

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Local Procurement Obligations

R.09-10-032
(Filed October 29, 2009)

**CALPINE PROPOSAL TO MODIFY STANDARD CAPACITY PRODUCT
(SCP)**

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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(SCP)**

I. Introduction

As requested in the December 23, 2009 scoping memo and assigned commissioner's ruling (ACR), Calpine submits the following proposal to modify Standard Capacity Product to make it more easily tradable. In initial comments on scope, at the pre-hearing conference, and in comments on the CAISO SCP Phase II issue paper, a number of parties, including TURN, AReM, and Calpine suggested that further refinements to SCP are necessary to make it more easily tradable and the ACR included such modifications in 2(b) of the Phase 1 scope.

II. What changes to SCP are required to make it easily tradable?

As indicated in the comments on the scope of this proceeding, the fundamental problem with SCP as it is currently implemented is that it fails to simplify bilateral contracting. The reason that it does not simplify bilateral contracting relates to the Resource Adequacy (RA) rules governing scheduled outages. Because capacity that exceeds certain scheduled outage thresholds in a month cannot be counted towards RA compliance, RA buyers and sellers generally must include provisions in bilateral transactions governing the replacement of or compensation for capacity that cannot be counted towards RA compliance due to scheduled outages. In addition,

the manner in which the current RA rules require the cross-validation of whether the capacity used to demonstrate compliance by load-serving entities (LSEs) is actually available for counting purposes, as distinct from the different measure of availability that is the focus of the current SCP, creates numerous unnecessary compliance complexities.

The debate over the mechanics of replacing capacity in the event that is sold as RA but cannot be counted for RA compliance due to scheduled outages is sometimes framed as “LSE replace,” i.e., the status quo, versus “supplier replace.” This framing is misleading because pursuant to virtually every bilateral RA transaction, suppliers are required to replace capacity that is not available for RA compliance. This proposal is an attempt to standardize the terms pursuant to which suppliers replace capacity, or incur penalties, in instances in which RA that already has been sold is unavailable for RA compliance purposes and centralize the enforcement of delivery for RA compliance purposes with the CAISO.

The proposal simplifies both contracting and compliance by decoupling LSE compliance and supplier performance. It is based on the approach that Calpine articulated when it and other members of the “Joint Parties” initially proposed SCP in 2007.¹ As described in the Joint Parties’ proposal:

The key element of the Proposal is, therefore, to make RA capacity suppliers responsible directly to the CAISO, through explicit, enforceable tariff-based performance obligations. By doing so, the RA capacity product and RA contracts can be standardized, permitting LSEs and other buyers to satisfy fully their RA procurement obligations upon purchasing qualifying RA capacity. RA buyers would no longer need to negotiate and enforce after-the-fact performance obligations through complex contractual provisions, since suppliers’ performance will be subject to CAISO Tariff penalties and enforcement; this, in turn, will enable RA capacity to be more freely tradable between LSEs, who will no longer be reliant on contractual risk sharing with RA suppliers regarding performance and penalties. In effect, RA buyers’ and sellers’ obligations would be bifurcated: LSEs and other buyers would meet their RA obligations by

¹ <http://docs.epuc.ca.gov/efile/REPORT/75397.pdf>

procuring and registering with the CAISO sufficient qualified RA capacity that meets their system and local RA requirements in advance of applicable annual or monthly compliance filing dates; and sellers would then be obligated to the CAISO for their performance, as the CAISO is in the best position to monitor and require performance. This bifurcation of obligations would allow the RA capacity product to be standardized and readily tradable, buyers and sellers would minimize transaction costs, CPUC staff administrative overhead would be reduced, and reliability would be assured by clearly requiring RA capacity suppliers to deliver the expected high-level of performance and availability through the CAISO tariff, subject to monitoring and enforcement by the CAISO, rather than piecemeal through bilateral contracts.

III. Elements of the proposal

The following does not attempt to articulate every element of a modified SCP. Many important elements already exist in the current implementation of SCP. Instead, it focuses on incremental changes to the current RA rules and the CAISO tariff that would result in an SCP that is closer to what was envisioned in the Joint Parties' 2007 proposal. Making SCP more easily tradable involves two essential steps: moving provisions governing the availability of resources for RA compliance purposes (as distinct from the availability currently measured and rewarded by SCP) to the CAISO tariff and decoupling the validation of compliance demonstrations by LSEs from the validation of resources provided by suppliers. In addition, because bilateral RA transactions with their own availability provisions have been undertaken since the introduction of SCP, such transactions may warrant grandfathering if this proposal is adopted.

A. Include "RA availability" provisions in the CAISO tariff

While the current SCP addresses a particular measure of availability, i.e., whether a unit is not on a forced outage, it does not address the availability of resources to count towards RA

compliance demonstrations, i.e., “RA availability.”² Our proposal involves including provisions governing RA availability in the CAISO tariff. Once these provisions are in the tariff, it will no longer be necessary to include similar provisions in bilateral contracts. There are two main components to introducing provisions related to RA availability in the CAISO tariff.

1. Include RA availability standards in the tariff

D.06-07-031 established how scheduled outages affect whether a resource can be counted towards system RA compliance. For summer months, a resource counts fully if it is scheduled out for less than 25 percent of the days in a month and not at all if it is scheduled out for more than 25 percent of the days in a month. For non-summer months, a resource counts fully if it is scheduled out for less than 25 percent of the days in a month; the counting is prorated between 25 and 50 percent of NQC if it is scheduled out between approximately one and two weeks; and it does not count at all if it is scheduled out for more than two weeks.³ For CPUC jurisdictional LSEs, section 40.2 of the CAISO tariff defers to the CPUC to determine how resources count towards RA requirements. The CPUC counting rules, including those governing scheduled

² We are using the term “RA availability” in the same sense as articulated in Article 1.39 of the SCE RA pro-forma contract (http://www.sce.com/nrc/AllSourceRFO/090702_RA_Capacity_Confirm_SCE_Buys.doc):

“RA Availability” means, for each Unit, expressed as a percentage, (a) the Unit’s Designated RA Capacity for a Monthly Delivery Period, divided by (b) the Unit Contract Quantity, provided that a Unit’s RA Availability shall not exceed 1.00.

“Designated RA Capacity” is defined in Article 1.15 of the SCE pro-forma:

“Designated RA Capacity” means, for each Unit, the amount of RA Capacity that Seller provides to Buyer pursuant to this Confirmation that is certified for inclusion in RAR Showings and if applicable, LAR Showings, in each case as determined or approved by the CPUC (and/or, to the extent authorized by the CPUC or CAISO) pursuant to the CPUC Decisions, or by an LRA having jurisdiction. Designated RA Capacity shall include those attributes associated with the capacity identified in Article 2 and Article 3 hereof.

³ See Section 13 of the *2010 Filing Guide for System and Local Resource Adequacy (RA) Compliance Filings* (<http://www.cpuc.ca.gov/NR/rdonlyres/14DFD39E-40C6-4FAF-8C36-38F8708BC23A/0/RAGuide2010.doc>)

outages could be incorporated directly in the CAISO tariff, either in section 40.2.1.1 or perhaps by incorporating them into the CAISO's default resource counting rules in section 40.8, which apply in the event that the requirements of section 40.2.1.1(c) are not met.

2. *Specify replacement provisions and penalties for failing to deliver RA that is being used by an LSE to make a compliance demonstration*

Bilateral RA transactions generally include provisions governing replacement capacity in the event that the capacity that has been sold is unavailable to be used for RA compliance. For example, Article 5.2 of SCE's RA pro-forma requires RA sellers to provide physical substitute units in the event that a unit is unavailable for RA compliance demonstrations. In the event that substitute capacity is not provided, Article 4.4 specifies that the seller is not paid for any capacity that cannot be used for RA compliance demonstrations and Articles 5.3 and 5.4 specify that the seller reimburse the buyer for her cost of procuring replacement capacity above the cost of the original transaction with the seller. Article 4.4 in combination with Articles 5.3 and 5.4 imply that seller pays the full cost of replacement capacity procured by the buyer in the event that the seller fails to deliver the capacity that she sold or suitable replacement capacity. We propose the inclusion of similar provisions in the tariff. A natural approach is to penalize suppliers for failure to deliver capacity that has been sold for RA compliance at a proxy price, such as the ICPM price that is used in the current version of SCP, or the CAISO's cost of procuring replacement capacity.⁴

Note that by including delivery requirements and penalties and replacement obligations in the tariff, the CAISO then becomes responsible for enforcing delivery rather than each individual

⁴ The Joint Parties' November 16, 2007 proposal in R.05-12-013 (<http://docs.cpuc.ca.gov/efile/REPORT/75397.pdf>) included such provisions in a mark-up of a then relatively current version of the CAISO tariff in section 40.7.3.

(footnote continued)

LSE, i.e., the CAISO assesses penalties and procures replacement capacity in the event that a supplier is unable to deliver RA capacity that has been sold and pledged for RA compliance.

B. Simplify the cross-validation of RA purchases and sales

Currently, the CAISO validates LSEs' RA compliance filings against suppliers' Supply Plans submitted to the CAISO pursuant to section 40.4.7 of the tariff. Through this validation, the CAISO ensures that the amount of RA from a resource claimed by an LSE is equal to or less than the amount of RA from the resource that the resource's scheduling coordinator claims has been sold. This cross-validation is at the heart of the complexity and lack of standardization in current bilateral RA transactions. For example, an LSE can buy RA from a resource for a month only to have the scheduling coordinator for the resource fail to report the capacity that was sold in a Supply Plan either due to oversight or due to scheduled outages that exceed the levels that were contemplated when the capacity was sold. Consequently, buyers and sellers are required to rely on contractual provisions that govern when such validation failures occur. In addition, the iterative process through which the RA buyers and the sellers, the CPUC, and the CAISO attempt to remedy discrepancies between RA Plans and Supply Plans is cumbersome and time-consuming.

The solution to this problem is to validate an RA purchase against a corresponding RA sale once at the time of the transaction. Presumably, the CAISO would validate transactions that result in cumulative sales of RA from a resource consistent with its NQC. On monthly and annual bases the CPUC and/or the CAISO would confirm that LSEs have entered into sufficient validated transactions to comply with RA procurement obligations. Similarly, the CAISO would check suppliers' Supply Plans against their validated transactions and request replacement

capacity or assess penalties in the event that the RA “deliveries” in Supply Plans were insufficient to cover RA sales that had been validated previously with the CAISO. The key difference from the status quo is that the CAISO would not cross-validate directly RA Plans and Supply Plans.

Some sort of electronic registry may be helpful but is not strictly necessary to facilitate the validation of transactions envisioned in this proposal.^{5 6}

C. Grandfathering

If the changes described above are implemented, another round of grandfathering, similar to the grandfathering attending the introduction of SCP last year, may be warranted. Since SCP was introduced, transactions have been consummated that include scheduled outage provisions that potentially overlap with the scheduled outage provisions that we propose to include in the tariff. To prevent confusing overlap between these provisions and the new tariff provisions, we suggest that parties to the relevant transactions be given the option of exempting the transactions from the new RA availability provisions of the tariff.

IV. Conclusion

The foregoing is a conceptual summary of what we believe to be some desirable changes to SCP. We realize that bringing these changes to fruition will require careful drafting of rules and tariff language. We look forward to the workshops and are willing to devote resources to implementing these changes if there is a consensus to do so.

⁵ The Joint Parties’ November 16, 2007 proposal in R.05-12-013 (<http://docs.cpuc.ca.gov/efile/REPORT/75397.pdf>) included a detailed approach to this issue in its mark-up of section 40.4.7 of the then-current CAISO tariff.

⁶ A similar system, WREGIS, is used to track Renewable Energy Credits throughout the West.

Respectfully submitted this January 11, 2010 at Dublin, California

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January 11, 2010

CERTIFICATE OF SERVICE

I, Marjorie Oxsen, hereby certify that I have this day, January 5, 2010, served a copy of **CALPINE PROPOSEAL TO MODIFY STANDARD CAPACITY PRODUCT (SCP)** on all known parties to R. 09-10-032 by transmitting an e-mail message with the document attached to each person named in the official service list and by first class mail on the parties listed as “Parties” and “State Service” on the attached service list who have not provided an electronic mail address.

Executed on January 11, 2010 at Dublin, CA.

/s/ Marjorie Oxsen

Marjorie Oxsen

Via Email and US Mail
President Michael R. Peevey
ALJ David M. Gammons