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)

REPLY COMMENTS OF L. JAN REID ON THE PROPOSED DECISION OF ALJ ALLEN

March 19, 2012

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SUBJECT INDEX

I. Overview

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, L. Jan Reid (Reid) submits these reply comments on the proposed decision (PD) of Administrative Law Judge (ALJ) Peter Allen in Track I and Track III of Rulemaking (R.) 10-05-006. (Agenda ID #11086) Chief ALJ Karen Clopton mailed the PD on February 21, 2012. Reply comments are due Monday, March 19, 2012. I will file this pleading electronically on the due date, intending that it be timely filed.

II. Recommendations

I have relied on state law and past Commission decisions in developing recommendations concerning the comments of other parties.

I recommend the following:[1]

1. The Commission should reject the arguments of AES Southland (AES) concerning the need for new generation. (p. 2)

2. The Commission should give zero weight to the California Cogeneration Council's recommendation concerning GHG compliance costs. (pp. 3-4)

My recommendations are based on the following proposed findings:

1. State law does not require the Commission to either accept or reject proposed settlements in their entirety. (p. 2)

2. The cost causation principle has been a part of Commission regulation for decades. (p. 4)

3. Consistent with the cost causation principle, the Independent Power Producers (IPPs) should be responsible for their own GHG compliance costs. GHG costs should not be transferred from unregulated IPPs to bundled ratepayers. (p. 4)

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[1] Citations for these recommendations and proposed findings are given in parentheses at the end of each recommendation and finding.

III. Need for New Generation

AES Southland, LLC (AES) recommends that the Commission "Remove any reference to a finding that resources are not needed prior to 2020 (or even beyond), including such references at page 9, footnote 9 on page 9, and on pages 10 through 11." (AES Comments, p. 4) AES argues that "While the Proposed Decision would adopt the Settlement on the ground that it is reasonable because the record supports a finding that no new generation is needed before 2020, that finding is inconsistent with the Settlement." (AES Comments, p. 4) In other words, AES apparently believes that the Commission must either accept or reject a settlement in its entirety and that the law does not allow the Commission to exercise its own judgment.

The PD found that "There is clear evidence on the record that additional generation is not needed by 2020, so there is record support for deferral of procurement." (PD, p. 7) In other words, the PD reviewed the record in this proceeding and correctly concluded that there is no need for additional generation by 2020. In so finding, the PD is consistent with state law and with the Commissions' Rules of Practice and Procedure.

Rule 12.1(d) requires that "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest."

Thus, the Commission is required to exercise its best judgment when evaluating proposed settlements. State law does not require the Commission to either accept or reject proposed settlements in their entirety.

Therefore, the Commission should reject the arguments of AES concerning the need for new generation.

IV. GHG Costs

On September 23, 2011, the Independent Energy Producers Association (IEP) filed a motion which "noted that some independent power producers entered into PPAs prior to the enactment of AB 32, and those PPAs do not include mechanisms to cover the cost of CARB's cap-and-trade regulations implementing AB 32." (PD, p. 55)

The PD noted that: (PD, p. 55)

> Specifically, IEP requests that this Commission, on an expedited basis, make a "[D]etermination of the treatment of GHG compliance costs associated with contracts executed between independent generators and utilities prior to the passage of AB 32 that do not include a mechanism for recovery of such costs. (IEP Motion at 3.)

The California Cogeneration Council (CCC) now recommends that "For the same reasons that the PD recognizes a need to provide relief to the non-QF (Qualifying Facility) independent generators, these atypical QFs also should be afforded an opportunity to negotiate amendments to their PPAs to allow for recovery of greenhouse gas compliance costs imposed by AB 32." (CCC Comments, p. 1, footnote omitted) In other words, the CCC wants the Commission to order the IOUs to renegotiate existing contracts, so that the modified contracts account for GHG compliance costs.

In regard to the IEP motion, the Commission found that: (PD, p. 57)

> At the same time, contracts negotiated and executed when AB 32 was working its way through the legislature should have taken the potential impacts of AB 32 into consideration. Even those negotiating contracts shortly before then might also have reasonably foreseen that this issue could arise.

CCC's comments on this issue are only a minor extension of the IEP's motion. If the Commission had agreed with the IEP's motion, the Commission

should consider CCC's proposal. Since the Commission did not agree with the IEP's motion, the Commission should not consider the CCC's recommendation.

The CCC's recommendation is inconsistent with the cost causation principle that has been a part of Commission regulation for decades. Cost causation is an important regulatory principle at the CPUC and at other utility regulatory commissions. The principle of cost causation simply states that the individuals or businesses responsible for costs should pay for those costs.

The cost causation principle is evident in the Commission's setting of electric rates. On a per-kilowatt-hour basis, it is more expensive for a utility to provide service to a residential customer than to an industrial customer. Thus, we find that average rates for residential customers are higher than average rates for industrial customers.

Consistent with the cost causation principle, the Independent Power Producers (IPPs) should be responsible for their own GHG compliance costs. GHG costs should not be transferred from unregulated IPPs to bundled ratepayers.

The CCC does not claim that the Commission erred in rejecting IEP's motion. The CCC simply reargues the positions that are already part of the record in this proceeding. Thus, the CCC's comments are inconsistent with Rule 14.3(c), which states that:

> Comments shall focus on factual, legal or technical errors in the proposed or alternate decision and in citing such errors shall make specific references to the record or applicable law. Comments which fail to do so will be accorded no weight.

Therefore, the Commission should give zero weight to CCC's recommendation concerning GHG compliance costs.

V. Conclusion

The Commission should adopt Reid's recommendations for the reasons given herein.

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Dated March 19, 2012, at Santa Cruz, California.

/s/

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VERIFICATION

I, L. Jan Reid, make this verification on my behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters that are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated March 19, 2012, at Santa Cruz, California.

/s/_____

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