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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

Application for Certification for the HIGH DESERT POWER PROJECT	Docket No. 97-AFC-1C

HIGH DESERT POWER PROJECT, LLC'S RESPONSE TO THE STAFF'S ISSUES REPORT, STATUS CONFERENCE STATEMENT, AND PROPOSED SCHEDULE FOR THE REMAINING PROCEEDINGS

INTRODUCTION

Pursuant to the Committee's *Notice of August 11, 2016 Committee Status Conference and Related Orders* [1] ("Notice"), High Desert Power Project, LLC ("HDPP") provides the following *Response to the Staff's Issues Report, Status Conference Statement, and Proposed Schedule for the Remaining Proceedings* related to the High Desert Power Project (the "Facility").

I. RESPONSE TO STAFF'S ISSUES REPORT

On August 1, 2016, Staff filed, *Staff Responses to Committee Questions in the Notice of August 11, 2016 Committee Status Conference and Related Orders* (TN#: 212535, the "Staff Issues Report" or "SR"). Staff and HDPP have overwhelming agreement on many basic principles in the responses to the Committee questions. HDPP's specific responses to Staff on each question are set forth in Attachment A hereto.

II. RESPONSE TO CDFW'S STATUS REPORT

HDPP's Petition for Modification ("Amendment")[2] requests two modifications: (1) modification of the project's operations to allow for percolation of State Water Project water to build the Facility's groundwater bank and (2) the addition of groundwater as a backup water supply for the Facility. On August 5, 2016, the California Department of Fish and Wildlife ("CDFW") filed its status report. CDFW's status report included a detailed scope of work for a water balance study of the Alto Sub-basin. HDPP is extremely concerned with the magnitude of the regional study proposed by CDFW, particularly because the long-term regional planning process for water use in the Mojave Basin is outside the scope of this proceeding. HDPP will discuss its specific concerns with CDFW's proposed regional study at the August 11th Status Conference.

[1] TN # 212263.
[2] As summarized and clarified in TN# 212397.

III. STATUS CONFERENCE STATEMENT OF HDPP

HDPP provides its responses to the questions raised in Section 3 of the Notice. This Status Conference Statement begins by examining a few foundational legal principles that should guide the remainder of this proceeding. It ends with a Proposed Schedule intended to facilitate resolution of the few remaining issues.

A. What categories of questions (other than those outlined above) should be asked?

There are no further categories of questions that should be addressed in this proceeding as there is sufficient evidence in the record to move forward with the processing of the Amendment.

The Committee's July 12, 2016, *Committee Orders Regarding the Scope of Future Proceedings (Scoping Order*)[3] properly characterized and decided the issue of the applicability of CEQA to the pending Amendment:

> Executive Order B-29-15 (as extended by Executive Orders B-36-15 and B-37-16) exempts power plant certification and amendments that seek to secure alternate water supplies necessary for continued power plant operation from CEQA. By finding that the Petition is subject to these Executive Orders, the Committee finds that resolving the issues presented by the Petition are exempt from the substantive and procedural requirements of CEQA.[4]

In addition to the exemption from CEQA, the Commission should also rely on the role and responsibilities of the Mojave Water Agency ("MWA") as the court-appointed Watermaster to manage the Mojave Basin for both the benefit of all water uses and wildlife and other biological resources. The comprehensive Judgment addresses impacts to the environment, water users, and the groundwater basin balance. The Watermaster's ongoing administration of the Judgment will prevent potentially significant effects in the Basin from HDPP or other users' water use. Moreover, the actions of the Watermaster are overseen by the Court, and parties to the Adjudication can ask the Court for relief if they feel that MWA as Watermaster has not been protective of the environment. The Commission must respect and must not interfere with the Judgment and Watermaster's management of the Basin. As the Staff Issues Report states, "Imposing Conditions of Certification that require Petitioner to take independent action in the basin might interfere with the functions of the Watermaster." (SR, p. 7.)[5]

The Watermaster will, as part of its responsibilities overseen by the court and subject to public review and comment, address environmental issues: "By maintaining the groundwater

[3] TN # 212262.
[4] *Id*., p. 9. HDPP also agrees that the Committee has plenary discretion in the conduct of these proceedings, consistent with the direction in Applicable law and the Executive Orders (defined by the Committee as Executive Order B-29-15, as extended by Executive Orders B-36-15 and B-37-16). HDPP has never contested the Committee's discretion on procedural matters.
[5] TN # 212535.

levels in the basin and sub-basins, which sustains the baseflow, and by maintaining the minimum discharge obligations of Victor Valley Water Reclamation Authority's ("VVWRA") Shay Road plant, per the MOU, MWA ensures that the total flow in the Mojave River in the Transition Zone is sustained above the minimum flow needed to sustain the riparian habitat per the judgment in the adjudication case." (SR, p. 7.)

B. What is the definition of the "water balance calculation" that has been discussed? What information will it provide that is in addition to that provided in the Annual Report of the Mojave Basin Area Watermaster? What question about project impacts will it answer and how will it answer those questions?

The "water balance calculation" is CDFW's proposal to conduct a regional study and planning process for water use in the Mojave Basin. This protracted study will not necessarily provide any further information in addition to that provided in the Annual Report, or the analysis that has already been conducted by HDPP in support of the Amendment. The calculation will not provide any further information that is reasonably necessary for a decision in this proceeding given the important role of the Watermaster in the management of the Mojave Basin. As a court-appointed Watermaster, MWA is not another state or local agency whose discretionary reviews and approvals are preempted by the Commission's authorities. While the Mojave Water Agency is itself a public agency, when MWA acts as Watermaster it exercises authorities granted by the Judgment and its actions are overseen by the court. The Watermaster's actions relevant to this proceeding (such as recommending adjustments to the Free Production Allowance and other actions to maintain the safe yield of the basin, and approval of HDPP's percolation storage agreement) are actions taken pursuant to the Judgment. Therefore, by extension, these are actions of the Judicial Branch. To use an analogy for Commission purposes, MWA as Watermaster is more akin to a federal agency not preempted by the Warren-Alquist Act.

The Governor and the Legislature have acted affirmatively to move the State of California's groundwater system to follow the model used in adjudicated basins, like the Mojave Basin administered by MWA. Specifically, the landmark 2014 Sustainable Groundwater Management Act ("SGMA")[6] provides the structure and the certainty already provided by the Judgment and MWA. Effective water basin management, similar to that of the Mojave Basin, is the California Legislature's goal for all groundwater basins under the SGMA. In fact, SGMA's provision, Water Code section 10720.8(a)(2), expressly exempts the Judgment and MWA from SGMA because the MWA Watermaster model and the SGMA model for groundwater management State-wide are the same model.

The practical effect of MWA as Watermaster's unique, court-appointed status is this: while the Commission does not preempt MWA as Watermaster, the Commission should in approving the Amendment determine whether HDPP will be in compliance with Watermaster requirements as applicable LORS. Conversely, any potential impacts from the Facility's use of water will be managed and subject to the oversight of the Watermaster to ensure that there are no adverse effects from such use.

[6] See Water Code § 10720.8(a)(2) exempting the Judgment and MWA from compliance with the SGMA.

C. HDPP's Petition

Focusing on the substance of the Amendment, there is little controversy about the existing supplies or about the substantial benefits of percolation.

1) **State Water Project ("SWP") Water**: HDPP seeks no changes to its use of its SWP Water supply, approved in the Commission's CEQA-equivalent certified regulatory process.

2) **Banked SWP Water**: While seeking an additional and more effective means of banking SWP Water via percolation, HDPP seeks no changes to its use of its Banked SWP Water supply.

3) **Recycled Water**: HDPP seeks no changes to its use of Recycled Water Supply, and remains committed to using a maximum amount of Recycled Water that is available, in sufficient quality and quantity, subject to the limits of the plant's existing equipment. As the Staff Report states, "The MOU between VVWRA and CDFW ensures that a minimum amount of recycled water is discharged to the river." (SR, p. 7.)

4) **Mojave River Basin ("MRB") Adjudicated Water**: To facilitate settlement, HDPP offers to make permanent the All-Party Stipulation's limitation on its use of MRB Adjudicated Water as an emergency backup supply. Specifically, HDPP offers to (a) use MRB Adjudicated Water as an emergency backup supply for blending, if, and only if, HDPP's groundwater bank falls below 4,000 AF and (b) consume no more than 2,000 AF of MRB Water Rights per water year.

5) **Percolation**: Similarly, all Parties support percolation to build the groundwater bank for the facility. The Staff Response correctly notes the benefits of percolation:

> Percolation of SWP will not have discernible impacts on the water quality of the Alto sub-basin or basin aquifers. MWA has a well-developed groundwater recharge program which focuses on infiltration of SWP water at locations throughout the watershed. This recharge program is used to maintain the local water supply and ensure compliance with the requirements of the adjudication. MWA conducts these activities in accordance with applicable LORS and would not be allowed to recharge groundwater through infiltration of SWP if there were significant impacts to water quality. In some areas where there is poor groundwater quality the effects of recharge could actually enhance groundwater water quality. (SR, pp. 8-9.)

II. PROPOSED SCHEDULE

As discussed above, the Committee should rely on the evidence that is already available in this proceeding, the applicable CEQA exemption, and MWA's legal duties to manage and

safeguard the Mojave Basin as Watermaster and move forward to a decision in this proceeding. HDPP believes that this can be facilitated through additional settlement discussions between the parties. Once the parties have reached agreement, or once it is clear that there are only a few specifically identified issues remaining in dispute after settlement discussions conclude, the parties should hold a public workshop to discuss their stipulated settlement and/or any remaining issues to be adjudicated. Thereafter, a Committee meeting should be held to either adopt the stipulated agreement or set evidentiary hearings on the remaining contested issues. This process would result in a schedule as follows:

EVENT	DATE
All Party Confidential Settlement Discussions	Through Mid-August
Public Workshop of Stipulations/Remaining Issues	August 24, 2016
Committee Hearing on Stipulations/Remaining Issues	September 6, 2016
If All Issues Are Settled: Adoption of Stipulation	September 14, 2016, at the regular CEC Business Meeting
In the Alternative: If Issues Remain For Hearing	September 14, 2016, following the regular CEC Business Meeting

CONCLUSIONS

There is no need to further delay these proceedings with protracted regional modeling studies or processes – especially given the inapplicability of CEQA and the assurance that MWA as Watermaster will, in its regular, publicly-accountable role overseen by the courts, act to protect the environment and regional water supplies.

HDPP is, at the end of the day, just a customer of the local water suppliers.

Those local water suppliers are implementing a comprehensive water management program that epitomizes the Governor and Legislature's common policy goals for the Sustainable Groundwater Management Act. Respect for the policy mandates in the Executive Orders and the Sustainable Groundwater Management Act dictate that this proceeding be narrowly focused and conclude expeditiously.

Respectfully submitted,

/s/

Jeffery D. Harris
Samantha G. Neumyer
Ellison, Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816

Attorneys for High Desert Power Project, LLC

ATTACHMENT A

HDPP'S RESPONSE TO STAFF REPORT

A. Recycled Water - In the 2000 HDPP Decision, use of recycled water was prohibited due to concerns about the effect of diversion of recycled water away from its discharge to the Transition Zone.

Q1. How would the re-direction of recycled water from the Transition Zone to HDPP affect the riparian habitat in the Transition Zone?

• In the 2000 HDPP Decision, the Commission based its findings on evidence that pumping and recharge in the Alto sub-basin can create impacts on the Mojave River for decades after those activities occur.

Q2. What role does the current discharge of recycled water play in maintaining Mojave River flows and the health of the riparian habitat in the Transition Zone with the current and uncertain future base flow conditions?

A1: No water will be "redirected from the Transition Zone to HDPP". The Petition and the relief requested do not seek any changes to HDPP's current use of recycled water.

HDPP agrees that Staff has correctly "relied on a Memorandum of Understanding (MOU) (CEC 2016) that was entered into between the California Department of Fish and Wildlife (CDFW) and Victor Valley Wastewater Reclamation Authority (VVWRA) in 2003 regarding discharge of a minimum amount of recycled water to the river." (SR, p. 2.) The 2003 MOU was entered into well-after Certification of HDPP to memorize the plans to protect the lower Mojave Transition Zone.

A2: The Staff correctly notes that the "2003 MOU between CDFW and the VVWRA requires that VVWRA discharge at least 9,000 acre-feet per year of 'available recycled water' to the Transition Zone from the existing discharges at their Shay Road Treatment Plant in Victorville." (SR, p. 3.) The 9,000 AFY must be satisfied before any recycled water is made available to HDPP from the VVWRA facility. There is no such limitation on the second recycled water source, the City's Industrial Wastewater Treatment plant ("IWTP").

There is no need to further "study" HDPP's use of recycled water and the Transition Zone:

- HDPP use of recycled water was approved by the CEC in 2009 in the Commission's CEQA-equivalent Certified Regulatory Program.

- HDPP proposes no changes in its use of recycled water as approved in 2009. There are no increases in recycled water use.

- HDPP submitted an analysis of recycled water use in Exhibit 1000.

- Per the Executive Orders, this Petition for Modification is exempt from CEQA review; notwithstanding this exemption, MWA as Watermaster is charged with managing and monitoring the Basin to prevent potentially significant effects from occurring.

Finally, there is no need for additional environmental studies. There is no value in duplicating MWAs efforts.

B. Percolation of SWP Water - The Petitioner proposes to add percolation as an additional method of banking SWP water for use at HDPP. The 2000 HDPP Decision limited water banking to injection. Because evidence leading up to the 2000 HDPP Decision showed that the impacts of groundwater pumping and injection on base flows to the Mojave River may continue for many years after pumping or injection has occurred, the Energy Commission imposed Conditions of Certification that account for the interaction of pumping and injection on base flows in the Mojave River, including the dissipation of banked water over time, through use of a superposition groundwater model. This superposition

groundwater model allows the Energy Commission to isolate the specific effects of the project. With the imposition of these Conditions of Certification, the Energy Commission found that project pumping of injected water would never cause water levels in the Transition Zone to be lower than they would be without pumping. When considering percolation as a method of groundwater storage:

> ***Q1. Are there other analytical methods that can be used to calculate the rate of dissipation of water banked through percolation (and the remaining amount water available for withdrawal over time)?***
> ***Q.2.• Have the Mojave Water Agency, Victor Valley Wastewater Reclamation Authority, or another entity performed environmental analyses that can be used to calculate the rate of dissipation of water banked by HDPP?***
> ***Q3. What modifications to Conditions of Certification governing withdrawal of banked water are required to more accurately address the availability of water banked by percolation? Specifically, how should evaporation and the distance between the percolation surface and the saturated zone be accounted for in determining the amount and timing of percolated water availability?***

A1. It has not been demonstrated that the FEMFLOW3D model, which uses four discrete, below ground injection points for forced injection of treated water, can be converted to an Alto Subbasin-wide model for unforced, natural percolation.

Setting aside this significant technical obstacle, there is no need to "model" percolation. Instead, HDPP should be treated like every other, similarly situated water user and have MWA as Watermaster calculate and account for water percolated into the Basin. As the Staff Response recognizes, "It is the duty of the Watermaster, MWA, to account for SWP water banked for HDPP via percolation." (SR, p. 5.) Revising an injection groundwater model to track percolation is unnecessary, expensive, and time-consuming. Accounting for percolated water will be accomplished by the MWA Watermaster processes.

A2. HDPP agrees that "It is the duty of the Watermaster to account for SWP water banked for HDPP via percolation." (SR, p. 5.) MWA as Watermaster is also responsible for ensuring that the Basin is managed to avoid potentially significant impacts.

A3. HDPP provided a markup of the Facility's Conditions to account for percolation. (TN 212397, *High Desert Power Project, LLC Summary of Relief Requested*, dated July 22, 2016; Attachment A.) HDPP agrees that, "Determining how much of the percolated water is available to the project is part of the duties of the MWA appointed as the Watermaster for the adjudicated basin." (SR, p. 6.) HDPP further agrees that "The Watermaster would also address the short and long term effects of the banked water recovery for use at HDPP on the water balance in the basin." (SR, p. 6.)

C. Groundwater - The use of groundwater was not analyzed in the 2000 HDPP Decision.

> ***Q1. What type of analysis is needed for the Energy Commission to assess whether impacts on base flow to the Mojave River in the Transition Zone are caused when HDPP pumps groundwater?***
> ***Q2. What action is the MWA required to take that affects base flows in the Mojave River at the Transition Zone?***
> ***Q3. What information is available about the effect of these MWA actions on base flow to the Mojave River in the Transition Zone?***
> ***Q4. Are there Conditions of Certification that the Energy Commission can impose that will ensure that base flow to the Mojave River in the Transition Zone will not decrease at any time as a result of the project's use of groundwater?***

A1. MWA performs the analyses required to maintain the Basin. There is no need for duplicative CEC analyses, especially given the CEQA exemption from the Executive Orders and MWA's responsibilities to protect the Basin under the Adjudication. There is no need to engage in the time-consuming and costly exercise of trying to convert the injection groundwater model to a model to account for percolation, given the Watermaster's responsibilities for managing the

Basin. HDPP's use of banked groundwater is governed by the Adjudication as implemented by the Watermaster. There are no regulatory or data gaps to be filled.

A2. HDPP agrees with the Staff Response:

> MWA was chosen by the Riverside County Superior Court in the adjudication proceeding in 1993 to be the Watermaster for the Mojave River Basin. It is part of the duties of MWA as the Watermaster to ensure that withdrawals are balanced by recharge to the groundwater basin as well as the sub-basins. The Watermaster is authorized to procure water from different sources, such as the SWP, to replenish the groundwater basin in case withdrawals exceed input into the basin. Funds used to procure the water come from the pumpers that exceed their free production allowances. (SR, pp. 6-7.)

A3. The Staff Response correctly notes that MWA prepares an annual report and files the report with the Court. (SR, p. 7.) The Staff Response also correctly notes that MWA's reporting to the Court describes "the inflow and outflow in the sub-basins, determines any increase or decrease in a sub-basin's storage, and identifies water pumpers responsible for the purchase of water to cover any shortages." (SR, p. 7.) There are no information or regulatory gaps to be filled. The current process is complete and protective of the environment and the Basin.

A4. The Staff Report correct notes, "Imposing Conditions of Certification that require Petitioner to take independent action in the basin might interfere with the functions of the Watermaster." (SR, p. 7)

It also correctly notes that the "MOU between VVWRA and CDFW ensures that a minimum amount of recycled water is discharged to the river." (SR, p. 7)

Staff correctly reasons, "By maintaining the groundwater levels in the basin and sub-basins, which sustains the baseflow, and by maintaining the minimum discharge obligations of VVWRA's Shay Road plant, per the MOU, MWA ensures that the total flow in the Mojave River in the Transition Zone is sustained above the minimum flow needed to sustain the riparian habitat per the judgment in the adjudication case." (SR, p. 7)

Finally, it is wasteful and duplicative to try to convert Staff's injection model to address the percolation model, given the Watermaster's responsibilities to manage the Basin.

D. Water Quality - In the 2000 HDPP Decision, the Commission required water treatment prior to injection of SWP water for banking. Although HDPP described the use of reverse osmosis (along with rapid mixing, adsorption clarifier with granulated activated carbon, and mixed media filtration) as its water treatment method, it ultimately elected, post-certification, to use another method.

> ***Q1. Would the use of reverse osmosis – or any other alternative treatment method – allow the Petitioner to inject more SWP water for banking?***
> ***Q2. Would injection without water treatment allow banking of additional water?***
> ***Q3. What are the adverse impacts to the environment or the local or regional water supply, if any, if untreated SWP water were percolated into the groundwater system?***

A1: HDPP agrees with Staff's conclusion "…that more water treatment equipment or processes would not increase SWP water injection banking." (SR p. 8.)

A2: HDPP agrees with Staff's conclusion that, "Direct injection to the Alto sub-basin aquifer of SWP water without treatment would not be allowed because of the risk of introducing contaminants into the groundwater (See Subsection D, Staff Response A3 below). Direct injection of untreated SWP water has the potential to introduce contaminants to the higher quality groundwater." (SR, p. 8.)

A3: Staff correctly concludes that percolation could be beneficial to the environment and the local or regional water supply:

> Percolation of SWP will not have discernible impacts on the water quality of the Alto sub-basin or basin aquifers. MWA has a well-developed groundwater recharge program which focuses on infiltration of SWP water at locations throughout the watershed. This recharge program is used to maintain the local water supply and ensure compliance with the requirements of the adjudication. MWA conducts these activities in accordance with applicable LORS and would not be allowed to recharge groundwater through infiltration of SWP if there were significant impacts to water quality. In some areas where there is poor groundwater quality the effects of recharge could actually enhance groundwater water quality.
> * * *
> In general, no adverse impacts are expected with percolation of untreated SWP water into the groundwater system, as the water reaching the aquifer is expected to be similar to or better in quality than the native groundwater
> (SR, pp. 8-9.)

The percolation basins that would be used are existing facilities that MWA has been using for years without any adverse effects. No new structures are required for MWA to percolate water.

E. Reliability - In addressing the Petition (and amendment to be filed), an additional criterion to consider is the contribution HDPP makes to electrical reliability. As set forth in the Interim Relief Decision, HDPP has been identified as a potential source of electrical generation in the event that the issues surrounding the curtailment of natural gas deliveries from the Aliso Canyon natural-gas storage facility cause a reduction in power production in the Los Angeles basin.

Q1. What witnesses or other evidence on HDPP's role in supporting reliability are needed?

A1. The California Independent System Operator ("CAISO") has noted, and the committee should take official notice of the fact, that the CAISO has already recognized the electric system reliability benefits of HDPP.

The Facility's operating history supports the conclusion that the Facility's location on the interstate pipeline will be critical to address the reliability issues similar to those raised by the Aliso Canyon natural gas storage leak. Specifically, in February 2014, due to low gas inventories in the Southern California area on the SoCalGas and Southwest Gas system, several

natural gas units in Southern California were required to either reduce their power output or be shut offline. Because the Facility was not impacted by the SoCalGas issues, the CAISO issued an Exceptional Dispatch Capacity Procurement Mechanism designation to the Facility to ensure that there was sufficient capacity to meet load and maintain the CAISO's operating reserve requirement.[7] As the CAISO Notice stated:

> Due to low gas inventories in the Southern California area on the SoCal Gas and Southwest Gas system, the gas company forced multiple natural gas units in Southern California to reduce their power output and, for some, to be shut off line. This resulted in forced reduction of over 2000 MW of capacity. When we evaluated our system capacity and evening peak load it was determined we would not have enough capacity to meet our load and operating reserve obligations. We decided to issue the ED CPM to High Desert since it was not impacted by the SoCal Gas issues to help meet our operating reserve requirements and avoid going into a Stage 1 Emergency.[8]

The capacity provided by the Facility allowed the CAISO to avoid going into a Stage 1 Emergency.[9] A facility like HDPP, which is located favorably on the interstate pipeline system and not reliant upon natural gas storage facilities in Southern California, provides great value to a system stressed by the events at Aliso Canyon.

Second, the 830 megawatt ("MW") Facility provides grid support through the provision of flexible capacity, baseload energy, ancillary services, and Resource Adequacy capacity. As just one additional example of the manner in which the Facility provides grid support, in 2015 the Facility was committed in CAISO's residual unit commitment ("RUC") process[10] for 30% of the hours the Facility was on-line.

Finally, the Facility meets a critical need by supporting the integration of renewable energy resources. The Facility's day-ahead and instantaneous dispatch schedule is a clear indication of the Facility's importance in meeting this renewable integration need. The Facility's dispatch schedule fluctuates daily (up or down) to provide instantaneous support to unexpected drop-off or ramp-up of renewable energy (e.g., unexpected cloud cover or missed wind forecasts). The Facility also routinely ramps from 746 MW to 200 MW for the morning renewables ramp up, and from 200 MW to 746 MW for the evening renewables ramp down.

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[7] https://www.caiso.com/Documents/February2014-ExceptionalDispatchCPMDesignationReport.pdf
[8] *Id.*, p. 1
[9] https://www.caiso.com/Documents/February2014-ExceptionalDispatchCPMDesignationReport.pdf
[10] *See*, CAISO Tariff, Appendix A, defining Residual Unit Commitment," RUC", as "the process conducted by CAISO in the Day-Ahead Market after the [CAISO integrated forward market] has been executed to ensure sufficient Generating Units, System Units, Systems Resources, Participating Loads, and Proxy Demand Resources are committed to meet CAISO Forecast of CAISO Demand." Also *see*, CAISO Tariff §§ 31.5, et seq.