



January 31, 2012

Honesto Gatchalian
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Comments on Draft Resolution E-4471

Dear Mr. Gatchalian:

The California Large Energy Consumers Association (CLECA) herein provides its comments on the Draft Resolution E-4471 pursuant to Rule 14.5 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure. This draft resolution orders Pacific Gas & Electric, Southern California Edison, and San Diego Gas & Electric to negotiate and enter into a contract with Calpine's Sutter Energy Center (Sutter) for a nine month term ending no later than December 31, 2012. The draft resolution further contemplates recovery of costs through a non-bypassable charge to pay for the cost of the contract. The estimated cost of the contract is capped at \$2.95 million per month, for a total of \$29.5 million. CLECA recommends rejection of the draft resolution. It is not supported by the facts; moreover, it circumvents and undermines the Commission's established process for fossil fuel procurement.

CLECA has been an active participant in the Commission's Long Term Procurement Planning (LTPP) proceedings, including the current one, R.10-05-006. At issue there is whether Calpine's uncontracted generation facilities should be given financial support, despite the lack of a clearly demonstrable need for these facilities for Resource Adequacy (RA) purposes. A proposed decision in R.10-05-006 is and has been pending for months. Directing the utilities to nonetheless provide payments to Sutter - with no evidentiary record to support a finding that the facility is needed - severely undermines the LTPP process. The LTPP proceeding is supposed to determine need for new fossil generation or indeed for any fossil generation in addition to that already owned by or under contract to a utility under the Commission's jurisdiction. Decisions or resolutions that direct or authorize utilities to engage in procurement of fossil resources for any non-RA purpose should not be issued without a clear need for the resources established by the LTPP process.

The alleged need for Sutter is not until 2017-2018, and based on a *very preliminary* analysis conducted by the California Independent System Operator (CAISO). The alleged benefit of keeping Sutter available is associated with the projected retirement of existing generation prompted by the Once Through Cooling (OTC) regulations.



However, the CAISO is now assessing whether new resources will, in fact, be required to replace plants that are retired as a result of the OTC regulations as part of an anticipated further phase of the current LTPP proceeding. Other parties supported this additional study work and a proposal for its adoption is included in a settlement currently before this Commission in the LTPP case. The schedule included in the settlement would lead to a decision on this exact issue by the end of 2012. It bears repeating: there is simply no evidence currently before the Commission that Sutter will be needed either in 2012 or in 2017-2018. There is absolutely no evidentiary record to support this resolution.

Sutter is not even directly connected to the CAISO-controlled grid. The draft resolution attempts to make a virtue out of necessity; it claims that Sutter's use of a pseudo-tie arrangement to connect to the CAISO-controlled grid will provide valuable data for understanding the use of pseudo-ties to connect renewable generation that is not CAISO grid-connected. (The mention of a pseudo-tie may also be meant to discourage other generation facilities from threatening to shut down in order to seek a Commission resolution that would direct utilities to negotiate with these other generators and provide ratepayer dollars to keep them in business.) It is clear, however, from CAISO reports¹ that the learning from the pseudo-tie has already occurred. Furthermore, there are two other pseudo-tie arrangements currently in force. The education process should not continue indefinitely at ratepayer expense.

If Sutter cannot stay in business under the current market structure, there are two possible reasons. The first is that it is not needed, period. The second is that there is a problem with the market structure. Neither reason justifies paying Sutter to be available for another year. It is not the responsibility of ratepayers to put powerplants on financial life support when they are not needed. It is also not the responsibility of ratepayers to subsidize powerplants while a flawed market structure is being reformed.

There are additional concerns that are not addressed in the draft resolution or the cover letter. The not-to-exceed cap is what the CAISO would otherwise pay to Sutter to stay in business in 2012, assuming that the CAISO makes a convincing showing to the FERC that the plant meets its "risk of retirement" criteria. Even then, the CAISO will have to propose to FERC that it waive one of the criteria, because Sutter does not meet it. The utilities are given 30 days to negotiate a contract at a lower price. *Why would Sutter negotiate a lower price when the Commission is putting a maximum price in writing? What happens if the utilities and Sutter cannot reach an agreement?*

Assuming adoption of the settlement calling for another phase of LTPP, if the Commission determines in that next phase that there is a need for additional fossil generation, then a procurement process can occur and Sutter may participate.

¹ See California Independent System Operator Report, Dynamic Transfers Final Proposal, May 2, 2011, at 11-12 (footnote 6) and 34 (referencing renewable facility Copper Mountain Solar pilot project and the Pseudo PGA developed as "the prototype for future pseudo-tie services" based on lessons learned from the New Melones pseudo-tie and the Sutter pseudo-tie).



Alternatively, the Commission may decide on the record in R.10-05-006 to date that some additional resources are needed. CLECA would not agree with that conclusion, but it is presumably possible. Until such time, the threat that if Sutter closes now it may not be able to reopen is based on assertions of potential imposition of air quality regulations for new sources. The draft resolution fails to explore the plausibility of this argument. The cost of mothballing would likely be far less than the cost of paying to keep the plant operating when it is not needed. CLECA suggests that the Commission undertake due diligence to determine the nature of the risk embodied in these assertions. In the meantime, the limited amount of real evidence provided thus far does not support adoption of the draft resolution, and its adoption would undermine the Commission's LTPP process.

Respectfully submitted,

A handwritten signature in cursive script that reads "William H. Booth".

William Booth
Nora Sheriff
Counsel to CLECA

Enc. Certificate of Service

CERTIFICATE OF SERVICE

I, Karen Terranova, hereby certify that I have on this date caused the attached Comments on Draft Resolution E-4471 to be served to all known parties by either United States mail or electronic mail, in proceedings R10-05-006 and R11-10-023, Robert Strauss, Nathaniel Skinner, all Commissioners, Director of the Energy Division, Chief of ALJs and General Counsel, pursuant to the Commission's letter of January 17, 2012.

Dated January 31, 2012 at San Francisco, California.

A handwritten signature in black ink that reads "Karen Terranova". The signature is written in a cursive style with a long horizontal flourish at the end.

Karen Terranova