

January 11, 2011

Comments of the California Cogeneration Council on the CAISO's proposed Revision to the Regulatory Must-Take Generation Definition

I. Introduction and Summary

These comments are offered on behalf of the California Cogeneration Council (CCC)¹ which is an *ad hoc* association of natural gas-fired cogenerators located throughout California. CCC projects serve on-site electrical and thermal loads at industrial, commercial, and institutional facilities across the state and are located in the service territories of California's three major investor-owned electric utilities (IOUs). The CCC represents a significant share of the distributed combined heat and power (CHP) projects now operating in California.

On December 14, 2010, the California Independent System Operator (CAISO) distributed a Straw Proposal proposing modifications to the ISO tariff definition of "Regulatory Must Take Generation", and convened a stakeholder conference call on December 22, 2010.

The CCC supports the CAISO's proceeding to revise the ISO tariff definition of "Regulatory Must Take Generation". The commencement of this stakeholder process is timely in light of the California Public Utilities Commission's (CPUC) approval of the "Qualifying Facility and Combined Heat and Power Program Settlement Agreement", on December 16, 2010.²

As the CAISO's Straw Proposal correctly points out, as a condition of the Qualifying Facility (QF) CHP Settlement, the IOUs will seek to have the Federal Energy Regulatory Commission (FERC) declare that the mandatory purchase obligation of the Public Utility Regulatory Policies Act of 1978 (PURPA) no longer applies to them. If FERC terminates the mandatory must take requirement in California, then there may be some uncertainty as to how QF resources will be treated under new power purchase agreements.

The ISO also points out in the straw proposal, that the definition would benefit from updating to make it more generally applicable to industrial facilities capable of producing electricity and to emphasize and clarify the distinction between non-dispatchable and dispatchable generation from these types of facilities.

¹ Members of CCC own and operate more than 30 different combined heat and power (CHP) projects in California that collectively generate about 1,300 megawatts (MWs). CCC member projects are "qualifying facilities" (QFs) that sell power to the IOUs under the provisions of the Public Utilities Regulatory Policies Act (PURPA) of 1978.

² Decision 10-12-035, mailed 12/21/2010.

II. Modification of the Tariff Definition

The CCC wants to ensure that in transitioning from a federal QF program to a state CHP program, existing and new CHP facilities continue to be classified by the CAISO Tariff as Regulatory Must-Take Generation. All new power purchase agreements (PPAs) included in the Settlement have a provision requiring that the facility maintain QF status, subject to PURPA. Consequently, although the PURPA must-take obligation for facilities greater than 20 MW will no longer be in effect in California, these facilities will continue to have unique operating characteristics that require maintaining the special treatment that Regulatory Must-Take Generation has with regard to certain tariff requirements.

The tariff currently defines Regulatory Must-Take Generation as follows:

Those generation resources identified by CPUC, or a Local Regulatory Authority, the operation of which is not subject to competition. These resources will be scheduled by the relevant Scheduling Coordinator directly with the CAISO on a must-take basis. Regulatory Must-Take Generation includes generation from Qualifying Facility Generating Units subject to mandatory purchase obligation as defined by federal law, nuclear units and pre-existing power purchase contracts with minimum Energy take requirements.

The CCC agrees with the CAISO's goal of modifying the tariff definition to simply continue to recognize must-take capacity for resources that have non-dispatchable capacity and to identify where possible, the non-dispatchable capacity. The CAISO proposed revision to the definition of Regulatory Must-Take Generation is well intended but may be too general and result in capturing unintended generation. The CCC proposes the following more targeted language:

The following Generation resources that the relevant Scheduling Coordinator may bid or schedule directly with the CAISO on a must-take basis: (1) Generation from Qualifying Facility Generating Units subject to an Existing QF Contract or a new QF Contract pursuant to a mandatory purchase obligation as defined by federal law; (2) the non-dispatchable capacity of Generation from (a) other QF Generating Units, (b) other Generating Units of facilities with an industrial host producing electricity in conjunction with useful thermal energy, or (c) Generating Units of facilities producing electricity as part of a process to capture and inject carbon dioxide for enhanced oil recovery; (3) Generation from nuclear units; and (4) the minimum take Generation from Generating Units subject to pre-existing power purchase contracts with minimum Energy take requirements.

The intent of the insertion of "new QF contract" in (1) above, is to acknowledge that the PURPA mandatory purchase obligation will remain for QFs less than or equal to 20 MWs, and that these facilities should continue to be covered by this definition.

Our interpretation of the intent of (2) is to narrow the existing definition to cover just the non-dispatchable capacity of the four types of generation listed in this provision. We interpret (2) (a) to include QF Generating Units that are not subject to the mandatory purchase obligation (greater than 20 MW), but are certified as QFs, for example, generating facilities that sign new PPAs pursuant to the QF CHP settlement, and other types of QF facilities that would have been captured under the original definition of Regulatory Must-Take Generation.

We assume the language in (2) (b) is meant to include CHP generation that is not QF certified. We are unclear, however, if there are other types of generation this provision was intended to include. The purpose of the language we propose to be inserted in (2) (b) above, is to narrow the scope of the types of generating units that would be included in the definition, in an effort to ensure that they meet a minimum standard that would reflect the unique operating characteristics that require must-take status.

The CCC has no position on (2) (c), but does find it odd to call out in the definition generating units of facilities with a specific application. It would be helpful to understand from the CAISO the reason for including this specific type of generation.

We assume that the inclusion of (3) and (4) above, is a carry-over of the intent of the original definition and that no new change is proposed.

III. Additional Revisions to the Tariff

The term “Regulatory Must-Take Generation” appears throughout the CAISO Tariff, and consequently the CAISO proposes to not revise the name of the term. The CCC supports this approach, and points out that continued classification under this term for CHP facilities is important for a number of reasons highlighted by relevant portions of the tariff.

Regulatory Must-Take Generation experiences a scheduling priority that is essential for a resource that is dependent upon the industrial host facility’s thermal energy requirements. The Qualifying Facility Participating Generator Agreement (QF PGA) recognizes the unique operational attributes of CHP facilities, and continued access to the existing terms of the QF PGA is essential for ongoing, successful operations.

The CAISO straw proposal notes possible revisions to other sections of the tariff to ensure consistency with changes to the Regulatory Must-Take Generation definition. If the definition is expanded beyond QFs to include other types of must take generation, then the relevant sections should reflect that change.

IV. Conclusion

The QF CHP Settlement encourages the smooth transition from the existing federal program to a state CHP program. Existing CHP QF Contracts are exempt from the CAISO tariff and QF PGA, however, the Settlement recognizes the need for these resources to move into the new regulatory and market environment that other electricity generating resources experience. As CHP facilities transition to new PPAs they will comply with the CAISO tariff, and sign QF PGAs, both which recognize and are tailored to embrace the unique operating characteristics of these resources. Maintaining the existing must-take status for both existing and new CHP facilities through revision of the definition will ensure a smooth transition.

Respectfully submitted,

Beth Vaughan
Executive Director
California Cogeneration Council

January 11, 2011