

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

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March 19, 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. Reply Comments

A. The Commission Should Eliminate Some of the Conditions the PD Imposes on Contracting with Once-Through Cooled Units.

The vast weight of companies commenting on the proposed restrictions on contracting with Once-Through Cooled (“OTC”) units opposed the PD’s recommended limitations on contracting with OTC units.¹ SCE’s comments thoughtfully articulate the problems created by the proposed restrictions, including:

- The proposed restrictions discriminate against parties who contract with OTC generating units without explaining how those provisions benefit ratepayers;²

¹ In addition to NRG, the other parties submitting comments included: the three Investor Owned Utilities (Pacific Gas and Electric Company, Southern California Edison Company (“SCE”), and San Diego Gas & Electric Company); GenOn California North, LLC; the Independent Energy Producers Association; the Natural Resources Defense Council (“NRDC”); and the Western Power Trading Forum.

² *Opening Comments of Southern California Edison Company (U-338E) on Proposed Decision of Administrative Law Judge Peter Allen*, submitted March 12, 2012 in the above-captioned rulemaking (“SCE Comments”) at 3.

- The proposed restrictions increase costs risks to consumers by introducing uncertainties and delays into the contracting process;³ and
- The proposed restrictions are inconsistent with Resource Adequacy (“RA”) timelines.⁴

Only one entity, NRDC, supported the PD’s proposal to prohibit such contracts in passing.⁵ All of the other comments on OTC contracting – except NRDC’s – echo problems with the proposed restrictions raised by NRG in its opening comments and recommend that the CPUC defer to the SWRCB on how to treat OTC units.

It is not necessary or efficient for the Commission’s authority over RA contracting to be used to restrict or even override the SWRCB’s authority with regards to OTC policy and the OTC compliance schedule. The SWRCB has responded to the concerns of the California Independent System Operator (“CAISO”) about the reliability implications associated with the retirement of OTC units. NRG expects the SWRCB will continue to be sensitive to the CAISO’s reliability concerns as the SWRCB seeks to reduce or eliminate the use of once-through cooling as the next few years unfold.

As NRG’s comments noted, the SWRCB could extend a compliance date for a variety of reasons, including unit changes that would result in favorable environmental impacts or as necessary to preserve reliability. It is entirely possible that yet unforeseen events or emerging technologies may affect the current schedule of proposed compliance dates. If a compliance date is indeed extended, there is no reason to prevent the utilities from contracting with the unit and potentially force the unit into a premature retirement. It would be both unwise and unnecessary

³ SCE Comments at 4, 5.

⁴ SCE Comments at 5-6.

⁵ *Comments of the Natural Resources Defense Council (NRDC) On the Proposed Decision On System Track I and Rules Track III Of the Long-Term Procurement Plan Proceeding and Approving Settlement*, submitted March 12, 2012 in the above-captioned rulemaking at 2.

to irrevocably lock in the current proposed compliance schedule by imposing restrictions on contracting with OTC units at this time. As it did in its opening comments, NRG respectfully requests the Commission to eliminate the proposed restrictions on contracting with OTC units.

III. Conclusion

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

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