UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	**)** **)** **)** **)**	**Docket No. ER12-2634-000**

MOTION FOR LEAVE TO ANSWER PROTEST AND ANSWER TO PROTEST AND COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

The California Independent System Operator Corporation ("ISO") hereby submits this motion for leave to answer and answer to the protest of the California Wind Energy Association ("CalWEA") filed in this proceeding regarding the ISO's September 17, 2012, proposed tariff amendment to modify scheduling priority and related matters in connection with combined heat and power resources (also known as cogeneration facilities) and qualifying facilities that remain subject to Public Utility Regulatory Policies Act of 1978[1] ("PURPA").[2] CalWEA asks the Commission to extend the scheduling priority provided in the proposed amendment to all wind qualifying facilities. CalWEA fails to provide any basis for concluding that the ISO's proposed revisions are not just and reasonable or are unduly discriminatory or preferential. Therefore, the Commission should approve the proposed amendment as filed.

[1] Pub. L. 95-617, 92 Stat. 3117 (1978).

[2] The ISO submits this filing pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213 (2012).

The ISO also responds in this answer to comments filed by the Energy Producers and Users Coalition, the Cogeneration Association of California, and the California Cogeneration Council.

I. SUMMARY

CalWEA asks the Commission to extend to all wind qualifying facilities the scheduling priority that the ISO proposes to provide to eligible combined heat and power resources (only for the capacity dedicated to the host's industrial process) and to new small qualifying facilities (20 MW or less) with a PURPA power purchase agreement. CalWEA asserts that the ISO is favoring federal and state policies promoting combined heat and power generation over those promoting renewable energy and that the ISO's proposal undermines wholesale competition.

CalWEA raised its concerns late in the stakeholder process, well after the goals of that process had been established. Issues concerning the scheduling priority and curtailment of wind resources, which include resources that are not qualifying facilities as well as qualifying resources, were not within the scope of that stakeholder process or of the ISO's filing. The ISO does, however, plan to address them in a later stakeholder process.

The ISO's proposal is not a comprehensive effort to promote policies relating to renewable and combined heat and power resources, so it is inaccurate to portray it as favoring one over the other. Indeed, the ISO has already implemented new policies to promote and integrate renewable resources. This is a far more limited proposal, which simply addresses the need to accommodate the operational constraints of combined heat and power resources in recognition

of new policies promulgated by the California Public Utilities Commission as well as state and federal public policy goals to promote new combined heat and power development.

Because of those operational constraints, the ISO proposes to provide a scheduling priority to that portion – *and only that portion* – of the output of a combined heat and power resource necessary to accommodate the host industrial process. CalWEA presents no evidence that wind resources have operational constraints that require a similar scheduling priority. To the extent there is evidence that wind resources generally or wind qualifying facilities specifically require special treatment with regard to curtailment for other reasons, CalWEA can present it during the later stakeholder process.

There is also no evidence that the ISO's proposal will interfere with competition. Resources with and without PURPA contracts have always been treated differently under the ISO tariff. The Commission concluded that, because the ISO's markets and other developments have provided qualifying facilities with expanded competitive opportunities, load-serving entities would no longer be required to purchase the energy of those resources. It did not condition its finding on the provision of a scheduling priority to qualifying facilities without PURPA contracts. CalWEA presents no basis for the Commission to do so now.

Because CalWEA, the only party to protest the ISO's proposal, has made no showing that the proposal is unjust, unreasonable, or unduly discriminatory or preferential, the Commission should approve the ISO's amendment as filed.

II. BACKGROUND

By the September 17 filing, the ISO proposed to end the existing blanket "regulatory must-take" scheduling priority for qualifying facilities in light of recent state and federal policies. The ISO also proposed to allow combined heat and power resources to be eligible to receive a scheduling priority for the capacity dedicated to their industrial hosts—regardless of whether the resources are qualifying facilities. The existing blanket scheduling priority will continue to apply to existing and new small qualifying facilities (20 MW or less) with a power purchase agreement pursuant to a mandatory purchase obligation under PURPA and other qualifying facilities with "grandfathered" power purchase agreements during the remaining term of the agreements.

State and federal polices include the California Public Utilities Commission orders requiring qualifying facilities to comply with the ISO tariff once their grandfathered power purchase agreements end, and the Commission's decision to end the mandatory purchase requirement under PURPA for qualifying facilities greater than 20 MW. The effect of these regulatory changes – absent a tariff amendment – would end the regulatory must-take scheduling priority for all qualifying facilities as grandfathered contracts terminate, except for those facilities 20 MW or less that enter into new PURPA contracts.[3]

Today, wind resources are subject to different scheduling priorities. Some wind resources are qualifying facilities under grandfathered contracts, some are qualifying facilities no longer under grandfathered contracts, and some participate

[3] Qualifying facilities entering new PURPA contracts would no longer be exempt from complying with the ISO tariff but would receive the higher regulatory must-take scheduling priority.

in the ISO's participating intermittent resource program (PIRP). PIRP resources do not receive a scheduling priority; rather the resources submit "self-schedules". Accordingly, one benefit of these state and federal regulatory changes would be to end the higher scheduling priority applicable to wind qualifying facilities so that, over time, all wind resources will have the same self-schedule priority except for the qualifying facilities under 20 MW that remain under PURPA contracts.

For the reasons discussed in the ISO's September 17 filing, although the ISO supports the end of the regulatory must-take scheduling priority, the ISO concluded that one class of resources could be adversely affected by these federal and state law changes: the combined heat and power resources with capacity dedicated to a host industrial process. On December 20, 2010, the ISO initiated a stakeholder process to address the unique circumstances of these resources and to consider maintaining eligibility for the regulatory must-take scheduling priority, but only for the portion of the capacity dedicated to their industrial hosts. The policy stakeholder process concluded when the ISO posted a draft final proposal on January 20, 2012.[4] Throughout this 13-month period, CalWEA did not participate and only submitted comments on February 13, 2012, in response to the draft final proposal, far too late to consider comments that would require substantial change in the scope of the initiative.

[4] The ISO published an addendum to its draft final proposal on April 30, 2012, which did not make any substantive modifications to the ISO's proposal.

Twelve Parties submitted motions to intervene in this proceeding. Four parties submitted supportive comments.[5] Only CalWEA protested.

II. MOTION TO FILE ANSWER

Rule 213(a)(2) of the Commission's Rules of Practice and Procedure generally prohibits answers to protests.[6] The Commission has accepted answers that are otherwise prohibited if such answers clarify the issues in dispute[7] and where the information assists the Commission in making a decision.[8]

As discussed below, CalWEA's protest contends that the ISO's proposal discriminates against certain wind resources. The ISO believes that understanding the ISO's response to these arguments will clarify the issues and assist the Commission's understanding. The ISO therefore requests that the Commission accept this answer.

III. ANSWER

CalWEA contends that the ISO has provided no rational basis for providing scheduling priority to combined heat and power resources and to new small qualifying facilities (20 MW or less) with a PURPA power purchase agreement, but not to other types of qualifying facilities.[9] CalWEA asserts that the ISO is favoring one set of federal and state policies (promoting combined heat and

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[5] California Energy Commission; California Public Utilities Commission; Energy Producers and Users Coalition, the Cogeneration Association of California, and the California Cogeneration Council (collectively, the "CHP Parties"); and Pacific Gas and Electric Company.

[6] 18 C.F.R. § 385.213(a)(2) (2012).

[7] *See Southwest Power Pool, Inc.,* 89 FERC ¶ 61,284 at 61,888 (1999).

[8] See El Paso Electric Co., et al. v. Southwestern Pub. Serv. Co., 72 FERC ¶ 61,292 at 62,256 (1995).

[9] CalWEA states that the priority protects the resources from curtailment for reliability or economic reasons. This is incorrect. The priority only pertains to economic curtailment. *Compare* ISO Tariff §§ 31.4 and 34.10.2 *with* § 7.8.4

power generation) over another (promoting renewable energy). CalWEA also argues that the ISO's proposal undermines wholesale competition by distinguishing between resources that have PURPA power purchase agreements and those that do not. None of these arguments has merit.

A. The ISO's Proposal Is Consistent with Its Promotion of Renewable Energy.

CalWEA's argument regarding public policies relies on a false premise – that the ISO must employ the same mechanism to promote different public policies. This ignores the fundamental differences between renewable resources, like wind, and combined heat and power generation regarding their ability to participate in the electric power marketplace. California has given renewable resources a powerful boost through its 33 percent renewable standards portfolio. Nonetheless, wind resources face two obstacles that distinguish them from other resources: they are remote and intermittent. To address the first, the ISO developed its location constrained resource interconnection program, to facilitate the construction of long distance interconnection facilities in a manner that accommodates the construction and financing process of renewable resources. Following that, the ISO overhauled its transmission planning process to ensure that development of a transmission infrastructure that could support the delivery of energy from a 33 percent renewable portfolio. In response to the second, the ISO instituted the participating intermittent resource program, which allows wind and other intermittent resources to participate in the ISO's markets without the threat of significant deviation penalties.

Combined heat and power resources face a different obstacle, an operational constraint. Their output is directly tied to their host industrial processes. Curtailment beyond a certain point will endanger the industrial process. Wind does not have a similar operational constraint. The ISO has responded by proposing a limited scheduling priority. The priority is available only for the output necessary to accommodate the host industrial process (the "RMTMax"). Output above that level has the no greater scheduling authority than non-PURPA wind generation resources, such as those that participate in the participating intermittent resource program and qualifying facilities that are no longer subject to grandfathered PURPA contracts, other renewable generation, or fossil generation. This is consistent with the ISO's general policy of encouraging economic bidding over price-taker self-schedules and avoiding higher priority self-schedules except when fully justified. Significantly, CalWEA does not discuss this limitation on the scheduling priority provided to combined heat and power resources. CalWEA presents no evidence why the operation of wind resources requires a greater scheduling priority than that provided to the portion output of combined heat and power resources that exceeds RMTMax.

The ISO's proposal recognizes that combined heat and power resources are not primarily in the electric business. As the California Energy Commission has explained, the scheduling priority is needed to protect the economic activity of the industrial hosts and to encourage new combined heat and power resources.[10] These considerations simply do not apply to wind.

[10] Motion to Intervene and Comments of the California Energy Commission at 12-13.

CalWEA does contend that, in response to CalWEA's argument that the ISO should consider wind resources, the ISO promised to take up the issue in a summer 2012 stakeholder process that never occurred. The minutes of the ISO's May meeting of the Board of Governors indicates that the ISO stated it would take up CalWEA's concerns in a July 2012 stakeholder process.[11] That stakeholder process was intended to consider revisions to participating intermittent resources program and, thus, was an appropriate initiative to consider wind curtailment generally. In particular, as outlined in the ISO's renewable integration market vision and roadmap, such revisions were to be targeted at increasing the dispatchability of participating intermittent resources by enabling them to participate in the program and simultaneously submit decremental bids to indicate their willingness to curtail their output.[12]

The ISO did in fact proceed with consideration revisions intended to increasing the dispatchability of participating intermittent resources, but as part of its stakeholder process on a flexible ramping process rather than as a separate process.[13] Although the ability to submit decremental bids is not the same as a scheduling priority (which CalWEA has not shown to be necessary or justified), it does provide intermittent generators with an opportunity to express their willingness to curtail before operators must make such decisions. To the extent

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[11] *See* http://www.caiso.com/Documents/BoardofGovernorsGeneralSessionMinutesMay16-17_2012.pdf.

[12] *See* December 8, 2011 memorandum from Keith Casey to the ISO Board of Governors at 4, available at http://www.caiso.com/Documents/Decision-RenewableIntegration-MemoDec2011.pdf.

[13] *See* http://www.caiso.com/Documents/RevisedDraftFinalProposal-FlexibleRampingProduct.pdf, section 5.

there are more wind resources submitting dispatchable bids to curtail, there will be less need to cut schedules.

Although the flexible ramping stakeholder process did not address curtailment issues, they are included in the ongoing stakeholder initiative catalog process. The item is described as an initiative to consider curtailment priorities.[14] The ISO is currently in the planning process for stakeholder initiatives, and cannot provide a date certain when it will consider these issues. The planning process for stakeholder initiatives includes a ranking process which invites stakeholders to prioritize discretionary initiatives. The ISO plans to prioritize and schedule this initiative as part of this process.

B. The ISO's Proposed Limitations on Scheduling Priority Have a Rational Basis and Are Therefore Nondiscriminatory.

The discussion above demonstrates the rational basis for distinguishing between wind resources and combined heat and power resources with regard to scheduling priorities. CalWEA, however, also objects to the distinction between small qualifying facilities with PURPA contracts and other qualifying facilities. It claims that the distinction interferes with the competitive market, forcing small qualifying facilities to choose between participating in the ISO markets (and facing potential curtailments) and signing a PURPA contract. It argues that larger facilities will face the same choice, but in addition would have to reduce operations to meet the size (20 megawatt) limit.

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14 http://www.caiso.com/informed/Pages/StakeholderProcesses/StakeholderInitiativesCatalogProcess.aspx

CalWEA ignores the legal basis for this distinction. Under section 4.6.3.2 of the ISO tariff, qualifying facilities with grandfathered PURPA contracts are essentially exempt from the ISO tariff. The ISO must honor all contractual rights and obligations. Curtailment is thus controlled by the PURPA contract, not the ISO tariff. The amendment simply continues that historical deference to PURPA contracts but will no longer exempt qualifying facilities from other tariff requirements.

When the Commission released the California load-serving entities from the purchase obligation, it did so – as CalWEA recognizes – because it concluded

> We have reviewed the four components of the California market: (1) California's [Combined Heat and Power] Program; (2) California's [Renewable Portfolio Standard] Program; (3) California's [Resource Adequacy] requirements; and (4) [the ISO's] implementation of [it revised] day-ahead market. And, we find that, considering these four components together, California's market will contain competitive qualities comparable to those identified in PURPA sections 210(m)(1)(A) and (B). Therefore, we find that [qualifying facilities] will have non-discriminatory access to wholesale markets comparable to those identified in PURPA sections 210(m)(1)(A) and (B), as required under PURPA section 210(m)(1)(C).[15]

The Commission did not qualify that finding with any condition that qualifying facilities must retain any of the exemptions from the ISO tariff that they previously enjoyed. The Commission relied on competitive opportunities, not special treatment. CalWEA does not provide a basis for providing special treatment that the Commission did not rely upon.

[15] CalWEA Protest at 7 n. 8 (citing to *Pacific Gas & Electric Co.*, 135 FERC ¶ 61,234, at P 24 (2011)).

Consistent with the Commission's approach, qualifying facilities must comply with the ISO tariff. The ISO's proposed tariff provisions simply recognize the distinction made by the California Public Utilities Commission.

In an attempt to bolster its case, CalWEA states that Southern California Edison Company advised CalWEA members that they will be curtailed before other wind generating projects interconnected to the same transmission line if they do not sign new PURPA contracts and instead sell to buyers off of the Edison system. CalWEA notes that Southern California Edison Company stated this position regarding its sub-transmission facilities that are not under the ISO's operational control. The ISO, however, does not control how Southern California Edison Company operates its system, so this particular contention is irrelevant to the ISO's proposal. Neither does the ISO control the relationship between the utility and the resource under the grandfathered PURPA contract and there is no relationship between these resources and the ISO.

C. The ISO's Proposal Does Not Alter Treatment of a Combined Heat and Power Facility with Multiple Generating Units as a Single Qualified Facility.

The CHP Parties express concern about the definition of Net Scheduled Generating Unit. They state their understanding, in light of the provision of the ISO tariff stating that the singular includes the plural, that the definition is the equivalent of a definition that reads:

> A Generating Unit(s) identified in a Net Scheduled PGA operated as a single unit such that the Energy bid or self-scheduled with the California ISO is the net value of the aggregate electrical net output of the Generating Unit(s) and the Self-provided Load.[16]

[16] CHP Parties at 4.

Under this reading, a combined heat and power facility with multiple generating units is treated as a single Net Scheduled Generating Unit. The ISO agrees that this correctly captures the ISO's intention.

IV. CONCLUSION

For the reasons explained above, the Commission should approve the amendment as filed.

Respectfully submitted,

/s/ Michael E. Ward

Nancy Saracino
General Counsel
Sidney M. Davies
Assistant General Counsel
California Independent System
Operator Corporation
250 Outcropping Way
Folsom, CA 95630
Tel: (916) 351-4400
Fax: (916) 351-4436
E-mail: sdavies@caiso.com

Michael E. Ward
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
Tel: (202) 239-3300
Fax: (202) 654-4875
E-mail: michael.ward@alston.com

Counsel for the California Independent System Operator Corp.

Dated: October 19, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party listed on the official service list for these proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Executed at Washington, DC, on this 19th day of October, 2012.

/s/ Michael E. Ward

Michael E. Ward
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
Tel: (202) 239-3300
michael.ward@alston.com