

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Integrate
and Refine Procurement Policies and
Consider Long-Term Procurement Plans.

Rulemaking 10-05-006

**OPENING BRIEF OF NRG ENERGY, INC.
ON TRACK III ISSUES**

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September 16, 2011

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I. INTRODUCTION

NRG Energy, Inc., on behalf of NRG Cabrillo I, LLC, NRG Cabrillo II, LLC, NRG El Segundo, LLC, and NRG Long Beach, LLC (“NRG” or the “NRG Companies”) respectfully submits this Opening Brief on a single Track III issue in accordance with the Administrative Law Judge’s (“ALJ”) Ruling Addressing Motion for Reconsideration, Motion Regarding Track I Schedule, and Rules Track III Issues dated June 13, 2011, and Rule 13.11 of the Commission’s Rules of Practice and Procedure.

This Opening Brief addresses a single issue: the puzzling proposal from Energy Division Staff to limit the right of Load Serving Entities (“LSEs”) to flexibly contract with the least-cost generation mix to supply California’s needs, and instead limit LSEs’ ability to contract with a subset of generating units to one year (referred to as the “Staff Proposal”). Specifically, the Staff Proposal would prevent LSEs from: (1) entering into a contract for longer than one year with any resource identified by the State Water Resources Control Board (“SWRCB”) as utilizing once-through cooling technology; or (2) entering into any contract with such resources that extend

beyond the compliance date, unless the resource complies with the SWRCB policies, or the contract is for the express purpose of repowering the power plant so that the repowered power plant does not use once-through cooling (“OTC”). NRG urges that this proposal be rejected.

II. DISCUSSION

A. Energy Division’s Proposal To Limit Contracts With Once-Through-Cooled Generating Units To A Single Year’s Duration Should Be Rejected.

There is a degree of unanimity amongst stakeholders opposing Staff’s Proposal that is rarely reached by California parties. All three Investor Owned Utilities – Pacific Gas and Electric Company (“PG&E”), San Diego Gas & Electric Company (SDG&E”), and Southern California Edison Company (SCE”), and the independent generator community all agree that such artificial restrictions on contracting opportunities would potentially harm the Commission’s resource adequacy program, potentially harm system reliability, as well as increase costs to California ratepayers. This proposal is both untimely and unnecessary.

First, there is no reason to limit contracting opportunities for OTC plants prior to the compliance dates established by the SWRCB. Many, if not all, of the compliance dates established by the SWRCB are several years in the future. The one-year limitation on contracting thus serves no useful purpose, because it does not change the dates by which OTC units must comply with SWRCB rules. Further, the phased implementation of the SWRCB’s new rules was carefully designed to provide generators time to comply with new rules, while ensuring that the State’s environmental goals were accomplished. Adopting the Staff Proposal would upset this careful balance.

Second, limiting the ability of LSEs to contract with OTC units is likely to increase the prices such LSEs pay for generating capacity. LSEs routinely enter into multi-year arrangements in order to protect ratepayers against price volatility. Generators also benefit, because these

longer term contracts limit their risk, thus promoting lower overall prices. The Staff Proposal, however, would increase prices by increasing the risk to generators, effectively encouraging them to seek higher prices in one-year agreements than they might accept for multi-year agreements. The Proposal would similarly artificially decrease the pool of potential long-term counterparties for LSEs to contract with, thereby making it more difficult for the LSEs to meet their long-term needs on a least-cost basis. The Staff Proposal would thus increase the price LSEs pay for generation while providing little or no environmental benefit.

Third, lack of access to longer-term contracts may lead to decreased system reliability, because longer-term contracts allow for longer-term system planning. There is no question that limiting access to longer-term contracts would increase the uncertainty of future revenue streams for existing OTC generators seeking to comply with the OTC Policy under either Track 1 (replacement by a non-once-through-cooled generation) or Track 2 (mitigation of impingement and entrainment impacts). This uncertainty will manifest itself in higher prices (as discussed above) and also make it difficult for existing units to plan their capital expenditure spending in order to comply with OTC and other environmental rules. Without the ability to plan on a multi-year forward basis, the prohibition proposed by Staff encourages units to leave the market in an uncontrolled and unmanageable fashion. The State of California is not ready to potentially lose thousands of megawatts of flexible, gas-fired generation, without significant notice. Yet by prohibiting generators and LSEs from managing their needs on a multi-year basis, this is exactly the type of behavior that Staff's Proposal appears designed to incent.

Finally, we note that NRG is not alone in raising these concerns:

- PG&E testified that once-through cooled units should be allowed to compete in procurement solicitations without limitation. PG&E noted that its procurement

evaluation process included scoring criteria that would reflect the environmental attributes of once-through cooled units.¹

- SDG&E likewise testified that the proposed one-year limitation on contracting with once-through cooled units would not lower (and might increase) the costs borne by its ratepayers, nor would it advance those facilities' compliance with the OTC Policy or the procurement of replacement capacity that did not rely on once-through cooling.²
- SCE testified that the Staff Proposal creates undue risk, will likely increase costs to its customers, and would increase costs without meeting a clear policy objective. SCE further asserted that the proposal creates undue risk to grid reliability and hinders the integration of new and increasing amounts of renewable resources.³

III. CONCLUSION

For the reasons set forth herein, NRG respectfully urges the Commission reject Energy Division Staff's Proposal to limit contracts with once-through cooled units to a single year's duration.

Respectfully submitted,

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¹ Pacific Gas and Electric Company Chapter I Track III Testimony Procurement Rules to Comply With Once-Through Cooling Policies at 1-1 to 1-4.

² Prepared Track III Testimony of San Diego Gas & Electric Company (U 902 E), Public Version, at 17-19.

³ Testimony of Southern California Edison Company On Track III Issues – Rules Track III Procurement Policy at 9-12.