TURN
THE UTILITY REFORM NETWORK
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January 31, 2012

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

Re: Draft Resolution E-4471

Dear Mr. Gatchalian:

Pursuant to Rule 14.5 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), The Utility Reform Network (TURN) offers the following comments regarding Draft Resolution E-4471. TURN strongly urges the Commission to withdraw or reject the Draft Resolution (DR). The proposed outcome is grossly unfair to ratepayers, unnecessary for the purposes claimed in the draft resolution, and would set a very dangerous precedent by encouraging independent generators to directly lobby the Commission in order to secure lucrative power contracts with the Investor-Owned Utilities (IOUs). The draft resolution further fails to reconcile the proposed outcome with the Long Term Procurement Planning process and the established planning reserve margins adopted by the Commission.

THERE IS NO EVIDENCE THAT CONTRACTING WITH SUTTER WILL YIELD ANY NEW LESSONS RELATED TO DYNAMIC TRANSFERS

The DR offers an entirely new rationale for requiring the IOUs to contract with Sutter – the notion that continued operations will provide "more information on the strengths, weaknesses, and capabilities of connecting to the grid through a pseudo-tie using the CAISO's dynamic transfer tariff."[1] This rationale is not based on any record evidence, lacks relevance, and is not persuasive. To the extent the CAISO wishes to gain further experience with dynamic transfers to support renewable energy goals, continuing the operation of Sutter offers few incremental benefits.

[1] Draft Resolution, pages 5-6.

Sutter has been operating under a pseudo-tie since 2005. In 2009, the CAISO noted the existence of 3,500 MW of dynamic imports from resources outside of its Balancing Area Authority.[2] Moreover, newly constructed renewable resources outside the CAISO such as the Copper Mountain solar facility are currently operating under pseudo-ties. Future pseudo-tie and dynamic transfer arrangements are likely to involve intermittent solar and wind generation rather than baseload combined cycle plants like Sutter. It is not clear how another year of experience with Sutter, and $29.5 million in additional ratepayer expenditures, will provide any relevant educational benefits that can be applied to the development of dynamic transfer arrangements with intermittent renewable resources.

CALPINE HAS NOT DEMONSTRATED FINANCIAL NEED

Calpine has not demonstrated a need for a Commission or CAISO bailout in order to keep Sutter operational. In R.10-05-006, Calpine's own historic analysis for a generic CCGT plant shows market revenues exceeding costs in all years through 2010.[3] With respect to future operations, Calpine refused to comply with repeated requests for actual cost information about specific units (such as Sutter), asserted that the relevant data is confidential and declined to submit a detailed showing of need even under seal.[4]

The DR asserts that relief is needed because "the CAISO and Calpine have both stated that the Sutter plant is not currently under contract to any Load Serving Entity (LSE) in the 2012 resource adequacy compliance year."[5] This statement is not supported and may not be true. Under cross examination in R.10-05-006, Calpine's own witness admitted that some of its existing and so-called "uncontracted" CCGT units have supply contracts to sell power to non-IOU buyers but refused to provide any details to the Commission.[6] TURN believes that some of Calpine's units may be selling energy and/or capacity to Publicly Owned Utilities and Electric Service Providers. Given Calpine's refusal to disclose relevant details in a Commission proceeding, the DR should not accept the unverified premise that Sutter lacks any off-takers. Finally, under the Commission's Resource Adequacy (RA) rules, Load-Serving Entities still have time to finish purchasing RA capacity for most remaining months of 2012, meaning that there is potential for Calpine (and other generators) to sell additional capacity in 2012.[7]

Publicly available financial data reveals that Calpine continues to reap profits from its fleet of California generating assets. According to recent documents filed with the Securities and Exchange Commission, Calpine realized $338 million in net income from

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[2] CAISO Dynamic Transfer Issue Paper, November 30, 2009, page 20.
[3] Calpine opening brief, R.10-05-006, page 5.
[4] R.10-05-006, Reporter's Transcript, page 845, 851, Barmack; See also R.10-05-006, Ex. 220.
[5] Draft Resolution, page 3.
[6] R.10-05-006, Reporter's Transcript, page 864, Barmack.
[7] For example, LSEs' final RA reports for March are due today. See http://www.cpuc.ca.gov/PUC/energy/Procurement/RA/RA+Calendar.htm.

its Western operations during the first 9 months of 2011.[8] Moreover, Calpine controls geothermal units at the Geysers that are able to sell their output at premium prices. Given the ongoing profitability of Calpine's California generation, there is no demonstrated need for ratepayers to subsidize the company's operations.

A TEMPORARY SHUTDOWN OF SUTTER WOULD NOT HARM RATEPAYERS

Even in the event that Sutter is placed into temporarily shutdown, Calpine has not provided a credible threat that the unit would be permanently removed from service. In R.10-05-006, Calpine was unable to identify a single instance of a CCGT unit ever shutting down and being permanently dismantled.[9] Since there is no identified need for Sutter in the coming years, a multi-year shutdown would have no negative impact on system reliability. If Sutter does enter temporary shutdown, the unit could be returned to service by Calpine in the future or sold to another owner.

Moreover, the DR has not identified a single projected resource addition that could be deferred by keeping Sutter operational. Concerns about unit retirements in the Los Angeles basin and local need in San Diego are irrelevant because Sutter, due to its location, is unable to provide replacement capacity for any need identified in these geographic areas.

THE DRAFT RESOLUTION FORCES THE IOUS TO EXECUTE AN UNECONOMIC CONTRACT AND GIVES CALPINE HUGE NEGOTIATING LEVERAGE TO EXTRACT SUBSTANTIAL FINANCIAL PREMIUMS

The DR requires the IOUs to negotiate a contract at a cost not to exceed the CAISO CPM price of $67.50/kW-year. Since the IOUs would be obligated to execute a contract, the DR would provide Calpine with superior negotiating leverage and the ability to extract substantial financial premiums. In an affidavit supporting the CAISO filing at FERC, Calpine asserted that "Sutter will sustain cash flow losses of $19.7 million in 2012"[10] an amount that equates to $37.50/kW. This assertion is not supported by any public documentation, cannot be verified and is likely to be inflated.[11]

If the DR is adopted, Calpine will undoubtedly demand the maximum allowable price. This outcome is entirely foreseeable and represents a repeat of history. Earlier last

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[8] Calpine Form 8-K, filed October 28, 2011; Calpine Third Quarter 2011 investor update conference call presentation, page 28. Calpine's California assets comprise 5,572 MW of its 6,898MW assets in the West.
[9] R.10-05-006, Ex. 600, Barmack testimony, page 11; RT 860-861, Barmack.
[10] California Independent System Operator Corporation Petition for Waiver of Tariff Revisions and Request for Confidential Treatment Docket No. ER12-897-000, January 26, 2012, Attachment C, Affidavit of Alex Makler, paragraph 7 (p. 5)
[11] For comparison purposes, the Commission recently assumed a fixed O&M cost estimate of $8.54/kW-year for a combined cycle unit as part of the 2011 Market Price Referent. See Resolution E-4442, Appendix G, Row 2.

decade, Calpine used its political influence and persuaded the Commission to coerce SDG&E to execute a 10-year PPA for the partially-built Otay Mesa CCGT facility at a premium price. As explained in the Commission dissent, 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."[12] The Commission should heed the warnings of that dissent (*i.e.* "the fact that Otay Mesa provides insurance does not make the purchase prudent"[13]) and avoid making the same mistake twice.

Unfortunately, the DR suggests another possibly successful effort by Calpine to circumvent markets and promote crony capitalism. In a recent presentation to its investors, Calpine identified the following strategy for reaping profits from its California generating units – "**Our Strategy:** Enhance value through asset management and *regulatory engagement*."[14] The DR is a perfect example of Calpine increasing the value of its assets through "*regulatory engagement*" and could set the stage for a round of lobbying by generators eager for the Commission to require IOUs to sign above-market contracts with their units regardless of system need or ratepayer benefits.

RELIANCE ON A NEWLY CREATED CAISO 2017 FORECAST REPRESENTS AN ABANDONMENT OF THE LONG-TERM PLANNING PROCESS

The DR notes that the most recent modeling performed in Phase 1 of R.10-05-006 concluded that there is no identified need for system resources in 2020.[15] Despite this fact, the DR relies upon a December filing by the CAISO to conclude that Sutter "was needed by 2017 under a high load sensitivity" and accepts the notion that "flexible" resources may be useful in supporting the achievement of renewable energy targets.[16] The DR ignores the fact that this CAISO "report" was not part of R.10-05-006, has not been vetted by this Commission, and was roundly criticized by many parties that filed comments with the CAISO.

TURN devoted substantial time and resources to reviewing the CAISO modeling efforts, believes that there are flaws in the methodology and input data, and has provided feedback to the CAISO (consistent with the settlement agreement in R.10-05-006). This feedback has not been incorporated into the December report upon which the DR relies. By accepting the unvetted (and highly criticized) representations of the CAISO and prematurely determining a need for "flexible" resources in excess of the planning reserve margin, the DR makes a mockery of the Long-Term Procurement Planning (LTPP) process.

[12] D.04-06-011, dissent page 2.
[13] D.04-06-011, dissent page 2.
[14] Calpine Third Quarter 2011 investor update conference call presentation, page 12.
[15] Draft Resolution, page 4.
[16] Draft Resolution, pages 6, 8.

The LTPP settlement executed by practically all active parties confirmed the inconclusiveness of the CAISO's need analysis and directs the CAISO to provide additional analysis in 2012 for review and comment in a Commission proceeding.[17] The DR ignores this process, mechanically endorses the CAISO's new claims without scrutiny and adopts highly questionable findings regarding the need for "flexible" resources without reference to past decisions or the evidentiary record in R.10-05-006.

Finally, the DR fails to reconcile its proposal with the adopted planning reserve margin of 15-17 percent. The CAISO testimony in R.10-05-006 forecasts a planning reserve margin of up to 50% in 2020.[18] Absent any broader Commission revision of the planning reserve margins, there is no basis to require extreme measures in order to ensure that every existing unit remains continuously operational in the coming years. Any additional procurement for this purpose would merely create stranded costs for the IOUs that could not be collected from the customers of utilities not subject to CPUC jurisdiction (e.g. the Publicly Owned Utilities).

THERE ARE NO RATEPAYER PROTECTIONS IN THE DRAFT RESOLUTION

In addition to the threshold problem of requiring the IOUs to execute an unnecessary contract for unneeded capacity based on flawed premises, the DR fails to establish any protections for ratepayers. For example, the DR does not require the same type of "open book" negotiations that are routine for Reliability Must-Run contracts and pricing amendments to executed renewable energy contracts. Moreover, the DR does not state that the Resource Adequacy benefits of Sutter can be used to offset overall obligations for the procuring IOUs. Finally, the DR provides no role for the IOUs' Cost Allocation Mechanism groups to review and comment on the negotiations.

The absence of any ratepayer protections combined with an unsupported procurement mandate represents a toxic combination. The Commission should not offer a bailout to a surplus generation unit simply because the owners are perceived to be good corporate citizens. If adopted, the DR will merely spawn a wave of requests from others seeking similar treatment.

[17] For example, the settlement says at page 5 "There is general agreement that further analysis is needed before any renewable integration resource need determination is made."

[18] R.10-05-006, Ex. 1505, Woodruff reply testimony, page 4.

Sincerely,

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Service list to R.10-05-006 and R.11-10-023