

Comments of the Independent Energy Producers Association (IEP) re ISO Proposal Revised Definition of Regulatory Must-Take Generation and Related Changes

“Revised Straw Proposal”

February 10, 2011

“The CAISO proposes to revise the tariff definition of Regulatory Must-Take Generation to remove the limitation based on PURPA and to make it more generally applicable to industrial facilities with the capability to produce electricity in conjunction with the operation of their industrial processes and to other facilities producing electricity in conjunction with useful thermal energy.” [CAISO Straw Proposal, p. 5] In response to this initiative regarding the status of CHP facilities and their treatment under the CAISO Tariff defining Regulatory Must-Take Generation, IEP makes the following comments regarding the Revised Strawman Proposal:

- **Regarding section (1)**, IEP appreciates and supports the changes in the Revised Straw Proposal that recognizes “generation from Qualifying Facility Generating Units subject to an Existing QF Contract or a new QF power purchase agreement pursuant to a mandatory purchase obligation as defined by federal law.” As noted in prior IEP comments, if FERC declares that the PURPA mandatory purchase obligation no longer applies in California, then the mandatory purchase obligation will be suspended only with respect to new contracts from QF resources. However, the IOUs will continue to have a mandatory obligation to purchase energy and/or capacity during the pendency of any existing QF contract(s) administered by the IOU.
 - Recommendation: the term “Qualifying Facility Generating Units subject to an Existing QF Contract” seems awkward and redundant. IEP recommends shortening the term to “Generating Units subject to an Existing QF Contract.”

- **Regarding section (2)**, IEP has concerns regarding section (2) and requests that the CAISO provide additional time for stakeholders to assess how best to address the “non-dispatchable Generation” subsection of the Revised Strawman. As noted in prior IEP comments, the CAISO should not proceed to impose a common mandatory obligation(s) on all QFs (e.g. renewable and/or CHP) without regard to the operational and economic restrictions they may face. What’s needed is additional clarity on how the “cut plane” between the non-dispatchable and the dispatchable component of the CHP operation will be determined. In this regard, because future CHP (e.g. the “transitional” and “new” CHP as defined in the recent QF Settlement Agreement) will be determined based on the business relations between the buyer and the seller, we believe that the tariff should defer to the buyers and sellers for determining the dispatchable and non-dispatchable component of the CHP operation. Furthermore, we believe that a modest expansion of the current timeframe for considering this matter within the CAISO’s stakeholder process will enable stakeholders to propose a rational, balanced, and appropriate approach for the CAISO to consider including in its tariff.

- **Regarding Application of the PURPA “must-take” Obligation.** As noted in IEP’s prior comments, the suspension of the PURPA “must-take” obligation may not occur in the California context for some time. For example, the timing of any application to suspend the PURPA “must-take” obligation pursuant to 210(m) may be delayed due to a number of conditions precedent to an Effective Date for the QF Settlement pending before the CPUC. In the absence of a formal suspension of the PURPA ‘must-take’ obligation, the PURPA obligation remains applicable to California. Pursuant to PURPA, QFs are entitled to receive payment for the delivery of energy and capacity equivalent to the utilities avoided cost. Over 20 years of regulatory decisions and court determinations have addressed this matter. IEP remains concerned that the CAISO’s efforts revising the standard for “Regulatory Must-Take Generation, particularly terminating the ‘must-take’ status of what may be a significant component of QF operations, risks opening a Pandora’s Box of uncertainty related to PURPA implementation. Thus, we reiterate our request to provide sufficient time on this matter to enable the QF and utility parties to consider and propose a workable solution.