



# **DRA**

*Division of Ratepayer Advocates  
California Public Utilities Commission*

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Honesto Gatchalian  
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San Francisco, CA 94102  
E-mail: [jjn@cpuc.ca.gov](mailto:jjn@cpuc.ca.gov)

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

Dear Mr. Gatchalian:

## Introduction

The Division of Ratepayer Advocates (DRA) submits the following reply comments on Draft Resolution E-4471 ("Draft Resolution"). DRA has reviewed the opening comments filed by all parties on the Draft Resolution. Nearly all parties oppose the Draft Resolution, with the CAISO being the lone party expressing support. Calpine did not file opening comments. It is clear that the Draft Resolution is highly problematical for many reasons and the Commission should reject it outright.

## Summary of DRA's Position

No one asserts that the Calpine Sutter Energy Center (Sutter) is needed before 2017 at the earliest, not even the CAISO. Therefore, there is overwhelming agreement that Sutter is not needed at least for the next five years. The Draft Resolution does not justify the need to keep Sutter online in 2012, and the stated reason of obtaining additional information from the pseudo-tie arrangement between the plant and the CAISO is not sound. Sutter is not a local capacity resource and offers little or no value to the Los Angeles Basin and San Diego.

## The Draft Resolution's Primary Justification is Not Persuasive

As many of the opposing parties point out, this pseudo-tie arrangement between Sutter and the CAISO has been in place since 2005, there are other pseudo-tie and dynamic transfer arrangements in place already by which to gain additional information. Moreover, as some of the

parties point out, the Draft Resolution provides no clarity or detail as to the additional information that is needed or the value of that specific information in order to support its conclusion that the ratepayer subsidy provided to Sutter is just and reasonable under Public Utilities Code Section 454.5.

### Response to the CAISO's Comments

The CAISO claims there is a need for Sutter in the 2017/2018 timeframe. Its claim is based on a report it issued (the "CAISO Report") in support of its CPM (capacity procurement mechanism) Tariff Waiver Request which, if granted by FERC, would permit the CAISO to provide backstop payments to Calpine in order to keep Sutter online in 2012. The CASIO Report does not clearly demonstrate need for the Sutter Plant in 2017/2018. The CAISO's assertion that Calpine is needed is based on the "high load" scenario, which results in a need determination that is 10% higher than the CPUC base case in the Long Term Procurement Proceeding (LTPP). Moreover, nearly all parties agreed in the LTPP proceeding that the need for new resources was inconclusive and should continue to be studied in the LTPP. The Draft Resolution and some of the opening comments point to serious questions and shortcomings of the CAISO Report. In its opening comments, the CAISO maintains that use of the "high peak load" scenario is appropriate because it is a "plausible" load outcome. While it may be plausible, it is not consistent with the Commission approved base-case scenarios for use in long term planning, and thus should not form the basis for Commission authorized procurement.

Furthermore, the CAISO in its opening comments ignores a key point noted in the Draft Resolution: that the State Water Resources Control Board's policy permits Once-through-Cooling (OTC) plants to remain online if additional time is needed to bring online needed flexible resource capacity. Therefore, the Commission has the time and flexibility to adhere to its LTTP process to properly determine need.

### If a Market Solution is Needed, This Should be addressed in the LTPP and RA Processes

The Commission should refrain from making ad hoc decisions outside its LTTP process that undermine the Resource Adequacy (RA) Market. Several parties in their opening comments point out the need for the Commission to examine the market structure for RA and to make the necessary adjustments to the market rules if needed. The market structure issues pointed out by several parties have been raised in the Commission's current RA Proceeding, and that would be the appropriate forum to address these concerns.

### Other Problems with the Draft Resolution

There are several other problems with the Draft Resolution pointed out by several parties in their opening comments, which DRA agrees with, including: (1) uncertainty over whether Calpine will be granted continued ratepayer subsidies for Sutter beyond 2012; (2) risk that other generators without contracts will seek similar ratepayer subsidies; (4) uncertainty over fair cost allocation and the definition of "all benefiting customers" (when in reality there are no benefiting customers) in the implementation of the non-bypassable charge (including billing requirements);

(5) concern over anti-trust implications of ordering the utilities to jointly negotiate a contract with Calpine; (6) lack of clarity and guidance to the utilities on the terms and conditions of negotiations with Calpine; (7) absence of a requirement that Calpine open its books to the utilities as part of the negotiations; (8) failure of the Commission to investigate Calpine's claim of financial distress; and (9) failure of the Commission to conduct a due diligence analysis of alternatives to the retirement of Sutter. Any one of these is reason enough to reject the Draft Resolution, but when taken together, these reasons constitute overwhelming evidence that the resolution should not be adopted.

### Conclusion

In light of these serious problems raised by the opening comments, the only reasonable course of action for the Commission is to reject the Draft Resolution. Please contact Chris Ungson at [chris.ungson@cpuc.ca.gov](mailto:chris.ungson@cpuc.ca.gov), 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)