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**COMMENTS OF THE COGENERATION ASSOCIATION OF CALIFORNIA
AND THE ENERGY PRODUCERS AND USERS COALITION
ON CAISO'S UPDATED STANDARD CAPACITY PRODUCT PROPOSAL**

These comments once again ask the California Independent System Operator (CAISO) to be cognizant of the differing requirements and operations of California's combined heat and power qualifying facility (CHP QF) projects.¹ For inexplicable reasons the CAISO proposals have been ignoring the requirements of this critical portion of California generation.

It is vital that the actions and tariff provisions of the CAISO do not become barriers to the continued operation and development of new and existing CHP QF projects. California has a significant number of CHP QFs that provide several thousand megawatts of reliable capacity to the Resource Adequacy (RA) program. The CAISO needs to explicitly recognize the unique contractual, operational and beneficial aspect of CHP QFs in its RA program tariff. Absent this recognition, the standard capacity product (SCP) proposal will not effectively promote the objectives of the RA program. Instead, the CAISO actions will have the counter-productive effect of erecting barriers to California's statewide energy and GHG objectives. To maintain the integrity of the RA program and limit conflicts with GHG efforts, the CAISO must adequately resolve this issue before filing its tariff with FERC.

¹ These comments are limited to addressing the needs of combined heat and power qualifying facilities.

The CAISO proposal must be modified to ensure duplicative obligations are not imposed on CHP QFs. The discussions at the December 11, 2008 meeting demonstrate that while the CAISO agrees that an exemption for CHP QF resources from the must-offer obligation is needed, it expects CHP QF resources to comply with uniform SCP availability standards.² The California Public Utilities Commission (CPUC), however, has already adopted contracts for CHP QFs and contemplates the execution of more contracts which establish rigorous performance standards for these resources. These resources should be exempt from new, duplicative or conflicting SCP terms and obligations. The CAISO's persistence in seeking to impose an additional layer of requirements and penalties on CHP QFs is unwarranted. The CAISO action would unreasonably expose CHP QFs to unnecessary financial risk. Moreover, the additional obligations would directly conflict with the CPUC's and the California Air Resources Board's (CARB) efforts to promote CHP resources. The solution is simple. The CAISO should explicitly exempt all CHP QFs that have an existing QF utility contract, or will execute a CPUC-adopted QF contract from the provisions of the SCP. Importantly, this must be achieved through an explicit waiver in the SCP tariff language.

I. ALL CPUC-APPROVED CHP QF CONTRACTS OR STANDARD OFFER CONTRACTS, WHETHER EXISTING OR CURRENTLY UNDER NEGOTIATION PURSUANT TO D.07-09-040, MUST GOVERN PERFORMANCE OBLIGATIONS OF QFS

Establishing a general, uniform, standard set of generator obligations is administratively easy for the CAISO to enforce but this should not be the primary

² See CAISO December 11, 2008 presentation, at slide 12.

objective of a grid operator. The CAISO's task is to integrate resources, all resources, into an effective and functional SCP program. That program must address and deal with the differences in generation resources, *i.e.*, specifically the distinctions between a utility, merchant power generation facility and a customer-owned industrial thermal generation facility like a CHP project. A single set of uniform standards cannot accommodate all resources.

Unlike other RA resources that have yearly contracts reflecting RA obligations, CHP QFs are subject to CPUC-governed, long-term contracts that detail all aspects of availability and performance. A new generation of requirements is being developed by the CPUC pursuant to Decision (D.) 07-09-040. Many existing contracts continue in full force and effect and address terms of availability and performance. Accommodation of these terms and obligations is necessary to avoid duplicative or conflicting regulation and penalties, and is essential for the efficient and effective management of the grid. As explained below, explicitly waiving such requirements for CHP QFs under CPUC-approved contracts is the most direct and efficient manner to preclude this significant overlap.

A. CHP QF Contract Terms Approved by the CPUC Must Govern to Give Effect to State Efforts to Promote CHP Resources

Subjecting CHP QFs to duplicative or conflicting obligations and penalties will interfere with State policy efforts to promote these critical resources.

Through CPUC D.07-09-040, the CPUC seeks to implement standard offer agreements to ensure that CHP QF resources can continue to play an important role in the State's electricity sector. These efforts complement the interest

expressed by the CPUC and CARB to promote CHP resources to further reductions of greenhouse gas.³ To give effect to these efforts to promote and retain the contribution of CHP QF resources to the state, the CPUC-approved QF agreement terms and conditions must govern the obligations of CHP QFs. Subjecting CHP/QFs to a “one size fits all” program fails to recognize the unique contractual, operational and beneficial aspect of CHP QFs and would compromise these goals.

B. An Explicit Waiver from SCP Obligations is Necessary to Avoid Significant Overlap in CPUC-Approved CHP QF Contracts

An explicit waiver from SCP obligations for CHP QFs holding CPUC approved contracts is required to preclude the imposition of duplicative obligations. Pursuant to CPUC D. 07-09-040, utilities and QFs requiring amended, restated or new contracts will be provided standard offer contracts that can extend as long as ten years. While the specific terms continue to be debated, these contracts will address the terms and obligations regarding availability and performance. These issues are also being addressed in the CAISO SCP proposal. However there is no assurance that these provisions will be consistent or harmonious. The conflicting obligations on the contract holders would be impracticable and commercially unreasonable.

Importantly, the terms of these proposed contracts include rigorous availability and capacity performance requirements, scheduling rules, performance obligations, and penalties for non-performance.⁴ Southern

³ CARB Proposed Scoping Plan, at 17 and 43-44; CPUC D. 08-10-037, at 16 and 102.

⁴ See SCE Advice Letter 2200.

California Edison's (SCE) recently filed Advice Letter demonstrates this significant overlap in scope. In particular, Section 1.04 demonstrates that a capacity factor standard will apply to CHP QFs and Section 3(n) of Exhibit D presents a financial penalty for failure to meet that standard.

In addition to duplicative obligations, it is important to realize that QF contracts bind CHP QF performance obligations in compelling commercial ways. For example, under the terms of the contract, CHP QFs can unfairly be subject to duplicative penalties and, at the same time, precluded from receiving any "incentive" payments. The SCP provisions must explicitly exempt CHP QFs holding CPUC-approved contracts for any overlap in obligations and give effect to carefully crafted CPUC-approved QF contracts,.

C. Proposed Treatment of CHP QFs is Consistent with Accommodations Made Today

Accommodations made for CHP QF contracts currently under negotiation would be consistent with the accommodations currently made for QF contracts. Today, CAISO tariffs include a provision which ensures that the obligations and commitments in CPUC-adopted contracts are honored:

Current Conformed Tariff Section 4.6.3.2: Existing Contracts for Regulatory Must-Take Generation.

Notwithstanding any other provision of this ISO Tariff, the ISO shall discharge its responsibilities in a manner which honors any contractual rights and obligations of the parties to contracts, or final regulatory treatment, relating to Regulatory Must-Take Generation of which protocols or other instructions are notified in writing to the ISO from time to time and on reasonable notice.

MRTU Section 4.6.3.2: Existing Agreements for Regulatory Must-Take Generation.

Notwithstanding any other provision of this CAISO Tariff, the CAISO shall discharge its responsibilities in a manner that honors any contractual rights and obligations of the parties to existing agreements, including Existing QF Contracts, or final regulatory treatment, relating to Regulatory Must-Take Generation of which protocols or other instructions are notified in writing to the CAISO from time to time and on reasonable notice.

Previously existing or new CPUC-approved QF contracts that result from D.07-09-040, and CHP QFs that have elected to execute a QF PGA with the CAISO must be treated in a similar fashion.⁵ This is the only way to give effect to the CPUC's efforts to maintain encouragement of CHP QFs. Differing performance standards, penalties, energy and ancillary services must-offer obligations, and other obligations and penalties should not apply to CHP QFs. The CAISO tariff should recognize this non-discriminatory and coordinated basis for establishing requirements for these resources by providing that the obligations in the utility contracts are solely applicable and controlling.

II. FAILURE TO ADDRESS OVERLAP BETWEEN CHP QF AGREEMENTS AND SCP TERMS AND CONDITIONS CAN IMPACT SUPPLY RELIABILITY

The CAISO cannot afford to ignore the significant overlap between CPUC-approved CHP QF contracts and SCP terms and conditions. A cursory review of the net qualifying capacity (NQC) data indicates that CHP QFs provide over 3000 MW of reliable capacity to the CAISO. Roughly 73% (*i.e.*, over 2200 MW) of that capacity is used to ensure local reliability. To guarantee that the RA program can continue to benefit from CHP QF resources, the CAISO must preclude the imposition of duplicative obligations and penalties on CHP/QFs.

⁵ While a QF PGA alters some of a CHP QF's obligations to CAISO, its obligations, pricing, scheduling and penalties are governed by its utility contract.

III. CONCLUSION

Stakeholders may be eager to implement an SCP to facilitate 2010 RA contracting but in order to promote the goals of the RA program, the CAISO must have sufficient time to resolve critical issues associated with CHP QF resources. As noted above, failure to accommodate these resources conflicts with State policy, the RA program goals, and unfairly imposes duplicative costs on a subset of resources. In light of State CHP QF policy, the CAISO must explicitly exempt CHP QFs in CPUC-adopted QF contracts from SCP obligations.

CAC/EPUC look forward to working with CAISO on these and other issues.

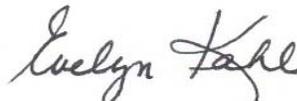
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December 18, 2008



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