

**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

AES SOUTHLAND, LLC'S REPLY BRIEF ON TRACK I ISSUES

Seth D. Hilton
STOEL RIVES LLP
555 Montgomery Street, Suite 1288
San Francisco, CA 94111
Telephone: (415) 617-8913
Email: sdhilton@stoel.com

Attorneys for AES Southland, LLC

Dated: October 3, 2011

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)

AES SOUTHLAND, LLC'S REPLY BRIEF ON TRACK I ISSUES

AES Southland, LLC (AES Southland) submits the following reply brief concerning Track I issues in R. 10-05-006, Long-Term Procurement Proceeding, pursuant to the briefing schedule adopted by Administrative Law Judge Allen on August 15, 2011.

I. INTRODUCTION

AES Southland's three gas-fired generation facilities in Southern California Edison's (SCE) service territory (AES Huntington Beach, AES Redondo Beach, and AES Alamitos) supply 4,140 megawatts (MW) of local capacity, accounting for over 50 percent of the net qualifying capacity in the transmission-constrained western sub-area of the LA Basin Local Capacity Area (LCA). All of these units use once-through cooling (OTC) technology, and therefore must comply with the California Water Resources Control Board's (Water Board) Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling (OTC Policy) by December 31, 2020. (Ex. 1701 at 1-2 (AES, Didlo).)

Evidence submitted in this proceeding by AES Southland and others establishes that the Commission must issue a procurement decision concerning SCE's local capacity resource (LCR) needs by December 2012 at the latest to allow for the timely redevelopment of new capacity to replace the significant amounts of generation that is expected to retire, including AES

Southland's generation facilities. AES Southland has projected that it will take seven years, at a minimum, to permit and construct replacement generation facilities. Moreover, it is not an option to retire all of AES Southland's generation prior to constructing replacement resources, as this will result in the loss of 50 percent of the net qualifying capacity in the western sub-area of the LA Basin LCA. Instead, redevelopment at the sites must proceed in a manner that allows AES Southland to retain substantial local generation on line throughout the construction period, so it can meet its current contractual commitments, maintain unit availability critical to local area reliability during construction, and undertake construction within the land that is available.

In its opening brief, SCE contends that AES Southland "has options available to alleviate such time constraints," arguing that AES Southland could obtain a two-year extension of its compliance deadline from the Water Board, resulting in an "equivalent delay" in the need for a procurement decision. (SCE Brief at 42.) Unfortunately, SCE's position is based upon a misunderstanding of both AES Southland's testimony and of the Water Board's OTC Policy. This same misunderstanding leads SCE to incorrectly assume that the Commission has the time to launch a new proceeding to investigate procurement of the AES Southland capacity by the California Independent System Operator (CAISO). (SCE Brief at 14.) As the CAISO's opening brief emphasizes, "an expeditious decision in this case" is of "crucial importance," and, "given the lengthy lead times required to permit and construct generation needed for operational flexibility, long-term procurement decisions must be made quickly, preferably well before year end 2012." (CAISO Brief at 5.)

II. DISCUSSION

A. A Procurement Decision by the End of 2012 is Crucial.

As AES Southland noted in its opening brief, it is essential that the Commission issue a decision on LCR need by the end of 2012 at the latest. At a minimum, SCE should be authorized to procure a “no regrets” amount of 2,000 MW of local capacity resources in the western sub-area of the LA Basin LCA before the end of 2012. Studies and analyses performed by SCE, the CAISO, and AES Southland’s consultant Electric Power Engineers all confirm that 2,000 MW represents a minimum amount of generation that will be needed to meet local capacity needs in the western sub-area of the LA Basin LCA. SCE itself emphasizes in its opening brief that without the OTC units, investor-owned utilities have “very few options to meet their local RA requirements,” and retirement of OTC facilities “could negatively affect grid reliability if their retirements cannot be timely ‘addressed with additional generation or transmission improvements.’” (SCE Brief at 20.) As AES Southland further explained in its opening brief, there are no apparent additional generation or transmission improvements that could be put in place if repowered AES Southland capacity is not timely procured. (AES Southland Brief at 4-5.)

Contrary to the assertion that SCE makes in its brief (SCE Brief at 41), AES Southland is not proposing that the Commission issue a procurement directive by December 2011. A procurement decision by December 2012, as contemplated in the proposed settlement, may be sufficient to allow for the timely redevelopment of OTC resources in the western sub-area of the LA Basin LCA. However, as the CAISO notes, meeting the December 2012 deadline in the proposed settlement is of critical importance. A decision after that date may be too late to allow for the timely replacement of the AES Southland generation.

B. An Extension of the Water Board Compliance Deadline Would Not Alleviate the Need for a LCR Decision by December 2012.

SCE asserts in its opening brief that “[t]he State Water Resources Control Board recently extended the compliance deadline for many units by two years from December 31, 2020 to December 31, 2022. If AES requests a deadline extension, this would essentially allow for an equivalent delay” in the need for a procurement decision. (SCE Brief at 42.) SCE’s assertion is flawed for several reasons. First, the Water Board **did not** extend the compliance deadline for AES Southland by two years. Thus far, the Water Board has only ruled on Los Angeles Department of Water and Power’s (LADWP) compliance plan. The Water Board did extend some compliance dates for LADWP (in connection with the acceleration of compliance dates for other LADWP units), but has not provided any compliance deadline modifications to any other owners. The Water Board did adopt new language that imposes additional burdens on any owner that is approved for a compliance extension beyond 2022.¹ No such extensions have yet been approved by the Water Board.

Second, even if the Water Board granted AES Southland a two-year extension of the compliance deadline for some AES Southland units, the extension would not alleviate the need for an LCR determination by December 2012. As Jennifer Didlo explained in her testimony on behalf of AES Southland, “even with a directive in this procurement cycle, AES will still need an extension of its OTC compliance dates for certain units beyond 2020.” (Ex. 1701 at 4 (AES, Didlo).) As she further explained, the initial repowering of some units must be completed one or two years prior to 2020, even with a two-year extension of the final compliance deadline. (*Id.*) The development of all three sites cannot proceed simultaneously due to land limitations and the

¹ These burdens include additional restrictions on the use of OTC beyond those imposed on units that achieve compliance prior to 2022.

need to ensure that local area reliability requirements continue to be met while replacement units are being constructed. (*Id.*)

Permitting is expected to take between two to four years, with each redevelopment stage then taking an additional three to five years for contracting, financing, demolition and construction. (*Id.*) GenOn California North, LLC's detailed explanation as to why development of new gas-fired generation in California would take at least seven years further supports AES Southland's own estimate of the time needed to redevelop its sites. (GenOn Brief at 5-9). It is worth noting that both GenOn's and AES's estimates are best case scenarios; redevelopment could, and has at other sites, taken far longer to accomplish.

That permitting and construction timeline would mean that the first units could, at best, only come on line a year or two before the 2020 compliance deadline. AES Southland contemplates that two additional stages would be needed to fully redevelop the site, pushing the final stages out to 2022 or beyond (Ex. 1701 at 4 (AES, Didlo)), even if a procurement decision is issued before December 2012 as contemplated by the proposed settlement. Thus, even if the Water Board grants AES Southland a two-year extension, a procurement decision on SCE's LCR need is necessary before the end of 2012.

C. SCE's Suggested Alternatives to AES Southland's Redevelopment Plan are Unrealistic.

SCE's opening brief suggested that there may be alternatives to AES Southland's proposal for redevelopment. First, SCE proposes that AES Southland could simply install 2,000 MW of combustion turbines on its sites without demolition of the existing plants. (SCE Brief at 42.) However, siting combustion turbines on currently available space at the sites is unlikely to be a reasonable alternative. As Ms. Didlo explained in the testimony cited by SCE to support its suggestion, engineering analysis performed by AES Southland has made it clear that siting

combustion turbines in that manner would result in a suboptimal location and arrangement “which is not something that the State of California would want for the next 50 years.” (Tr. 838:27 – 839:6 (AES, Didlo).) A timely LCR procurement decision would avoid the need to use such suboptimal solutions and would instead allow SCE, and AES, to implement the most efficient and cost effective solutions to the need for long-term local capacity in the western sub-area of the LA Basin LCA. Ms. Didlo also pointed out that the 2,000 MW figure relied upon by SCE overstated the amount of capacity that could be added without demolition of the existing plants. “We’ve done further analysis, and the facts of the matter are still being explored. However, we definitely overstated how much could be installed.” (Tr. 839: 9-12 (AES, Didlo).)

Transmission development also does not provide a realistic alternative to developing generation resources within the western sub-area of the LA Basin LCA. As both AES Southland and the CAISO have previously explained, “additional transmission... is not a practical solution for system needs in 2020.” (CAISO Brief at 3 (citing Ex. 1701 at 7-8 (AES, Didlo).)

Attempting to permit and construct major new transmission lines in the highly urbanized LA Basin would likely take longer than redeveloping brownfield generation, and new transmission projects in this highly urbanized area may be extremely difficult to site on any time schedule. (Tr. 828:11 – 829:2 (AES, Ballouz); Ex. 1701 at 7-8 (AES, Didlo).)

D. SCE’s Request for a New Procurement Proceeding Should Not Apply to OTC Replacement.

SCE has requested that the Commission open a new proceeding to address a new generation procurement method for capacity to replace OTC generation or to meet renewable integration needs required to maintain reliability of the electric grid in the future. (SCE Brief at 14.) Were the Commission to consider instituting such a proceeding, the procurement of capacity to replace OTC generation should be excluded from that proceeding. As explained

above, there is limited time available to procure the resources necessary to replace retiring OTC generation in the western sub-area of the LA Basin LCA. Opening a new procurement proceeding would virtually ensure that the necessary resources would not be procured in a timely fashion.

Furthermore, as AES Southland noted in its opening brief, there are no feasible alternatives to repowering much of the capacity at some or all of its Huntington Beach, Redondo Beach, and Alamitos generation facilities. These are instead “must run” facilities, built long ago by SCE, along with a matching urban transmission system, to enable its west LA Basin loads to be met in a system that relied on generation at specific sites. (Ex. 1701 at 5-6 (AES, Didlo).) Thus the competitive procurement mechanism proposed in SCE’s testimony may not be appropriate for procuring capacity to replace these generation facilities. Instead, cost-based contracts with the utilities for certain locally required resources, consistent with what the California legislature envisioned when it passed Assembly Bill 1576 (Nunez) in 2005, may be the appropriate procurement mechanism.

///

///

III. CONCLUSION

A final determination of SCE's LCR need must be made by December 2012 at the latest, to ensure that sufficient capacity is available to ensure continued reliable electric service to a critical urban area in Southern California. AES Southland urges the Commission to ensure that such a determination is made by December 2012, or, in the alternative, that it authorizes SCE to procure a minimum "no regrets" amount of local capacity resources for the western LA Basin by no later than December 2012.

DATED: October 3, 2011

/s/ Seth D. Hilton

Seth D. Hilton

STOEL RIVES LLP

555 Montgomery Street, Suite 1288

San Francisco, CA 94111

Telephone: (415) 617-8913

Email: sdhilton@stoel.com

Attorneys for AES Southland, LLC