

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)
Tracks 1 and 3

OPENING BRIEF OF THE UTILITY REFORM NETWORK
ON TRACK 1 AND TRACK 3 ISSUES

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OPENING BRIEF OF THE UTILITY REFORM NETWORK ON TRACK 1 AND TRACK 3 ISSUES

Pursuant to Rule 13.11 of the Commission's Rules of Practice and Procedure, The Utility Reform Network (TURN) hereby submits this opening brief on Track 1 and Track 3 issues. While not addressing all the issues presented in testimony, TURN reserves the right to respond to proposals contained in the opening briefs of other parties in reply briefs.

I. THE COMMISSION SHOULD APPROVE THE TRACK 1 SETTLEMENT AGREEMENT

As a signatory to the settlement agreement, TURN urges the Commission to adopt the Track 1 settlement without modification. The settling parties agree that there is no need to authorize procurement to add capacity for renewable integration purposes during the current LTPP cycle. Under the settlement, the CAISO is supposed to update its assumptions for Once Through Cooling (OTC) unit retirements and present the results of additional renewable integration studies by March 31, 2012.

TURN has been monitoring the development of the CAISO methodology for assessing renewable integration resource needs and believes that the model cannot be relied upon to authorize any additional procurement at this time. TURN has significant concerns with the CAISO's current modeling and inputs. For example, during hearings, TURN witness Woodruff explained that the "all-gas scenario" modeled by the CAISO produced anomalous and problematic results.¹ TURN intends to raise this and other concerns informally with the CAISO and other parties prior to the next round of significant modeling efforts in the first quarter of 2012.²

¹ Reporter's Transcript, pages 442, 480, Woodruff.

² Ex. 1504, Woodruff testimony, page 2.

In approving the settlement agreement, the Commission should direct the CAISO to work with TURN and other parties prior to commencing the next round of integration modeling efforts. This cooperation will ensure that a final assessment of need can be part of a Commission decision issued by the end of 2012. If the CAISO does not adequately address the concerns raised by TURN and other parties prior to the first quarter of 2012, the Commission should anticipate litigation over the reasonableness of the inputs, assumptions and methodologies presented by the CAISO. Such litigation could require the CAISO to prepare additional scenarios and thereby delay the ability to reach any conclusions within the timelines outlined in the settlement.

In an effort to avoid such delays, TURN has already begun outreach to the CAISO to share some of its specific concerns with the current approach. To facilitate such cooperation, the Commission may wish to establish an informal working group that will serve as a forum for exchanging concerns and refining the modeling inputs and assumptions prior to 2012.³

II. THE COMMISSION SHOULD REJECT CALPINE'S PROPOSAL TO REQUIRE INVESTOR-OWNED UTILITIES TO CONTRACT WITH EXISTING GENERATION UNITS

Calpine requests that the Commission order the three major IOUs to conduct solicitations for existing uncontracted CCGT generating resources and offer 3-5 year contracts to the winning bidders.⁴ Calpine makes this proposal based on the belief that expected wholesale markets "do not provide reasonable opportunities for such existing resources to secure sufficient revenue streams to recover going forward

³ TURN understands the CAISO and Commission staff are already beginning to organize such a working group.

⁴ Ex. 600, Barmack testimony, page 3.

costs”.⁵ Absent such a solicitation, Calpine asserts that up to 3,200 MW of its own generation could be at risk of permanent shutdown.

Calpine’s proposal is riddled with flaws and must be rejected. Calpine has not demonstrated that its facilities need such solicitations to remain profitable, would almost certainly possess extreme market power in any such solicitation, cannot credibly argue that their facilities will be permanently shut down in the absence of these solicitations, and fails to reconcile this proposal with the established planning reserve margins adopted by the Commission.

As a threshold matter, Calpine refuses to provide any information about the actual costs of operating the existing generation units in question. Despite repeated requests for information, Calpine claims that such data is confidential and declines to submit detailed cost data even under seal.⁶ The Commission cannot seriously consider Calpine’s proposal without being able to review whether the units in question are actually unable to cover going forward costs with market revenues. When IOUs submit proposals for cost recovery, the Commission requires substantial supporting materials to justify the request. If Calpine wishes to have their request considered, they should also be subject to the same disclosure requirements as any IOU seeking similar treatment.

Calpine also fails to disclose how many of these existing units are currently selling output to other buyers. Calpine witness Barmack admits that there are other supply contracts to sell power from these units but either refused to provide, or disclaimed any knowledge of, the details.⁷ TURN believes that many of these units are selling their output to other buyers including Electric Service Providers. These facts are

⁵ Ex. 600, Barmack testimony, page 2.

⁶ Reporter’s Transcript, page 845, 851, Barmack; See also Ex. 220.

⁷ RT, page 864, Barmack.

certainly relevant to any consideration of Calpine's request for special treatment but have been entirely omitted from its evidentiary showing.

Calpine claims that the auctions will be competitive and that prices will be set based on market forces. If the solicitations are indeed competitive, Calpine admits that the prices are likely to mirror the compensation available in short-term wholesale markets.⁸ There is no basis for concluding that this outcome would make a material financial difference for Calpine relative to selling output into wholesale markets without contracts.

The only way for Calpine to realize above-market revenues is to structure the procurement obligation so that there is insufficient competition. Under this scenario, Calpine would be able to use its dominant position and market power to extract significant economic premiums.⁹ Under cross-examination, Dr. Barmack could not identify a single other company likely to bid eligible units into the proposed solicitation.¹⁰ As a result, Calpine could end up being the sole bidder (by design) with resulting prices that are neither just nor reasonable by any standard.¹¹

Perhaps most importantly, Calpine could not make a credible showing that its existing CCGT units will be permanently shut down in the absence of their desired solicitation. While Calpine witness Barmack stated that "existing generating resources will retire" if short-term market revenues are insufficient, he could not point to a specific instance of Calpine (or any other generator) ever shutting down and dismantling a single CCGT unit in the United States for this reason.¹² This is unsurprising because, as explained by TURN witness Woodruff, CCGT units "are the

⁸ Ex. 600, Barmack testimony, page 10. Ex. 1505, Woodruff reply testimony, page 3.

⁹ Ex. 1505, Woodruff reply testimony, pages 3-4.

¹⁰ RT, pages 866-867, Barmack.

¹¹ RT, pages 454-455, Woodruff.

¹² Ex. 600, Barmack testimony, page 11; RT 860-861, Barmack.

most efficient gas resources on the CAISO system and even in the current market should be expected to recover their 'going forward' costs".¹³ Even if the short-term operating economics are unfavorable, Woodruff explains that Calpine has a variety of options including asset sales or temporary shutdown.¹⁴ The notion that Calpine would physically dismantle these units, which is the basis of their request, is simply not credible. As explained by TURN witness Woodruff under cross-examination, "Calpine is not going to take a bulldozer to them if it doesn't get this proposal."¹⁵

Finally, Calpine has been unable to reconcile its proposal with the adopted planning reserve margin of 15-17 percent. As noted by TURN witness Woodruff, the CAISO Track 1 testimony forecasts a planning reserve margin of up to 50% in 2020.¹⁶ Absent any broader Commission revision of the planning reserve margins, there is no basis to adopt policies requiring the IOUs to procure additional resources for the purposes of retaining a planning reserve margin for the overall system.¹⁷ Any additional procurement for this purpose would merely create stranded costs for the IOUs that could not be collected from the customers of utilities that are not subject to CPUC jurisdiction (e.g. the Publicly Owned Utilities).¹⁸

The Calpine proposal is ill-conceived, misguided and likely to increase ratepayer costs without yielding any tangible system benefits. The Commission should not contemplate a mandatory procurement obligation for these resources at this time. TURN therefore urges the Commission to forcefully reject Calpine's mechanism.

¹³ Ex. 1505, Woodruff reply testimony, page 2.

¹⁴ Ex. 1505, Woodruff reply testimony, page 2.

¹⁵ RT 459, Woodruff.

¹⁶ Ex. 1505, Woodruff reply testimony, page 4.

¹⁷ RT 465-466, Woodruff.

¹⁸ RT 872, Barmack.

III. SCE'S NEW GENERATION AUCTION MECHANISM SHOULD BE REJECTED

Southern California Edison (SCE) proposes that the Commission consider, in a future proceeding, authorizing a "New Generation Auction Mechanism" (NGAM) that would allow the CAISO to run regular auctions for new resources needed for local capacity requirements and renewable integration.¹⁹ TURN opposes this recommendation and urges the Commission not to invite SCE to develop this concept for consideration in any future proceeding.

TURN witness Woodruff identified a range of concerns with SCE's proposal. First, the CPUC's traditional oversight of wholesale procurement and resource need would be severely truncated. Under SCE's proposal, the sole CPUC responsibilities would be (1) establishing the share of CAISO determined resource needs that should be allocated to CPUC-jurisdictional load-serving entities and (2) approving cost recovery for contracts that are allocated to the IOUs.²⁰ The remainder of the process would be controlled by the CAISO and subject to FERC oversight with the CPUC playing an advisory role. This outcome would constitute a complete abandonment of Commission authority and a radical shift in procurement responsibilities.

Moreover, TURN does not believe that the CAISO is well-suited to this task. The CAISO lacks a focus on least-cost resource planning, typically exhibits a bias towards excessive resource need, and has no background in the solicitation, evaluation, negotiation and administration of long-term PPAs for new generation resources.²¹ Moreover, the CAISO's "stakeholder process" fails to provide meaningful opportunities for participation by stakeholders and would therefore provide few

¹⁹ Ex. 202, SCE Ex. 3, pages 4-8.

²⁰ Ex. 1504, Woodruff testimony, page 3.

²¹ Ex. 1504, Woodruff testimony, pages 4-5.

remedies in the event that TURN or other ratepayer advocates disagreed with CAISO determinations.

While TURN shares some of SCE's concerns about the fair allocation of costs for new generation between IOUs and other CPUC-jurisdictional load serving entities, the NGAM proposal is not a reasonable strategy for addressing this concern. Given the recent rejection of SCE's centralized capacity market proposal in D.10-06-018, there is no reason to consider another flavor of centralized procurement for this purpose. The Commission fully considered similar arguments in R.05-12-013 and was not persuaded. TURN does not believe that devoting another proceeding to relitigating these arguments would be a wise use of Commission and stakeholder resources.

IV. UTILITIES SHOULD BE HELD ACCOUNTABLE FOR CERTAIN CRITICAL COST PARAMETERS USED AS THE BASIS FOR SELECTING ANY UTILITY OWNED GENERATION PROJECT

The June 10 ALJ ruling indicated an intent to consider possible "refinements to the bid evaluation process, particularly weighing competing bids between utility-owned generation and power purchase agreements."²² TURN has identified one significant "refinement" that would improve the ability to fairly consider the relative value of utility-owned generation (UOG) as compared to third-party PPA offers. The Commission should require that the critical cost parameters of any UOG bid should be binding on the IOU for the first ten years of project operations.

"Critical cost parameters" include initial capital costs, capital additions, fixed and variable O&M, and heat rates. TURN witness Woodruff explains that this requirement is appropriate because of "the potential for the costs of UOG resources

²² ALJ ruling denying motion for reconsideration and motion regarding Track 1 schedule and addressing Track 3 issues, R.10-05-006, June 10, 2011, page 6.

to escalate from those upon which the evaluation and selection was based.”²³ Given the typical treatment for UOG resources, in which IOUs are not held to forecasts of cost or performance after the project achieves initial commercial operation, the Commission must take action to create real accountability so the original selection process is not unfairly biased in favor of UOG.

Absent this type of accountability, IOUs have an incentive to assume superior long-term cost and performance advantages of UOG projects. Since the Commission rarely, if ever, revisits these initial assumptions, there is no penalty to making overly optimistic projections that are never realized. Even if they are revisited, the IOU need only demonstrate that the costs are reasonable at the time they are incurred. The absence of any accountability mechanism only emboldens IOUs to game this process to the benefit of shareholders and the detriment of ratepayers.

TURN encourages the Commission to adopt this general principle in this proceeding and leave the details to any utility-specific application seeking approval of a UOG project.

V. THE COMMISSION SHOULD HIRE AND MANAGE INDEPENDENT EVALUATORS

The June 10th ALJ ruling included a staff proposal to switch the hiring and oversight of Independent Evaluators (IE) from the IOUs to the CPUC Executive Director and Energy Division.²⁴ Under the staff proposal, the Commission would exercise management oversight and costs would be paid by the relevant IOU and collected in rates. TURN supports this approach and believes that ratepayers would benefit from this being the general practice for all IE-related work.

²³ Ex. 1504, page 7.

²⁴ ALJ ruling denying motion for reconsideration and motion regarding Track 1 schedule and addressing Track 3 issues, R.10-05-006, June 10, 2011, Appendix B, page 8

TURN witness Woodruff, who has been an active participant in the Procurement Review Groups of the three major IOUs for many years, explains the basic rationale for this shift:

I am concerned that IOU retention of IEs poses potential conflicts of interests to IEs. Specifically, IEs retained by IOUs may face a conflict between their business interests which require satisfying the interests of their client – and the Commission’s goal in having IEs hired – which may at times require IEs to oppose the business interests of their client. I believe direct retention of IEs by the Commission would mitigate this potential conflict. I also believe that this potential conflict is the reason that IEs in many states across the U.S. – if not most – are hired by Commissions rather than utilities.²⁵

This fundamental conflict of interest means that IEs are typically reluctant to challenge major procurement decisions made by the IOUs, instead preferring to focus on minor disagreements that do not pose the risk of alienating their sponsor. TURN has observed this dynamic up-close for many years. Although TURN believes that the IEs have provided a valuable service to the Commission and ratepayers to date, the switch to Commission management would liberate the IEs to provide far more useful (and less constrained) analysis without the fear of jeopardizing future contracting opportunities.

The Commission should therefore adopt this staff proposal for all IE related workloads. TURN believes that such a change would significantly increase the usefulness of IE work and ensure that the IEs exercise truly independent judgment with respect to both minor and significant elements of IOU procurement activities.

²⁵ Ex. 1504, Woodruff testimony, page 8.

Respectfully submitted,

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VERIFICATION

I, Matthew Freedman, am an attorney of record for THE UTILITY REFORM NETWORK in this proceeding and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true of my own knowledge, except for those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I am making this verification on TURN's behalf because, as the lead attorney in the proceeding, I have unique personal knowledge of certain facts stated in the foregoing document.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 16, 2011, at San Francisco, California.

_____/S/____

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