

Decision 06-12-037 December 14, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

OPINION ON PETITIONS FOR MODIFICATION OF DECISION 05-10-042

1. Summary

In this decision, we address three pending petitions for modification of Decision (D.) 05-10-042 that were filed by the California Independent System Operator (CAISO), the Independent Energy Producers Association (IEP), and Southern California Edison Company (SCE), respectively. The petitions are granted in part and denied in part as set forth in the following discussion and order. The modifications to D.05-10-042 and the resource adequacy (RA) program that we adopt today include the following:

- Firm liquidated damages (LD) import contracts must now specify a firm delivery point at an interconnection with the CAISO control area or a CAISO scheduling point to qualify as RA resources.
- Certain import contracts are exempted from the general requirement that RA resources make themselves available to the CAISO in real time.
- Minor wording changes to clarify the intent of the Commission on certain matters are adopted.

2. Background

D.05-10-042, issued in Phase 2 of the RA portion of this proceeding, reaffirmed and clarified the Commission's RA policy framework that was adopted in D.04-01-050 and D.04-10-035. D.05-10-042 also ordered the implementation of that policy framework beginning with the 2006 compliance year. Under the RA program as currently constituted, the three large California investor-owned electric utilities as well as electric service providers and community choice aggregators (collectively, load-serving entities or LSEs) are required to demonstrate that they have acquired the capacity resources needed to serve their forecasted retail customer load and a 15%-17% reserve margin.

The petitioners have proposed modifications pertaining to twelve areas of D.05-10-042.¹ The following discussion addresses each of these 12 topics in Sections 3.1 through 3.12 of this decision, respectively. As described more fully therein, certain proposed modifications are not adopted here because the topic has already been resolved in Phase 1 of Rulemaking (R.) 05-12-013 (the successor to this proceeding for RA issues) or is more appropriately addressed either in Phase 2 of that proceeding or a future RA proceeding. Also, D.06-04-040, which considered applications of IEP, Calpine Corporation (Calpine), and FPL Energy LLC for rehearing of D.05-10-042, modified that decision and denied rehearing of the modified decision. The modifications adopted in D.06-04-040 have rendered certain of the modification requests considered here moot. Finally, we note that

¹ Pacific Gas and Electric Company (PG&E) also filed a petition to modify D.05-10-042, seeking to remove a prohibition on reselling and re-trading of import capacity. That petition was granted by D.06-02-007.

the RA compliance filing guide issued by the Commission's Energy Division resolved certain matters that were raised in the petitions.²

The Alliance for Retail Energy Markets (AReM), the Division of Ratepayer Advocates (DRA), PG&E, San Diego Gas & Electric Company (SDG&E), SCE, and The Utility Reform Network (TURN) filed responses to the CAISO's petition. SCE and PG&E responded jointly to IEP's petition. AReM, PG&E, Sempra Global, and TURN filed responses to SCE's petition. Pursuant to authorization by the Administrative Law Judge (ALJ), the CAISO, Calpine, and SCE filed replies to the responses to SCE's petition.

3. Discussion

3.1 Planned Outages (CAISO)

The CAISO recommends the addition of a counting convention specifying that resources that are scheduled to be offline for maintenance for 25% of the month or longer during any reporting month must be replaced in the LSE's compliance showing.

The Commission adopted a protocol for scheduled outages in Phase 1 of R.05-12-013. In particular, D.06-07-031 specified the extent to which resources with scheduled outages count towards an LSE's procurement obligation depending on the scheduled duration of the outage and whether the compliance showing is for summer or non-summer months. (D.06-07-031, p. 10.). This issue

² D.06-07-031 expressly authorized the Energy Division to modify the RA filing guide, templates, and instructions and to promulgate additional filing procedures as necessary for the orderly implementation of the RAR program and the changing needs of the program. (D.06-07-031, Conclusion of Law 8.)

has been resolved by the Commission, and it is not necessary or appropriate to revisit it here at this time.

3.2 Delivery Point for Imports (CAISO)

D.05-10-042 ordered a phased prohibition of the use of firm LD contracts for purposes of RA compliance. However, the decision exempted firm LD import contracts from the general sunset/phase-out provision, thereby allowing their ongoing use, because import LD contracts do not raise issues of double counting and deliverability that in-area LD contracts have.

In its petition for modification, the CAISO requests that this exemption be limited to import LD contracts that specify a firm delivery point at an inter-tie or interconnection with the CAISO Control Area. The CAISO contends that this modification is necessary to ensure that the basis for the exemption is actually met by these contracts. PG&E and TURN support this modification, and SCE does not oppose it. DRA contends that the modification is unnecessary.

We will approve this proposed modification with a clarification arising from proposals by AReM and the CAISO in their opening and reply comments on the ALJ's Proposed Decision. According to the CAISO, if an import may simply be delivered to a "firm delivery point" within the CAISO Control Area generally, that import is indistinguishable from an in-area firm LD contract. Under that circumstance, the supplier of the import could source the obligation from power within the CAISO Control Area by submitting a schedule for delivery at "NP/SP 15." Such an outcome would not comport with our reasons for exempting these contracts from the general, phased, prohibition on the use of LD contracts. We note that while DRA believes the proposed modification to be unnecessary, it does not identify any specific problem if we adopt this

clarification. We also note that this modification is prospective, and does not apply to pre-existing contracts.

3.3 Intermittent Resources (CAISO)

For wind and solar resources without backup, D.04-10-035 determined that a historic performance approach should be used to determine the resource's qualifying capacity. It left implementation issues related to this determination to Phase 2. D.05-10-042 subsequently adopted a three-year rolling average approach and a standardized peak hour definition drawn from Standard Offer 1 contracts.

The CAISO proposes that the RA program be modified to provide that wind generation other than qualifying facility (QF) generation must be part of the CAISO's Participating Intermittent Resource Program (PIRP) to be eligible to provide RA capacity. In support of this proposal, the CAISO explains that PIRP allows intermittent resources such as wind generation to schedule energy in the forward market without incurring imbalance charges when the delivered energy differs from the scheduled amount. Moreover, the CAISO explains, when its Market Redesign and Technology Upgrade (MRTU) is implemented, it intends to factor the PIRP resource adequacy capacity when making Residual Unit Commitment (RUC) decisions to avoid over-procurement of resources.³ Since RUC is intended to provide the CAISO with a resource commitment tool to ensure sufficient generation capacity is on-line, and PIRP facilitates the efficiency

³ On September 21, 2006, the Federal Energy Regulatory Commission (FERC) issued a decision largely approving the CAISO's proposed MRTU with a targeted implementation date of November 2007. See *Order Conditionally Accepting The California Independent System Operators' Electric Tariff Filing To Reflect Market Redesign And Technology Upgrade*, FERC Docket No. ER06-615.

of RUC by allowing it to predict the contribution of intermittent resources, the CAISO believes that participation in PIRP should be a precondition for intermittent resources to provide RA capacity. The CAISO proposes to exclude QFs from this requirement because “there may be reasons for intermittent [QF] resources with existing Public Utility Regulatory Policies Act (‘PURPA’) contracts to forego the benefits of PIRP.” (CAISO Petition, p. 6.)

TURN agrees with this proposed requirement. PG&E supports it provided that it is applied only on a going-forward basis. Similarly, AReM does not oppose it on a going-forward basis. AReM opposes its applicability for 2006 as untimely, since LSEs had already issued requests for offers for qualifying capacity.⁴ Noting that QF wind resources already participate in PIRP, DRA states that it would not oppose requiring non-QF wind resources to be subject to the same requirement. However, DRA believes that it may be preferable to take up this issue in future RAR proceedings. SCE opposes the mandated participation of wind resources in PIRP based on what it sees as “serious flaws” in the CAISO’s planned implementation of MRTU. SCE is concerned that the proposal could result in LSEs losing 2,000 megawatts in 2007-08, distort location-based marginal pricing and the feasibility of Day-Ahead schedules, and lead to increased need for RUC commitments. SCE notes that this proposal was not considered in the RA workshops.

Even though we seek to harmonize our RA program with the CAISO’s market programs, including the MRTU, and we do not necessarily share each of SCE’s concerns about the MRTU in general or the PIRP in particular, we are

⁴ AReM filed its response when the compliance filing date for 2006 year-ahead RAR showings was imminent.

nevertheless concerned that this controversial new proposal has not been sufficiently vetted before this Commission. We note that the proposal was not taken up in workshops leading to the issuance of D.04-10-035 or those leading to D.05-10-042. We have too little information in the record before us to conclude that mandating the participation of wind resources in PIRP is necessary and fully consistent with RA program goals. We agree with DRA that it is preferable to take this up in future RA proceedings. Our rejection of the CAISO's PIRP proposal at this time is therefore without prejudice.

3.4 Import Capacity Allocation (CAISO)

As the Commission stated in D.05-10-042, whether import resources count for the RA program depends on the extent to which those resources can rely on access to inter-tie capacity. D.05-10-042 determined that available import capacity (as determined by the CAISO) should be allocated to LSEs according to each LSE's share of CAISO system peak load. To accomplish this, LSEs notify the CAISO of their intended use of specific import paths and the CAISO then determines the feasibility of the LSE shares. "If the CAISO determines that the allocation on a particular path is not feasible to meet a local requirement, then it would allocate first based on 'evergreen' priority, and then based on the load share percentage." (D.05-10-042, p. 56.) The CAISO seeks three modifications to this import allocation scheme.

First, the CAISO proposes to remove the reference to meeting "a local requirement" from the passage quoted above. The CAISO's feasibility determination pertains to pre-established limits in the CAISO's baseline analysis, which are not related to local capacity requirements. Accordingly, we will adopt this proposed clarification, which is unopposed.

Second, the CAISO proposes a modification specifying that LSEs must provide the CAISO with contractual or delivery information pertaining to the evergreen priority provision. AReM does not oppose this proposal provided that the data provided to the CAISO is consistent with the Commission's required compliance demonstration and with scheduling protocols. AReM notes that its members will seek to protect market-sensitive information. DRA finds the proposal to be duplicative and unnecessary because the decision already requires that qualifying resources submit "capacity value [which includes a deliverability component] and supporting documentation to the CAISO." (D.05-10-042, Conclusion of Law 10.) Moreover, DRA notes, the compliance filing guide issued by the Energy Division states that LSEs must provide contract information to the CAISO. TURN also makes this point. SCE opposes this proposal on the grounds that the petition fails to specify the type of information sought.

As DRA and TURN indicate, this proposed modification of D.05-10-042 is unnecessary. Moreover, any clarification to the Commission's data submission requirements regarding "ever-greened" contracts that Energy Division determines to be necessary can be accomplished through refinements to or revisions of the RA compliance filing guide pursuant to authorization granted in D.06-07-031. (See Footnote 2, *supra*.)

Third, the CAISO proposes adding a conclusion of law to D.05-10-042 that would recognize the CAISO as the appropriate entity to determine the level of import capacity available for allocation among Commission-jurisdictional LSEs. According to the CAISO, this would acknowledge the CAISO's statutory responsibility to operate the grid in a reliable manner and to ensure nondiscriminatory use of the transmission assets under the CAISO's operational control. AReM does not dispute the contention that the CAISO is the

appropriate entity to determine the level of import capacity for allocation among Commission jurisdictional LSEs but it believes the CAISO should use a public process to make the determination. DRA opposes the request and is concerned that it would muddy the jurisdictional delineation of responsibilities between the Commission and the CAISO rather than clarify it. PG&E is concerned that the CAISO may be attempting to secure unilateral authority to determine the level of import capacity available for allocation among Commission-jurisdictional LSEs when the determination should be a collaborative process. SCE similarly is concerned that the CAISO is seeking “unfettered authority” over the determination of import capacity available for allocation.

We understand that the Energy Division’s implementation of this aspect of the RA program has been successfully resolved in collaboration with the CAISO. We do not find it is necessary to further delineate the jurisdictional responsibilities of the Commission and the CAISO at this time, and we therefore decline to make this modification.

3.5 Planning Reserve Margin (CAISO)

The CAISO seeks to modify the 15%-17% planning reserve margin (PRM) requirement that was adopted in D.04-01-050.⁵ To account for changes in generator deliverability during non-summer months, the CAISO proposes that D.05-10-042 be modified by adding a provision for a 23% PRM during non-summer months. AReM, DRA, PG&E, SCE, SDG&E, and TURN oppose this proposal on procedural and substantive grounds.

⁵ D.04-10-035 clarified that the 15%-17% PRM requirement applies to the entire year and it accelerated the PRM implementation date from January 1, 2008 to June 1, 2006.

The CAISO acknowledges that D.05-10-042 rejected this same proposal but it offers no new facts in its petition that would allow us to modify D.05-10-042 as proposed.⁶ In this respect, the petition is procedurally deficient and should therefore be denied. We recognize the importance of revisiting aspects of the PRM at an appropriate time and in an appropriate forum. We therefore concur with and accept SDG&E's suggestion that the CAISO's proposal for adopting higher off-peak reserve margins be rejected without prejudice.

3.6 Qualifying Capacity (QC) Listing (CAISO)

D.05-10-042 provided that the CAISO would maintain a centralized listing of the qualifying capacity of resources that LSEs could rely upon for their RA showings. In its petition, the CAISO seeks clarification regarding whether the Commission intends that the QC listing be confidential or available publicly through the CAISO's website. The CAISO notes that some ambiguity exists because certain deliverability information was provided to the CAISO pursuant to a protective order.

DRA agrees that the CAISO's request for clarification is reasonable but it recommends that this issue be resolved in connection with the Revised Protective Order on RA-related information. Alternatively, DRA suggests that this issue be considered in R.05-06-040, the Commission's generic proceeding regarding the confidentiality of procurement and other data. PG&E believes that the Commission should clarify that the centralized QC listing is intended to be public information, and that the public portion of the list should include the names of the units, their total QC, and the amount of RAR capacity that has been

⁶ See Rule 47(b) of the Rules of Practice and Procedure in effect at the time of the CAISO's petition, subsequently recodified as Rule 15.4(b).

contracted to date. SCE does not object to the public release of QC information. TURN believes that D.05-10-042 implicitly provides that the QC listing is public information, and it has no objection to modifying the decision in this respect.

In D.06-07-031, issued in Phase 1 of R.05-12-013, the Commission stated the following:

[W]e reiterate our understanding and expectation that the CAISO will establish and publish a list of generating units and the QC for those units so that LSEs will know and be able to rely on the extent to which the resources they acquire and use for their RAR compliance showings will count toward meeting their procurement obligation. (D.06-07-031, pp. 7-8; *see also* Finding of Fact 4.)

Since D.06-07-031 provides that the CAISO's QC list should be published, the Commission has already clarified any ambiguity as to its intent. It is not necessary to modify D.05-10-042 in this respect.

3.7 Must-Offer Obligation (IEP)

IEP seeks modification of two elements of the treatment of the Must-Offer Obligation (MOO) in D.05-10-042. First, IEP proposes that the decision be modified to recognize that the Commission lacks jurisdiction to order continuation of the MOO established pursuant to authorization of the FERC if and when the FERC follows through on its stated intention to terminate this "FERC MOO." IEP also seeks a modification to acknowledge that the duration of the FERC MOO is a matter for the FERC to decide. To accomplish this, IEP proposes specific wording changes in Section 4.3 and in Finding of Fact 9. PG&E and SCE oppose these modifications.

D.06-04-040, issued after IEP filed its petition, modified D.05-10-042's discussion of the MOO to clarify that the MOO to be included in RA contracts (RA MOO) is an independent, RA-based requirement that does not attempt to change or alter the FERC MOO. Ordering Paragraph 1.g. of D.06-04-040 restated

the very discussion for which IEP seeks modified language to explain these points. Also, Ordering Paragraph 1.m. of D.06-04-040 restated Finding of Fact 9. Accordingly, IEP's petition is moot in this respect.

3.8 Expanded Availability Obligations (IEP)

The Commission has adopted a broad policy of ensuring that RA resources are made available to the CAISO at the times and places needed by the CAISO.⁷ In order to give effect to this policy, D.05-10-042 expanded upon the sequential availability obligation of RA capacity resources, first established in D.04-10-035, "to first be scheduled by the LSE, then to bid into Day-Ahead markets if not scheduled, and then be subject to RUC if the bid is not accepted..." (D.04-10-035, p. 41.) In particular, D.05-10-042 (Section 4.1, pp. 14-16) established requirements that qualifying RA resources must be made available to the CAISO on a real-time basis to the extent they are able to perform. D.05-10-042 also specified that resources must submit a zero dollar (\$0) bid for capacity bid into RUC. It did so to avoid providing RA resources with "needless revenue streams" or double recovery of costs. IEP seeks modifications to D.05-10-042 that would reverse these newly added requirements.⁸ PG&E and SCE oppose such modifications.

⁷ "The Commission's policy that RAR should ensure that capacity is available when and where it is needed means that the RAR program design must be consistent with the CAISO's operational needs." (Section 3.4 of D.05-10-042, p. 10.) Later in the same passage, the Commission declared that "...it is pointless to design a regulatory system that encourages investment in order to create capacity unless that capacity is actually available to the grid operator to serve load where it exists in day-ahead, hour-ahead, and real-time circumstances." (*Id.*)

⁸ Ordering Paragraphs 1.d. and 1.e. of D.06-04-040 modified portions of the decision for which IEP seeks modification here, but they did not resolve or affect the substance of IEP's requests regarding the expanded availability obligation.

IEP contends that the real time availability requirement will, among other things:

- Preclude sales of power to the Western grid that are routinely made today. According to IEP, this will increase costs for California customers and may cause reliability problems if other states reciprocate. Moreover, according to IEP, RA resources will seek to recover lost energy sales opportunities through higher capacity payments, thus raising costs to customers.
- Cause import RA units and some internal generators to maintain transmission capacity to the CAISO control area boundary until real time, which will increase the cost of imports and may create “phantom” congestion, according to IEP. IEP also contends that reservations of transmission capacity could fully schedule inter-ties in the forward markets and subsequently preclude low-cost energy that could otherwise be obtained closer to real time from flowing into or through the CAISO control area.
- Require gas-fired generation to secure fuel and fuel transportation in volatile intra-day markets, creating uncertainty and risk related to fuel costs. IEP believes that hourly balancing requirements imposed by interstate gas transportation pipelines increase the costs of the real-time obligation.
- Create operational problems for many units, especially imports, due to the CAISO’s rules for dispatch selection in forward markets.

IEP contends that the zero dollar RUC bid requirement will result in units with high capacity-related costs being dispatched on the same basis as units with very low costs, essentially removing price-related economic discipline from the RUC process. For example, according to IEP, forcing a zero RUC bid on imports could result in imports with higher capacity costs than alternatives being inappropriately selected in the RUC process. IEP also contends that maintaining

the availability of RA units for contingent dispatch will require generators to incur additional costs. IEP agrees with the policy objective of avoiding double payments for capacity costs, but believes this issue is better addressed through contracts rather than a regulatory requirement.

IEP offers fall-back positions for its two recommendations. If the Commission retains the requirement that RA resources be available in real time, IEP proposes (a) that all sellers have an opportunity to demonstrate to the CAISO that their units are either short-start or long-start units and (b) that the Commission recommend that the CAISO maintain a master file of unit operational characteristics and limitations so that units are not dispatched in a way that is excessively costly or operationally impossible. If the Commission retains the zero RUC bid requirement, IEP recommends that any portion of a unit's capacity that is not subject to an RAR contract be exempted from the requirement.

We decline to adopt either of IEP's proposed modifications to the RA capacity availability requirement. IEP's arguments against the real-time availability obligation largely represent a concern that generators will incur increased operational or opportunity costs as a result of the obligation. However, as noted above, the Commission's policy is to ensure that RA capacity is made available to the CAISO for its operational needs.⁹ Even if a real time availability obligation imposes incremental costs on resources (a factual

⁹ Pub. Util. Code § 380 (c) requires that LSEs maintain generation capacity adequate for their load requirements plus reserves and that such capacity "shall be deliverable to locations *and at times as may be necessary to provide reliable electric service.*" (Emphasis added.) This statutory provision affirms our policy determination that RA resources should be available in real time.

proposition not adequately developed in the IEP petition, as PG&E and SCE explain in detail in their response), IEP has not demonstrated that any such cost burden should override our policy objective of resource availability for the CAISO's operational needs. Stated differently, IEP's petition presents us with insufficient grounds for concluding that the costs of the real time availability obligation outweigh the reliability benefits of CAISO access to RA resources in real time. We find IEP's other concerns regarding the real time availability obligation – that it will jeopardize reliability if other states reciprocate and may create phantom congestion – also lack adequate factual support. Nor is IEP's argument that the zero dollar RUC bidding requirement will distort economic dispatch persuasive. As PG&E and SCE point out, the CAISO algorithm for unit commitment (not dispatch) is based on start-up and minimum load costs as well as availability, which results in the cheapest units being selected for RUC. The dispatch of energy depends on energy bids, not availability bids.

We will not adopt IEP's fall-back recommendations regarding (1) availability of a master file of unit operational characteristics and limitations and (2) exempting the portion of a unit's capacity that is not subject to an RA contract from the zero-bid RUC requirement. As the CAISO points out in the comments on the Proposed Decision, these modifications are unnecessary because the proposed MRTU systems and master file already satisfy the intent to provide efficient and feasible unit commitment decisions, and MRTU design already provides that non-RA capacity is not required to submit zero RUC bids.

3.9 Interagency Coordination Regarding Load Forecasts (IEP)

D.05-10-042 discusses the roles of the CAISO and the California Energy Commission (CEC) in the implementation and ongoing operation of the RA program. Section 5.2 of D.05-10-042 establishes a primary role for the CEC with

respect to review of and adjustments to preliminary load forecasts submitted by LSEs. Among other things, the discussion in Section 5.2 refers to a suggestion by IEP that a common forecasting methodology developed and endorsed by both the CAISO and the CEC would be beneficial. IEP further proposed that a formal memorandum of understanding (MOU) between the CAISO and the CEC to develop such a methodology should be pursued. In D.05-10-042, the Commission determined that this matter was not critical to implementation of the RAR program, but it also "...[found] this suggestion intriguing and urge[d] the agencies and stakeholders to study it." (D.05-10-042, p. 33.)

Indicating concern about energy shortages facing California, as well as concern over a reported dispute pertaining to the CEC's Integrated Energy Planning Report, IEP believes the need for both a common forecasting methodology and a clearer understanding of the roles of the CAISO and the CEC in demand forecasting deserves greater attention. IEP therefore proposes that D.05-10-042 be modified to recommend that the CAISO and the CEC immediately enter into negotiations on the terms of the suggested MOU to eliminate any ambiguity or unnecessary inaccuracy in the load forecast for the 2006 RA program.

As noted above, in D.05-10-042, the Commission found that development of a common forecasting methodology pursuant to an MOU between the CAISO and the CEC should be studied but was not critical to the initial implementation of the RA program. IEP's oblique references to a dispute over a CEC report and to energy shortages facing California do not convince us otherwise. Moreover, it is not clear to this Commission that recommending immediate commencement of negotiations between the CAISO and the CEC, rather than recommending that the agencies and stakeholders first study the nature of the problem to be

resolved, is the preferred approach. We therefore decline to adopt this proposed modification.

3.10 Adjustments to Monthly Load Forecasts (SCE)

In connection with month-ahead procurement obligations, D.05-10-042 determined that it would be unreasonable to either require an LSE that has lost a significant portion of its customer base to procure capacity commitments for load it no longer has, or to allow an LSE that has gained substantial load from customer migration to acquire only the capacity needed for the load that it had forecast a year ahead, before it acquired the new load. Based on this determination, LSEs are required to include in their month-ahead compliance filings adjustments for positive and for negative load growth due to migration.

SCE asks that the requirement for LSEs to update load forecasts and acquire resources and reserves for such load be stricken from the decision. Alternatively, SCE asks that LSEs be allowed a minimum of six months from the date they receive returning load before penalties are assessed for failure to acquire resources to serve the added load. Acknowledging that this could create a shortfall of RA capacity, SCE believes the CAISO should provide the needed capacity by entering into reliability must-run contracts or through the Reliability Capacity Services Tariff.

In support of its primary recommendation to strike the monthly true-up requirement, SCE claims that the requirement to acquire additional resources is vague and leaves several questions unresolved. For example, SCE notes, the decision refers to “substantial” changes in load without defining that term, and it does not prescribe whether it is up to LSEs to determine whether their load change is substantial. SCE also believes it is unclear what point in time prior to

the LSE's monthly compliance filing the action of one LSE to shed load no longer affects the monthly procurement obligation of another LSE.

PG&E supports this proposed modification while AReM opposes it. Sempra Global and TURN take more nuanced positions and offer alternative approaches to deal with load migration in monthly compliance filings. Sempra Global notes that SCE has not identified the magnitude of this problem. Sempra Global believes that SCE's proposal for a six-month grace period is too long and would disrupt the stream of revenues to generators the RA program is designed, in part, to provide. Sempra Global is also concerned that a knowledgeable customer could migrate from LSE to LSE every six months, thereby causing RA costs not to be incurred by the LSE. TURN notes that SCE's primary proposal would completely reverse a material element of the decision, and that the SCE alternative of a six-month compliance waiver is unacceptably broad and could result in failure of LSEs in the aggregate to meet the 15%-17% reserve margin. TURN supports an alternative in which the investor-owned utilities would be directed to amend their Transitional Bundled Service tariffs to provide that "no notice" customers reimburse the utility for the costs of obtaining RA capacity.

We will not adopt SCE's proposal to strike the monthly true-up requirement or SCE's alternative proposal for a six-month waiver of penalties for several reasons. First, as SCE explicitly acknowledges, the effect would be to rely on CAISO acquisition of needed capacity rather than on LSE procurement to meet load and a 15%-17% reserve margin. That outcome would be contrary the policy objectives for RA we have expressed in a series of decisions. Such reliance on CAISO procurement should be avoided to the extent possible unless there are compelling reasons for doing otherwise, yet SCE's petition fails to provide such reasons. Second, in describing its concerns about vagueness of the monthly true-

up requirement, SCE confuses language we used in explaining the reason for the requirement, *i.e.*, the reference to a “substantial” gain in load due to migration, with the actual terms of the requirement itself. That requirement, which is simply that month-ahead compliance filings shall include adjustments for positive and for negative load growth due to load migration, does not use the term “substantial.”¹⁰ Also, while we recognize the various alternatives put forward by Sempra Global and TURN, we are not prepared to adopt them at this time. We are concerned that introducing the more complex program elements these suggestions entail may unduly encumber the operation of the RA program. We are reluctant to implement such program elements at this time when the magnitude of the load migration problem faced by LSEs such as SCE has not even been identified. Finally, we believe that the detailed procedures for implementation of this true-up requirement are appropriately established by our Energy Division and the CEC, and do not require prescriptive formal action of the Commission.¹¹

3.11 Clarification of Performance Obligations (SCE)

As noted earlier in this decision, D.04-10-035 established a sequential availability obligation for RA resources to be scheduled by the LSE, bid into the

¹⁰ D.05-10-042, p. 91. *See also* Conclusion of Law 20: “In their month-ahead filings, LSEs should be required to incorporate adjustments to their year-ahead load forecasts to account for customer migration.”

¹¹ This is fully consistent with D.05-10-042, which observed that the provision for monthly true-ups could “create additional need for review of load forecasts for which the CEC has particular expertise.” (D.05-10-042, p. 92.) We note with approval that the Energy Division’s March 2006 compliance filing guide for month-ahead RA submittals describes the procedures to be followed by LSEs and CEC staff with respect to adjustments for load migration.

day-ahead market if not scheduled, and be subject to the RUC process if the bid is not accepted. D.04-10-035 provided that in order to count for RA purposes, contracts executed after the Phase 2 decision (*i.e.*, D.05-10-042) should include such provisions. Section 4.1 of D.05-10-042 discussed various issues regarding this sequential availability obligation, including an LSE view that generators ought to share in the RA obligation and in any sanctions for failure to perform. The Commission addressed this concern in part in discussing the allocation of the RA obligation to LSEs under our jurisdiction and to generators pursuant to CAISO tariff provisions. The Commission also noted agreement with the widespread view that further consideration of this allocation is required.

Pending development of such a comprehensive balancing of the RA obligation, D.05-10-042 provided that, on an interim basis, LSE concerns about being held accountable for generator performance over which they have little control could be mitigated by the ability of:

... contracting parties to formulate terms and conditions that appropriately allocate any risks of generator nonperformance that accrue to the LSE. Additionally, we would expect RA contracts to require generators to comply with all CAISO tariff provisions, including those to be developed addressing RA resource performance obligations and penalties. (D.05-10-042, p. 18.)

SCE is concerned that the quoted language does not address whether a resource whose contract was executed prior to the issuance of D.05-10-042 is required to have such features in order to count towards an LSE's RA procurement obligation. SCE believes that parties who entered into contracts before the decision was issued should not be unfairly prejudiced by retroactive

application of regulatory requirements for contracts.¹² SCE proposes that the language quoted above be modified by the insertion of qualifiers to indicate prospective application.

As noted above, D.04-10-035 provided that in order to count for RA purposes, contracts executed after the issuance of D.05-10-042 should include the sequential availability provisions adopted by the Commission. D.05-10-042 expanded upon the obligation but it did not change the earlier decision's provision for prospective application of the availability requirement. Thus, the clarification sought by SCE is arguably unnecessary. Nevertheless, the clarifications proposed by SCE may promote better understanding of our RA program, and we therefore adopt them.

3.12 Applicability of the Real-Time Obligation to Imports (SCE)

SCE seeks a modification that would exempt import resources from the real-time availability requirement (discussed in Section 3.8 of this decision). SCE contends that subjecting imports to a real-time obligation is unworkable because imports do not have transmission priority under FERC's open access rules. SCE says that as a practical matter, imports cannot be preferentially called upon during congestion conditions to meet the CAISO's needs even if they are subject to a real-time obligation. Since the CAISO resolves congestion associated with import schedules based on bids, the CAISO cannot accept RA imports and reject non-RA imports at times when an inter-tie is congested. Moreover, SCE notes,

¹² We note that SCE confuses the Commission's discussion of an LSE's ability to protect its interests by negotiating the allocation of risks of generator nonperformance with a regulatory requirement to do so.

other control areas do not regularly provide for schedule changes in real time, and instead require hour-ahead schedule changes for imports and exports.

AReM and TURN support this modification, while PG&E finds it to be inconsistent with the Commission's RA policy.¹³ In addition to the reasons cited by SCE for its proposal, TURN points out that there will not be a real-time must-offer obligation prior to the CAISO's MRTU implementation. PG&E argues that the absence of a contractual requirement that makes import capacity subject to requirements similar to those imposed on in-area generators would degrade the value of imports for RA purposes and could ultimately result in the reduction or elimination of imports for RA purposes or, similarly, an increase in planning reserve requirements. Calpine opposes disparate treatment of imports and in-area generators as proposed by SCE unless in-area generators are compensated for the value of the real-time availability service they alone would supply. CAISO points to various of its prospective tariff provisions that indicate the real-time obligation will generally depend on the outcome of the CAISO's Integrated Forward Market and the RUC process. In reply to the responses, SCE notes (a) that the CAISO has not shown that the real-time availability of imports is necessary for reliable grid operations, and (b) that the CAISO's Interim Reliability Requirements Program tariff only imposes a real-time requirement on import resources if the Commission or another local regulatory authority has imposed such an obligation.

We will approve the proposed modifications in part for the primary reason cited by SCE – that certain imports (described below) cannot be preferentially

¹³ TURN withdrew its support in comments on the Proposed Decision.

called upon during congestion conditions to meet the CAISO's needs even if they are subject to a real-time obligation. Moreover, there is no record support for the proposition that reliability will be impaired by the proposed exemption particularly with limitations we adopt. We also find that PG&E's contention that value of imports for RA purposes would be degraded, ultimately leading to a need for higher reserves, likewise lacks adequate record support. Finally, while we note Calpine's concern regarding "disparate" treatment of resources, we find inadequate record support for consideration of its suggestion for a compensation scheme for in-area resources that are subject to a real-time obligation.

In its comments on the Proposed Decision, the CAISO proposes a refinement to the proposed exemption from real time availability obligations. The CAISO notes that its tariffs identify four types of imports: (1) Dynamic Resource-Specific System Resources, (2) Non-Dynamic Resource-Specific System Resources, (3) Dynamic System Resources (non-resource specific), and (4) Non-Dynamic System Resource (non-resource specific). The CAISO points out that dynamic resources can be dispatched, and that Resource-Specific System Resources, whether dynamically scheduled or not, should be treated in accordance with the physical characteristics of the underlying resource. The CAISO therefore proposes that the real-time availability exemption be limited to Non-Dynamic System Resources. SCE concurs with this refinement to its exemption proposal. We will adopt this proposed refinement based on the CAISO's representation that the narrow exemption that results is consistent with grid reliability. We also adopt the CAISO's proposed clarification that this exemption should take effect until implementation of MRTU. As the CAISO notes, in the pre-MRTU time period, the absence of the ability by the CAISO to

utilize imports prior to the real-time market to meet reliability needs requires that the real-time obligation on imports persist until MRTU implementation.

4. Comments on Proposed Decision

The proposed decision of the ALJ was mailed on November 14, 2006 pursuant to Public Utilities Code Section 311(g)(1) and Article 14 of the Rules of Practice and Procedure. Comments were filed by AReM; CAISO; Calpine; Californians for Renewable Energy, Inc.; Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.; PG&E; Powerex Corp.; Sempra Global; and TURN. Reply comments were filed by AReM, CAISO, PG&E, Powerex Corp., and SCE. Our decision today makes certain revisions to the Proposed Decision in response to the comments. Most significantly, we have adopted a refinement to the exemption of import resources from real-time availability obligations by limiting the exemption to Non-Dynamic System Resources.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Mark Wetzell is the assigned ALJ for this proceeding.

Findings of Fact

1. An import that could simply be delivered to a firm delivery point within the CAISO Control Area generally would be indistinguishable from an in-area firm LD contract, and the supplier of the import could potentially source the obligation from power within the CAISO Control Area.

2. The CAISO's determination of the feasibility of a particular import path pertains to pre-established limits in the CAISO's baseline analysis, which are not related to local capacity requirements.

3. Providing clarification that the sequential availability obligation that was adopted in D.04-10-035 and expanded upon in D.05-10-042 is prospective (*i.e.*, is applicable to contracts executed after issuance of D.05-10-042) may promote better understanding of our RA program.

4. Certain imports cannot be preferentially called upon during congestion conditions to meet the CAISO's needs even if they are subject to a real-time obligation.

Conclusions of Law

1. The petitions of the CAISO, IEP, and SCE should be granted to the extent provided herein.

2. D.05-10-042 should be modified in accordance with the foregoing discussion and findings.

O R D E R

IT IS ORDERED that:

1. The petitions for modification of Decision (D.) 05-10-042 filed by the California Independent System Operator (CAISO), the Independent Energy Producers Association (IEP), and Southern California Edison Company (SCE) are granted to the extent provided herein.

2. D.05-10-042, as previously modified by D.06-04-040, is further modified as follows:

- a. The following text is added at the end of the third paragraph at page 15 that continues onto page 16, (as modified by Ordering Paragraph 1. d. of D.06-04-040):

Certain import contracts are not subject to the real time must-offer obligation adopted herein.

- b. The second and third sentences of the first full paragraph at page 18 are modified to read as follows (additional language is underlined):

In particular, we would expect prospective contracting parties to formulate terms and conditions that appropriately allocate any risks of generator nonperformance that accrue to the LSE. Additionally, we would expect future RA contracts to require generators to comply with all CAISO tariff provisions, including those to be developed addressing RA resource performance obligations and penalties.

- c. The fourth sentence of the third numbered paragraph at page 56 is modified to read as follows (deleted language is struck through):

If the CAISO determines that the allocation on a particular path is not feasible ~~to meet a local requirement~~, then it would allocate first based on 'evergreen' priority, and then based on the load share percentage.

- d. The third sentence of the first full paragraph at page 68 is modified to read as follows (additional language is underlined):

Accordingly, we approve the exemption of firm import LD contracts from the sunset/phase-out provisions applicable to other LD contracts as adopted in Section 7.4, provided, however, that to qualify for the exemption a firm import LD contract must specify a firm delivery point at an interconnection with the CAISO control area or a CAISO scheduling point as defined in the CAISO's tariffs.

- e. Finding of Fact 6 is modified to read as follows (additional language is underlined):

It is necessary that RA resources be available to the CAISO when and where needed. It is consistent with that determination that all RA resources (upon implementation of the CAISO's Market Redesign and Technology Update, excluding import contracts supported solely by Non-Dynamic System Resources (non-resource specific) as defined in the CAISO tariffs) have an

obligation to make themselves available to the CAISO in real time to the extent they are physically capable.

3. The resource adequacy requirements portion of this proceeding is closed.

This order is effective today.

Dated December 14, 2006, at San Francisco, California.

MICHAEL R. PEEVEY

President

GEOFFREY F. BROWN

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

Commissioners