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January 31, 2012

Via Regular and Electronic Mail

Mr. Honesto Gatchalian
California Public Utilities Commission
Energy Division □ Tariff Unit
505 Van Ness Avenue, 4th Floor
San Francisco, California 94102

Re: Comments of the California Municipal Utilities Association
On Draft Resolution E-4471 (Calpine's Sutter Energy Center)

Dear Mr. Gatchalian:

The California Municipal Utilities Association (CMUA) hereby provides comments on draft Resolution E-4471 (Draft Resolution) in which the California Public Utilities Commission (Commission) proposes to order the investor-owned utilities (IOUs) to enter negotiations with Calpine Corporation (Calpine) with respect to procurement of capacity from the Sutter Energy Center. As further described below, CMUA requests that the Commission expressly affirm in Resolution E-4471 the applicability of previous Commission decisions holding that municipal departing load (MDL) customers are excluded from generation-related non-bypassable charges (NBCs).

In the Draft Resolution, the Commission identifies various reasons why the IOUs should be ordered to negotiate with Calpine in order to avert closure of the Sutter Energy Center. Among other things, the Draft Resolution notes that the Commission has identified "a desire to access resources that are flexible for renewable integration, as well as those not directly connected to the CAISO grid." The Draft Resolution provides that the IOUs' contract with Calpine should be executed in a manner that minimizes the cost to the IOUs' ratepayers.² Additionally, the Draft Resolution finds that "any benefits and costs should be applied via a non-bypassable charge to all *benefitting customers*."³

¹ Draft Resolution at 2.

² *See id.* at 8.

³ Draft Resolution at 10 (Finding 19) (emphasis added). "Benefitting customers" is a term understood to mean all of the IOUs' customers, including customers served by electric service providers (direct access) and customers served by community choice aggregators (community choice aggregation), but not MDL customers served by publicly owned utilities. (*See, e.g.*, D.08-09-012 at 26, affirmed in D.11-05-005 at 18 [FOF 6].)

Since the Draft Resolution invokes the touchstone phrase, non-bypassable charge, CMUA summarizes the important decisions in which the Commission has held that MDL customers are excluded from NBCs associated with generation procured by the IOUs.

In Commission Decision (D. 06-07-029, which established a cost allocation mechanism for system reliability resources, the Commission stated that the "definition of benefitting customers subject to the resource adequacy cost allocation mechanism does not apply to [publicly owned utility] customers".⁴ In D.08-09-012, the Commission revisited the issue of NBCs for MDL customers.⁵ After an exhaustive review, the Commission found that MDL customers are excluded from NBCs associated with both system reliability resources (D.06-07-029) and also procurement resources (D.04-12-048) because, among other reasons, MDL is reflected in the load forecasts on which the IOUs' long-term procurement plans are based.⁶ The Commission recently revisited this issue in D.10-04-028 because Southern California Edison Company (SCE) had proposed to impose an NBC on MDL customers based on the purported societal benefit of certain generation resources. After affirming the relevance and applicability of D.08-09-012, the Commission noted that the perceived societal attributes of the generation resources do not trump the clear cost-causation principles espoused in D.08-09-012.⁷

CMUA respectfully requests that the Commission revise the Draft Resolution to provide that MDL customers are excluded from the definition of "benefitting customers" and therefore excluded from any NBC that may result from a contract with Calpine for the Sutter Energy Center.

Thank you in advance for your consideration of these comments.

Respectfully,



Scott Blaising
Attorney for the
California Municipal Utilities Association

⁴ D.06-07-029 at 48.

⁵ See D.08-09-012 at 12, note 19.

⁶ See D.08-09-012 at 24 (Ordering Paragraph 2) ("Because customer generation departing load and [MDL] are excluded, as classes, from the adopted load forecasts on which the investor-owned utilities (IOUs) long term procurement plans ((LTPPs) are based, CGDL and MDL customers are excluded from having to pay the D.04-12-048 and D.06-07-029 NBCs, including any above market costs related to RPS contracts".)

⁷ See D.10-04-028 at 30 ("We will not deviate from D.08-09-012 here and create a new category of "demonstration project" that would allow SCE to charge stranded costs from this project on MDL and other customers exempt from NBCs according to D.08-09-012.")

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