

Comments of the Joint Investor-Owned Utilities (“IOUs”) Concerning Draft Final Proposal on Regulatory Must-Take Generation

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The Joint IOUs appreciate the opportunity to provide comments on the January 30, 2012, CAISO Draft Final Proposal (“Draft Final Proposal”) regarding Regulatory Must-Take Generation (“RMTG”). While the Joint IOUs generally support the effort to revise the current CAISO tariff language regarding RMTG, the Joint IOUs oppose the CAISO’s current approach to the revision, as reflected in the Draft Final Proposal. The Joint IOUs remain concerned that the CAISO’s current proposal unnecessarily expands the number of resources potentially eligible for RMTG treatment, reduces flexibility for the CAISO and the IOUs to meet the operational needs of the system, and does not provide adequate tools necessary to limit RMTG treatment to an appropriate RMTmax value for eligible combined heat and power (“CHP”) resources. The Joint IOUs’ outline on the following pages their specific recommendations for changes to the Draft Final Proposal.

Definition of RMTG

The CAISO tariff definition of “Regulatory Must Take Generation” should be changed to the following:

Generation that the relevant Scheduling Coordinator may self-schedule directly with the CAISO on a must-take basis, limited to the following:

- (1) Generation from Qualifying Facility Generating Units subject to an Existing QF Contract;
- (2) Generation up to the RMTmax of a combined heat and power resource, provided that such resource meets the minimum operating and efficiency requirements set forth in the Code of Federal Regulations, Title 18, Part 292.205 for a qualifying cogeneration facility and that such Generation is purchased by a Load-Serving Entity pursuant to a contract with a combined heat and power resource executed for the purpose of meeting either or both of the targets set forth in Sections 5 and 6 of the CHP Program Settlement Agreement Term Sheet, dated October 1, 2010, and approved by the California Public Utilities Commission in Decision 10-12-035; and
- (3) Generation from nuclear units.

The Joint IOUs’ RMTG definition preserves the existing RMTG protections for existing or “Legacy” QF contracts and nuclear units and sets reasonable parameters around which combined heat and power (“CHP”) resources should be eligible for RMTG treatment.

The Joint IOUs object to the Draft Final Proposal’s definition of RMTG for several reasons. First, the second criteria in CAISO’s proposed definition (“Criteria (2)”) would allow any resource that produces electricity and “forms of useful thermal energy used by an industrial or commercial host for industrial, commercial, heating or cooling purposes”¹ This criteria is too broad and would have the effect of unnecessarily adding inflexible generation to the CAISO system, regardless of whether the resource is selling its output to a load-serving entity pursuant to a regulatory mandate or not. CHP resources without such contracts are “merchant” generators and should be treated no differently than other merchant generators under the CAISO Tariff. Second, the Draft Final Proposal would require Scheduling Coordinators (“SCs”) to self-schedule RMTG on a must-take basis; the Joint IOUs believe this requirement is too inflexible. The Joint IOUs add the word “may” to the definition to provide SCs the flexibility to determine if there are circumstances, such as the existence of negotiated contract terms, where it may be unnecessary to self-schedule RMTG on a must-take basis.

Definition of RMTmax

Under the Joint IOUs’ definition of RMTG, the value and concept of RMTmax would only apply to Criteria 2 resources,² not Legacy QFs and nuclear units. The Joint IOUs recommend that the entire output of Legacy QFs and nuclear units be treated as RMTG, as it is

¹ Draft Final Proposal at 11.

² See the Joint IOUs’ proposed definition of RMTG above.

today. With this in mind the Draft Final Proposal's definition of RMTmax should be changed to the following:

For a Generating Unit meeting the requirements pursuant to Criteria (2) in the definition of Regulatory Must Take Generation, the minimum operating level at which the Generating Unit can safely and reliably meet the cogeneration host's thermal requirements, determined as follows:

- (a) There is a rebuttable presumption that RMTmax is 0 MW, and this value shall serve as the default RMTmax for the Generating Unit until an RMTmax value is set in accordance with (b) – (c) below;
- (b) RMTmax shall be established by agreement of the Generating Unit's owner and operator and its CHP Program contract counterparty or counterparties, however, in the event an agreement cannot be reached between the Generating Unit's owner and operator and its CHP Program contract counterparty or counterparties, RMTmax shall be certified by affidavit of a jointly-selected independent California-licensed certified engineer; and
- (c) RMTmax shall be reestablished at a minimum once every year using the procedures set forth in (a) and (b) above.

The Joint IOUs' RMTmax definition clarifies that the concept of RMTmax only applies to Criteria 2 resources under the RMTG definition. The Joint IOUs added the concept of a rebuttable presumption that RMTmax should be set at a default value of 0 MW to be consistent with the concept that RMTmax should reflect "the portion of generation from the facility that is truly non-dispatchable."³ In addition, because only CHP resources with CHP Program contracts will be eligible for RMTG status, setting the default RMTmax to 0 MW provides the contract counterparties incentive to expeditiously set an appropriate RMTmax value, either by agreement or by retention of a qualified third-party engineer.

The Joint IOUs disagree with the Draft Final Proposal's approach to defining RMTmax with regard to the cogeneration host's "thermal *and* electrical requirements."⁴ The Joint IOUs recommend that the RMTmax value must be based only on the cogeneration host's *thermal* requirements because the special regulatory status historically afforded to QF CHP arises from the fact these resources generate heat (i.e., useful thermal energy), not that they generate electricity.

How to Establish RMTmax

Similarly, the CAISO should change its proposed tariff language relating to how RMTmax is established to the following:

Any establishment of a Generating Unit's RMTmax under (b) in the definition of RMTmax shall include consideration of the Generating Unit's thermal host's requirements throughout the day and year, as well as the projected thermal needs

³ Draft Final Proposal at 9.

⁴ Id. at 12 (emphasis added).

for the operating processes of the thermal host, which would include an evaluation and consideration of any supplemental source of supply to meet the thermal requirement's demand as well as ability to interrupt thermal demand, and shall be subject to any confidentiality and non-disclosure requirements imposed by the Generator or thermal host on the independent engineer and the CHP Program contract counterparty or counterparties. In the event the services of an independent engineer are needed, the Generating Unit's owner or operator and CHP Program contract counterparty or counterparties shall jointly select, retain, and bear the costs of the engineer.

Again, the Joint IOUs' changes to the Draft Final Proposal's tariff language on how to set RMTmax if an independent assessment is required clarifies that establishment of RMTmax should be based only on *thermal* needs of the cogeneration host throughout the day and year, not on thermal and electrical needs or on the economics of a CHP operation.

Additional Comments

The Joint IOUs note that the CAISO "anticipates having to make other minor revisions to the tariff to implement its intended revision to the scope and treatment of must-take generation," including the terms of the current Qualifying Facility Participating Generator Agreement ("QF PGA").⁵ The Joint IOUs remain concerned that the current effort to revise the tariff with regard to RMTG, as set forth in the Draft Final Proposal, has not sufficiently addressed what additional changes will be required to other provisions of the CAISO Tariff when the RMTG definition changes. The RMTG issue is important and all RMTG-related tariff changes should be addressed comprehensively at the same time to avoid the potential for inconsistency between and among tariff provisions. With regard to any additional tariff revisions required to implement the RMTG-related revisions, the Joint IOUs encourage the CAISO to conduct additional stakeholder discussions to ensure that any such changes to the CAISO Tariff and QF PGA are appropriate and consistent with the Joint IOUs' recommendations in these comments.

While the Joint IOUs recognize that the CAISO's proposal "does not include any 'controls' that would ensure daily RMT self-schedules are truly limited to truly non-dispatchable quantities,"⁶ the Joint IOUs also appreciate the CAISO's intent to adopt tariff language that reflects that "daily RMT schedules should be based on an estimate of the actual requirements of the CHP unit and its host [thermal] requirements."⁷ The Joint IOUs specifically support the CAISO's determination that the CHP resource shall provide the CAISO and its contract counterparty or counterparties with an indicative annual profile of hourly RMTG as part of the annual RMTmax certification process.⁸ While non-binding, the provision of RMTmax in hourly increments enables generators to translate the principle that daily RMTG values should be limited as needed to meet host thermal requirements into terms that are relevant to the CAISO's hourly dispatch decisions. The indicative annual profiles may also contribute useful information for the further refinement of the RMTG-related tariff language.

⁵ Id. at 13. The Draft Final Proposal indicates on page 9 that "[t]he ISO would need to amend the tariff and QF PGA provisions to be consistent with any changes to the definition of Regulatory Must-Take Generation."

⁶ Id.

⁷ CAISO "RMTG Revised Straw Proposal" Conference Call Presentation, February 6, 2012, at 14.

⁸ Id. at 15.

To that end, the Joint IOUs note that their recommended definitions and tariff language on identifying eligible RMTG resources and setting RMTmax are based on the notion that the counterparties to the CHP Program contracts will be able to cooperate and establish “a reasonable estimate of the actual requirements” of the CHP unit and its host within the confines of the CHP Program contract, as often as necessary.

In closing, the Joint IOUs emphasize that another goal of the current process for revising the RMTG-related tariff provisions must be to reflect changing regulatory circumstances and to preserve the maximum system flexibility both now and in the future by treating “must-take” generation as an exceptional circumstance in a well-functioning market. As the CAISO notes, the current policy is to offer RMTG scheduling priority to QFs subject to Legacy PPAs. What began as a work-around and accommodation to decades-old contracts dating from a time period when the CAISO market was not even contemplated should not be unnecessarily and unreasonably expanded. The Joint IOUs respectfully request that the CAISO follow their recommendations and limit Criteria (2) RMTG status to CHP resources generating under the CHP Program and AB 1613 program. Further, for those eligible Criteria (2) resources, RMTmax should be set no higher than absolutely necessary to support the host’s reasonable *thermal* needs, and this value should be set by agreement of the CHP Program contract counterparties (or an independent engineer if necessary).