DRA

Division of Ratepayer Advocates
California Public Utilities Commission

JOSEPH P. COMO
Acting Director

505 Van Ness Avenue
San Francisco, California 94102
Tel: 415-703-2381
Fax: (415) 703-2057

http://dra.ca.gov

January 31, 2012

Honesto Gatchalian
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
E-mail: jnj@cpuc.ca.gov

Subject: DRA's Comments on Draft Resolution E-4471

Dear Mr. Gatchalian:

The Division of Ratepayer Advocates (DRA) submits the following comments on Draft Resolution E-4471, which directs Pacific Gas & Electric (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric (SDG&E) to try to negotiate a contract with Sutter Energy Center to end no later than December 31, 2012.

BACKGROUND

On November 22, 2011, Calpine Corporation (Calpine) filed a notice with this Commission under General Order 167, notifying the Commission of its intention to retire Sutter Energy Center (Sutter) due to the lack of a Resource Adequacy Contract. Also on November 22, Calpine filed a request with the California Independent System Operator (CAISO) under the recently approved "At Risk of Retirement" category, stating that it intended to retire Sutter for economic reasons unless it receives from CAISO a Capacity Procurement Mechanism (CPM) designation (or a bilateral contract).[1] Sutter does not meet all of the criteria for the At Risk of Retirement Category set forth in CAISO's tariff, but the CAISO is seeking a waiver of the tariff requirement that the CPM resource be needed for reliability by the end of the calendar year following the current Resource Adequacy (RA) compliance cycle, so it can grant Calpine's request. The CAISO filed its Petition for Waiver of Tariff Revisions on January 27, 2012.

In response to the above filings, and in anticipation of the CAISO's Federal Energy Regulatory Commission (FERC) waiver filing, the Energy Division proposed this Draft Resolution ordering

[1] DRA's Comments on the CAISO's December 6, 2011 Report on Basis and Need for CPM Designation for Sutter Energy Center were filed with the CAISO on December 16, 2011.

Calpine not to shut down Sutter until the FERC or the Commission acts. The Draft Resolution further orders PG&E, SCE, and SDG&E (hereafter, the "Investor Owned Utilities (IOUs)" to negotiate with Calpine for a contract of limited duration ending no later than 2012, and if such negotiations are successful, to submit a Tier 3 Advice Letter seeking approval of the contract. The cost of this contract will not be bypassable.

DISCUSSION

No one asserts that Sutter Energy Center is needed before 2017 at the earliest

The CAISO issued a report on the reasons for CPM Designation for Sutter as part of the CPM At Risk of Retirement tariff process. That report indicates that Sutter "will only be needed for reliability and operational requirements as of 2017/18" under the "high load" scenario presented in the Commission's Long Term Procurement Proceeding.[2] Therefore, by the CAISO's own admission, **Sutter is not needed for another five to six years, and even then, it would only be needed under extreme high load assumptions that were not part of the Commission-approved base case assumptions for purposes of long-term procurement planning.**

The Draft Resolution acknowledges that "[t]he analysis of the four Commission required-scenarios utilized in R.10-05-006 indicated that there is no identified need for new system resources in 2020."[3] Calpine, in its request for a CPM Designation to the CAISO, does not argue that there is a need for Sutter either to meet system or local reliability or operational needs in 2012. In short, the Draft Resolution orders the IOUs to negotiate for a contract with a resource for a number of months in 2012, for which there is no established need. And it is unclear what the Commission would do from 2013 through at least 2016 when there is also no demonstrated need for the plant.

For this fundamental reason, DRA opposes the adoption of Draft Resolution. Although the Draft Resolution provides that the contract should "minimize[s] costs to ratepayers" and should be "significantly below what would be paid if the Sutter plant were subject to the CPM," and in that respect, would be preferable to the possibility that Sutter might receive a CPM designation, DRA does not believe it is possible for such a contract to be "just and reasonable" under Public Utilities Code section 454.5 unless there is a need for the resource to provide reliability services to the ratepayers.

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[2] CAISO Report on the Basis and Need for CPM Designation for Sutter Energy Center (December 6, 2011) pp. 2, 6.
[3] Draft Resolution E-4471, p. 4, fn omitted.

Interest in gathering additional information on CAISO's pseudo-tie and dynamic transfer tariff changes does not justify a ratepayer subsidy of the plant

The Draft Resolution states "[t]he purpose of this order is to keep the Sutter plant online for 2012, enabling further analysis of the impacts of current and proposed dynamic transfer changes at the CAISO."[4] This information-gathering rationale does not justify the potential expense of a contract with Sutter. The Draft Resolution estimates the cost of the Resolution "[n]ot to exceed $2.95 million per month, to a total of $29.5 million."[5] Moreover, a pseudo-tie and dynamic transfer arrangement has been in place between Sutter and the CAISO since 2005, providing at least six years of information. Other existing dynamic transfer and pseudo-tie arrangements within and outside the state to the CAISO can continue to be used in order to assess the effects of the proposed dynamic transfer tariff changes. For example, pseudo-tie arrangements are in place with New Melones, Copper Mountain, and the Hoover Dam. The CAISO is in the midst of a pilot arrangement whereby exchanges between the CAISO and Bonneville occur at more frequent scheduling intervals. Other Western Region initiatives that would help to increase coordination and transmission system utilization between balancing areas are in place or under discussion. If the CAISO needs additional pseudo-tie and dynamic transfer arrangements beyond those that are in place today, it could do so by establishing such arrangements with other existing and economically viable plants, an alternative that is more cost effective than keeping Sutter online.

The financial information provided by Sutter is inconclusive and sketchy at best

In support of Calpine's request for a CPM designation, Calpine submitted an affidavit and financial analysis providing the financial basis for why it is "uneconomic" for Sutter to remain in service in 2012. DRA issued a subpoena to the CAISO for this confidential material submitted with Calpine's CPM request.[6] DRA has reviewed both public and confidential information on Calpine's financial condition. DRA's analysis of this supporting information shows that many critical pieces of information are missing from Calpine's financial showing. For example, Calpine does not provide detailed information explaining significant changes in operating expenses for 2012 and later years. Calpine does not provide any information on offers Sutter received in its Request for Offers (RFOs), or on what kinds of bids Calpine made in RFOs. For all we know, Calpine may have turned down reasonable offers for RA capacity in the past, may have failed to win RA contracts because its bids were not competitive, and may have deferred expense-incurring activities to 2012 that should have or could have been done earlier in anticipation of obtaining CPM payments from CAISO at more attractive prices than it could obtain in the RA solicitations.

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[4] Draft Resolution E-4471, p. 1.
[5] *Ibid.*
[6] CAISO's Tariff section 43.2.6(5) requires the resource requesting an At Risk of Retirement CPM designation to submit an affidavit and supporting financial documentation.

The Draft Resolution would set a bad precedent, and may encourage other plants to follow Calpine's example and not participate in the RA Market

DRA objects to the Draft Resolution for many of the same reasons that it opposes the CAISO's proposed CPM Designation for Sutter. Requiring the IOUs to negotiate for a capacity contract with a resource that did not obtain an RA contract undermines the RA capacity market. Both the CAISO's CPM designation (if the petition for waiver is approved) and any contract resulting from the Draft Resolution (if approved by a Tier 3 Advice Letter) would take place outside of the RA and Long Term Planning processes, and may "open the floodgates" to any plant which cannot compete effectively and fails to receive an RA contract. There is currently an excess of capacity in the state, with statewide reserves at over 30%, or roughly double the state's planning reserve margin. While this problem should be addressed, ordering the IOUs to negotiate a contract with Sutter Energy Center is not an appropriate solution.

CONCLUSION

For the reasons stated above, the Commission should reject the Draft Resolution. The Commission should not give in to Calpine's strong-arm tactics to negotiate a better price outside of the RA bilateral market and RFO process.

Please contact Chris Ungson at chris.ungson@cpuc.ca.gov or Charlyn Hook at chh@cpuc.ca.gov or (415) 703-3050, if you have questions about these comments.

Sincerely,

/s/ LINDA SERIZAWA
Linda Serizawa
Interim Deputy Director

Cc: President Michael Peevey; Commissioner Mike Florio; Commissioner Timothy Simon; Commissioner Catherine Sandoval; Commissioner Mark Ferron; Edward Randolph, Director of Energy Division; General Counsel Frank Lindh; Robert Strauss (Energy Division); Nathaniel Skinner (Energy Division)

Service List for R.10-05-006 (Long Term Procurement Plan); and R.11-10-023 (Resource Adequacy)