

INDEPENDENT ENERGY PRODUCERS

December 17, 2010

California Energy Commission

Dockets Office, MS-4

RE: Docket No. 11-IEP-1D Reliability

1516 9th Street

Sacramento, CA 95814-5512

DOCKET

11-IEP-1D

DATE DEC 17 2010

RECD. DEC 17 2010

RE: Comments of the Independent Energy Producers Association on the Joint Committee Workshop on Electricity Infrastructure Need Assessment, convened on November 23, 2010, in preparation for the 2011 Integrated Energy Policy Report (IEPR).

Docket No. 11-IEP-1D Reliability

Dear IEPR and Electricity and Natural Gas Committees:

The Independent Energy Producers Association (IEP) appreciates the opportunity to comment on the Joint Committee Workshop on Electricity Infrastructure Need Assessment, convened on November 23, 2010. IEP is California's oldest and leading trade association, representing over 26,000 MWs of non-utility, independently-owned generation resources in California.

As a general matter, the Draft Staff Paper entitled *Infrastructure Need Assessments for the 2011 Integrated Energy Policy Report* outlines a proposal to assess new infrastructure needed for California's electricity sector. While IEP supports the notion that ONE forum could be used as a platform to discuss ALL the issues related to statewide planning and development, there seems to be little likelihood that the various agencies currently responsible for aspects of energy infrastructure planning and development will agree to yield their authority to the Energy

Commission. In the absence of the establishment of a single forum, IEP is not attracted to creating an additional layer of analysis, especially if it is not clear that it will result in a better product than what is already available. Consequently, IEP believes that finding ways to make the existing planning processes better, more efficient, in an open and transparent manner should be the central focus of the Energy Commission's 2011 IEPR.

While IEP is not opposed to assessing the state's infrastructure needs, it is the application of "need" within the context of a "need conformance" that is troubling. IEP's concerns regarding the staff's proposal, expressed more fully below, relate primarily to the following: (1) imposing a new "need" screen in the siting process may impede the siting process; and (2) creating additional layers may hinder rather than help the state's planning and development processes.

I. Imposing a New "Need" Screen In the Siting Process May Impede the Siting Process.

The 2009 IEPR described the use of an infrastructure need assessment as a precursor to incorporating need conformance in the power plant permitting process at both the CEC and local agencies. Need conformance, a process that compares project proposals with the needs identified in a need assessment, could screen out proposals that do not match the identified need.¹ In the 2009 IEPR proceeding, many parties challenged the need assessment/need conformance proposal because they did not believe that the Energy Commission licensing process should limit the number of power plants that could be constructed. While the Draft Staff Paper acknowledges that it will not focus on need conformance per se, staff recognizes that the results of the proposed need assessment have the potential to serve multiple purposes, one which could be to help the power plant licensing team better understand how proposed projects will match up with future system needs.² This purpose, to match specific facilities or sets of facilities with the identified need, may be problematic in the overall siting process.

First, the Results Identified in the Need Assessment May Create the Potential for Additional Litigation in the Siting Process. The proposed need determination creates a potential for challenges to a power plant application not only on the basis of environmental

¹ Draft Staff Paper on Infrastructure Need Assessments for the 2011 Integrated Energy Policy Report, page 3.

² Ibid, page 2.

factors (as we have seen before), but also on the basis of a new or different interpretation of “need.” The Draft Staff Paper proposes to identify a range of need in its infrastructure assessment, encompassing a possibility for multiple futures, which could be interpreted in many different ways.³ At the same time, staff describes the infrastructure need assessment as a process that will guide decisions about the future energy system mix, to determine the necessary attributes and locations of needed power plants and transmission lines, in a specified timeframe.⁴ As a result of different interpretations regarding the location and more importantly the timeframe of “needed” power plants, the product of a “need assessment” could create an additional basis for siting applications to be challenged.

The Application For Certification (AFC) process is currently time-consuming and extensive. In general, sponsors of projects tend to know what is expected of them, and bring their projects forward accordingly. Furthermore, once a permit from the Energy Commission is granted, the likelihood of it being overturned is very slim. The Energy Commission’s proposal to add a new “need” screen to the siting process creates an additional ground for intervenors to challenge the issuance of a permit. For example, the timeframe in which a resource is needed could vary depending on the initial assumptions (i.e. levels of renewable energy, energy efficiency, demand response, etc.) that were used to determine the assumed “need” for a new resource. These assumptions and the resulting “need” have the potential to be challenged in every siting case. Hence, developing a “need” screen within the siting process may create yet another avenue for power plants seeking certification in California to be challenged. This potential for additional litigation could hold up the siting of resources indefinitely, resulting in a lack of “needed” resources in the identified timeframe.

Second, the Need Determination May Create Additional Barriers to Development.

A formalized need determination may in fact do more harm than good. Specifically, the application of “need” within the context of the siting process raises serious concerns. The potential for an ever-changing planning environment, different interpretations of need, and uncertainties regarding the direction of the state’s policy goals, result in a lot of uncertainties, from a development perspective, about what will be incorporated in a final need determination.

³Ibid, page 4.

⁴ Ibid, page 3.

Previously we have been working in a market where generators bring competitive projects through the CEC's licensing process to be evaluated against the requirements of the California Environmental Quality Act (CEQA). Under the proposed need determination, however, some applicants may be favored over others in the siting/CEQA review process based on their project's location, evaluated in the context of an infrastructure need assessment that was conducted some years prior. The concern is that the identified "need" has the potential to change over time and could be subject to different interpretations (from stakeholders, agencies, etc.) along the way. Under this framework, how will developers be assured that the need that was previously identified (which they have spent money structuring their projects around) will not change as the result of a re-assessment? Will the need be out of date by the time developers begin to put their investments into action? In what timeframe will developers be told what is needed? In other words, it may be very difficult for developers to make investment decisions based on a model that has the potential to be constantly evolving, with course corrections occurring en route.

While the Draft Staff Paper proposes to project need out to the 2017-2020 timeframe, many of the mechanisms to achieve the state's 2020 goals are still being developed. As noted in the Draft Staff Paper, "renewable generation requires flexible resources, but the types and amounts are poorly understood. No formally accepted methods for computing the required quantities of the operating characteristics exist. It is not completely clear whether the nature of the needed characteristics match the design of the current market."⁵ These types of uncertainties will make it difficult to pinpoint which characteristics will be "needed" in the future when projects finally come before the Energy Commission in an actual siting case. Even with some indication of what will be needed in the future, the proposed conclusions may be no more than "best guesses." For example, how will the Energy Commission know ahead of time (i.e. now) which operating characteristics will be desired in the future, especially when many of these characteristics are still being debated/understood by the CAISO today?

As a result of the uncertainty surrounding a final need determination in the siting process, IEP is concerned that the product of a formalized need assessment may (a) stifle development,

⁵ Ibid, page 13.

(b) create uncertainty for developers prepared to invest in California, and (c) limit competition by defining where a facility should be built. IEP believes that a stable and transparent investment and regulatory framework is essential to attracting new generation infrastructure investment in California. Included in any such framework is the need for an open, transparent, and competitive market structure. It is not clear at this point, that a need assessment/need conformance evaluation will provide the stable investment and regulatory framework that California needs as it strives to reach its renewable energy and other policy goals.

Third, Current Statutory Language May Not Give the CEC the Authority to Conduct A Need Evaluation As Part of Its Siting Process. Presently, the legal construct of the CEC licensing process does not require the Energy Commission to perform a need assessment or need conformance evaluation. In fact, the Energy Commission no longer has the authority to determine the need for new generation as part of its siting review. In 1999, the California Legislature passed and the Governor approved SB 110, which added section 25009 to the Public Resources Code. Section 25009 removed the Energy Commission's previously existing authority to determine the need for new generation. As explained in section 25009, "before the California electricity industry was restructured, the regulated cost recovery framework for power plants justified requiring the Commission to determine the need for new generation, and site only power plants for which need was established. Now that power plant owners are at risk to recover their investments, it is no longer appropriate to make this determination." To encourage private capital to invest in new power plants and to ensure the timely construction of new electricity generation capacity, the Legislature concluded that it was no longer necessary for the Energy Commission "to determine the need for new generation and site only power plants for which need was established."

The reasons for removing this element of the siting review are as applicable today as when SB 110 was first enacted. Accordingly, the Commission should not use the IEPR to conduct a need determination that it can no longer incorporate in its siting reviews for new generation. In addition, IEP does not believe that the Energy Commission should seek legislative authority to conduct a need assessment/need conformance process without first considering improvements that can be gained from the various infrastructure assessments that already exist.

II. Additional Layers Will Hinder, Rather Than Help The State's Planning and Development Processes

As noted throughout the Draft Staff Paper, a variety of agencies and organizations already rely upon something that resembles infrastructure need assessment to perform each of their individual responsibilities.⁶ These assessments are performed in the California Public Utilities Commission's (CPUC) Long Term Procurement Plan and Resource Adequacy proceedings, the California Independent System Operator's (CAISO) Local Capacity and Transmission Planning Processes, etc.

Unfortunately, the problem with the planning environment in California today is precisely the process described above. There is an abundance of planning studies by a variety of different agencies, each with different assumptions and different results, which are generally two years old by the time they are finally released. To create an additional planning process with inputs and results that are derived from studies already in place, as proposed here, creates an additional layer of planning that in the end may not be that helpful. While IEP acknowledges that a clear process that provides upfront knowledge about what it takes to get a project built in California is an invaluable tool to developers, the process that the Draft Staff Paper is proposing may only lead to further uncertainty.

Admittedly, many of the planning processes that are currently in play are far from perfect. However, absent ONE common forum where ALL the planning can come together, we should avoid duplicating processes that already exist and instead rely upon improving the current system. One issue that could be improved upon is the coordination between the CAISO and the Municipal Utilities. This is a relationship that the Energy Commission is well positioned to foster as a result of the interaction that occurs between the CEC and the Municipals. Another issue that could be improved is defining the connection between each of the individual planning processes. Presently there are no clear indicators linking the individual steps of the development process. For example, what is the role of a PPA (Power Purchase Agreement)? What is the role

⁶ Draft Staff Paper on Infrastructure Need Assessments for the 2011 Integrated Energy Policy Report, page 7.

of a siting permit? Which one should come first? Which agency's results should be the end-all be-all conclusions?

In addition, there may be other mechanisms worth examining. The Least-Cost/Best-Fit (LCBF) methodology is defined in law as a standard for evaluating which renewable energy projects, encompassing both the least cost and best fit, should be approved.

- Is the LCBF working? Is it working according to the way that it was meant to work?
- Are both elements "least cost" and "best fit" being applied simultaneously in decision making?
- How are best fit guidelines determined?
- How can the LCBF be improved?

Before we determine if an additional and potentially duplicative layer needs to be added to the development process, we should be asking these types of questions within the construct of the existing planning framework.

IV. Conclusion.

While IEP supports the notion of ONE forum that could be used as a platform to discuss ALL the issues related to statewide planning and development, the likelihood of this occurring seems slim. As a result, IEP is not attracted to creating an additional layer of analysis, if it is not clear that it will be a better product than what is already available. Consequently, IEP believes that finding ways to make the existing planning processes better, more efficient, in an open and transparent manner should be the central focus of the Energy Commission's 2011 IEPR.

IEP appreciates the opportunity to comment on the Energy Commission's *Draft Staff Paper on Infrastructure Need Assessments for the 2011 Integrated Energy Policy Report*.

Respectfully Submitted,



Amber Riesenhuber
Policy Analyst
Independent Energy Producers Association
1215 K Street, Suite 900

Sacramento, CA 95814
916-448-9499
amber@iepa.com