

California Energy Commission
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Re: Docket No. 09-IEP-1A
1516 9th Street
Sacramento, CA 95814-5512

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Independent Energy Producers Association Comments
RE: Draft 2009 IEPR, Docket No. 09-IEP-1A
Dated September 2009

The Independent Energy Producers Association (IEP) appreciates the opportunity to comment on the *Draft 2009 Integrated Energy Policy Report* (IEPR), docket number 09-IEP-1A. IEP represents over 20,000 MWs of independently owned generation resources in California. As a general matter, IEP supports the biennial IEPR as an important instrument to assess all aspects of the energy industry from which crucial policies and practices will be developed. That being said, it would be especially helpful if amongst the litany of ideas included in the *Draft*, there was some sort of prioritization that would indicate which issues are considered more important from a CEC resource perspective. In regards to the *Draft* material, IEP is particularly pleased to see the Energy Commission's interest on issues surrounding (1) the implementation of the 33% Renewables Portfolio Standard (RPS), (2) the hybrid electricity market, and (3) the electricity procurement process. In the comments that follow, IEP's remarks will be structured by: (1) the Broader Issues, (2) Individual/Particular Policy Concerns, and (3) Specific Language Recommendations.

I. The Broader Issues.

- A. The Value of Grid Reliability:** As the IEPR is a public document, it is crucial for the public to understand the impact that grid reliability has on the various policy goals that are outlined in the *Draft*, including Once-Through Cooling (OTC) retirements, RPS targets, emission credits, etc. While 'grid reliability' is *mentioned* in the *Draft IEPR*, its important link to a range of policies is not stressed nearly enough. Without fully addressing the system's electric reliability concerns in relation to these other targets, the Energy Commission is masking a significant factor that weighs on achieving each of these important policy goals. It is quite clear that without grid reliability many of the *Draft's* proposed policies may go by the wayside, yet it is not evident, from a public perspective, that this is indeed the case.

Recommendation: As a preliminary step, the CEC should move the following statement, which appears on page 2 of the Executive Summary, to the top of page 1 of the Executive Summary: “A major challenge to policy makers is the need to balance the state’s environmental goals with the need for reliable and affordable energy supplies for its citizens.” This overarching message should be prevalent throughout the entirety of the document.

B. Need Assessment/Conformance. Throughout the *Draft IEPR*, there is a clear preference for the Energy Commission to determine the need for future power plant facilities through an official “needs assessment” process. Presently however, “the legal construct of the licensing process does not call out a need assessment or need conformance” requirement.¹ As a result, the Energy Commission’s proposal to determine “need” through a formalized process seems to add an additional layer on top of an already complicated siting process.

At this point, IEP is not convinced that a formalized needs assessment is indeed necessary. In fact, there are already various policy mechanisms that assess ‘need’ for power plant facilities. One example is the CPUC’s approval process for power purchase agreements (PPA); the approval of which essentially deems a facility as per se ‘needed’ in light of existing public policy (e.g. the loading order) and utility forecasted demand. Another example is the CAISO’s reliability study that determines if a plant is ‘needed’ for local resource adequacy requirements. Given these energy agency assessments (along with others) that are already in place, the urge to impose an additional step in assessing “need” appears misplaced.

Furthermore, IEP is concerned that a formalized needs assessment may do more harm than good. In particular, the outcome of a formalized needs assessment will likely (1) stifle development, (2) create uncertainty for developers, (3) limit competition, and (4) blur the CEC’s role. Since the needs assessment will “determine the necessary attributes and locations of needed power plants, and in what time frame” the Energy Commission will essentially have the authority to pick winners and losers, which is duplicative of the existing roles of other energy agencies.²

The *Draft 2009 IEPR* recommends that the “Energy Commission should plan to undertake a need conformance for power plants it licenses in a more organized and formal manner, relying upon need assessments prepared in an integrated planning process to determine future power plant needs.”³ While IEP is not certain that a needs assessment is necessary, we do believe coordination is essential among the various agencies that determine the fate of a project, including the Energy Commission, the Public Utilities Commission, the CAISO, CARB, the Department of Fish and Game, BLM, local governments, etc. A clear process that provides upfront knowledge as to what it takes to be sited will be an invaluable tool to developers. Presently there are

¹ *Draft 2009 IEPR*, page 208.

² *Draft 2009 IEPR*, page 208.

³ *Draft 2009 IEPR*, page 224.

no clear indicators linking the individual steps in the process. What is the role of a PPA? What is the role of a siting permit? What is the role of the CAISO generation interconnection deposit? While the association between each of these steps is ambiguous, it is evident that dialogue amongst stakeholders and the respective agencies still needs to occur. If there continues to be an opaque process for siting generation in California, reaching our clean energy goals will be unachievable. First and foremost, the Energy Commission should lead in an intra-agency stakeholder dialogue, broadly focused on procurement practices, the assessment of need, and the siting process.

On the other hand, included in the final chapter of the *Draft* is the recommendation for the Energy Commission to “seek legislative authority for (1) an explicit need conformance process for power plants it licenses directly; and (2) its need assessment conclusions to be used by local and regional environmental agencies with final approval over power plants that the Energy Commission does not license.”⁴ Because the proposal for a formalized “needs assessment’ has **NOT** been fully vetted, IEP has concerns regarding the Energy Commission’s recommendations to seek legislative authority in advance of a public process to more extensively debate the issue.

Recommendation: The Energy Commission needs to have a dialogue amongst all of the relevant agencies and stakeholders to fully vet the ‘needs assessment’ proposal in the context of current procurement practices, existing energy agency roles (including the CAISO) and the siting process.

C. The Hybrid Market. California’s so-called “hybrid market structure,” as implemented by the California Public Utilities Commission (CPUC) beginning in 2004, is a policy tool designed to ensure that utility-owned generation and independent power generation compete on a level playing field. In CPUC Decision 07-12-052, at page 209, the PUC indicated its preference for a competitive level playing field when it established an important principle regarding the utilities’ procurement of generating resources:

We want to make it clear that we continue to believe in a ‘competitive market first’ approach. As such we believe that all long-term procurement should occur via competitive procurements rather than through preemptive actions by the IOU, except in truly extraordinary circumstances.

Decision 07-12-052, page 209 (footnote omitted)

As noted above, it is the CPUC’s intent for utilities and independent power producers (IPP) to compete against each other on a competitive, level playing field. However, if this competitive level playing field is not maintained as originally envisioned, consumers may not benefit from the competitive forces necessary to achieve least-cost energy resources. Now, with five years of experience, it’s timely to review the hybrid market structure and assess how

⁴ *Draft 2009 IEPR*, page 224.

well it's working from the perspective of (a) fostering a competitive level playing field between Utility-Owned Generation (UOG) and IPP development and (b) lowering consumer costs. A priori, one might conclude that a conflict of interest may exist in a procurement model in which the utility designs and administers solicitations; evaluates the bids from the RFO in which they have an option to bid; and, are provided options to propose UOG-developed projects outside of competitive structures, in certain circumstances. Accordingly, IEP shares the Energy Commission's interest in examining the hybrid market structure to determine if it is indeed functioning properly. IEP is encouraged by the Energy Commission's attention to the proper execution of California's hybrid market.

Recommendation: The Energy Commission and the CPUC should work together to determine if the hybrid market structure is being implemented as originally planned, fair and competitively. This should include investigating the conflict of interest that occurs when utilities design, solicit, administer, and have the option to bid into its own RFO or, alternatively, propose projects outside of its RFO structure.

D. Investment in Desired Infrastructure. IEP believes that a stable and transparent investment and regulatory framework is essential to attracting new generation infrastructure investment. Included in any such framework is the need for an open, transparent, competitive market structure; as well as liquid and stable capacity, energy, and ancillary service(s) markets to foster electrical generation when and where it is needed consistent with state and federal policies. To achieve these ends, the investment and regulatory framework must be consistent in the application of planning, forecasting, and siting assumptions. Furthermore, this framework should support a "portfolio" approach to procurement by load-serving entities (LSEs), wherein the supply portfolio is comprised of market purchases and bilateral contracts of varying terms and duration, each of which is based on the LSE's individual risk profile.

IEP notes that on page 198, in addressing the issue of Investment in Desired Infrastructure, the *Draft IEPR* raises the issue of Forward Energy or Capacity Markets. Importantly, IEP believes that California needs a centrally administered Capacity Market that facilitates forward bilateral contracting. Such a market should be independently established, centrally administered, and transparent. Any such Forward Capacity Market, however, should be treated as *one* mechanism to support new generation, while recognizing that long-term contracting serves as another important means to foster investment in generation infrastructure. Both market design elements likely are necessary, neither likely sufficient.

Recommendation: The CEC should address, as part of its overall assessment of infrastructure investment and market design in California, the extent to which market design elements such as a Forward-Capacity

Market should be added, so as to deliver the benefits of fully competitive markets to California consumers.

E. The Importance of Natural Gas Facilities. “The Energy Commission’s *Framework for Evaluating Greenhouse Gas Implications of Natural Gas-Fired Power Plants in California* found that as California’s integrated electricity system evolves to meet GHG emission reduction targets, the operational characteristics associated with increasing renewable generation will increase the need for flexible generation to maintain grid reliability. The report states that natural gas-fired power plants are generally well-suited for this role and that California cannot simply replace all natural-gas fired power plants with renewable energy without endangering the safety and reliability of the electric system.”⁵ In addition, because natural gas plants tend to provide the flexibility the system needs for peaking, cycling, and some baseload operation, natural gas plants can support the integration of renewable resources by providing the operational characteristics that the system needs to operate reliably.⁶ While some renewable resources can provide baseload power, such as geothermal and biomass, intermittent resources like wind, hydro and solar operate when nature allows and are therefore not always available to meet system needs during peak hours. Intermittent resources can also drop off or pick up suddenly requiring system operators to quickly compensate for sudden changes.⁷

As a result of these facts, it is evident that natural gas-fired generation is a reliable resource to (1) maintain grid reliability, and (2) provide a flexible fast-start resource that can compensate for the intermittent nature of renewable technologies. Furthermore, new, clean natural gas-fired facilities will create an overall system-wide benefit from a GHG perspective, in that they will be displacing less efficient units from operating. Thus, while some have tried to eliminate the niche for natural gas plants in California, it is clear that California’s renewable energy goals must be combined with the operation of clean natural gas facilities.

Recommendation: Clean Natural Gas-Fired Facilities will play a vital role in reaching California’s climate change and renewable goals. It will be exceedingly important for the Energy Commission to support the role of natural gas as a clean energy resource that will help integrate renewable generation.

II. Particular Policy Concerns

A. Feed-in Tariffs. As the European experience with feed-in tariffs suggests, “renewable energy development and financing can happen more quickly and often more cost effectively than under competitive solicitations.”⁸

⁵ Draft 2009 IEPR, page 107.

⁶ Draft 2009 IEPR, page 82.

⁷ Draft 2009 IEPR, page 82.

⁸ Draft 2009 IEPR, page 90.

Accordingly, the Energy Commission has explored the potential benefits of a feed-in tariff in California as a way to accelerate renewable energy generation and increase the likelihood of meeting California's RPS goals.⁹ While it is unclear at this point as to whether federal law allows states to implement a feed-in tariff outside of the PURPA context, particularly a feed-in tariff similar to those implemented in Europe, IEP supports the Energy Commission's recommendation to gain clarity on this issue and determine if a feed-in tariff is indeed an implementation tool that California could pursue.

B. Making the Most of Federal Dollars. One discussion that, for the most part, has been omitted from the Energy Commission's *Draft 2009 IEPR* relates to the federal funding that is provided under the American Recovery and Reinvestment Act (ARRA). On October 15, 2009, the Renewable Energy Action Team (REAT) published *Milestones to Permit California Renewable Portfolio Standard Energy Projects by December 2010*. While IEP appreciates the REAT focus on the ARRA funding deadlines, which states that construction must begin by 2010 in order to qualify, IEP remains concerned that even under the proposed modified milestone approach, few if any, California projects will meet this deadline. To begin, the REAT Milestones are simply a restatement of the CEC's "model" 12 month permitting schedule. To date, the Energy Commission has had limited success in permitting small-scale, CEC-jurisdictional projects in this timeframe. Quite frankly, the chances of the CEC succeeding in permitting large-scale renewable energy projects thousands of acres in size, which also require NEPA compliance and a federal lead agency, seem remote at best.

For example, by applying the deadlines in the *Milestones* to projects that are nearly two years into the CEC permitting process, the results yield a CEC decision in July 2010 or later. On the other hand, when applied to new projects that are not yet data adequate, the REAT Milestones suggest a final decision of November 2010. It seems impossible that new projects that are not yet data adequate can be permitted just four months (or less) after projects that have already been in the permitting process for nearly two years. In essence, the milestone deadlines are seemingly unrealistic.

Similarly, a CEC decision in November 2010 may be too late to qualify for ARRA funding. Projects must commence construction in 2010. This will be nearly impossible with a November 2010 decision, given the time for administrative appeals and judicial review. In addition, while the ARRA deadlines allow for a "safe harbor" if applicants have paid or incurred more than 5% of the total cost of the property, it may be difficult to obtain financing and make such expenditures without a final and non-appealable CEC Decision.

While IEP understands and appreciates the Commission's sincere belief that it can "fast track" permitting to allow projects to qualify for ARRA funding, the time remaining suggests that this task may be impossible, except for a few projects that are already well into the Commission's siting process.

⁹ *Draft 2009 IEPR*, page 89.

Projects that are not data adequate have virtually no chance of being approved in time to meet the 2010 ARRA deadlines. Given this reality, it is time for the Commission to consider seeking extraordinary authorities to streamline its permitting processes, like those used during the 2000-2001 energy crisis. This would likely require new legislation and/or a gubernatorial declaration of emergency. These options should be on the table if the Commission is serious about qualifying California projects for their fair share of 2010 ARRA funding.

Recommendation: The Energy Commission needs to focus on fixing the timelines that will allow renewable developers to capture federal monies that were established by the American Recovery and Reinvestment Act (ARRA). In addition, the Energy Commission should continue to improve the REAT milestone work product, which may involve truncating the timelines further. Finally, the Energy Commission may want to encourage, among the appropriate authorities, an extension to the timeline of the Federal Program.

- C. Replacement Power:** On page 170, the *Draft* notes that “the Energy Commission, CPUC and California ISO are developing enhanced Local Capacity Requirements (LCR) analyses for each local capacity area, or load pocket, within the California ISO balancing authority area.” IEP strongly supports this recommendation and is glad to see its inclusion in the *Draft*, as an enhanced LCR analysis for each local capacity area is the type of detailed system analysis that will improve overall understanding of system needs.

- D. Renewable Integration:** “To facilitate integrating renewable energy into California’s electricity system while maintaining reliability, the IEPR committee recommends [that]... the Energy Commission support the detailed analysis being conducted by the California ISO to identify specific system requirements such as local ramp rates, inertia, and other transmission-related ancillary service functions.”¹⁰ IEP supports the IEPR committee’s recommendations here, as any additional clarity on the above mentioned requirements will greatly improve and support effective siting in California, specifically in the South Coast basin, etc.

- E. Planning in the Electricity Sector:** On the bottom of page 203, the *Draft* notes that “the CPUC’s Energy Division staff has proposed expanding the scope of the LTPP to address “system requirements” rather than just IOU-bundled customer needs. IEP encourages the implementation of this recommendation as it will open up the “system requirements” for the entire California market, rather than just a subset of those requirements.

III. Specific Language Recommendations (Please See the Attached Document).

¹⁰ *Draft 2009 IEPR*, page 218.

IV. Conclusion. The Energy Commission staff has presented a well rounded discussion of many important policy goals in this year's *Draft IEPR*. IEP is particularly pleased to see the CEC's interest in investigating the hybrid market, and the conflict of interest that may be embedded therein. In addition, the Energy Commission's interest to gain clarity on the possibility of pursuing feed-in tariffs as an option to bring renewable generation quickly to the grid is encouraging. Finally, as it is not certain that a formalized need conformance process is necessary, the issue should be discussed more thoroughly amongst stakeholders and the relevant agencies.

IEP thanks the Energy Commission for the opportunity to submit these comments on the *Draft 2009 Integrated Energy Policy Report*.

Respectfully submitted,



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Specific Language Changes to the *Draft 2009 IEPR*

1. On page 168 of the *Draft*, IEP recommends changing the language to read:

In addition to this policy goal, the following ~~three~~ four external forces continue to exert major influence over the electricity industry:

- Siting requirements at both the state and local level, which have the potential to create barriers to timely development of new/repowered clean generation (for both renewables and non-renewables).
- Policies to reduce or eliminate the use of once-through cooling in power plants.
- The scarcity and high cost of emissions credits needed for new power plants.
- The need to shift the mix of resources toward demand-side resources and renewables and away from fossil power plants in response to global climate change initiatives.

2. On page 224 of the *Draft*, IEP recommends changing the language to read:

- ~~The Energy Commission should seek legislative authority for (1) an explicit need conformance process for the power plants it licenses directly; and (2) its need assessment conclusions to be used by local and regional environmental agencies with final approval over power plants that the Energy Commission does not license.~~
- The Energy Commission should have a dialogue amongst all of the relevant agencies and stakeholders to fully vet the ‘needs assessment’ proposal in the context of current procurement practices, existing energy agency roles (including the CAISO), and the siting process.