

**COMMENTS OF THE
ALLIANCE FOR RETAIL ENERGY MARKETS
ON THE CAISO's DECEMBER 14, 2010 STRAW PROPOSAL
ON NEW SCHEDULING PRIORITY CLASS AND
REVISIONS TO MUST-TAKE GENERATION**

On December 14, 2010, the California Independent System Operator (CAISO) issued a straw proposal¹ that would: (1) implement a new preferential scheduling priority class for “regulatory must-run pump loads” intended, in part, to replace current scheduling priority rights that will expire when legacy existing transmission contracts (ETCs) terminate; and (2) modify the definition of must-take generation to create a new preferential class for certain industrial facilities that will have their rights associated with the Public Utility Regulatory Policy Act of 1978 (PURPA) expire as a result of a recently approved settlement at the California Public Utilities Commission (CPUC).² The Alliance for Retail Energy Markets (AREM)³ believes that elements of these proposed tariff modifications will create unwarranted preferences for the affected resources and as a result may well be discriminatory and in violation of fundamental principles of open and non-discriminatory access to the CAISO’s transmission system.

A. Pump Load issues:

One of the most contentious aspects at the time of the formation of the CAISO was the treatment of legacy transmission contracts (ETCs) and regulatory requirements, such as “must-take” generation under PURPA. In the end, the Federal Energy Regulatory Commission (FERC) approved limited preferential rights for such contracts and requirements with the explicit understanding that such rights will *expire* over time, thus eventually ensuring that FERC’s requirement for an open, non-discriminatory transmission system operated by the CAISO will be met. Now, as the preferential transmission contracts approach their expiration, the CAISO’s straw proposal seeks to replace the preferential transmission access with preferential scheduling priority through creation of a new scheduling priority class. So, while the ETC may expire, creating more open access to the transmission system, the ability to beneficially use that transmission access will be compromised by the existence of a new scheduling priority for the pumped load resources.

ETCs and their associated preferential rights have created continuing issues throughout the operation of the CAISO. For example, ETCs crowd out access to

¹ *A New Scheduling Priority Class for Regulatory Must-Run Pump Load in the Integrated Forward Market and Modifications to the Definition of Regulatory Must-Take Generation, Straw Proposal*, December 14, 2010, CAISO.

² Decision 10-12-035.

³ AREM is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California’s direct access market. This filing represents the position of AREM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.

Congestion Revenue Rights (CRRs) in the highest tiers with the result that other Load-Serving Entities (LSEs) have a significantly lower chance to obtain the CRRs they need to hedge their congestion costs. Also, ETCs clog the intertie and the NP-26/SP-26 interface, which significantly diminishes access by other LSEs to needed resource adequacy (RA) resources. ETCs also significantly affect cost-effective operation of the CAISO's transmission system. The CAISO's proposal is silent regarding whether the "preferential scheduling class" may also include preferential treatment for CRRs and RA allocation purposes.

The CAISO provides little justification for why pump loads should be afforded this preferential treatment, beyond vague references that pump loads need "reliable" energy⁴ to operate (generally off-peak). All LSEs require reliable energy to serve their load, and do so by paying to manage the energy and congestion risks through the energy and CRR markets. The proposed scheduling priority for pump loads, however, would likely lead to *lower* congestion costs for this priority class, while increasing the costs of other LSEs who do not have this priority. Likewise, the proposed "new scheduling priority class" of pump loads would have higher and better curtailment rights⁵ than other LSEs who do not have this priority. AReM does not support and sees no justification for such preferential treatment, when these resources have the same access to risk management tools as do all other LSEs. Further, these pump loads are typically bid into the market as interruptible loads, which are paid to drop when called on. This reality seems to conflict with the CAISO's proposed justification for this new scheduling priority class based on a need for "reliable" energy.

B. QF Must-Take Status:

The CAISO's stakeholder presentation notes that "EPAct 2005 foreshadows the end of the mandatory purchase obligation applicable to qualifying facilities (QFs) over time" and that "CPUC policy requires QFs to comply with the ISO tariff and the CPUC has recently approved a settlement that will result in new QF contracts." Both of these statements are true. EPAct 2005 has provided a framework pursuant to which utilities may seek termination of their PURPA obligations, and indeed the recently approved CPUC settlement requires California's investor owned utilities ("IOUs") to do just that. In those applications, the IOUs will be required to provide that the California energy market is sufficiently competitive that the existing QF facilities no longer need the PURPA avoided-cost framework to remain viable. Representatives of the owners of California QF facilities and QF developers are parties to the settlement, as are the IOUs. Given that the premise for the settlement is that the market is sufficiently competitive to support the QF facilities without PURPA, a request that these facilities, or some subset of them, continue to get preferential must-take status is wholly inappropriate. In other words, QF facilities cannot rely on a settlement that is predicated on their recognition that the market is sufficiently competitive to allow them to function without PURPA, while at the same time being afforded the same type of preferential treatment that they have

⁴ Straw Proposal, p.3.

⁵ Straw Proposal, pp. 6-7.

received while PURPA is in effect. If relief from PURPA obligations is approved by FERC, then these facilities can and must manage their dispatch risks as do any other facilities with dispatch restrictions that wish to participate in the CAISO markets.

C. Conclusion

As FERC intended, expiration of contractual and regulatory rights should lead to more open and non-discriminatory access to the CAISO's transmission system and reduce operational issues related to ETCs. The expiration of the ETCs decidedly *should not lead* to creation of new preferential rights or scheduling priority classes for pump loads. Similarly, QF facilities that are foregoing PURPA protections as a result of the CHP settlement approved by the CPUC should not be exempt from participating in those markets and managing the risks embedded in those markets through preferential scheduling priorities.

AReM appreciates this opportunity to provide these comments and looks forward to participating in this stakeholder process going forward.

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On Behalf of the Alliance for Retail Energy Markets

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