

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.

Rulemaking 10-05-006  
(Filed May 6, 2010)

**COMMENTS OF NRG ENERGY, INC.  
ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE ALLEN**

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March 12, 2012

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**I. Introduction**

NRG Energy, Inc. (“NRG”) submits these comments in accordance with Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”) and the instructions provided in the February 21, 2012 cover letter attached to the Proposed Decision of Administrative Law Judge (“ALJ”) Peter V. Allen (“PD”).

**II. Summary**

NRG largely supports the PD, in particular (1) the PD’s proposed rules regarding the participation of Utility Owned Generation (“UOG”) in utility Requests for Offers (“RFOs”) and (2) the PD’s rejection of Energy Division Staff’s proposed restrictions on contracting with Once-Through Cooled (“OTC”) Units. While the PD takes a proper step towards providing the contracting flexibility that will be needed to sensibly and successfully implement the State Water Resources Control Board’s (“SWRCB’s”) OTC policy, some of the conditions the PD imposes on OTC contracting are unnecessary and may impede contracting with OTC units as their compliance dates near. NRG respectfully requests the PD be modified to remove some of the unnecessary restrictions on OTC unit contracting. Otherwise, the Commission risks artificially decreasing the universe of RA suppliers and unintentionally driving up ratepayer costs.

### III. Comments

#### A. The Commission Should Eliminate Some of the Conditions the PD Imposes on Contracting with OTC Units

The PD appropriately rejects the conditions Energy Division Staff had proposed for contracting with OTC units, in particular, the proposed requirement that utilities may not contract with OTC units for terms longer than one year. This is sensible direction, and will both help generators comply with the state's OTC policy and reduce the cost of doing so.

However, the PD still imposes a number of onerous and unnecessary conditions on contracts with OTC units that will almost certainly increase contracting costs. These include:

- that contracts with OTC units with terms of less than five years must be submitted for approval through a Tier 3 Advice Letter, and contracts with OTC units longer than five years must be submitted through the application process;<sup>1</sup>
- that the Advice Letter or application for contracts with OTC units that expire less than one year before that unit's SWRCB compliance deadline must specifically show how the agreement (1) helps facilitate compliance with the SWRCB OTC policy, and (2) does not prolong OTC operation;<sup>2</sup>
- that a contract with an OTC unit may extend beyond the SWRCB compliance dates only if the contract does not allow the utility to continue to purchase or receive power generated using OTC beyond that date even if SWRCB extends the compliance date.<sup>3</sup>

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<sup>1</sup> PD at 24.

<sup>2</sup> PD at 24-25.

<sup>3</sup> PD at 25.

These conditions are unnecessary and may impede efficient and effective contracting with OTC units. NRG questions why such conditions are necessary. The SWRCB will ensure that units are complying with its OTC policy and compliance deadlines. Rather than looking to restrict contracts with OTC units, the Commission should be looking at agreements with OTC units as a means by which compliance will be achieved. The Load Serving Entities under the Commission's jurisdiction are well aware of the OTC policy and compliance deadlines; it seems highly unlikely that they would either knowingly or unknowingly contract with an OTC unit beyond OTC compliance deadlines absent some irresistibly compelling reason to do so – a reason that they would certainly have vetted with the Commission. It is unnecessary for the Commission to impose the PD's proposed conditions restricting OTC contracting.

With regards to the proposed requirement for submitting contracts with OTC units through a Tier 3 Advice Letter: this requirement is not imposed on contracts of similar terms with non-OTC units. The Tier 3 Advice Letter approval process can take months. It would add no value, but significant additional burden relative to similar contracts with non-OTC units.

Similarly, the requirement that a utility may not take power from an OTC unit beyond that unit's original OTC compliance date even if the SWRCB extends the compliance date is misguided. It is conceivable that the SWRCB could extend a compliance date for a unit for any number of reasons, including unit changes that would result in favorable environmental impacts. There is no logical reason why that unit should not continue to provide cost-effective energy or reliability service to California's ratepayers if its compliance date is extended. If utilities are precluded from extending an existing agreement with an OTC unit or from entering into a new agreement with an OTC facility, the OTC unit may be forced into a premature retirement, even though it can physically and lawfully continue to operate in compliance with the SWRCB requirements. While NRG does not propose that contracts should be used to create a way to

circumvent compliance deadlines, there is no compelling reason to use compliance deadlines to restrict contracting.

The reliability implications related to the OTC compliance schedule are not yet clear. The CAISO has not yet released the extensive analysis it is conducting in support of this rulemaking, which includes an examination of the impacts of potential OTC retirements. More relevant still, a lot can happen between now and the OTC compliance deadlines that could affect those deadlines. The September 8, 2011 San Diego Blackout, and, even more recently, the forced outages of (i) Palomar, a new gas-fired combined cycle plant and (ii) the San Onofre Nuclear Plant demonstrate the reliance and value of existing OTC generation for both capacity and energy. Blindly adhering to far-forward compliance dates could be strongly misguided and can likely expose the grid to future reliability shortfalls. Other factors, such as the need to ensure electric system reliability, or emerging technologies that could impact OTC compliance plans, may influence either those compliance dates or the ways in which generating units will achieve compliance.

In sum, NRG respectfully requests the Commission not second guess the SWRCB or otherwise increase utility RA compliance costs by artificially limiting contracting opportunities. Specifically, we request that the Commission eliminate (1) the requirement to submit contracts with OTC units of less than a five-year duration through the Tier 3 Advice Letter Process (which will in turn eliminate the requirement to show how such contracts facilitate compliance with the OTC policy) and (2) the requirement that parties may not take service from OTC units beyond their OTC compliance dates even if the SWRCB extends their compliance dates.

#### **IV. Conclusion**

NRG respectfully requests that the Commission consider these comments and take action consistent with the discussion herein.

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