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

Re: Draft Resolution E-4471

Dear Mr. Gatchalian:

These comments on Draft Resolution E-4471 are submitted on behalf of the Coalition of California Utility Employees, which includes IBEW 1245 who has members living in the area where the Sutter Power Plant is located and throughout Northern California.

I. THE DRAFT RESOLUTION WOULD BE UNJUSTIFIED CORPORATE WELFARE

Draft Resolution E-4471 is utterly inconsistent with the entire premise of electric deregulation. Deregulation, for which Calpine and its trade association the Independent Energy Producers of California vigorously advocated, was premised on the idea that non-utility generators would live or die based on market forces so that ratepayers would not be saddled with supporting uneconomic generating plants. Draft Resolution E-4471 puts a lie to the Commission's entire rationale for deregulation. It is perhaps the most misguided proposal to come out of the Commission since deregulation itself. There is absolutely no justification for bailing out a failed generator with ratepayer money that could otherwise be used to make the electric system safer and more reliable – goals toward which this corporate welfare for Calpine contributes nothing.

The Sutter power plant was built by Calpine as merchant generation. Calpine made a business decision to build this facility with private capital, based on its business judgment that its investors would make a good return on that investment. Now that investment is (apparently) not working out so well, and Calpine is seeking a bailout from ratepayers. A bailout would be corporate welfare at its worst.

Specifically, what's going on here is that after the Sutter plant failed to secure any Resource Adequacy payments Calpine persuaded the CAISO to provide a bailout that is not authorized by the CAISO tariff. Not satisfied with its success at the CAISO, since the CAISO needs FERC approval that has been strongly opposed, Calpine now wants the CPUC to provide a back-up bailout.

II. THE CAISO BAILOUT

The CAISO has told FERC that (a) Sutter is needed for statewide reliability by 2017, (b) Sutter can't run profitably at current market prices, (c) Sutter can't be mothballed until 2017 without "likely" triggering New Source Review because of EPA "policy," and, implicitly (d) New Source Review will result in economically impracticable costs to bring Sutter out of mothballs. None of these assertions have been supported by evidence. The alleged statewide need is based on the CAISO's own inflated load projections, which are higher than the CEC's adopted forecast, and also contradicts Calpine's own position in the CPUC's LTPP proceeding.

The claim that Sutter can't run profitably today is equivalent to a claim that Sutter can't cover its variable operating costs (since fixed costs will continue whether or not Sutter is retired). That's highly dubious for a modern combined cycle plant and no evidence supporting it has been presented. In particular, where is the evidence that market spot prices have been lower than Sutter's marginal cost, at a time when natural gas prices are particularly low?

The claim that Sutter can't be mothballed without "likely" triggering New Source Review before it resumes operation is equally unsupported by any record or citation to legal authority.

And finally, even if mothballing Sutter now would trigger retrofit requirements in 2017 as claimed, so what? Where is the evidence that the price Sutter could command in a capacity-short future market would be insufficient to cover the cost of retrofits? Surely the cost of retrofitting better pollution controls on an already-built plant would be less than the cost of building an entire plant from scratch. If brand new combined cycle plants can be built today, with BACT (Oakley, for example), why can't Sutter compete with them when its future capital costs are only for pollution retrofits?

III. THE STATED RATIONALE FOR RESOLUTION E-4471 IS AN OBVIOUS SHAM

Perhaps recognizing that the CAISO's approach to FERC is based on a collection of dubious and unsupported assertions, Resolution E-4471 takes a different approach. The CAISO's theory, if true, would require paying Sutter not just in 2012, but in 2013-16 as well, and would apply not just to Sutter, but to every other power plant that claims it, too, would be needed in 2017.

So instead, Resolution E-4471 justifies the bailout for Calpine on the theoretical information to be gained from Sutter's use of a "pseudo-tie" to interconnect with the CAISO. The Resolution admits that Calpine is one of the settling parties in the LTPP proceeding that have said there is no system-wide RA need through 2020, and no need to enter into contracts today for long-term system RA (Draft Resolution, p. 6). Instead, the Resolution claims that the Commission wants to keep Sutter in operation to provide data regarding the operation of pseudo-ties. This fig leaf is embarrassingly transparent.

Sutter has been operating under a pseudo-tie since 2005. Effectively, the Commission is making a judgment, without benefit of any published analysis, that a \$29 million dollar R&D

project to obtain an 8th year of pseudo-tie data regarding Sutter operation is worthwhile. Will the Commission take a similarly cavalier attitude towards utility proposals to spend \$29 million for 10-month-long R&D proposals that they, rather than the Commission, have chosen?

Even if it were true that (a) operating Sutter under a pseudo-tie provides valuable information, (b) that information will be made available in a sufficiently widespread and timely way to allow it to be put to use, and (c) that information is worth paying to get, that still wouldn't be enough to justify the proposed Resolution. The Resolution provides no evidence that its alleged aim will be attained. Payment of up to \$2.95 million per month to Calpine provides no assurance whatsoever that Sutter will actually be operated. If Sutter is maintained in an operable state using the proposed capacity contract, but few or minimal kilowatt-hours of generation are actually scheduled, then few or minimal pseudo-tie operational data will be obtained.

The Resolution would open the door wide to ongoing costs to ratepayers. While the Resolution claims the basis for operating Sutter in 2012 is to provide data regarding pseudo-ties, it is hard to avoid the suspicion that it is also intended to forestall the CAISO's FERC application for permission to enter into a contract with Sutter at the exact same price, \$2.95 million per month, referenced in the Resolution. And, if so, then there will be on-going costs after 2012, because the exact same situation will occur in 2013: Calpine will threaten to shut down Sutter without a capacity contract, the CAISO will offer to provide one, and the CPUC will then need to intervene as it is doing with this resolution to head off the CAISO. Unless the Resolution were amended to prohibit any future bailout (an outcome that the current Commission lacks the legal power to order, since it cannot bind future Commissions), then the Resolution should acknowledge that the potential costs are many times greater than just \$29.5 million.

The Resolution asserts that keeping Sutter in operation would provide valuable data, but provides no analysis of the nature or use of the alleged valuable data. The CAISO Board has already approved a policy statement on dynamic transfers as the culmination of an 18-month 2009-11 process¹ and made its tariff filing at FERC 6 months ago on July 29, 2011.² FERC accepted that filing and it went into effect on November 1, 2011.³ Does the Commission believe that something will be learned from Sutter operation in 2012 that wasn't previously known from Sutter operation in 2005 through 2011, something that will cause the ISO to abandon its existing policy and modify its filed and approved tariff amendment? If so, why did not the Commission protest the CAISO's tariff amendment filing?⁴

IV. THE DRAFT RESOLUTION HAS MANY OTHER FLAWS

- With regard to the analysis cited on pages 4 and 5 of the Draft Resolution, the assertion that there has been no final finding regarding need in the LTPP proceeding is true, but misleading. Calpine is one of the signatories to the Settlement in that proceeding,

¹ <http://www.caiso.com/Documents/FinalProposal-DynamicTransfers.pdf>.

² http://www.caiso.com/Documents/2011-07-29_DynamicTransferAmendment_ER11-4161.pdf.

³ <http://www.ferc.gov/EventCalendar/Files/20110930102028-ER11-4161-000.pdf>.

⁴ <http://www.ferc.gov/EventCalendar/Files/20110930102028-ER11-4161-000.pdf>, p. 4.

meaning that Calpine itself has agreed that there is no capacity need through 2020 using the LTPP planning assumptions. The Draft Resolution later admits as much (p. 6).

- The Draft Resolution admits (p. 5) that the CAISO analysis omits Oakley, but fails to recognize that this omission **reduces** the problem of CAISO-wide capacity shortfalls that Sutter is supposed to solve. Adding new generation at Oakley (or anywhere else in the CAISO control area) will reduce the alleged need to keep Sutter in service, and reduce the reliability benefits (if any) of having Sutter potentially available in future years.
- The Draft Resolution admits (p. 5) that the CAISO believes there may be a need for up to 2,000 MW of new generation in the LA Basin to replace once through cooling units, but fails to recognize that this need reduces the problem of CAISO-wide capacity shortfalls that Sutter is supposed to solve. Adding new generation in the LA Basin will **reduce** the alleged need to keep Sutter in service, and **reduce** the reliability benefits (if any) of having Sutter potentially available in future years. Sutter itself provides no value towards meeting potential LA Basin needs.
- The Draft Resolution admits (p. 5) that SDG&E has applied (in A.11-05-023) for authorization to contract for 450 MW of new generation, but fails to recognize that this need reduces the problem of CAISO-wide capacity shortfalls that Sutter is supposed to solve. Adding new generation in the SDG&E area (or anywhere else in the CAISO control area) will reduce the alleged need to keep Sutter in service, and reduce the reliability benefits (if any) of having Sutter potentially available in future years. Sutter itself provides no value towards meeting potential SDG&E reliability needs.
- Finding of Fact 12 confuses pseudo-ties and dynamic transfers. While the CAISO has only three current pseudo-ties, it has dynamically scheduled resources into its control area since its inception more than 13 years ago, and as of two years ago had approximately 3,500 MW of dynamic scheduling of generators.⁵ Sutter is not needed to provide data regarding the operation of dynamic transfers.
- Planned future dynamic imports from renewable resources (p. 7, asserting that “Fifteen percent of out-of-state renewable resources in 2020 are assumed scheduled via dynamic transfer”) are not a reason to keep Sutter in operation. First, the CAISO already has thousands of megawatts of out-of-state resources subject to dynamic scheduling and doesn’t need the 525 MW of in-state Sutter generation to learn about how dynamic scheduling works. Second, Sutter is neither a renewable resource nor an intermittent resource, and so it will not provide information about dynamic scheduling of intermittent or renewable resources. Third, the “15 percent” figure in the Resolution does not refer to pseudo-ties, but to dynamic schedules, most of which do not involve pseudo-ties. To the extent the CAISO needs data on the operation of out-of-state resources scheduled via pseudo-ties, the pseudo tie with the Nevada Copper Mountain solar project will provide such data, and the pseudo tie with the in-state Sutter non-renewable project will not.

⁵ See <http://www.caiso.com/2476/2476ecfa5f550.pdf>, p. 20.

V. EVEN ON ITS OWN TERMS, THE DRAFT RESOLUTION HAS MANY QUESTIONS THAT DESERVE ANSWERS BEFORE THE COMMISSION APPROVES A BAILOUT

Even if the Commission were determined to force ratepayers to bail out a merchant generator for which there is no justification in any Commission policy, there are many questions that must be answered first:

- What was the last price that Calpine bid in an RA RFO for Sutter capacity for 2012? If it did not bid, that undermines its claim that it needs a 2012 capacity contract to keep Sutter running (since if it needs such a contract, it should have already tried to get one). And if it did bid, then it absolutely should not get any more now than the amount bid.
- What is the evidence that Calpine's market revenues for 2012 at Sutter, if it sold into the ISO spot market, would not just fail to cover its variable costs for 2012, but fail to do so by a large enough margin to make it worthwhile forgoing post-2012 profits from future capacity markets by retiring the plant instead? Because if Calpine hasn't analyzed the long run benefits of keeping Sutter open, even at a short term loss, then how can it know that retirement in 2012 makes sense?
- If it is true that Calpine would rather retire Sutter than keep it open in 2012 without an RA contract, why should the CPUC care? If the CPUC bows to Calpine's threats, then every existing generating plant can play the same game. If Calpine isn't bluffing, then there will be a large hunk of metal sitting at Sutter, and Calpine will (if rational) accept any bid bigger than \$0 for it, since it's clearly worth nothing to Calpine. If the CAISO thinks that Sutter is so needed in 2017, then they can buy it from Calpine for \$10, and auction it off in the RA market of 2016.

VI. CONCLUSION

The Commission should face up to what the Draft Resolution really means: The Commission is abandoning its professed belief in competitive generation to bail out one of the biggest proponents of competition and the supposed evils of utility owned generation. This would be more than ironic. If it is going to take this step, it has to go all the way: from now on, all generators are entitled to recover their capital, but only a regulated rate of return. Ratepayers should not pay a market rate of return to generators who do not face a market risk of failure.

The Commission should reject the Draft Resolution.

Sincerely,

/s/ Marc Joseph

Marc D. Joseph

MDJ:vs

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cc: Commissioners:

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CERTIFICATE OF SERVICE

I certify that I have by email, mail or messenger this day served a true copy of Comments on Draft Resolution E-4471 on all parties or their attorneys as shown on the attached service list.

Dated January 31, 2012 at South San Francisco, California.

 /s/ Valerie Stevenson
Valerie Stevenson

January 31, 2012

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Service lists notified of draft Resolution E-4471:
R.10-05-006, 2010 Long Term Procurement Plan
R.11-10-023, Resource Adequacy Program

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