (“CCSF”); Golden State Water Company (“GSWC”); J.P. Morgan Ventures Energy Corporation and BE CA LLC (“J.P. Morgan”); Metropolitan Water District of Southern California (“MWD”); Powerex Corp. (“Powerex”); California Department of Water Resources State Water Project (“SWP”); and Southern California Edison Company (“SCE”).

The following seven entities submitted motions to intervene and protests: California Municipal Utilities Association (“CMUA”); Dynegy Moss Landing, LLC, Dynegy Oakland, LLC, and Dynegy South Bay, LLC, (collectively, “Dynegy”); NRG Power Marketing LLC (“NRG PML”), Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Power LLC, and Long Beach Generation LLC (collectively, “NRG” or the “NRG Companies”); San Diego Gas & Electric Company (“SDG&E”); the City of Santa Clara, California (“Santa Clara”), doing business as Silicon Valley Power (“SVP”), and the M-S-R Public Power Agency (“M-S-R”) (collectively “SVP-MSR”); the Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside California (collectively, “Six Cities”); and Western Power Trading Forum (“WPTF”).

exists here because 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 to ensure a complete and accurate record in this case.⁴

III. ANSWER

The CAISO's SCP and A/S MOO proposals result from an extensive stakeholder process.⁵ These efforts are reflected by the significant support the filing has received from a diverse cross-section of stakeholders. For example, the CPUC notes that it has long supported the CAISO's development of tariff provisions to standardize short-term generator performance metrics and penalties for non-compliance, and therefore requests the Commission to approve them as soon as is practical.⁶ For GSWC, the CAISO proposal achieves a reasonable balance between preserving the stability of existing RA contracts -- and not subjecting parties to conflicting or duplicate availability requirements -- while requiring RA Capacity under all new RA contracts entered into after January 1, 2009, to adhere to the CAISO's new standards.⁷ AReM "strongly supports the CAISO Amendments, its request for a Commission order by June 27, 2009, and the January 1, 2010 effective date" and states that the proposed amendments "will standardize and clarify the requirements, allowing for simpler and

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).

⁵ The stakeholder process is described in Section II.B of the CAISO's Filing Letter.

⁶ CPUC at 3.

⁷ GSWC at 6.

presumably swifter negotiations.”⁸ SDG&E states the SCP tariff filing is “imperfect but workable and ready to be implemented without delay.”⁹

While a number of parties have filed comments or protests regarding a particular aspect(s) of the CAISO’s proposal, these complaints fail to withstand scrutiny. The CAISO proposal is just and reasonable.¹⁰ Importantly, the commenters on the SCP proposal do not challenge fundamental elements of the proposal including the CAISO’s specification of Availability Assessment Hours, the determination of the Availability Standards,¹¹ and setting the proposed penalty level at the approved Interim Capacity Procurement Mechanism (“ICPM”) backstop charge. Similarly, only one party challenges the need for the A/S MOO. The CAISO submits that its filing is carefully balanced and can be implemented in accordance with current RA regulatory programs and with CAISO systems. It will enhance the reliability and efficiency of the CAISO Controlled Grid and the CAISO’s markets. Accordingly, it should be approved by the Commission.

A. The CAISO’S SCP Proposal Is Just and Reasonable.

1. The Scope of the Exemptions to the SCP Program Is Just and Reasonable

Certain participants argue that the CAISO’s proposed exemptions to the SCP program are too broad;¹² while other participants claim that

⁸ AReM at 3 and 4.

⁹ SDG&E at 3.

¹⁰ *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984), *cert denied*, 469 U.S. 917 (1984) (utility need establish that its proposed rate design is reasonable, not that it is superior to all alternatives).

¹¹ With the exception of the proposed standard for non-resource specific System Resources which is discussed below.

¹² See e.g., WPTF at 4-6; NRG at 3-4.

certain exemptions, in particular the date for grandfathering existing RA contracts, should be expanded.¹³ The CAISO, supported by the CPUC, believes that the scope of the proposed exemptions is just and reasonable. As such, the Commission should approve the proposed exemptions from SCP as being just and reasonable at this time.

a. The January 1, 2009 Grandfathering Date Is Appropriate

While a few parties raised issues regarding how the January 1, 2009 cut-off date for the grandfathering of existing contracts will be applied, only one party -- SCE -- has challenged the cut-off date itself. SCE takes the position that the cut-off date for these RA agreements should be the effective date of the proposed tariff amendment, arguing that parties executing contracts between January 1, 2009 and the effective date of the amendment will not be able to incorporate the availability requirements into the contracts without substantial financial risk.¹⁴ SCE opines that parties who are in the process of negotiating contracts for the 2010 RA Compliance Year face the possibility that the SCP availability requirements ultimately adopted by the Commission could be substantially different than those proposed in the tariff language, thus causing contractual disputes and placing burdens on Load Serving Entities ("LSEs") to renegotiate the contracts. SCE

¹³ See *e.g.*, Six Cites at 10; SCE at 5.

¹⁴ SCE at 4.

discounts the CAISO's stated concerns -- that pushing the grandfathering date out to the effective date of the Commission's order will encourage LSEs to enter into contracts with poor performing units -- as "exaggerated."¹⁵

SCE's position is not well-founded and should be rejected. As noted in the filing letter, LSEs have had ample notice, since August 2008, that the CAISO was developing availability requirements to be effective for the 2010 RA Compliance Year, and that the January 1, 2009 cut-off date for existing contracts was proposed in the January 8, 2009 CAISO White Paper on this issue.¹⁶ In order to avoid inconsistencies in performance requirements for 2010, it should not be difficult for LSEs and suppliers to draft conditional contract provisions regarding Availability Standards, one that assumes SCP is in place for 2010 and another that assumes SCP is not in place. These are sophisticated entities with significant contract experience. Indeed, SCE acknowledges that its contracts have included availability standards even without the SCP.¹⁷ It should not create an insurmountable drafting hurdle to address this issue in contracts, to the extent any contracts are entered into prior to Commission action on the SCP proposal. This is confirmed by the fact that only

¹⁵ *Id.* at 5.

¹⁶ Filing Letter at 16.

¹⁷ SCE at 5.

one entity has raised this issue. Indeed, the CPUC, which is SCE's regulator, has not challenged the proposed grandfathering date. Under these circumstances, SCE has not presented a persuasive reason that SCP should not apply to contracts negotiated after January 1, 2009.

Similarly, SCE has not supported its conclusions that the CAISO's concerns are inconsequential. SCE states that the risk is "small" that LSEs will rush to sign contracts without performance standards, but provides no basis for this assertion. Given that the RA demonstration date for RA Compliance Year 2010 will not be made until the Fall of this year and given that RA contracts can easily include conditional provisions in the event RA is not approved by the Commission in a timely manner, it seems that the only reason that LSE's would be seeking to sign contracts immediately after January 1, 2009 would be to avoid the SCP provisions. Further, SCE fails to acknowledge the substantial risk that pushing out the grandfathering cut-off date until mid-2009 could lead to inconsistencies in availability standards for most of the RA contracts for the 2010 Compliance Year, thereby effectively pushing the uniform applicability of the SCP to the 2011 Compliance Year. This is inconsistent with the stated goals of the CAISO and the CPUC, as well as the desires of the numerous stakeholders that made SCP the **number one** stakeholder

initiative. Unnecessary extension of the grandfathering cut-off date would frustrate one of the key elements of the proposal. For all of these reasons, the CAISO urges the Commission to approve the proposed January 1, 2009 cut-off date for grandfathering existing contracts.

b. The CAISO's Proposal To Temporarily Exempt Resources Whose Qualifying Capacity Is Calculated Based On Historical Performance Is Just And Reasonable

The CAISO's SCP proposal recognized that currently the CPUC (and possibly other Local Regulatory Authorities) adjust the Qualifying Capacity ("QC") of certain RA Resources based on historical operating performance. In other words, a resource's forced outage during the year could result in a reduced QC for the resource for the subsequent RA Compliance Year. The CAISO proposed a temporary exemption for this category of resources because, until the CPUC and Local Regulatory Authorities align their intermittent counting rules for RA with the SCP program, these resources could in effect be penalized twice for the same forced outage – once in the form of a financial charge under the CAISO's SCP program and a second time through a reduction in the resource's RA QC for the next RA Compliance Year. Given the circumstances that exist at this time, the CAISO did not believe that it was appropriate to "double-penalize" these resources. Accordingly, the CAISO proposed a SCP exemption for these

resources to allow the CPUC and LRA RA programs to align their counting rules with the SCP.

Three parties -- WPTF, Dynegy and NRG -- challenge this proposed exemption. WPTF -- which did not submit any written comments during the lengthy SCP stakeholder process -- now intervenes and (1) argues that the exemption is unduly discriminatory and (2) expresses concern that there is no commitment to revisit this exception within a designated period of time and no guarantee that the CPUC will even act in a timely fashion.¹⁸ WPTF suggests that the CPUC can simply amend the Proposed Decision in the ongoing RA Phase 2 proceeding to address this issue. NRG proposes a sunset date of January 1, 2011 for this exemption.¹⁹ Dynegy supports the protest submitted by WPTF.²⁰

As explained in the filing letter, the CAISO supports the ultimate development and implementation of a long-term RA framework in which there is a uniform Availability Standard applicable to all RA Resources, and the SCP proposal is only an initial step in that direction.²¹ The CAISO must work with the CPUC and other Local Regulatory Authorities to ensure that the program

¹⁸ WPTF at 6.

¹⁹ NRG at 5.

²⁰ Dynegy at 3.

²¹ Filing Letter at 14.

is developed and implemented in a coordinated and reasonable manner. However, given the circumstances that exist today, the proposal initially to exclude resources whose QC is calculated based on historical performance is just and reasonable. Contrary to WPTF's claim, the CAISO's proposal is not unduly discriminatory. Resources whose QC is calculated based on historical performance are not similarly situated to thermal resources.²² Because of current counting rules, these types of resources would face the potential for double penalties if SCP were to be applied to them. Thermal resources do not face that situation. Obviously, it would be unfair to subject any resources to "double-penalties" for the same outage. It would be equally unfair to subject only resources with a QC based on historical performance to a double penalty. Accordingly, it is appropriate to temporarily exempt these resources from SCP until the double-penalty issue can be resolved.

WPTF's suggestion that the CPUC can simply change the Proposed Decision in the RA Phase 2 proceeding to address this issue is not feasible. This specific issue was not addressed in the Phase 2 proceeding, and there is no support in the record for such

²² See Filing Letter at 17.

a change. Indeed, in its Protest, Dynegy acknowledges that the Proposed Decision did not address this issue.²³

In any event, the CAISO notes that, in its September 2006 Order conditionally accepting the CAISO's new market design, the Commission recognized that RA is a complex matter that represents "the confluence of state-federal jurisdiction"²⁴ and authorized the CAISO to defer to the CPUC or the appropriate Local Regulatory Authority with respect to designating eligible resources and determining QC.²⁵ The CAISO submits that its proposed exemption at this time for RA Resources whose QC value for RA purposes is calculated based on historical actual hourly output data is appropriate and consistent with this deference to the CPUC and Local Regulatory Authorities.

The CPUC "has recognized that it is necessary and desirable to establish and maintain a degree of capacity product uniformity in order to facilitate the forward commitments that are necessary to foster infrastructure development" and notes that the CAISO has requested it to revamp the method for calculating the Net Qualifying Capacity of certain intermittent resources.²⁶ The

²³ Dynegy at 3-4.

²⁴ September 2006 Order, 116 FERC ¶ 16,274 at P 1112.

²⁵ *Id.* at P 1117. The September 2006 Order recognizes that Local Regulatory Authorities may establish criteria for determining Qualifying Capacity. *Id.* at P 1200.

²⁶ CPUC at 3-4.

CAISO supports the ongoing efforts to harmonize the respective state and CAISO requirements so that they work in a consistent and coordinated basis to ensure that both real-time reliability demands and long term procurement needs are met with appropriate incentives for compliance.

The CAISO does not believe that a mandatory sunset date for this to occur, as suggested by NRG, is the best approach. As indicated above, any change to the CPUC's counting rules for intermittent resources to account for forced outages in a different manner than is done today would need to be undertaken in a new RA proceeding. It is not certain when such a new proceeding would commence or conclude or whether it would be bundled with other RA issues. The CAISO suggests that a more appropriate approach would be for the CAISO to file a report every six months discussing the status of its efforts in working with the CPUC and Local Regulatory Authorities to standardize the applicability of the SCP program to all resources, including but not limited to QFs, intermittent resources, and demand response resources (as discussed in the next section). This reporting obligation will assist the Commission and stakeholders in monitoring the efforts of the CAISO, the CPUC, and other Local Regulatory Authorities in standardizing the RA requirements for resources and LSEs.

MWD supports the proposal in Section 40.9.2 (3) but requests that the section be amended to state that “The exemption herein will continue to the extent that the CPUC or a Local Regulatory Authority retains the use of historical performance as the basis of determining RA Qualifying Capacity.”²⁷ The CAISO does not believe that this tariff change is necessary. In that regard, the proposed tariff language already exempts these types of resources from SCP. The CAISO cannot change the scope of the exemption without making a filing under Section 205 of the Federal Power Act. If the CAISO fails to consider properly MWD’s determination of RA Qualifying Capacity for its small conduit hydroelectric plants in a future filing, MWD could protest the proposed tariff change at the time the CAISO makes a Section 205 filing. On the other hand, the specific change proposed by MWD could limit or preclude the CAISO’s use of its Section 205 rights to propose changes to the tariff in the future. That is not appropriate.

In addition, MWD fails to recognize that the CPUC is not the only Local Regulatory Authority with responsibility for determining RA standards.

c. The Proposed Exemption for Demand Response Resource Is Appropriate at this Time

²⁷ MWD at 9.

The CAISO also proposed to exempt demand response (“DR”) resources from the SCP program at this time. As explained in the Filing Letter, the exemption is appropriate because efforts are under way to transition from the historic treatment of DR resources into one in which they participate more fully in the CAISO markets.²⁸ Also, as further explained in the Filing Letter, it is important for the CAISO to coordinate with the CPUC and stakeholders as to how DR resources are treated for RA purposes.²⁹ The CPUC and SWP also support the determination to defer application of SCP to DR resources at this time.³⁰

WPTF recognizes that the ways in which DR resources will participate in the CAISO’s markets are being developed, but nonetheless insists that DR be included in the SCP program at this time.³¹ In particular, WPTF expresses dismay that “(1) in some cases, the CAISO cannot even deploy DR until after it declares a Stage 2 emergency, and (2) the CAISO has and will commit non-RA capacity -- ahead of using DR that counts towards meeting RA requirements -- to avoid a Stage 2 emergency.”³² WPTF’s notes that the CPUC opened Rulemaking R.07-01-041 to examine

²⁸ Filing Letter at 18.

²⁹ *Id.*

³⁰ CPUC at 4; SWP at 2.

³¹ WPTF at 7.

³² *Id.* at 7.

demand response issues and expresses frustration that “[t]here has been ample opportunity to limit the types of DR that can satisfy RA requirements or to modify DR participation rules and requirements to make DR an operationally more flexible and reliable resource for the CAISO, but no such action has yet been taken.”³³ WPTF requests that the Commission reject the CAISO’s proposal to exempt DR from the SCP’s availability requirements and direct the CAISO to conduct a stakeholder process and submit by October 31, 2009 a proposal for applying SCP availability requirements to DR that counts toward meeting RA requirements. NRG again requests that the proposed exemption for DR resources sunset on January 1, 2011.³⁴

In the April 2007, Order on Rehearing, the Commission “direct[ed] the CAISO to coordinate with the CPUC to minimize the potential for disagreements as to whether particular demand-side resources qualify on a technical basis in meeting resource adequacy requirements.”³⁵ The requested temporary exemption for DR resources is consistent with this direction.

Again, the CAISO supports the goal articulated by WPTF and NRG for universal SCP applicability to both supply-side and

³³ *Id.* at 8.

³⁴ NRG at 6.

³⁵ *California Independent System Operator Corp.*, 119 FERC ¶ 61,076 (2007) at P 560.

demand-side resources. However, the reality is that there is a need to realign historic demand response programs into a new and still evolving set of DR market products. The point was emphasized by the CPUC in its comments on the CAISO's Order 719 Compliance Filing:

Over the last several years, parties to various proceedings at the CPUC have raised questions related to whether direct bidding of retail load into CAISO wholesale markets as Demand Response either explicitly or implicitly conflicts with state laws, procurement rules and/or processes or policies. CPUC staff has also identified a number of existing state laws, procurement process and/or policies which may potentially conflict with or complicate some aspects of Order 719, or various ways in which the CAISO may seek to fulfill the dictates of Order 719. The CAISO's Order 719 Compliance Filing also identifies potential CPUC procurement program-related impediments to direct bidding by retail Demand Response into CAISO markets.

Importantly, the CPUC's review of state statutes and rules *should not* be viewed as an effort to forestall the expansion of such Demand Response activities, but rather, as a process to *identify and expedite* resolution of the complex issues raised by the FERC's proposed changes to California's energy markets. In order to facilitate the CAISO's efforts to comply with Order 719, this review will commence soon, and is expected to take place in parallel with the CAISO's stakeholder process implementing the Demand Response portion of Order 719.³⁶

Until the stakeholder process is completed to refine those products and associated requirements, it is unreasonable for the CAISO to incorporate them into the SCP program.

³⁶ See CPUC's Comments dated 5/26.09 in Docket No. ER09-1048 at 4-5.

The DR programs that WPTF complains about are retail programs not set forth in the CAISO Tariff. There currently are two types of DR programs -- the Emergency Response DR program that WPTF references in its comments and certain price-responsive programs. WPTF's comments regarding the implementation of the Emergency Response DR program are wholly unrelated to the SCP filing. In any event, the Emergency Response DR is not dispatchable and does not have a Resource ID. It could just as easily be considered a reduction in the applicable load requirement as it could an RA resource. With respect to the pre-existing retail price responsive demand programs, these programs too are not dispatchable by the CAISO and have their own terms, conditions and penalties that are not under the CAISO Tariff. They are not responsive to CAISO prices and are separately dispatched by LSEs. These resources do not have SC IDs and do not report "outages" into SLIC. Also, just as it is appropriate to grandfather certain pre-existing contracts and not apply SCP to them, it is appropriate to exempt pre-existing DR programs from SCP until they can be reformed and aligned with the SCP program.

As with the counting methodologies for intermittent (and other) resources discussed above, the DR programs need to be aligned with SCP before the SCP Availability Standards should be applied to them. As WPTF notes, there currently is a CPUC

proceeding addressing DR. As described in the prior section, the CAISO believes that the best approach at this time is for the CAISO to submit bi-annual reports regarding its work with Local Regulatory Authorities on standardizing the applicability of the SCP program to DR resources.

d. The CAISO will Continue to Work with the CPUC to Coordinate RA Reporting Deadlines

Without seeking specific action from the Commission, SCE notes that the traditional date for LSEs to submit final compliance showings with the CPUC is October 29, rather than the September 30, 2009 date used by the CAISO in the Filing Letter.³⁷ SCE correctly notes that the CAISO and the CPUC have been working together to coordinate a compliance schedule that accommodates the CAISO Tariff requirements for procuring backstop resources and the LSEs' local and system RA showings.

Indeed, in comments submitted to the CPUC, the CAISO noted that the traditional end-of-October date for RA compliance showings would not provide sufficient time for the CAISO to comply with the filing date in CAISO Tariff Section 43.1.2.1 for determining collective deficiencies in the LSEs' Local Capacity Area showings.³⁸ For Compliance Year 2010, that date is November 2, 2009. In

³⁷ SCE at 10.

³⁸ See CAISO Reply Comments *Rulemaking to Consider Revisions to Annual Procurement Obligations and Refinements to the Resource Adequacy Program* CPUC Docket R.08-01-025, <http://www.caiso.com/23ad/23ad702c51720.pdf>.

order to coordinate these submission dates, the CAISO noted that RMR contract extensions must be completed by October 1 (September 30) and that these designations are based on the preliminary local procurement showings due to the CPUC's Energy Division staff on September 18. Thus, the CAISO urged the LSEs to complete their final compliance submissions by October 9, and also offered to issue a revised deficiency notice by mid-November reflecting the final compliance showings submitted on October 29. The end of September RMR designation date, based on the preliminary Local Capacity Area procurement submissions, was the date referenced in the Filing Letter.

SCE acknowledges that the CPUC's RA Phase 2 Proposed Decision supported the CAISO's proposed compliance schedule, as well as the CAISO's stated intention to continue to work together on coordinating compliance schedules.³⁹ However, for the 2010 RA Compliance Year, the schedule is now established.

e. The CAISO Agrees That The Section 40.9.2(2) Exemption Should Include Additional Capacity That Becomes Available To An LSE During The Primary Term Of A Grandfathered Contract Pursuant To The Terms Of Such Contract

Proposed Section 40.9.2(2) provides an exemption for capacity under a resource specific power supply contract that existed prior to January 1, 2009, or RA Capacity that was procured

³⁹ Proposed Decision of ALJ Wetzell, Rulemaking 08—1-025, May 15, 2009.

under a contract either executed prior to January 1, 2009 or submitted to the applicable Local Regulatory Authority for approval prior to that date. The section specifies that the exemption will apply only to the initial term of such contracts, and only to the MW capacity quantity and RA Resources specified in the contract prior to January 1, 2009. Should exempt contracts be re-assigned or undergo novation, the exemption will not apply to extended terms, increased capacity or additional resources beyond those specified in the contract.

Six Cities and CMUA generally support this “grandfathering” exemption for contracts prior to January 1, 2009, but seek clarification as to how the exemption will apply to contracts that do not specify a fixed MW amount of capacity or which otherwise contemplate that additional capacity would become available under the contract at a future time during the initial term of the contract. CMUA explains that some existing contracts refer only to a ratio of a specific resource that could change due to physical changes in the resources or other commercial changes that would require step-up to available capacity should another party default. According to CMUA, such provisions are common in certain resource specific contracts.⁴⁰ Six Cities notes that providing an exemption for additional shares of capacity that becomes available under the

⁴⁰ CMUA at 11-12; Six Cities at 11.

original terms of the contract would come within the intent of the proposed tariff language.⁴¹ Six Cities states that there are contract provisions that increase capacity rights covered by the contracts in proportion to increases in the capability of the resource, but that other terms in the contract remain unchanged.⁴²

The CAISO is agreeable to incorporating the clarifications requested by CMUA and Six Cities, and can include appropriate tariff language in a compliance filing following issuance of a Commission order on the SCP proposal. To the extent such capacity increases are expressly contained in the provisions of the grandfathered contract, and not the result of contract extensions or other amendments to the original terms and conditions of the grandfathered contract, the CAISO believes it is consistent with the intent of its grandfathering proposal to grandfather any such capacity increases for the primary term of the contract. In order to properly implement this clarification, the CAISO believes that it is appropriate that when Scheduling Coordinators' submit their Section 40.9.2(2) certifications regarding grandfathered contracts they also identify any contract provisions that might entitle them to increased capacity from the contracted for resource(s) during the primary term of the contract and indicate the amount of additional

⁴¹ Six Cities at 10-11.

⁴² *Id.*

capacity to which they might be entitled. The CAISO would propose to include this additional reporting requirement when it submits revised tariff language reflecting the clarification.

f. It is Reasonable and Appropriate to Subject Local Capacity Area Resources Procured by a Load Following MSS Entities to the SCP Availability Standards, Non-Available Charges and Availability Incentive Payments.

The CAISO has proposed modifications to Section 40.1.1 that would clarify the application of the SCP to RA Resources procured by a Load following Metered Subsystem (“MSS”). Specifically, the proposed tariff language provides that Local Capacity Area Resources identified by the Scheduling Coordinators for such entities in accordance with Section 40.2.4 will be subject to the availability standards set forth in proposed Section 40.9. Section 40.2.4 has been similarly modified to reflect that application of the Section 40.9 Availability Standards, Non-Availability Charges and Availability Incentive Payments to Local Capacity Area Resources procured by a Load following MSS. Finally, Section 40.9.2(5) provides that the system RA Resources of a Modified Reserve Sharing LSE or a Load following MSS will be used in the determination of the Availability Standards and will be subject to Outage reporting requirements but will not be subject to the Availability Standards, Non-Availability Charges and Availability Incentive Payments.

As explained in the Filing Letter, this exemption from the SCP for system RA Resources procured by these entities is reasonable because they are subject to a different RA availability requirements.⁴³ Specifically, Load following MSSs are exempt from the system RA requirements set forth in Section 40.6, but are subject to contractual deviation penalties should insufficient resources be available to meet hourly loads. On the other hand, Load following MSSs are subject to the Local Capacity Area Resource procurement allocation responsibilities set forth in Section 40.3, and the Local Capacity Area Resources nominated by these entities are used by the CAISO to determine the need for any backstop procurement. Accordingly, for the purposes of SCP applicability, the CAISO explained that Local Capacity Area Resources procured by Load following MSSs should be treated similarly to other Local Capacity Area Resources.⁴⁴

SVP takes issue with the application of SCP Availability Standards, Non-Availability Charges and Availability Incentive Payments to Local Capacity Area RA Resources nominated by Load following MSSs. SVP argues that, unlike other LSEs, a Load following MSS will be subjected to penalties under the MSS Agreement for failure to have sufficient resources available to meet

⁴³ Filing Letter at 21.

⁴⁴ *Id.*

its load, including Local Capacity Area resources. Thus, according to SVP, the double counting of penalties used as a basis for exempting system RA Resources from the SCP is equally applicable to local area resources.⁴⁵

SVP has misinterpreted the CAISO's basis for applying the SCP to its local area resources but not system RA Resources. The CAISO has not proposed an "exemption" from the SCP for the system RA Resources of a Load following MSS; rather, this capacity is not subject to the CAISO's system RA tariff provisions and accordingly should not be subject to the SCP. In the Filing Letter, the CAISO noted that a Load following MSS has financial incentives to meet its hourly load obligations and these should be sufficient to ensure the availability of these resources. This explanation was not intended to imply that deviation penalties and the SCP availability incentives and charges are duplicative or would constitute the "double counting" of penalties intended to achieve the same purpose.

Indeed, SVP correctly states that Local Capacity Area resources procured by Load following MSSs are subject to the same penalties under MSS agreements that are applicable to its system RA Resources. However, these penalties are for actual performance based on energy delivery and not on unit (forced)

⁴⁵ SVP at 10.

outage availability (which is the basis for SCP charges). See Section 12.12 of MSS Agreement between SVP and the CAISO. In fact, a forced outage on any local area resource of a Load following MSS results in an exemption from the deviation penalty as a result of such forced outage. See Section 12.11 of MSS Agreement between SVP and the CAISO. Thus, the penalties under the MSS Agreement are not the same penalties being enforced under the SCP. Because Load following MSSs are required to procure Local Capacity Area Resources, and this capacity is used by the CAISO to determine deficiencies and procure backstop resources if necessary, it is perfectly consistent to apply both the SCP and deviation penalties to Local Capacity Area Resources. Thus, SVP's concerns are misplaced and should be rejected.

2. CAISO Processes Related To The Determination Of Unit Availability Are Appropriate

For purposes of determining RA unit availability, NRG suggests that the CAISO develop and undertake a comprehensive program of unit testing for ambient temperature effects and adopt the use of NERC Generating Availability Data System ("GADS") data. The CAISO does not agree with NRG that these changes are either necessary or appropriate.

The CAISO Tariff already contains adequate provisions for the CAISO to conduct unit tests it believes are necessary and take into account the effects of ambient temperatures on unit capacity. Under Sections 8.9 and 8.10, the CAISO

may conduct compliance testing, performance audits, and periodic testing of units. Under Section 40.4.4, if a CAISO testing program determines that a unit is not capable of supplying the full Qualifying Capacity amount, the CAISO can reduce the unit's Qualifying Capacity, for purpose of the Net Qualifying Capacity annual report under Section 40.4.2 for the next Resource Adequacy Compliance Year. In addition, Section 40.9.4.2 provides that temperature related ambient de-rates will be included in the calculation of the RA Resource's availability. Capacity de-rates submitted through SLIC that are due to temperature, *i.e.*, ambient conditions, will be counted against the hourly availability of the resource under the Availability Standards.

In the event that the CAISO determines that a unit test should be performed, it will undertake the necessary testing and treat the ambient de-rate in accordance with the applicable tariff provisions. There is no basis, however, to require the CAISO to undertake a comprehensive testing program of all RA Resources to determine how the capacity of each unit is impacted by ambient temperature conditions. NRG has identified no existing issue with the reporting of ambient de-rates nor offered any other justification for such broad-based testing, which will involve the expenditure of significant time and resources. Absent any compelling reason for mandatory testing, the Commission should reject NRG's suggestion and permit the CAISO to continue to use its discretion in determining when unit tests are warranted.

NRG's suggestion that the CAISO should be required to transition to the use of GADS data, rather than SLIC information, in determining unit availability

also lacks support. The suggestion is based on NRG's belief that Section 40.4.5 mandates the use of GADS data. That is not correct. Section 40.4.5 requires Scheduling Coordinators for RA Resources to provide or make available to the CAISO "all documentation requested by the CAISO to determine, develop or implement the performance criteria, including, but not limited to, NERC Generating Availability Data System data." This language requires Scheduling Coordinators to submit information to the CAISO that it requests. The language does not mandate that the CAISO stop using SLIC information and instead use GADS data for RA purposes. Further, the CAISO recognizes that the GADS data contains national unit performance information, and will continue to consider the benefits and costs of GADS implementation. However, the SLIC application is capable of providing the necessary information at this time and all affected Scheduling Coordinators are already using this application. The burden of starting a fully applicable GADS implementation would impose costs and delays in the implementation of the SCP program. Given the serious implications associated with GADS implementation, the CAISO requests that the Commission reject NRG's suggestion and not direct the CAISO to use GADS data to determine RA availability.

3. The Proposal to Collect Outage Data From Resources Smaller than 10 MW Is Necessary and Not Unduly Burdensome

In its comments, SCE does not object in principle to the reporting of outage information for Generating Units between 1 MW and 10 MW in order to calculate

target availability.⁴⁶ SCE nevertheless suggests that this reporting requirement should not be adopted.⁴⁷ SCE is concerned that the SCP proposal does not contain a comprehensive plan on how the reporting requirement will be implemented. Six Cities also claims that it would be unduly burdensome to require detailed outage reports for resources with less than 10 MW of capacity.⁴⁸ Six Cities suggest that such resources are not critical to reliability, so it is not critical that they be subject to the availability standards.⁴⁹ CMUA also filed opposed this requirement on the ground that it would be burdensome.⁵⁰ CMUA suggests that this burden might be more acceptable if the CAISO makes any link between this information and increased reliability, rather than use only in the availability assessment.⁵¹

The CAISO believes that Section 40.9.5 contains the appropriate and necessary level of information for adoption of that tariff provision. As indicated in the Filing Letter, the information will be used to develop the Availability Standards and administer the SCP program.⁵² Both SCP and the Availability Standards are designed to enhance the Resource Adequacy program, which was implemented to ensure that adequate resources would be available when and where needed to serve load, meet appropriate reserve requirements, and support reliable

⁴⁶ SCE at 9.
⁴⁷ *Id.* at 10.
⁴⁸ Six Cities at 9-10.
⁴⁹ *Id.* at 10.
⁵⁰ CMUA at 10-11.
⁵¹ *Id.*
⁵² Filing Letter at 28-29.

operation of the CAISO Controlled Grid. Accordingly, despite CMUA's protestation, it is quite clear that the collection of this outage information is pertinent to RA, SCP, and the Availability Standards and clearly has reliability-related implications.

As indicated in Section 40.9.5, the implementation details for this reporting requirement (*e.g.*, reporting template and process) will be addressed in the appropriate Business Practice Manual. Because, as SCE notes, units under 10 MW do not currently report outages to the CAISO through SLIC, Section 40.9.5 provides that the CAISO will develop a form and schedule for Generating Units between 1 MW and 10 MW to report equivalent availability-related information and include them in the Business Practice Manual. The CAISO anticipates that this will be a monthly reporting obligation. Section 40.9.5 specifies the information a Scheduling Coordinator is required to provide: (1) identify all Forced Outages, non-ambient derates, and temperature-related derates that occurred during the previous month; and (2) information necessary to enable the CAISO to calculate the resource's monthly availability including the start and end time of any Outages or derates, the MW availability in all Assessment Hours, and the causes of any Forced Outage or de-rate. The CAISO submits that this is not a burdensome amount of information that Scheduling Coordinators will be required to provide. This is basic information that a resource would need to compile for its own accounting and business purposes. Further, the information only needs to be provided on a monthly basis, and the CAISO will provide a template to facilitate reporting.

As additional justification for the reporting requirement, the CAISO notes that if a small Generating Unit elects to participate in the RA program, it is eligible to receive the benefits of being an RA Resource, including RA capacity payments and Availability Incentive Payments. The CAISO expects the unit to also comply with applicable RA obligations, including the provision of required outage information to its Scheduling Coordinator.⁵³ That information is necessary in order to calculate the unit's availability and its appropriate Availability Incentive Payment or Non-Availability Charge. As experience is gained following the implementation of SCP, if it appears to the CAISO that small Generating Units participating in the RA program are not submitting required outage information, the CAISO will consider remedial action, including possible tariff amendments to suspend Availability Incentive Payments to the non-compliant units or terminating their eligibility as RA Resources.

With respect to other concerns raised over the submission of outage information from the smaller Generating Units, especially for QFs, the CAISO stresses that participation in the RA program is *voluntary*. If a resource voluntarily chooses to participate as an RA Resource, it must bear both the burdens and the benefits of being an RA resource. It should not be able to receive only the benefits, and avoid the requirements attendant to its RA status. If a unit is an RA unit and receives all of the benefits of being an RA unit, it should accept the corresponding obligations of being an RA unit, obligations that are being borne by other RA units. If the smaller unit fails to meet the availability

standard, it should receive a penalty and not be permitted to “lean” on other RA resources that would have to make up for the smaller unit’s unavailability without consequence. Finally, these “small” units’ lack of availability -- especially in specified Local Capacity Areas -- could cause the CAISO to have to procure backstop capacity to meet its reliability needs. Clearly, these costs should be minimized and not ignored as would be the case with a policy that is indifferent to the availability of RA capacity. Excluding smaller resources from the obligation to report availability data would remove any incentive for these resources to be available as it necessary for all RA capacity.

4. The CAISO’s Unit Substitution Proposal Is Reasonable.

Proposed Section 40.9.4.2.1, which is based on language of the Reliability Capacity Services Tariff (“RCST”) and Transitional Capacity Procurement Mechanism (“TCPM”) substitution provisions approved by the Commission, allows Scheduling Coordinators to substitute non-RA capacity for resources that are on a Forced Outage or de-rate in order to mitigate the impact of these circumstances on its availability calculation. Section 40.9.4.2.1 enables Scheduling Coordinators to make substitutions for both system and Local Capacity Area RA Resources. With respect to Local Capacity Resources, the CAISO provides two opportunities for substitution, a pre-qualification process prior to the start of the RA Compliance Year and another opportunity at the time

of the Forced Outage. The Section 40.9.4.2.1 unit substitution procedure provides benefits for both the Scheduling Coordinators and the CAISO.⁵⁴

The proposed resource substitution procedure provides that for Local Capacity Area RA Resources, a Scheduling Coordinator may pre-qualify alternate non-RA resources that are located at the same bus and have similar operational characteristics as the Local Capacity Area resources. The CAISO will pre-qualify such alternate resources for use during the subsequent RA Compliance Year. In addition, when a Local Capacity Area RA Resource undergoes a Forced Outage or de-rate, a Scheduling Coordinator may request substitution of a non-pre-qualified unit prior to the close of the IFM. This substitution will be approved if: (1) the resource is located at the same bus and meets the ISO's operational needs, or (2) if not located at the same bus, is located in the same Local Capacity Area and meets the CAISO's effectiveness and operational needs.⁵⁵

Non-RA Resources may be substituted for system (non-Local Capacity Area) RA Resources, prior to the close of the IFM, if such units provide the same MW quantity of deliverable capacity as the system RA Resource. Alternate resources that are proposed as substitutions for system RA Resources need not be pre-qualified.⁵⁶

While supporting, in principle, the concept that the SCP should allow for unit substitution, two parties -- J.P. Morgan and Dynegy -- take issue with the unit

⁵⁴ See Filing Letter at 25-28.

⁵⁵ Tariff § 40.9.4.2.1(1).

⁵⁶ Tariff § 40.9.4.2.1(2).

qualification criteria for substitute Local Capacity Area RA Resources. These parties argue that the proposed tariff procedure imposes “more stringent” unit substitution requirements than the CPUC’s RA procurement rules, and could cause the SCP to be more than a “standard RA product.” For example, Dynegy states that under current RA rules, “an amount of non-RA capacity from any resource within a local area can substitute for the same amount of RA capacity within that same local area.”⁵⁷ Both parties propose that Scheduling Coordinators should be permitted to substitute any non-RA Resource located in a Local Capacity Area (and providing the same MW quantity) for a Local Capacity Area RA Resource, without the additional requirements that the substitute resource be located at the same bus and have similar operating characteristics (resource pre-qualification), or meet the CAISO’s operational and effectiveness needs (real-time substitution).⁵⁸

As an initial matter, it is necessary to clarify the record in one important regard. Neither the CPUC’s RA program nor the CAISO’s RA tariff provisions contain a rule setting forth a resource owner’s right to substitute a non-RA resource for a Local Capacity Resource at the time of a Forced (or any other) Outage. Indeed, Dynegy does not -- and cannot -- cite to any such rule. Thus, any claim that the CAISO is going beyond the existing RA substitution rules is simply incorrect. The CAISO is offering an enhancement that does not exist today and which can benefit both RA service providers and the CAISO. If

⁵⁷ Dynegy at 6.

⁵⁸ J.P.Morgan at 8; Dynegy at 7.

Dynegy is steadfast that SCP should match the current RA rules, then no “real-time” substitution should be allowed. However, the CAISO does not believe that would be an appropriate result. That is why the CAISO proposed an enhancement to the RA program to expressly incorporate a substitution rule. As discussed in greater detail below, the limitations on substitution for Local Capacity Resources proposed by the CAISO are just and reasonable. The fact that only two out of 25 intervenors object to the substitution provisions supports this conclusion.

J.P. Morgan and Dynegy overlook how the LSE’s Local Capacity Area RA showings and the CAISO’s ICPM backstop procurement process work together. Simply stated, LSEs must procure Local Capacity Area Resources in accordance with the results of the CAISO’s annual Locational Capacity Technical Study, and these resources are identified in the annual RA Supply Plans submitted to the CAISO (in accordance with Section 40.4.7) and to the CPUC. The CAISO then reviews these submissions to determine if LSEs have procured sufficient Local Capacity Resources to meet their allocated local capacity obligations. In addition, in accordance with CAISO Tariff sections 40.7 and 43.1.1, the CAISO conducts an effectiveness evaluation of these supply plans to determine whether the Local Capacity Area Resources that have been procured for each Local Capacity Area are effective in meeting all of the constraints that have been identified in the LCR Study. To the extent they are not, then a “collective deficiency” exists. If the CAISO determines that a collective deficiency exists, then LSEs have a 30 day window to “cure” such deficiencies (and avoid being

allocated any costs associated with CAISO backstop procurement) before the CAISO incurs the costs of procuring backstop resources.⁵⁹ The CAISO emphasizes that even if all LSE's procure a sufficient amount of Local Capacity Resources to meet their total allocated Local Capacity Requirements, a collective deficiency can still exist because LSEs might not have procured the correct mix of Local Capacity Resources to address all of the constraints identified in the LCR Study. Only after LSEs have made an attempt to purchase a fully adequate portfolio and the CAISO has confirmed that the procured portfolio is sufficient to satisfy the criteria specified in the LCR Study for each Local Capacity Area (or the CAISO has procured additional backstop capacity to reach this same result) will the LCR requirements have been met by the RA program.

The CAISO's substitution proposal recognizes the important role of "collective deficiencies" in the process of determining whether sufficient Local Capacity Resources have been procured to satisfy the criteria specified in the LCR Study. J.P. Morgan's and Dynegy's proposal fails to take this important consideration into account. Requiring the CAISO to automatically accept the substitution of any non-RA resource for an existing Local Capacity Area Resource located in the same Local Capacity Area could result in a situation where the CAISO is provided substitute capacity that is not effective in meeting constraints that previously were met, and the CAISO must then procure additional local capacity to meet local reliability needs. This situation can arise given the prevailing system conditions that exist at the time of the proposed

⁵⁹ CAISO Tariff Sections 43.1.1.3 and 40.7.

substitution. The replacement resource may not be an effective substitute for the original resource , and the CAISO would have to procure local backstop capacity that is effective in addressing the particular operating condition that exists at the time of the substitution. Thus, the outage of the original Local Capacity Resource would create a possible LCR capacity shortage and a unilateral substitution could create a “collective deficiency” where none existed before. Merely replacing the original unit with some other unit located in the same Local Capacity Area that has the same number of MWs may not be effective in resolving any particular constraint(s) that exists at the time of the outage. Under those circumstances, the CAISO would need to procure backstop capacity. This would essentially result in duplicative capacity payments being made to two resources. Because these are “Real-Time” events, unlike the situation that exists following the RA showings prior to each RA compliance year, LSEs would not have an opportunity to “cure” any “real-time” collective deficiency and avoid being allocated a *pro rata* share of backstop costs. Stated differently, the non-performance of a Local Capacity Resource due to a forced outage could have adverse cost consequences on other Market Participants if the CAISO were automatically required to accept a substitute unit that does not provide the same operational benefits as the original unit, such that the CAISO is required to procure backstop capacity. Thus, the impact of intra-year substitutions is different than the contract choices that LSEs make prior to the beginning of each RA compliance year.

Thus, adoption of J.P. Morgan's and Dynegey's proposal would create an ironic situation wherein an individual SC would be able to avoid the SCP availability penalties due to the Forced Outage (and retain its RA capacity payment) but the CAISO would nonetheless be required to incur backstop costs to be spread to all LSEs in the applicable TAC Area. Because under the Commission-approved RA program the CAISO already evaluates the effectiveness of all Local Capacity Resources following the annual RA showings, there is no inconsistency between the existing RA program and the CAISO's proposal for evaluating substitute Local Capacity Resources based on their effectiveness. In other words, Section 40.9.4.2.1 does not create a more stringent test for Local Capacity Area RA procurement than already exists today. Rather, the CAISO proposal seeks to mirror in "Real-Time" the analysis that already occurs in the year-ahead RA procurement process when the CAISO evaluates procured Local Capacity Resources to determine if there are any "collective deficiencies." Under these circumstances, the proposed unit substitution process is reasonable and consistent with the existing RA counting rules, the CAISO's Local Capacity evaluation process and the CAISO's backstop procurement process. As such, it should be approved.

5. The Proposed Separate Availability Standard and Metric for Non-Resource Specific System RA Resources is Reasonable and Non-Discriminatory

Proposed Section 40.9.7 sets forth the CAISO's proposal for a separate and discrete availability standard, metric and funding pool for non-Resource-Specific System Resources that provide RA Capacity from sources external to

the CAISO (*i.e.*, imports). The proposed monthly availability target has been set at 100% with no dead band. The CAISO proposed this metric because this category of RA capacity can be sourced from a wide array of resources and is measured based only on whether the capacity is offered into the CAISO's Day-Ahead market. Thus, it is unlike the other category of RA capacity which is based on the performance of *single* generating units and is tied to whether or not those individual units have a Forced Outages or derate. Instead, the availability calculation for imports will be based on hourly Economic Bids or Self Schedules to provide Energy (or Ancillary Services) in the DAM at the appropriate CAISO Scheduling Point.

Parties submitting comments and protests on proposed Section 40.9.7 did not take issue with the concept of a separate availability standard for non-Resource-Specific System Resources and the basic structure of the availability metric. However, Powerex, Six Cities, SVP, NCPA and CMUA all took issue with the application of the 100% availability standard to these resources.⁶⁰ These parties argued that the pool of resources from which the RA Capacity can be drawn might have more limited flexibility than envisioned by the CAISO, opining, for example, that if one Use Limited Resource is unavailable, it is likely that the entire pool of similar use-limited resources is unavailable for the same reason.⁶¹ NCPA, SVP and CMUA claim that the 100% availability standard is discriminatory because internal Resource-Specific RA System Resources can

⁶⁰ See Powerex at 7-9; Six Cities at 3-5; NCPA at 4-6; SVP at 6-9; and CMUA at 3-5.

⁶¹ SVP at 9.

substitute units in real time to avoid availability charges due to outages, but are held to a lower standard (*i.e.*, a standard based on historic outage information).⁶² Powerex and Six Cities note that there are times when transmission outages or derates will limit the ability of Scheduling Coordinators to deliver capacity at the designated Scheduling Point, thus, limiting the ability of Scheduling Coordinators to make substitutions from the “pool” of external resources. Finally, both Powerex and Six Cities note that CAISO Tariff Section 30.8 prohibits Scheduling Coordinators from bidding into the market when intertie paths are derated to zero (0) MW.⁶³ Six Cities suggest that the CAISO could develop alternative availability standards for such resources that include consideration of historical patterns for transmission outages and derates that have affected the transfer capability at each designated Scheduling Point. Alternatively, Six Cities states that the CAISO could exclude from application of the availability standard circumstances where failure to make a resource available results from transmission outages or derates.⁶⁴

As indicated below, the CAISO is willing to make a change in response to Powerex’s and Six Cities’ concerns regarding the application of Section 30.8 so that hours where such provision was applied will not count against calculation of a resource’s availability for the month. That modification should sufficiently address objections to the proposal.

⁶² NCPA at 5; SVP at 8; and CMUA at 4.

⁶³ Powerex at 8-9; Six Cities at 4-5.

⁶⁴ Six Cities at 5.

Before addressing specific arguments, some clarification is necessary. First, the parties generally appear to be engaged in “apples to oranges” comparisons between *Resource Specific* RA imports, the substitution provisions for *Resource Specific* RA Resources, and the characteristics of Non-Resource Specific system capacity contracts to draw on a pool of resources to satisfy energy delivery requirements. Clearly any external Resource Specific system RA Resources will be subject to the same SCP standards as internal unit specific resources because the physical attributes of the generating unit can be measured. As the CAISO explained in its Filing Letter, RA capacity that is tied to a specific generating unit is fundamentally different than non-resource specific capacity because the capacity is tied to a single resource, whereas the RA capacity of non-Resource Specific Resources is tied to multiple sources.⁶⁵ In other words, the supplier is basically stating that they will find a way to get the MW to the delivery point.

Moreover, with respect to Resource Specific RA Resources, the possibility that a Scheduling Coordinator might be able to substitute capacity from some other non-RA resource in Real Time under the SCP substitution rule is a significantly different situation from a scenario where a supplier has already lined up in advance and contracted with multiple units from which it can source the power to be provided via the non-Resource Specific System Resource.⁶⁶

⁶⁵ Filing Letter at 31-33.

⁶⁶ Clearly the designated alternate RA system resource must be 100% available or the substitution will not avoid the application of availability penalties.

Finally, the language in proposed Section 40.9.7.2 requiring the Scheduling Coordinator to procure sufficient transmission right to deliver energy to the CAISO Scheduling Point was not intended to be a barrier against substituting internal resources for Non-Resource Specific System Resources. Contrary to comments made by several parties, the separate availability standard for Non-Resource-Specific System Resources was not intended to favor internal resources over imports.

The parties' arguments can essentially be divided into two categories: (1) the CAISO incorrectly concludes that Non-Resource Specific RA resources can easily be provided by a pool of resources and the unit substitution provisions for resource-specific internal RA resources equate their abilities to those of non-Resource Specific System Resources; and (2) the CAISO should take into account historic transmission outage information or at least eliminate the hours in which transmission was reduced to zero capacity.

With respect to the first category, and given the clarifications above, the CAISO does not agree with arguments that the 100% availability standard for Non-Resource-Specific System Resources unduly discriminates against imports vis a vis internal Resource-Specific RA Resources that are able to substitute units in Real-Time. Furthermore, while the parties speculated that the pool of available resources could be limited due to outages affecting all similarly situated use limited resources, they identify no specific contracts or examples to support

their position. NCPA admits that Non-Resource Specific System Resources “are likely to be more reliable than sales dependent on a particular generating unit.”⁶⁷

In any event, with respect to the purported substitution distinction, the CAISO notes that it is permitting non-Resource Specific System Resources to substitute internal-CAISO resources for their imports. Thus, the substitution provisions applicable to Resource-Specific RA capacity apply equally to non-Resource Specific System Resources. In other words, Scheduling Coordinators can substitute internal resources to provide energy at a Scheduling Point, thereby minimizing the chances that transmission outages would prevent energy deliveries. To the extent the filed tariff language did not make that sufficiently clear, the CAISO can make appropriate modifications on compliance. Because the substitution rule applies to both types of resources, Six Cities and CMUA cannot rely on that argument to support their position.

Thus, arguments that Non-Resource-Specific RA imports should be subjected to the same availability standard as Resource-Specific RA capacity are not well-founded and should be rejected.

SVP offers no support for its argument that if one of their resources is unavailable they likely all are. It is difficult to fathom that all of the resources supporting a non-Resource Specific System Resource would be on an outage at the same time. If that were the case, then how would the supplier be able to provide the service under the contract? SVP’s argument basically amounts to an argument that the resources in the portfolio may not be available to provide the

⁶⁷ NCPA at 5.

service for which they have contracted – which contract is counting for RA purposes. If the supplier is unable to perform the contract and the capacity is not available, then arguably the contract is not providing the RA service and should be penalized via an SCP financial charge just like an individual generator that is on a forced outage or has a de-rate.

With respect to the second argument, the CAISO disagrees that the metric for Non-Resource Specific System Resources should take into consideration transmission outages on systems external to the CAISO. For all of the reasons stated above, these external RA capacity contracts include an arrangement for energy to be delivered at a specified Scheduling Point. However, the CAISO is agreeable to modifying its proposal under the circumstances described in Section 30.8 and addressed by Powerex and Six Cities. The CAISO would include tariff language in its compliance filing indicating that for the hours in which Section 30.8 applies, the CAISO will exclude such hours from the calculation of the Availability Standard. To implement this revision, the CAISO will need Scheduling Coordinators to provide this information to the CAISO on a monthly basis in order to reflect it in the calculation. The CAISO would include tariff language to reflect this exclusion in the compliance filing, and would also provide a reporting format in the Business Practice Manual for Reliability Requirements.

6. The Proposed Non-Availability Charge for RA Resources that Fall Below 50% of the Availability Standard for the Month Is Just and Reasonable

Section 40.9.6.1 provides a graduated scale for determining the amount of

RA Capacity of an RA Resource that is subject to the Non-Availability Charge. Under the proposed scale, if an RA Resource's actual availability is less than 50 percent for a given month, the RA Resource's entire RA Capacity will be subject to the Non-Availability Charge; and if its availability is greater than 50 percent but less than the Availability Standard minus 2.5 percent for a given month, the resource will be assessed the Non-Availability Charge for that portion of the RA Resource's RA Capacity equal to the Availability Standard percent minus 2.5 percent minus the resource's actual availability for the month.

The CAISO notes that the proposal that an SCP penalty should be applied to the entirety of an RA resource's RA capacity if the unit is not available more than 50% of the month did not originate with the CAISO. It was reflected in the "original" SCP proposal submitted by a numerous parties on December 12, 2007 in the CPUC's proceeding in Rulemaking 05-12-013.⁶⁸ That proposal was also submitted to stakeholders at the beginning of the SCP stakeholder process, included in the stakeholder record linked on the CAISO website, and adopted by the CAISO. During the lengthy stakeholder process, NCPA and SVP did not submit comments objecting to the imposition of a Non-Availability Charge to an RA Resource's entire RA capacity if the unit's availability is below 50 percent.⁶⁹ However, they raise this argument in their protests. NCPA and SVP claim that this approach is not justified, is overly burdensome, and creates poor

⁶⁸ That proposal was submitted by Calpine, Coral Power, Constellation Energy, J. Aron & Company, PG&E, Strategic Eenergy, AReM, WPTF, Mirant, APS Energy Services, Energy Users Forum, California Electricity Oversight Board, The Utility Reform Network, Division of Ratepayer Advocates, and Large Energy Consumers Association

⁶⁹ NCPA at 6; SVP at 11-12.

incentives.⁷⁰ NCPA and SVP would prefer a measure where a unit would “be assessed a Non-Availability Charge for that portion [of] its capacity that is the difference between the Availability Standard minus 2.5 percent and the resource’s actual Availability if the resulting value is equal to or greater than the PMin of the facility.”⁷¹

The CAISO disagrees with NCPA and SVP. The arguments ignore the fundamental purpose of the RA program and SCP. The RA program was implemented to ensure that adequate resources would be available when and where needed to serve load, meet appropriate reserve requirements, and support reliable operation of the CAISO Controlled Grid. SCP is proposed as an enhancement to the RA program. SCP is designed with availability incentives for RA Resources in order to promote reliability; reward resources that are most available to support grid operations; discourage LSEs and resources from “leaning” on others to the detriment of supply sufficiency; facilitate the selling, buying, and trading of capacity to meet RA requirements; and reinforce the planning Reserve Margins established by Local Regulatory Authorities. The CAISO included the requirement that an RA Resource be available at least 50 percent of the time, or be subject to Non-Availability Charges on its entire RA capacity, to align the incentive for the resource to perform with the need of the CAISO for RA resources to be reliable and there when needed. In the CAISO’s opinion, a resource that is actually available less than 50 percent of the time fails

⁷⁰ *Id.*

⁷¹ NCPA at 6; SVP at 12.

to meet the basic purpose of the RA program and poses a detriment to reliability. It should not be entitled to an Availability Incentive in such circumstances, and an overwhelming number of parties agree. As RA Resource availability improves above 50 percent, SCP recognizes the value of that more certain performance by graduated reduction of the applicable Non-Availability Charges and graduated award of Availability Incentive Payments. The CAISO believes that this approach is consistent with and promotes the purpose of the RA program and provides the appropriate incentives for RA Resources to make their RA capacity available to the CAISO.

As indicated above, the proposal for the 50% “cliff” reflected in the proposed tariff language is based on the proposal that was submitted by a large number of stakeholders at the start of the stakeholder process and is supported by a broad spectrum of stakeholders. Tellingly, no independent power producer - the entities that will bear the brunt of this proposal -- objects to it. The CAISO agreed that adoption of a “cliff” was not unreasonable given that the RCST, TCPM and ICPM capacity payment provisions all employ a “cliff” beyond which the resource receives no capacity payments. Given that the Commission approved a payment “cliff” for RCST, TCPM and ICPM – found in Appendix F, Schedule 6 of the pre-MRTU Tariff (for TCPM and RCST) and in Appendix F of the current CAISO Tariff for the ICPM -- it is not unjust and unreasonable to apply the proposed payment design in the SCP context.

7. SWP’s Proposed Force Majeure Language Is Unnecessary

One party, SWP, requests that the proposed Section 40.9.4.2 be modified to provide that outages due to Uncontrollable Forces will not be counted against availability.⁷² SWP's request is unnecessary and inadvisable. Section 14.1 of the CAISO Tariff already states, "Neither the CAISO nor a Market Participant will be considered in default of any obligation under this CAISO Tariff if prevented from fulfilling that obligation due to the occurrence of an Uncontrollable Force." Thus, all participants are protected against Non-Availability Charges as a result of force majeure events. Adoption of SWP's proposed language would add unwarranted confusion to the CAISO Tariff to have a specific additional exemption in one section whereas all other duties and obligations under the same tariff are covered by the general exemption. Accordingly, SWP's request should be denied.

8. The CAISO's Proposed Allocation of Undistributed Non-Availability Charge Funds Is Fair and Reasonable

Section 40.9.6.3 provides that the Availability Incentive Payment the CAISO pays to eligible RA Resources will equal the product of the resource's eligible capacity and the Availability Incentive Payment rate, which rate is capped at three times the Non-Availability Charge rate. In the event that any Non-Availability Charge funds are not distributed to eligible resources through Availability Incentive Payments due the cap, the section provides that remaining funds will be credited against the Real-Time neutrality charge for the Trade Month in accordance with Section 11.5.2.3.

⁷² SWP at 9.

Only one party -- Calpine -- suggests a different approach. Calpine proposes that any excess penalty payments should carry over to be available to fund any future incentive payments that would not be covered by sufficient penalty amounts in such months. The excess penalty amounts would then be refunded to load only if, over the course of an annual accounting period, excess penalty amounts were collected and not disbursed to resources eligible for incentive payments. Interestingly, this position seems inconsistent with Calpine's written comments submitted on December 18, 2009 in the stakeholder process in which Calpine affirmatively stated that the fund should clear monthly in order to provide the clearest link between performance and consequence.

The CAISO believes that the distribution contemplated in Section 40.9.6.3 is a just and reasonable approach to distribute any remaining funds in a given month. It will allocate the funds to metered CAISO Demand in the corresponding Default LAP. Since metered CAISO Demand will be charged for any backstop procurement the CAISO must undertake, which could result from unavailable RA capacity, it is appropriate that load be credited with any residual funds to offset the cost of backstop procurement.

The CAISO's proposal recognizes the temporal features of the RA program and assigns the benefits and burdens of performance (or non-performance) within the timeframe that they occurred. In particular, the CAISO's proposal recognizes that the RA program is essentially a monthly program.⁷³

⁷³ In approving the ICPM and TCMP tariff provisions, the Commission recognized the monthly nature of the RA construct. *California Independent System Operator Corporation*, 125 FERC ¶ 61,053 at P 89 (2008); *California Independent System Operator Corporation*, 123 FERC ¶ 61,229 at PP 35, 36, and

Because RA is a monthly product, there can be a different pool of resources each month. The CAISO's proposal aligns the benefits and the burdens in the timeframe in which they occurred. Stated differently the charges assessed to poor performers for a particular month's poor performers would be used to fund incentive payments to the resources that performed well during that month to offset the poor performances. Calpine's protest ignores the basic structure of the RA program and would instead misalign the cost burden and offset benefit. For example, brand new resources that were not RA resources the previous month could reap the benefits of the prior month's charges to poor performing units even though they were not called upon during the prior month to offset other RA unit's poor performance. It could also result in a situation where poor performance by RA units in a prior month led the CAISO to exceptionally dispatch the unit that becomes RA in the subsequent month. That unit would receive an ICPM payment for the preceding month as a result of certain units' non-performance and then in the subsequent month could receive incentive payments the next month based on charges imposed on the very same units that did not perform the prior month. That is not appropriate. Accordingly, the Commission should reject Calpine's protest.

B. The CAISO's A/S MOO Proposal Is Just and Reasonable

1. Calpine's Arguments Against Adoption Of An Ancillary Services Must Offer Obligation Are Without Merit

59 (2008). The CAISO's proposal to use charges imposed on RA resources in a given month to make incentive payments to other RA resources during that same month is consistent with the monthly RA construct.

Calpine argues that the CAISO has not demonstrated a substantial need to impose an Ancillary Services Must Offer Obligation on RA resources given that A/S bid deficiencies were “relatively low” in 2007 and 2008.⁷⁴ Calpine also expresses concern about imposing new requirements for RA resources that are not accompanied by a compensation mechanism that reflects different reliability capabilities.⁷⁵ Calpine claims that the fact that resources subject to the A/S MOO will be paid their opportunity costs only holds resources harmless from the additional offer obligation but does not allow such resources to realize financial awards commensurate with their enhanced capabilities and performance. Calpine argues that the CAISO should be “held to a higher standard of proof” to demonstrate that it has a significant problem with A/S bid deficiencies and that such deficiencies are associated with the lack of an A/S MOO.⁷⁶

Calpine has not set forth any legitimate basis for rejecting the A/S MOO Proposal and ignores the arguments that the CAISO set forth in its Filing Letter in support of the A/S MOO. Calpine is the only intervenor in this proceeding that opposes approval of an Ancillary Services Must Offer Obligation. Most telling is the fact that no other entity that would be subject to the A/S MOO objects to it or finds it to be problematic as Calpine alleges.

⁷⁴ Calpine at 7.

⁷⁵ *Id.* at 8.

⁷⁶ *Id.*

In particular, Calpine ignores important changed circumstances from the 2007-2008 timeframe that support the need for an A/S MOO. Since the launch of the new markets, the CAISO is now required to procure, *in the IFM*, 100% of its forecasted Real-Time A/S requirements. Stakeholders decided during the MRTU stakeholder process that the CAISO should not have any elasticity in these Day-Ahead A/S procurement obligations. This Day-Ahead A/S procurement obligation did not exist prior to MRTU and supports the corresponding need for a Day-Ahead A/S Must Offer Obligation for RA resources. If the Must Offer Obligation is limited to Energy, then the CAISO could be confronted with a situation where it has excess Energy bids, including Energy bids from A/S certified RA capacity, but insufficient A/S supplies being offered into the market to enable the CAISO to meet both its A/S procurement obligation under the tariff as well as applicable reliability criteria. The A/S MOO can prevent this situation by helping to ensure A/S supply sufficiency as well as market liquidity.

In its Filing Letter,⁷⁷ the CAISO identified other reasons why the A/S MOO proposal is needed for reliability and market efficiency. Calpine does not address those reasons, and the CAISO will not repeat them here.

Calpine also seems to vaguely suggest that some additional compensation should accompany the A/S MOO, but Calpine fails to state

⁷⁷ See Filing Letter at 39-40.

with any specificity what such compensation would be, where it should come from, and why it is necessary. Interestingly, no other supplier complains that any form of additional compensation is necessary in conjunction with the A/S MOO. As the CAISO indicated in its Filing Letter,⁷⁸ suppliers should be financially indifferent to complying with the A/S MOO, and that is confirmed by the fact that no supplier other than Calpine objects to it. To the extent RA units are selected for A/S rather than Energy, the Ancillary Service Market Price will reflect both the A/S capacity bid prices accepted in the market as well as the energy opportunity cost incurred by resources that forego earning their locational energy price because of the provision of A/S. Thus, the design of the ASMP approved by the Commission ensures that suppliers who offer both Energy and Ancillary Services will be financially indifferent to being scheduled for whatever combination of energy and A/S results from the market optimization.

It is not clear, what Calpine means when it states that resources subject to the A/S MOO will be paid their opportunity costs only holds resources harmless from the additional offer obligation but does not allow such resources to realize financial awards commensurate with their enhanced capabilities and performance. The CAISO submits that the ability of a resource to participate in the A/S markets is in fact the opportunity for A/S capable resources to realize financial awards

⁷⁸ *Id.* at 41.

commensurate with their enhanced capabilities and performance. The CAISO Tariff does not require any resource to certify to provide A/S; the resource owner presumably becomes certified for A/S because such certification enables it to realize additional revenues that are not available to resources without such capabilities.

Thus, the added reward that an A/S certified resource has derives directly from its ability to provide A/S services, submit A/S bids and receive A/S payments. Units that are not certified to provide A/S do not have this opportunity. Importantly, in instances where providing A/S service is more valuable to the resource owner than providing energy, an A/S-certified resource will have the opportunity to participate in the A/S market and reap that benefit that is only available to A/S certified resources; other resources will not have that opportunity.

To the extent Calpine is arguing that RA units with certified A/S capacity should receive a higher RA capacity payment than other units, Calpine has not expressly stated such argument or provided any basis for it. In any event, payments for RA capacity are made through bilateral contracts between LSEs and suppliers and not through the CAISO tariff. The CAISO is not privy to those payment provisions.

2. Intervenor's Have Not Demonstrated A Basis For Applying The A/S MOO To Hydro And Other Use Limited Resources

Several parties submitted comments regarding the CAISO's decision not to propose imposition of the A/S MOO on hydroelectric and other use limited resources ("ULRs"). Calpine, SDG&E, SCE and NRG all

claim that the CAISO has not demonstrated a basis for exempting hydro resources and other ULRs from the A/S MOO.

Calpine submits that the Energy and A/S bids of hydro resources and ULRs should be co-optimized consistent with the intended purpose of the A/S MOO.⁷⁹ NRG argues that the CAISO should impose the A/S MOO on all RA resources certified to provide Ancillary Services.⁸⁰

SDG&E submits that a comparable A/S MOO should apply to these resources. SDG&E suggest that the CAISO adopt an approach similar to that used by the eastern ISOs whereby a scheduling coordinator for a hydro resource or ULR resource files an annual plan that details the various operational limits and restrictions that must be observed by the units, and generally how the Scheduling Coordinator plans to assess opportunity costs for purposes of establishing the unit's price-sensitive offers in the day-ahead and real-time markets. Each day during the course of the year the Scheduling Coordinator would determine the minimum and maximum amount of energy and A/S that could be produced by the unit the next day and submit multi-part price offers designed to allow the CAISO to ration use of the unit based on the Scheduling Coordinator's assessment of marginal opportunity costs.⁸¹

SCE notes that dispatchable ULRs are required to submit bids in the day-ahead market so long as they are physically capable of operating

⁷⁹ Calpine at 8.

⁸⁰ NRG at 12.

⁸¹ SDG&E at 7.

in accordance with their operating criteria, including environmental and other operating constraints. SCE submits that these resources should have the same obligation with respect to A/S.⁸² SCE also notes the non-dispatchable ULRs are required to provide their expected energy. SCE argues that these resources should have the same obligation with respect to A/S in order to ensure that they are accountable to some degree for providing A/S.⁸³

The CAISO did not propose to impose the A/S MOO on hydro resources and other ULRs because they are exempt from the RA MOO under Section 40.6.1 which requires other RA resources to submit Economic Bids or Self-Schedules for every hour of every Trading Day to the extent they are available. Under the existing CAISO Tariff, hydro resources and ULRs do not have an affirmative requirement to bid Energy into the markets on a daily basis. In that regard, under Section 40.6.4.3.2 of the CAISO Tariff, hydro units are only required to “submit Self-Schedules or Bids in the Day-Ahead Market for their expected available Energy or their expected as-available Energy, as applicable, in the Day-Ahead Market and HASP.” Further, such units “shall revise their Self-Schedules or submit additional Bids in HASP based in the most current information available regarding their Energy deliveries. Also, hydro units are not subject to commitment in the RUC process.

⁸² SCE at 6.

⁸³ *Id.* at 7.

As the CAISO indicated in its Filing Letter, it was not attempting to expand the extent to which a Commission-approved offer obligation already applies (or does not apply) to specific resource-types. On the other hand certain of the intervenors seek to impose an A/S Offer Obligation on hydro resources and other ULRs that goes far beyond the scope of their existing RA obligations.

In its Filing Letter, the CAISO offered several additional reasons why it was not proposing to apply the A/S MOO to hydro resources. First, the CAISO noted that there are multiple operating requirements to which hydro resources are typically subject (*i.e.*, water management and other environmental objectives beyond power production) and which may require the resource to offer either Energy or A/S but not both. For example, hydro resources may offer only operating reserves under a contingency-only designation when it has limited ability to be dispatched for Energy, knowing that the reserves will only be dispatched under contingency conditions. Thus, the ability to offer either Energy or A/S but not both can be important to such resources. Second, the CAISO noted that its markets provide for a daily energy limit that a resource can use to specify a maximum MWh quantity that it can deliver over a 24-hour period, which the market will then allocate over that time period in an optimal fashion. This functionality was recognized by stakeholders as an essential feature to enable Hydro and other use-limited dispatchable resources to offer Economic Bids for Energy into the markets for all hours of the day

and allow the CAISO to optimize the scheduling of that energy, without any risk that the maximum available energy will be exceeded. At this time, the CAISO knows of no way to combine an A/S MOO feature with the daily energy limit into a 24-hour co-optimization process, because Energy and A/S are not simply interchangeable for a ULR. For example, one MWh of energy is not simply equal to one MWh of A/S capacity for such a resource, because a one MWh energy schedule is a financial commitment to generate one MWh of energy, whereas a one MW A/S schedule for one hour has only a small probability of being converted into a MWh of energy, and to a use-limited resource this distinction can have significant bearing on its daily energy limit.

Although certain intervenors argue that it is unduly discriminatory not to apply the A/S to hydro resources, they fail to recognize or address these distinctions between hydro resources and other resources that will be subject to the A/S MOO. The Commission has already found it appropriate to exempt hydro resources from the RA MOO in Section 40.6.1 to offer Energy bids or Self-Schedules into the Day-Ahead Market. The CAISO does not see any reason why the exemption should not apply to Ancillary Services as well. To the extent the Commission finds that it is necessary to impose an A/S offer obligation on hydro resources, the Commission should not go any further than the SCE proposal which appears to be the most consistent with the current Energy offer obligation

that these resources have, which was based on the realities of hydro operations.

3. A “Hold Harmless” Provision For SC’s Whose Self-Schedules Are Curtailed In Order To Provide Ancillary Services Is Inappropriate

CMUA, Six Cities, NCPA, M-S-R argue that the CAISO should be required to hold Scheduling Coordinators harmless if an energy self-schedule is curtailed for purposes of the CAISO using the capacity to provide Ancillary Services. CMUA claims that Scheduling Coordinators whose Energy self-schedules are curtailed face the real possibility of increased charges and notes that one “potentially significant” exposure is the CAISO uplift costs such as Charge Code 6636 (IFM Bid Cost Recovery Tier 1 Allocation). Although CMUA cannot identify any other potential charges that Scheduling Coordinators might face, CMUA urges the Commission to require the CAISO, in a compliance filing, to examine each of its charge types and fashion a comprehensive “hold harmless” mechanism that does not leave Scheduling Coordinators whose Energy-Self Schedule is curtailed worse off because of the Energy-A/S co-optimization.⁸⁴ NCPA, SVP and Six Cities echo CMUA’s concerns and argue that SC’s whose Energy Self-Schedules are curtailed should be held harmless from any additional charges they might incur as a result of such curtailment.

⁸⁴ CMUA at 7-8.

In its Filing Letter, the CAISO discussed the various potential financial impacts raised by these parties (including Charge Code 6636 uplift charges) and demonstrated that they were either non-existent or, if they occurred, would be both insignificant and reasonable.⁸⁵ First, Self Schedule curtailments will occur only after the market exhausts all available and effective economic bids. Second, because any curtailments will occur when A/S supplies are extremely short, A/S prices should be correspondingly high and that will provide added revenues to Scheduling Coordinators and mitigate the increased exposure Scheduling Coordinators might have to the IFM uplift. Third, Scheduling Coordinators that wish to Self-Schedule supply to serve their load can minimize the risk of curtailment by submitting bids at the bid cap for their Ancillary Services capacity. SVP expresses concern that “empirical analysis regarding Self-Schedules submitted at the bid cap under MRTU does not demonstrate any level of protection to the generating units.”⁸⁶ SVP’s argument is unclear. If Scheduling Coordinators are submitting Self-Schedules there are no bids associated with such Self-Schedules.”

Fourth, any increased exposure to the IFM uplift that might occur is reasonable and appropriate in light of the overall benefits to the market as a whole – including SVP -- that result from the CAISO’s co-optimization of Energy and A/S in the new markets, namely a more liquid A/S market

⁸⁵ Filing Letter at 43-45.

⁸⁶ M-S-R at 16.

supply, more efficient scheduling of RA capacity for Energy and A/S, and enhanced reliability due to increased A/S supplies. These benefits derive from the fact that RA capacity is explicitly intended to be used for the benefit of the entire system not just the LSE that procured it. These parties' arguments therefore amount to a claim of entitlement to enjoy the benefits of being served under the structure of the CAISO's centralized grid operation, spot markets and the RA program without having to be exposed to any of the associated costs.

In the CAISO's market parameters filing in Docket No. ER09-240, the CAISO proposed tariff language giving it the ability to adjust non-priced quantities (including curtailing Self-Schedules). This authority is reflected in Section 31.4 and 34.10 of the CAISO Tariff. The Commission approved the CAISO's ability to reduce Self-Schedules and other non-priced quantities without requiring that the CAISO adopt a "hold harmless" provision.⁸⁷ Likewise, the Commission should not require the CAISO to implement any "hold harmless" provision in connection with the CAISO's curtailment of Self-Schedules in order to procure needed A/S supplies. The CAISO also notes that in operating an integrated transmission grid, it routinely is required to re-dispatch resources. The curtailment of Self-Schedules and the re-dispatch of resources all have financial impacts on LSEs that have provided RA capacity to the CAISO. However, the CAISO is not required to hold LSE's harmless under such circumstances. This is

⁸⁷ *California Independent System Operator Corp.*, 126 FERC ¶ 61,147 (2009).

simply one of the costs of participating in an integrated transmission grid where the CAISO operates the system and maintains reliability for the benefit of all LSEs on the system. It is appropriate that LSEs bear both the benefits and the burdens of these integrated operations. A “hold harmless” provision is not only inappropriate under these circumstances, it is inconsistent with Commission precedent.

4. The Commission Should Not Require the Tariff To Explicitly Preclude Curtailment of Energy Self-Schedules Where A UDC Needs To Run A Unit To Serve Its Load

CMUA and Six Cities state that the CAISO proposal does not address the issue of instances where A/S-Energy substitution may trigger violations of local reliability requirements. They state that reliability requirements may require a Utility Distribution Company’s (“UDC”) internal generation to run in order to serve the UDC’s load and not violate physical facility limitations. For example, CMUA notes that if an RA resource is behind the interconnection there may be an absolute requirement that the unit run for energy in order for the counterflows to be created and firm load shedding avoided.⁸⁸ Six Cities provides as an example a situation in which Pasadena’s forecast exceeds interconnection capacity, and Pasadena must schedule Energy from its internal Generator to meet expected load. Six Cities state that the tariff should explicitly preclude curtailment of Energy Self-Schedules that are required for local reliability

⁸⁸ CMUA at 8.

reasons such as this.⁸⁹ CMUA suggests that these limitations may not be captured in the Full Network Model because they are internal to a UDC or at an interconnection point, at transmission voltages below those turned over to the CAISO, or captured in operating agreements between a UDC and a Participating Transmission Owner (“PTO”) to which the CAISO is not a party.⁹⁰ CMUA suggests that at a minimum the CAISO needs to establish a process to confirm with individual entities that all operational constraints are reflected in the Full Network Model and, where there is an Energy-A/S substitution that would result in violation of operational limitations, a process is in place to override the determination made by the market software.⁹¹ Six Cities suggest that the CAISO could simply set forth an explicit process in the tariff whereby an LSE can challenge and request reversal of a curtailment of an energy Self-Schedule when such curtailment would threaten reliability.

CMUA and Six Cities raised this issue during the stakeholder process. In response, the CAISO recognized that such provisions were warranted in the case of a Metered Subsystem (“MSS”) that is responsible to manage congestion and losses within its MSS network “bubble,” and as such added the following provision to Sections 40.5.1 and 40.6.1:

⁸⁹ Six Cities at 5.

⁹⁰ *Id.*

⁹¹ *Id.*

The CAISO will not curtail for the purpose of meeting Ancillary Service Requirements a Self-Schedule of a resource internal to a Metered Sub-System that was submitted by the Scheduling Coordinator for that Metered Subsystem.

The CAISO Tariff explicitly prohibits the CAISO from dispatching an MSS System Unit that is Self-Scheduled to serve loads within in MSS except in the case of a System Emergency or if needed under certain specified circumstances to maintain system reliability. The proposed tariff revision identified above is consistent with the Commission's previously approved treatment of MSS System Units. However, no similar tariff exception exists for the generation of a non-MSS LSEs, and as discussed below, any such exception would not be appropriate for non-MSS entities.

Six Cities and CMUA want the CAISO to go further than the proposed tariff revision and provide that the CAISO will not curtail the Self Schedules of entities that are not MSS entities if the Energy Self Schedule is needed to serve these entities' load. There is no basis for extending this provision to the RA units of LSEs that are not MSS entities, and the Commission should reject the CMUA and Six Cities proposals because, unlike MSS for which the CAISO does not manage congestion and losses on the network facilities to their MSS system, it is the CAISO's responsibility as system operator to operate the grid reliably for all LSEs and avoid involuntary curtailment of load absent a declared system emergency. As such, the CAISO cannot reduce an Energy Self Schedule to obtain additional A/S at the cost of failing to maintain reliable operation of the system and causing involuntary load curtailment in any area of the grid for this it has operational responsibility.

The “non-curtailment” tariff language proposed by the CAISO is appropriate for MSS entities because MSS Entities, pursuant to their Commission-approved MSS agreements which recognize the distinct circumstances of MSS entities, are authorized to use their System Units to serve loads within their MSS “bubble”. However, that is not the case with the RA capacity of non-MSS entities. That RA capacity exists for the benefit of the entire integrated grid, and the CAISO uses such capacity to maintain reliability on the entire grid and to serve all load on the grid in the most optimal and efficient manner. Unlike the internal generation of MSS entities, the RA capacity of non-MSS LSEs is *not* used for the sole purpose of serving the load of the LSE who has contracted for the RA capacity. As the Commission recognized in its September 21, 2006 Order on the MRTU Tariff, “resource adequacy is the availability of an adequate supply of generation or demand response to support the safe and reliable operation of the grid” and the RA process is “intended to ensure sufficient capacity will be available when and where it is needed to reliably operate the power system.”⁹² In the same order, the Commission recognized that one participant’s reliability decisions can impact the reliability of service available to other participants and the related costs that the other participants must bear.⁹³ The crux of Six Cities and CMUA’s complaints seems to be that they believe the CAISO cannot reliably operate the grid in their local areas and therefore individual LSEs must be able to make independent

⁹² *California Independent System Operator Corp.*, 116 FERC ¶ 61,274 at P 1090 (2006).

⁹³ *Id.* at P 1113.

operating decisions to meet their own needs and these decisions should override the operational responsibilities of the CAISO and trump the needs and reliability requirements of the entire integrated grid. That should not be the case. There can only be one entity primarily responsible for maintaining reliability and ensuring that all load is served in the CAISO Balancing Authority Area consistent with NERC's mandatory Reliability Standards, and that entity is the CAISO. The Commission concurs, noting that "the CAISO has the responsibility to ensure the reliability of the transmission system under its control...without an adequate resource adequacy program, the CAISO cannot fulfill that responsibility."⁹⁴ Clearly, if every non-MSS LSE had the right to fully control the use of its RA capacity to serve its local loads, that would undermine the control of the system operator and could create new reliability problems on the integrated grid. Because the CAISO is already required under its tariff and Commission order(s) to comply with the mandatory Reliability Standards and serve load, this proposed ability of non-MSS LSEs to assume operational control of the grid in their own areas is unnecessary, inappropriate and potentially even incompatible with system reliability.

If there are local constraints that affect the ability of the CAISO to reliably serve the load of any non-MSS LSE, then they need to be modeled. To the extent CMUA and Six Cities believe there are constraints that are not reflected in the Full Network Model, they should advise the CAISO of those constraints to ensure that they are captured. However, CMUA and Six Cities do not identify any

⁹⁴ *Id.* at P 1115.

specific unmodeled constraints or other deficiencies in the FNM. The CAISO submits that its operations and engineering staff are continuously examining grid and market conditions and outcomes to detect and quickly address these types of issues. Indeed, this is the CAISO's responsibility as system operator, and if any market participant or other stakeholder makes the CAISO aware of any situation that they believe the CAISO has overlooked or inadequately addressed, the CAISO will assess such information promptly and carefully and will take appropriate action. Decentralized self-management of grid operation by LSEs is not, however, a viable approach to such instances.

The CAISO notes that it has allowed entities to enter in MSS agreements with the CAISO, and several entities have MSS arrangements that allow them operational control over their internal facilities in a manner Six Cities and CMUA seem to be suggesting.

As indicated above, in the market parameters filing in Docket No. ER09-240, the CAISO proposed tariff language giving it the ability to adjust Self-Schedules when appropriate to ensure optimization solutions that represent both sound economics and good utility practice. The Commission approved the CAISO's ability to reduce Self-Schedules and other non-priced quantities under these circumstances, subject to the hierarchy of self-schedule priorities specified in Sections 31.4 and 34.10, without requiring that the CAISO adopt a tariff provision explicitly precluding adjustment or curtailment of Self-Schedules in

situations where a UDC desires to run a particular internal unit to serve its load.⁹⁵ For similar reasons, the Commission should not require the CAISO to implement any such tariff provision in connection with the CAISO's curtailment of Self-Schedules in order to procure needed A/S supplies only when there are insufficient A/S bids.

5. The A/S MOO Only Applies To The RA Capacity Of A Partial RA Unit

Calpine expresses concern with the implementation of the A/S MOO as it pertains to generation resources that only have a partial RA contract covering less than a resource's full net qualifying capacity ("NQC"). Calpine claims that application of the A/S MOO will result in the CAISO considering both the RA capacity and the A/S capacity, thereby effectively requiring the unit to bid capacity in excess of its RA obligation. Calpine argues that until such time that the CAISO software can be modified to co-optimize either energy or ancillary services, the A/S MOO should be deferred, at least as it would apply to partial RA units.⁹⁶ Similarly, NRG states that the CAISO should be required to explain how its software will optimize partial RA resources under the A/S MOO. NRG submits that the A/S MOO should only apply to the portion of the RA capacity procured and that the CAISO is not seeking to hold the balance of the unit to an A/S capacity obligation.⁹⁷

⁹⁵ *California Independent System Operator Corporation*, 126 FERC 61,147 (2009).

⁹⁶ Calpine at 9.

⁹⁷ NRG at 14.

The CAISO recognizes that Calpine's and NRG's concerns reflect certain aspects of how the IFM operates today. The CAISO is not proposing to apply the A/S MOO to the non-RA capacity of a unit, however, and one element of the implementation of A/S MOO will be to modify the IFM optimization so that when Energy and A/S bids are offered only for the RA capacity of a partial RA unit, only the RA capacity will be scheduled as a result of the co-optimization. The CAISO's proposed tariff language makes it clear that the A/S MOO will only apply to a unit's RA capacity. In that regard, Section 40.6.2 provides as follows:

Resource Adequacy Resources physically capable of operating must submit (a) Economic Bids for Energy and/or Self-Schedules for all their Resource Adequacy Capacity that is not covered by a Submission to Self Provide Ancillary Services; and (b) Economic Bids for Ancillary Services and/or a Submission to Self-Provide Ancillary Services in the IFM for all of their Resource Adequacy Capacity that is certified to provide Ancillary Services.

6. The CAISO Is Not Proposing To Exempt Resources That Self-Provide Ancillary Services From The Requirement To Submit Energy Bids and/or Energy Self-Schedules

NRG states that the CAISO has failed to explain its proposal that capacity resources that are used to self-provide ancillary services are not required to submit energy bids. NRG states that the CAISO's proposal to exempt self-provided ancillary services from the Resource Adequacy must offer obligation is inconsistent with the CPUC's stated objective for the RA program to assure that resources are made available to the CAISO through Day-Ahead submission of a bid or self-schedule. NRG claims that the CAISO has failed to justify why entities self-providing ancillary services

should be allowed to withhold energy from the energy market or how this proposal serves the CAISO's market efficiency objective.

Upon reviewing NRG's comments and considering the matter, the CAISO believes that it would be appropriate to adopt the change NRG proposes. Therefore, on compliance the CAISO will revise Sections 40.5.1(1)(i)(a), 40.6.1(1)(a), and elsewhere as may be needed, to remove the qualifying phrase "that is not covered by a Submission to Self-Provide Ancillary Services."

.7. Powerex Requests For Clarification

Powerex seeks several clarifications regarding the A/S MOO proposal. First, Powerex notes that, with respect to resources that have received schedules in the IFM or RUC, the proposed tariff language does not state specifically that the obligation to remain available in real time would extend only to the given Trading Hour. Powerex suggests that it would be more precise to specify that the resource's obligation is limited to the Trading Hour for which it receives a schedule. The CAISO agrees that for non-dynamic non-Resource Specific System Resources that provide RA capacity, the obligation to be available in real time applies only to those hours of the trading day for which the resource was awarded either an IFM or a RUC schedule. The CAISO does not object to adding tariff language to Section 40.6.2 to reflect that fact. The CAISO notes, however, that this modification is limited to non-dynamic, non-Resource Specific System Resources; other types of System Resources that provide

RA capacity are covered in sections 40.6.5.1 and 40.6.5.2. which specify offer obligations consistent with sections 40.6.1 and 40.6.2.

Powerex also states that for resources that do not receive schedules in the IFM or RUC it appears that, unless a resource is a Short-Start Unit or Long Start Unit, it does not appear to have any further obligation to remain available for that Trading Hour. The CAISO believes that Powerex is referring, as in the previous point, to the obligations on non-dynamic non-Resource Specific System Resources that provide RA capacity, which the CAISO has agreed to clarify in section 40.6.2 as stated above.

Finally, Powerex recommends two changes to Section 40.6.8 which pertains to the CAISO's use and calculation of Generated Bids. First, Powerex requests that the CAISO explicitly clarify in Section 40.6.8 that, if a SC for an RA Resource submits a partial bid for its RA capacity, the CAISO will insert a Generated Bid only for the remaining RA capacity and the original components of the bid shall remain unchanged. The CAISO agrees to clarify that the original bid prices shall remain unchanged when generated bids are inserted. However it may be necessary to shift some of the bid prices to different points on the resource's operating range in order to ensure a non-decreasing bid curve in instances where the Generated Bid may be at a lower price than one or more of the submitted bid prices.

Powerex also notes that the CAISO software currently does not generate bids for System Resources providing RA capacity at the interties.

Accordingly, Powerex requests that the CAISO modify its tariff and BPM to explicitly clarify that it will insert a Generated Bid for any remaining RA capacity provided by System Resources that have not submitted a bid in the Day-Ahead or Real-Time market, and that the Generated Bids for Energy for such resources will be \$0/MWh. The CAISO notes that under both the original tariff language and the proposed tariff changes there is no exemption from generated bid insertion for System Resources that provide RA capacity. Although the market software currently does not insert generated bids for such System Resources, the CAISO intends to implement this functionality in conjunction with the effective date of the A/S MOO.

Thus, the CAISO intends to insert Generated Bids for System Resources pursuant to Section 40.6.8 but does not have the capability at this time. To the extent that concept is not already clear in Section 40.6.8, the CAISO is willing to add language clarifying it. The CAISO has not yet determined whether the Generated Bid price for Energy will be \$0 or some other price. As proposed in Section 40.6.8, the CAISO would set forth the steps for calculating Generated Bids in the BPM.

8. Under The Express Provisions Of The CAISO Tariff, Load Following MSSs Are Not Subject To The Provisions Of Section 40.5.1 Or 40.6.1

SVP suggests that some clarification is needed regarding the statement in Sections 40.5.1 (1)(iv) and 40.6.1 (4) regarding “an RA resources that is... internal to that MSS.” SVP states that the CAISO does

not distinguish between Load Following MSSs and non-Load Following MSSs but that a distinction is necessary because Load Following MSSs are not subject to any RA must offer obligation.⁹⁸

No further clarifications or tariff changes are necessary. Section 40.1.1 of the CAISO Tariff expressly states that “Scheduling Coordinators for Load Following MSSs are subject solely to Sections 40.2.4, 40.3 and with respect to their Local Capacity Area Resource identified in accordance with Section 40.2.4, Section 40.9. [FIX QUOTE] The tariff language that SVP refers to is found in Tariff Sections 40.5.1 and 40.6.1. Because the CAISO Tariff already provides that those tariff sections do not apply to Load Following MSSs, the proposed tariff language can only apply to non-Load Following MSSs. No further clarification is needed.

9. SWP’s Recommended Tariff Revisions Are Unnecessary

SWP recommends a host of tariff revisions to make it clear that hydroelectric resources are exempt from mandatory Ancillary Services provision and related A/S MOO obligations.⁹⁹ The CAISO submits that these revisions are not necessary. The submitted tariff language -- as fully explained in the Filing Letter -- makes it clear that hydro resources are not subject to the A/S MOO or any of the tariff changes related to implementation of the A/S MOO. Indeed, other parties are objecting to the

⁹⁸ SVP at 14-15.

⁹⁹ SWP at 4, 6, and 8.

fact that the CAISO has expressly exempted hydro resources from any A/S MOO obligations.

IV. CONCLUSION.

Wherefore, the CAISO respectfully requests that the Commission approve the April 28 Filing as proposed and as discussed herein, without suspension or hearing.

Respectfully submitted,

/s/ Anthony Ivancovich

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Certificate of Service

I hereby certify that I have this day served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 3rd day of June, 2009 at Folsom, California.

/s/ Jane Ostapovich

Jane Ostapovich