

**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  
(Filed May 6, 2010)

**OPENING BRIEF OF GENON CALIFORNIA NORTH, LLC  
ON TRACK I AND TRACK III ISSUES**

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In accordance with Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”) and the procedural schedule established by Administrative Law Judge Allen, GenOn California North, LLC (“GenOn”) files this opening brief addressing Track I and Track III issues in this proceeding.

**I. SUMMARY OF RECOMMENDATIONS**

More than twenty parties to this proceeding entered into a settlement agreement proposing a resolution to Track I system procurement issues that was filed with the Commission on August 3, 2011 (“Settlement Agreement”). GenOn is a party to the Settlement Agreement and urges the Commission to approve it without delay. The Settlement Agreement gained momentum when it became apparent that the modeling results completed so far do not conclusively demonstrate whether or not there is a need to add new capacity to support integration of renewable resources through the year 2020. As reflected in the Settlement Agreement, there is broad consensus that (1) additional analysis is needed before any renewable integration resources need determination is made, and (2) the additional analysis should be completed and evaluated expeditiously so that the Commission can adopt a need determination by the end of 2012.

A second and equally important concept embodied in the Settlement Agreement is that there has not been an adequate analysis of the need for new resources to satisfy long-term local capacity requirements (“LCR”), particularly in light of the anticipated impacts of the State’s once-through cooling (“OTC”) policy. The OTC policy imposes upcoming compliance

deadlines on units currently utilizing OTC technology and compliance may necessitate the replacement or repowering of existing OTC units. As explained below, with all the attention dedicated to renewable integration needs, the analysis in the record to date regarding fundamental local reliability requirements has been inadequate. This is confirmed in the Settlement Agreement, which recognizes that the California Independent System Operator (“CAISO”) is in the process of studying local needs driven by the OTC compliance schedule and expects to complete the studies by the end of 2011. The CAISO then will incorporate the study results into the renewable integration model using the methodology developed in this proceeding. The Settlement Agreement thus confirms that the LCR analysis should be completed and evaluated on the same expedited time frame noted above, so that the Commission can adopt a need determination by the end of next year for new capacity that may be necessary to meet LCR in the year 2020.

It is important that the Commission adhere to the timeline outlined in the Settlement Agreement for issuing a need determination by the end of 2012. Based on project development timelines in California, to ensure that new capacity can be built and placed into operation in 2020, when the full force of the OTC policy will have taken effect, it is necessary to adopt a need determination by the end of 2012, so that competitive solicitations for new capacity can be initiated in 2013. The Commission’s approval of the Settlement Agreement therefore should recognize the importance of a timely, subsequent procurement decision to ensure LCR needs and any renewable integration needs are met. To that end, GenOn urges the Commission to open a new phase of this proceeding to consider the further analyses being developed by the CAISO, to implement the process and schedule outlined in the Settlement Agreement, and to adopt a need determination no later than the end of 2012.

Among the range of Track III issues considered in this phase of the LTPP, GenOn is particularly focused on the staff proposal to prohibit utilities from entering into procurement contracts with facilities relying on OTC for more than one year at a time. For the reasons explained below, the Commission should reject the staff proposal.

Finally, in light of the further needs analysis contemplated by the Settlement Agreement, and the CAISO’s focus on evaluating how OTC compliance deadlines affect the need for new

capacity to meet LCR, the Commission should allow parties to make policy recommendations regarding the replacement of OTC facilities in the next phase of this proceeding. It is difficult to make cogent recommendations regarding what types of procurement policies are needed to support OTC goals until the CAISO's additional study results are known. As the understanding of the impacts of OTC retirements becomes more complete, policy choices that are not readily apparent today may become more apparent then. GenOn therefore asks that the Commission allow parties to address how procurement policies can support OTC policy goals in the phase of this proceeding that addresses the need determinations referenced above.

These recommendations are explained in greater detail below.

**II. TRACK I: THE COMMISSION SHOULD APPROVE THE TRACK I SETTLEMENT AND COMPLETE THE PROCESS OUTLINED THEREIN IN TIME TO ADOPT A NEED DETERMINATION BY THE END OF 2012.**

**A. There is Broad Consensus That Further Analysis Should be Conducted in Time to Support a Need Determination by the End of 2012.**

The Settlement Agreement confirms the settling parties' agreement that the modeling results completed so far do not conclusively demonstrate whether or not there is a need to add new capacity to support integration of renewable resources through the year 2020. The Settlement Agreement further confirms that "there is general agreement that further analysis is needed before any renewable integration resource need determination is made,"<sup>1</sup> and emphasizes that this additional analysis should be completed and evaluated expeditiously, in time to support a Commission decision on the need for new capacity by the end of 2012. In particular, the settling parties agree as follows:

Accordingly, the Commission should, in collaboration with the CAISO, continue the work undertaken thus far in this proceeding to refine and understand the future need for renewable integration resources, either as an extension of the current LTPP cycle, which should be initiated expeditiously in the first quarter, 2012 and contain the procedural milestones set forth in this agreement.

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<sup>1</sup> Settlement Agreement (attached to the *Motion For Expedited Suspension Of Track 1 Schedule, And For Approval Of Settlement Agreement*, August 3, 2011), Section III.B, 5<sup>th</sup> Bullet Point.

Specifically, the Settling Parties agree that the CAISO should present the results of its additional OTC and renewable integration studies reflecting the recommendations described in Section [sic] below by no later than March 31, 2012. During the second quarter, 2012, the Settling Parties recommend that the Commission provide a process for parties to conduct discovery, serve testimony and participate in an evidentiary hearing on the CAISO's renewable integration model and study results. **Settling Parties further recommend that a final Commission assessment of need or a decision should be issued no later than December 31, 2012.**<sup>2</sup>

GenOn supports these recommendations and urges the Commission to approve the Settlement Agreement and implement a process that follows the procedural steps and timelines outlined in the Settlement Agreement.

**B. There Has Been Inadequate Analysis of Long-Term LCR and This Should be Remedied Before the Conclusion of this LTPP Cycle.**

The primary, if not sole, focus of the modeling efforts to date in this proceeding has been to determine the need for new capacity to support the integration of renewable resources that will come on-line by 2020 in conjunction with the 33% renewable portfolio standard ("RPS"). However, the 33% RPS is not the only policy initiative with the potential to cause issues for electric system reliability in California. The OTC policy adopted by the State Water Resources Control Board ("Water Board") which took effect in 2010 impacts thousands of megawatts of capacity in local capacity areas. The Commission must determine what will happen in those local capacity areas if the OTC megawatts are no longer available to meet LCR.

However, the CAISO's opening testimony on Track I issues only considers renewable integration and system peak demand needs in its analysis. The testimony and related modeling do not consider the impact of OTC retirements on the local needs in any local capacity area. As a result, that testimony does not identify the need for any new flexible, dispatchable generation in the Big Creek-Ventura local capacity area, for example, during the planning horizon for this proceeding. The CAISO states that it is still in the process of conducting those analyses.<sup>3</sup>

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<sup>2</sup> Settlement Agreement, Section III.B, 5<sup>th</sup> Bullet Point (emphasis added).

<sup>3</sup> Exhibit ("Ex.") 2400, Revised CAISO's Track I Direct Testimony of Mark Rothleder, p. 4:26:29.

SCE's opening testimony on Track I issues provides a high level assessment of local area needs using the CAISO's Load and Resource Tool.<sup>4</sup> However, SCE acknowledges that there is a relatively wide uncertainty bound in its analysis.<sup>5</sup> Examples of shortcomings in the SCE LCR analysis include a failure to consider effectiveness factors for particular generating units as well as impacts on power flow, voltage stability, dynamic stability, and inertia associated with the possible loss of OTC units. Until these studies are complete, which the CAISO is currently undertaking, it would be imprudent to assume that the local reliability requirements can be met without new capacity to replace OTC units.

With all the attention dedicated to renewable integration needs, the analysis in the record to date regarding fundamental local reliability requirements has been inadequate. This is reflected in the Settlement Agreement, which recognizes that the CAISO is studying local needs driven by the OTC compliance schedule, and will incorporate those study results into the renewable integration model, with the product of both those efforts to be analyzed in this proceeding in time to reach a conclusion on the need for new capacity by the end of next year. As laid out in the Settlement Agreement, the LCR study results should be reflected in and inform the results of the CAISO's modeling results to be presented next year. Given the importance of making accurate LCR need determinations to support system reliability, careful attention should be paid to local reliability before the Commission concludes this LTPP cycle.

**C. If New Capacity is Needed in 2020, Project Development Must Begin in 2013.**

If there is a chance that new natural gas-fired generating capacity could be needed in 2020, when the full force of the OTC policy will have taken effect, it will be necessary to adopt a need determination by the end of next year, so that competitive solicitations for such capacity can be initiated in 2013 to support project development. Based on publicly available data on the California Energy Commission's ("CEC's") website, it is reasonable to expect future development of new natural gas-fired generation in California to require at least 7 years, and potentially longer, from the time that development commences to the commencement of

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<sup>4</sup> Ex. 209, SCE-1: SCE's Testimony on Track I Issues (M. Minick), p. 9:10-12.

<sup>5</sup> Ex. 209, SCE-1: SCE's Testimony on Track I Issues (C. Silsbee), p. 4:1-2.

commercial operation. As explained below, this 7 year-plus time frame is supported by review of a recent project that is under development, and the addition of new regulatory developments that apply to new projects going forward.

An affiliate of GenOn is currently constructing the Marsh Landing Generating Station (“Marsh Landing”), a 760 megawatt gas-fired peaking facility located near Antioch, California. Marsh Landing was one of the winning projects selected in PG&E’s 2008 long-term all-source request for offer (“LTRFO”) process.<sup>6</sup> PG&E conducted its 2008 LTRFO pursuant to the Commission’s December 2007 decision in the last complete long-term procurement plan cycle, when the Commission authorized PG&E to procure up to 1200 megawatts (subsequently increased to just over 1500 megawatts) of new generation (including fossil fuel resources) by 2015.<sup>7</sup> PG&E issued its LTRFO on April 1, 2008 and proposals were due at the end of July 2008. The GenOn affiliate submitted the Marsh Landing proposal at that time and commenced the CEC certification process in late May 2008.<sup>8</sup> Thus the issuance of PG&E’s LTRFO in April 2008 can be viewed as a marker for the beginning of active development of the Marsh Landing project.

The GenOn affiliate and PG&E entered into a long-term power purchase agreement (“PPA”) for the Marsh Landing project in September 2009,<sup>9</sup> and several weeks later the GenOn affiliate submitted an amendment to its application for certification at the CEC to conform the project design with that reflected in the executed PPA.<sup>10</sup> The Commission approved the PPA in

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<sup>6</sup> Decision 10-07-045, *Decision on Pacific Gas and Electric Company’s 2008 Long-Term Request for Offer Results and Adopting Cost Recovery and Ratemaking Mechanisms* (July 29, 2010), *mimeo*, p. 2.

<sup>7</sup> *Id.*, *mimeo*, pp. 4-5; *see also* Decision 07-12-052, *Opinion Adopting Pacific Gas and Electric Company’s, Southern California Edison Company’s, and San Diego Gas & Electric Company’s Long-Term Procurement Plans* (December 20, 2007), *mimeo*, p. 300, Ordering Paragraph 4.

<sup>8</sup> *See* Marsh Landing Generating Station Power Plant Licensing Case, CEC Website at the following link: <http://www.energy.ca.gov/sitingcases/marshlanding/index.html>.

<sup>9</sup> PG&E filed its application seeking approval of the Marsh Landing PPA (Application 09-09-021) and other winning contracts from the 2008 LTRFO on September 30, 2009. *See* Decision 10-07-045 (July 29, 2010), *mimeo*, p. 1.

<sup>10</sup> *See* Marsh Landing Generating Station Power Plant Licensing Case, CEC Website at the following link: <http://www.energy.ca.gov/sitingcases/marshlanding/index.html>.

July 2010.<sup>11</sup> The CEC authorized construction of Marsh Landing in late August 2010.<sup>12</sup> Construction is now underway and the project is expected to be operating in the summer of 2013.

By all accounts, Marsh Landing was a relatively non-controversial project that received its approvals without substantial active opposition. Even so, it will have taken more than five years from the time that PG&E issued its LTRFO (April 2008) to achieve commercial operation (Summer 2013). Counting from the time that the Commission issued Decision 07-12-052 adopting a need determination and authorizing PG&E to solicit new capacity (December 2007), it will have taken more than five years to achieve commercial operation of the Marsh Landing project. This is consistent with the 4 to 7 year development timeline that SCE cites as the amount of time required to develop and build a new project.<sup>13</sup>

Significantly, as a peaking facility with relatively low total annual emissions, Marsh Landing did not require a federal Prevention of Significant Deterioration (“PSD”) permit.<sup>14</sup> Under new regulations in effect today, however, the Commission should expect all new natural gas-fired generating facilities to require a PSD permit. The U.S. Environmental Protection Agency (“U.S. EPA”) recently added carbon dioxide (“CO<sub>2</sub>”) emissions, and their equivalents, to the PSD framework,<sup>15</sup> which means that every new gas-fired generating project will be subject to PSD review for all emissions because of the relatively low threshold of CO<sub>2</sub> emissions required to trigger PSD review. The appellate process embodied in the PSD framework allows parties who oppose a project to seek appellate review by the Environmental Appeals Board of the U.S. Environmental Protection Agency (“EAB”) and the filing of such an appeal means that the

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<sup>11</sup> See Decision 10-07-045 (July 29, 2010), *mimeo*, p. 55, Ordering Paragraph 1.

<sup>12</sup> See CEC Docket No. 08-AFC-3, Final CEC Decision Approving the Marsh Landing Generating Station Project (August 25, 2010).

<sup>13</sup> Ex. 211, SCE-3: SCE’s Testimony on Track III Issues – Rules Track III Procurement Policy (N. Neeman Brady), p. 8:3-13. Note that SCE has testified that bids for new generation must be selected “by the end of 2012 in order to ensure that this new generation would have sufficient time to come online.” This is even earlier than the time frame outlined in this opening brief for the selection of bids for new generation.

<sup>14</sup> See CEC Docket No. 08-AFC-3, Final CEC Decision Approving the Marsh Landing Generating Station Project (August 25, 2010), *mimeo*, p. 44.

<sup>15</sup> See 75 Fed. Reg. 31514 (June 3, 2010), U.S. EPA Docket No. EPA-HQ-OAR-2009-0517, Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule.



project owner cannot commence construction until the appeal is resolved. Due to this appellate process, PSD review can be expected to add time, potentially as much as two years, to the permitting process for new gas-fired power project designs that previously were not subject to PSD permitting requirements.<sup>16</sup>

Instead of the five plus years it will have taken to develop the Marsh Landing project, with the PSD permit requirement and the associated appellate rights that procedure creates, it is reasonable to expect future new gas-fired projects to require at least 7 years, and potentially longer, for development, permitting and construction. Based roughly on the Marsh Landing example, with time added for resolution of a PSD appeal, a 7 year development process would break down as follows:

- 18 months from the time a utility issues its LTRFO to finalize and execute the PPA;
- 24 months to secure CEC approval and required air permits including PSD permit (assumes filings are made when the PPA is executed);<sup>17</sup>
- 12 months for the PSD appeal process to be completed after permits are issued; and
- 27 months for construction.
- TOTAL ELAPSED TIME: 81 months, or approximately seven years

If the PSD appeal process takes longer than 12 months, as occurred with the Russell City project, or there is active opposition to a project at the CEC, then the 7 year process could be extended.

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<sup>16</sup> The example provided by Calpine's Russell City project, a combined cycle facility subject to PSD requirements that was the target of two successive appeals to the EAB, supports this conclusion. See Russell City Energy Center Amendment Proceeding, CEC Website at the following link: [http://www.energy.ca.gov/sitingcases/russellcity\\_amendment/index.html](http://www.energy.ca.gov/sitingcases/russellcity_amendment/index.html).

<sup>17</sup> As noted above, Marsh Landing commenced its CEC certification process roughly at the same time that its proposal was submitted into the 2008 LTRO process and received its final certification a little more than two years later. This reflects the filing of an amendment concurrently with execution of the PPA, but a two year CEC certification process is not atypical. See *e.g.*, Oakley Generating Station Power Plant Licensing Case, CEC Website at the following link: <http://www.energy.ca.gov/sitingcases/oakley/index.html> (the application for certification was filed on June 30, 2009 and the final CEC decision approving the project was issued on May 18, 2011).

Applying these project development timelines, to bring new generation into operation by 2020, developers would need to receive the signal of a LTRFO during 2013 to commence the development process. Assuming that a new project can be completed in 7 years, a procurement decision issued by the end of 2012, with LTRFOs to be issued in early 2013, should provide adequate time to conduct a competitive process and allow project developers to offer projects that could be operational in 2020. To reflect this, the Commission's approval of the Settlement Agreement should recognize the importance of a timely, subsequent procurement decision to ensure LCR needs and any renewable integration needs are met. Accordingly, to implement the Settlement Agreement's recommendations, the Commission should open a new phase of this LTPP proceeding that focuses on considering the further analyses being developed by the CAISO, and implements the process and schedule outlined in the Settlement Agreement, including a need determination by the end of 2012.

**III. TRACK III: THE COMMISSION SHOULD REJECT LIMITS ON CONTRACTS WITH OTC FACILITIES AND ALLOW PARTIES TO SUBMIT OTC POLICY RECOMMENDATIONS IN THE NEXT PHASE OF THIS PROCEEDING.**

**A. The Commission Should Reject Limits on Contracts with OTC Facilities.**

GenOn currently operates four power plants that rely on OTC. The plants are: Contra Costa Generating Station and Pittsburg Generating Station in Northern California; and Mandalay Generating Station and Ormond Beach Generating Station in Southern California. GenOn entered into a contractual obligation to retire the Contra Costa Generating Station in May 2013, which is four years prior to the compliance deadline established in the Water Board's OTC policy. The other generating stations are also subject to the OTC policy and have compliance dates ranging from 2017 to 2020.<sup>18</sup> Because of these assets, GenOn has a compelling interest in any limits imposed on OTC facilities.

GenOn opposes the proposal to limit contracts with OTC facilities to no more than one year.<sup>19</sup> GenOn's position is consistent with the opposition to the proposal expressed by all three

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<sup>18</sup> Ex. 2100, GenOn's Track III Direct Testimony of John Chillemi, pp. 3:16-4:5

<sup>19</sup> Ex. 2100, GenOn's Track III Direct Testimony of John Chillemi, p. 4:13-16.

utilities.<sup>20</sup> A number of factors support this opposition. Most importantly, the proposed policy would severely compromise contracting for resource adequacy, which would unnecessarily drive up costs and could threaten reliability. Imposing a one year contract limitation on OTC facilities interferes with operation of the market, which in turn leads to inefficiency, which in turn leads to higher costs borne by ratepayers. Furthermore, the proposed policy severely compromises the ability of the owners of the OTC facilities to make reasoned decisions about essential investments to maintain and modify those facilities. At a time when the Commission should be exploring options to allow OTC operators to make reasoned decisions regarding competing alternatives to compliance with the OTC Policy, the one year limit reduces viable options for compliance. Accordingly, the Commission should reject the proposed one year limit on contracting with OTC facilities.<sup>21</sup>

**B. The Commission Should Allow Parties to Submit OTC Policy Recommendations in the Next Phase of This Proceeding.**

It is GenOn's expectation that rigorous analysis of LCR needs will lead to procurement decisions that obviate the need for specific Commission policies to address the Water Board's OTC policy. In the absence of such analysis, GenOn elected to refrain from making specific recommendations for possible OTC policies. However, if that analysis is not forthcoming, or if that analysis identifies issues that may not have previously been contemplated, it may prove expedient to generate additional proposals for OTC policies. Accordingly, as part of the subsequent phase of this LTPP proceeding to consider the CAISO's LCR analysis, the Commission should allow for consideration of additional OTC policy proposals.<sup>22</sup>

**IV. CONCLUSION**

Based on the foregoing, the Commission should approve the Settlement Agreement, but, just as importantly, also commit to opening a new phase of this proceeding to consider the LCR

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<sup>20</sup> Ex. 107, PG&E Procurement Rules Testimony (Track III) (Marino Monardi), p.1-3:3-8; Ex. 211, SCE's Testimony on Track III Issues – Rules Track III Procurement Policy (N. Neeman Brady), pp. 9:6-12:7; Ex. 313, SDG&E-2: SDG&E's Prepared Track III Testimony (Public Version), pp. 18:15-19:3.

<sup>21</sup> Ex. 2100, GenOn's Track III Direct Testimony of John Chillemi, pp. 4:19-5:10.

<sup>22</sup> Ex. 2100, GenOn's Track III Direct Testimony of John Chillemi, p. 4:6-11.

and other analyses currently underway at the CAISO according to the process and timelines outlined in the Settlement Agreement. Regarding Track III issues, the Commission should reject the proposal to limit contract terms with OTC facilities to one year. Finally, the Commission should allow parties to submit OTC policy recommendations in the next phase of this proceeding in light of the new information to be supplied by the CAISO.

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Respectfully submitted,



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