

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

REPLY BRIEF OF THE UTILITY REFORM NETWORK  
ON TRACK I AND TRACK III ISSUES

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**REPLY BRIEF OF THE UTILITY REFORM NETWORK  
ON TRACK I AND TRACK III ISSUES**

Pursuant to Rule 13.11 of the Commission's Rules of Practice and Procedure, The Utility Reform Network (TURN) hereby submits this reply brief on Track I and Track III issues.

**I. THE COMMISSION SHOULD IGNORE ATTEMPTS BY THE CAISO TO ADD NEW EVIDENCE AND DIRECT ALL PARTIES TO WORK TOGETHER TO RESOLVE MATERIAL DIFFERENCES REGARDING REASONABLE MODELING INPUTS AND ASSUMPTIONS**

The CAISO uses its opening brief to simultaneously support the Track I settlement and introduce a briefing memorandum provided to its Board of Governors which asserts new capacity needs through 2020 under various scenarios.<sup>1</sup> TURN urges the Commission to ignore this material and adopt the settlement without any reliance on these new CAISO representations. The CAISO preliminary analysis has not been vetted by any outside parties and is not part of the evidentiary record.

TURN witness Woodruff is part of the "group of experts" referenced in the CAISO opening brief charged with reviewing the modeling effort. This group has not reviewed or critiqued the preliminary results included in the CAISO opening brief. Since TURN and other parties continue to have significant concerns with the CAISO model and inputs, the Commission should be very wary about giving weight to any purported results.

The CAISO further emphasizes its desire to see a final determination of future need by the end of 2012 consistent with the Settlement Agreement. TURN supports a streamlined resolution by this date so long as the CAISO modeling effort adequately addresses the concerns raised by TURN and other parties participating in the "group

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<sup>1</sup> CAISO opening brief, pages 4-5, Exhibit 1.

of experts". If these concerns are not addressed prior to the first quarter of 2012, TURN intends to submit critiques as part of any 2012 Commission process dedicated to consideration of renewable integration system needs. Such litigation could require the CAISO to prepare additional scenarios and thereby delay the ability to achieve resolution by the end of 2012.

TURN therefore urges the Commission to adopt the Track I settlement, ignore the supplemental material provided in the CAISO opening brief, and urge the CAISO and all parties to work together to reach resolution on the proper modeling assumptions and inputs.

## **II. CALPINE'S REQUEST FOR A BAILOUT IS UNREASONABLE AND UNSUPPORTED BY THE EVIDENCE**

Calpine asks the Commission to require the IOUs to conduct solicitations for existing resources offering intermediate term contracts. The stated rationale is to "avoid retirements" and "ensure that existing resources remain available until uncertainty about future need and market rules are resolved."<sup>2</sup> Calpine offers very few specifics about the solicitation requirement but appears to suggest that the Investor Owned Utilities (IOUs) be required to procure at least 3,200 MW of existing CCGT units – precisely the amount currently owned by Calpine. Calpine relies on the CAISO and IOU Track I modeling as the basis for recommending a specific quantity of procurement despite the fact that the modeling results are disputed by many parties (including TURN) and will be revised in 2012 under the terms of the Settlement Agreement.

The Commission should reject Calpine's very expensive and completely unwarranted proposal. The scant evidence provided in support of the solicitation

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<sup>2</sup> Calpine opening brief, page 3.

lacks any specificity on either the actual finances of Calpine or the economics of the individual units that are purported to be at risk of shutdown. As a result, Calpine has failed make a persuasive case that its newly constructed, highly efficient generating units are at risk of permanent retirement. Despite this lack of evidence, Calpine pleads with the Commission for a bailout in the form of a solicitation designed to confer extreme market power on its own units.

Calpine claims that “current and expected wholesale market conditions do not provide uncontracted existing generation resources with reasonable opportunities to secure sufficient and stable revenue streams to recover going forward costs”.<sup>3</sup> Despite this sweeping statement, Calpine fails to demonstrate that it has experienced any financial losses for any of its existing CCGT units and refuses to provide any actual cost data, citing confidentiality concerns. This assertion of confidentiality is misplaced given the potentially huge ratepayer commitment at stake.

Even the generic analysis provided in Calpine’s opening brief shows revenues exceeding costs in all years through 2010.<sup>4</sup> The fact that market revenues may have declined in recent years does not represent a valid reason for offering Calpine an artificially-constrained solicitation with guaranteed contracts at above-market prices. With respect to future market opportunities and prices, Calpine relies on a single CAISO study on renewable integration to support its conclusion that “net revenues for conventional generation resources could decline even further as additional renewable resources come on-line”.<sup>5</sup> The weak findings of this single study cannot serve as a sufficient basis for ordering the relief sought by Calpine.

Calpine accuses TURN of opposing the intermediate-term solicitation solely to force uncontracted generation units into economic ruin so they can be purchased by IOUs

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<sup>3</sup> Calpine opening brief, page 3.

<sup>4</sup> Calpine opening brief, page 5.

<sup>5</sup> Calpine opening brief, pages 5-6.

at discounted prices.<sup>6</sup> This theory has no merit. TURN has demonstrated a decidedly mixed perspective on utility owned generation as evidenced by opposition to several recent utility ownership proposals (including PG&E's Manzanita wind project, PG&E's Oakley CCGT, and SDG&E's Palomar CCGT, and SCE's McGrath Beach CT). TURN does not seek to create distressed assets for transfer to the utilities since (in the current market) they are likely to represent resources well in excess of foreseeable capacity needs. Such a purchase could prove very costly for ratepayers with few offsetting benefits.

TURN opposes Calpine's proposal because it would have predictable and adverse consequences for ratepayers. In this case, Calpine threatens to permanently shutter newly built and highly efficient CCGTs unless it receives a guarantee of being able to negotiate contracts on its own terms. This is not the first time that Calpine has advocated for such relief. Earlier last decade, Calpine sought to coerce SDG&E to execute a 10-year PPA for the partially-built Otay Mesa CCGT facility. Through the use of its political influence, SDG&E managed to become the sole competitor for such a PPA and extracted a premium price. As the Commission dissent explained, the result was "a price negotiated in the absence of direct competition. In such a situation, Calpine had no incentive to keep its price low."<sup>7</sup> The Commission should heed the warnings of that dissent (*i.e.* "the fact that Otay Mesa provides insurance does not make the purchase prudent"<sup>8</sup>) and avoid making the same mistake twice.

Moreover, Calpine fails to support its assertion that existing CCGTs will be permanently shut down and dismantled unless intermediate-term contracts are made available. There is no plausible scenario under which highly efficient CCGTs are permanently shuttered and Calpine cannot point to a single unit that has experienced this fate. Even if such a facility temporarily ceases operations (which is a

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<sup>6</sup> Calpine opening brief, page 6.

<sup>7</sup> D.04-06-011, dissent page 2.

<sup>8</sup> D.04-06-011, dissent page 2.

highly unlikely occurrence), it would be economically irrational for a facility owner to dismantle the generating unit. As explained by TURN witness Woodruff, the expected response in the event of prolonged negative cashflows would be to either mothball the facility until market conditions improve or sell the units to other parties.<sup>9</sup>

TURN urges the Commission to reject the Calpine proposal rather than deferring consideration to a future proceeding. Granting Calpine its requested relief represents an unnecessary expenditure of ratepayer funds and will only embolden every independent generator to come to the Commission seeking a special guarantee of above-market contracts for their merchant units. This outcome would not serve ratepayers or the public interest.

### **III. SCE'S NEW GENERATION AUCTION MECHANISM SHOULD NOT BE THE SUBJECT OF A NEW PROCEEDING**

Southern California Edison (SCE) requests that the Commission open a new proceeding to consider authorizing a "New Generation Auction Mechanism" (NGAM) that would allow the CAISO to run regular auctions for new resources needed "for the replacement of OTC generation or to meet renewable integration needs required to maintain the reliability of the electric grid in the future."<sup>10</sup> The stated purpose of this mechanism is to ensure that generation procured to benefit the entire California grid be fairly allocated amongst all load-serving entities including municipal utilities. Additionally, SCE believes that this mechanism would ensure that "suppliers of intermittent generation, and not the load, should directly pay for the cost of their operating intermittency."<sup>11</sup>

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<sup>9</sup> Ex. 1505, page 2.

<sup>10</sup> SCE opening brief, page 14.

<sup>11</sup> SCE opening brief, page 14.

TURN opposes this recommendation and strongly urges the Commission not to open a new proceeding that only promises to divert time, energy and resources away from more pressing issues facing the state. SCE wishes to force parties into participating in a regulatory death march by commencing a “very rapid process” that would allow the CAISO to begin procuring new resources by the end of 2012.<sup>12</sup> Such a process would force extensive advocacy by all stakeholders and consume precious Commission staff time. This effort is unwarranted and misguided.

The Commission should be troubled by the key elements of SCE’s proposal. As TURN explained in opening briefs, SCE is essentially proposing to federalize jurisdiction over the procurement of resources that the CAISO determines are “needed” for any purpose other than satisfying resource adequacy. The CPUC would be reduced to an advisory role possessing only the ability to approve the allocation to IOUs of any new resources procured by the CAISO. SCE was unable (or unwilling) to explain how basic disputes between the CPUC, CAISO and the Municipal Utilities would be resolved, claiming that these are “details that are very complicated.”<sup>13</sup> In fact, the fundamental issues of jurisdiction and final authority are not complicated. SCE attempts to hide the obvious fact that the CAISO and FERC would be the ultimate arbiters of reasonableness in the event that “stakeholders” fail to agree on resource need, contracting protocols, the allocation of contracts amongst load-serving entities, and other key features of the proposal.<sup>14</sup> Since such disputes are almost certain to occur, the Commission would be placed in the role of a FERC intervenor seeking to modify or overturn a determination made unilaterally by the CAISO.

TURN seriously questions the ability of the CAISO to place the interest of ratepayers first when determining the need for new resources. The Commission need only look

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<sup>12</sup> RT Vol. 5, page 523.

<sup>13</sup> RT Vol. 5, pages 525-526, 527.

<sup>14</sup> RT Vol. 5, page 526.

at the fact that the CAISO's opening brief argues for the adoption of Calpine's expensive and unnecessary contracting proposal.<sup>15</sup> By contrast, SCE argues that "the Commission should be wary of Calpine's determination to obtain additional revenues for its generating facilities at the expense of utility customers."<sup>16</sup> TURN believes that SCE is right and the CAISO is wrong. Thankfully, the Commission can make the final decision on this issue. If SCE's proposal is adopted, however, the Commission would need to defer to the CAISO's judgement if similar issues arise in the future.

Moreover, SCE admits that the CAISO lacks experience dealing with many of the key features of new generation development including drafting long-term contracts, negotiating changes to pro forma contracts for individual generators, site permitting, CEQA compliance, project financing, and interconnection.<sup>17</sup> By contrast, TURN notes that the California Department of Water Resources (CDWR) actually possessed some of this expertise when it was charged with negotiating long-term contracts in 2001 on behalf of the IOUs and their customers. SCE agreed that CDWR did not perform as well as hoped and "could have done a better job."<sup>18</sup>

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. However, this problem does not warrant an entirely new FERC-regulated procurement mechanism. As the Commission noted in D.10-06-018, moving procurement responsibilities to the CAISO is not "an easily reversible choice" in the event that the results prove detrimental to ratepayers.<sup>19</sup> The Commission should therefore continue to work to refine the system of cost allocation for any resources

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<sup>15</sup> CAISO opening brief, page 8.

<sup>16</sup> SCE opening brief, page 41.

<sup>17</sup> RT Vol. 5, pages 529-531.

<sup>18</sup> RT Vol. 5, page 523.

<sup>19</sup> D.10-06-018, page 64.



procured by the IOUs to meet system needs that extend beyond the requirements of bundled service customers.

#### **IV. EXISTING GENERATING UNITS SHOULD NOT BE PERMITTED TO BID INTO SOLICITATIONS INTENDED TO DEVELOP NEW RESOURCES**

IEP urges the Commission to end the IOU practice of excluding existing units from submitting bids in certain resource solicitations.<sup>20</sup> IEP claims that existing generation units should be allowed to bid into any solicitation, that the vintage of a unit should not be a bar to eligibility and that ratepayers would benefit from this change in the form of lower prices.<sup>21</sup> Unless existing units are allowed to compete, IEP asserts (seemingly on behalf of Calpine) that some may suffer premature retirement.

TURN opposes this significant policy change sought by IEP. Existing generation units are already eligible to sell to the IOUs (and the ESPs) through a variety of procurement mechanisms including bilateral contracts and regular competitive solicitations. The modifications sought by IEP would deprive new generation units of dedicated market opportunities, a result that could jeopardize the ability to achieve future resource adequacy goals. Since mostly or fully depreciated existing units do not have the same capital recovery requirements as new construction, IEP's modification would allow existing units to raise their prices closer to the level of new construction and thereby reap revenues well in excess of what they need to continue operating. By displacing new units with existing units, IEP's proposal could lead to a shrinking surplus in wholesale markets and cause overall prices to rise until existing generating units are priced on par with new construction.

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<sup>20</sup> IEP opening brief, pages 13-16.

<sup>21</sup> IEP opening brief, page 14.

The Commission should allow the IOUs to establish vintage requirements for solicitations intended to bring new capacity into the market. This market segmentation will benefit ratepayers by ensuring that IOUs procure existing resources through other mechanisms which yield prices tied to the costs of owning and operating these units. Combining both types of resources into a single solicitation would benefit owners of existing generation instead of IOU ratepayers.

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 October 3, 2011, at San Francisco, California.

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