

**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.

R. 10-05-006
(Filed May 6, 2010)

**APPLICATION OF CALPINE CORPORATION
FOR REHEARING OF DECISION 12-04-046**

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Pursuant to Public Utilities Code Section 1731(b) and Rule 16.1 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, Calpine Corporation (“Calpine”) respectfully requests rehearing of Decision 12-04-046, issued in the Commission’s 2010 long-term procurement proceeding (“LTPP”). As discussed below, Decision 12-04-046 contains significant legal error in that findings and conclusions made in the decision are not supported by the record and, in fact, were known to be incorrect at the time Decision 12-04-046 was issued. Accordingly, rehearing is necessary to correct this error and allow the Commission to timely address the “real risk of economic shutdown” facing uncontracted existing resources.¹

I. INTRODUCTION AND BACKGROUND

Among other issues, Decision 12-04-046 addresses “the overall long-term need for new system and local reliability resources.”² Within the scope of evaluating long-term “system need,” the Commission considered a proposal by Calpine for the adoption of an interim procurement requirement to ensure the continued availability of uncontracted existing resources. Specifically, Calpine requested that the Commission direct the investor-owned utilities (“IOUs”)

¹ “Uncontracted existing resources” refers to existing generation resources that are not under contracts to, or owned by, load serving entities during the planning period.

² Assigned Commissioner and Administrative Law Judge’s Joint Scoping Memo and Ruling, mimeo at 3; *see also* Decision 12-04-046, mimeo at 3.

to hold intermediate term (3-5 years) resource solicitations to procure flexible capacity from uncontracted existing resources.³

With respect to Calpine's proposal, the record in the 2010 LTPP demonstrated that:

- The modeling performed in the proceeding assumed that uncontracted existing resources will remain available to help meet renewable integration needs through 2020.⁴
- Net revenues for combined cycle gas turbine units have been declining in recent years and, for 2010, were estimated to be less than one-half of the five year average.⁵
- The California Independent System Operator ("CAISO") projects that net revenues for conventional generation resources could decline further as additional renewable resources come on-line.⁶
- Sensitivity studies show that if existing resources assumed to be available in the renewable integration modeling shut down, substantial amounts of new replacement resources will be necessary to satisfy reliability needs, with a potential cost to ratepayers in the billions of dollars.⁷

The above facts – none of which were disputed during the course of the proceeding – highlight the fundamental economic decision facing uncontracted existing resources: if compensation from the markets available to such resources is not sufficient and stable enough to recover going forward and major maintenance costs, the generation will shut down for economic reasons.

In Resolution E-4471, the Commission, itself, recognized the "real risk of economic shutdown" by ordering the IOUs "to enter into contract negotiations with Calpine" on the Sutter Energy Center ("Sutter").⁸ The Commission took this action for the specific purpose of

³ Decision 12-04-046, mimeo at 13.

⁴ Calpine/Barmack, Exh. 601 at 2.

⁵ See Calpine/Barmack, Exh. 601 at 9 (citing *CAISO Market Issues and Performance Annual Report 2010* at 53).

⁶ Calpine/Barmack, Exh. 601 at 9 (quoting *CAISO Integration of Renewable Resources; Operational Requirements and Generation Fleet Capability at 20% RPS* at v (August 31, 2010)).

⁷ Calpine/Barmack, Exh. 601 at 13.

⁸ Resolution E-4471, mimeo at 13 (Ordering Paragraph 1).

“keep[ing] the Sutter plant online in 2012.”⁹ For purposes of this application for rehearing, it is important to note that Resolution E-4471 was approved by the Commission nearly a month *before* Decision 12-04-046 was approved and, in fact, is referenced in the decision.¹⁰ Thus, at the time Decision 12-04-046 was issued, the Commission had already found the need to address and remedy a situation where an uncontracted existing resource was facing economic retirement.

Notwithstanding that the Commission had already acknowledged and taken action to prevent the economic shutdown of an uncontracted existing resource, Decision 12-04-046 rejected the Calpine proposal on the grounds that the Commission did not believe “that any combined cycle plants, owned by Calpine or anyone else, are facing a real risk of economic shutdown.”¹¹ Rehearing is necessary to correct this error and allow the Commission to timely address the risk of economic shutdowns.

II. REJECTION OF THE CALPINE PROPOSAL IS NOT SUPPORTED BY THE RECORD AND IS BASED ON FINDINGS AND CONCLUSIONS THAT THE COMMISSION KNEW TO BE INCORRECT AT THE TIME DECISION 12-04-046 WAS ISSUED

As noted above, Decision 12-04-046 rejected Calpine’s proposal on the grounds that uncontracted existing resources are not facing the risk of economic shutdown. This conclusion is not supported by the record and is based on findings and conclusions that the Commission knew to be incorrect at the time Decision 12-04-046 was issued.

The risk of economic shutdowns was not an abstract concept or hypothetical scenario at the time Decision 12-04-046 was issued; but rather a reality that the Commission had previously taken action to address nearly a month before. In November 2011, Calpine submitted a notice to

⁹ Resolution E-4471, mimeo at 1.

¹⁰ See Decision 12-04-046, mimeo at 16, fn 10. Although Resolution E-4471 was issued prior to Decision 12-04-046, the decision references the draft and not final resolution (“We note that Calpine filed a notice with the Commission under GO 167 on 11/22/11, stating that it intended to retire its Sutter Energy Center generation plant in 2012.”) Draft Resolution E-4471 orders Calpine “not to retire the Sutter plant” at 9. http://docs.cpuc.ca.gov/word_pdf/COMMENT_RESOLUTION/157581.pdf.

¹¹ Decision 12-04-046, mimeo at 16.

the Commission pursuant to General Order (“GO”) 167 stating that it was planning to retire Sutter in 2012 for economic reasons.¹² At the same time Calpine submitted its GO 167 notice to the Commission, it also requested a Capacity Procurement Mechanism (“CPM”) designation from the CAISO.¹³ If granted, the CPM designation would provide Sutter with a CAISO tariff approved capacity payment that would allow Sutter to remain on-line for 2012.¹⁴

In January 2011 – three months before the Decision 12-04-046 was issued – the Commission issued *Draft* Resolution E-4471 in response to Calpine’s GO 167 Notice. Similar to the final version of Resolution E-4471 adopted by the Commission in March 2011, the draft resolution directed the IOUs to enter into contract negotiations with Calpine for the purpose of preventing the retirement of Sutter.¹⁵ Thus, the Commission had been fully aware for months that an uncontracted existing resource was at risk for economic shutdown and had already taken action to prevent the shutdown of the resource at the time it approved Decision 12-04-046.

While it is true that Calpine’s GO 167 notice was submitted and Resolution E-4471 was issued after evidentiary hearings had concluded and all briefs had been filed in the 2010 LTPP, the Commission has the “undoubted authority to take judicial notice of its own prior decisions, whether they have been admitted into testimony or not.”¹⁶ In this case, the Commission clearly took notice of Resolution E-4471 by specifically referencing the resolution in Decision 12-04-046. Notwithstanding this notice, Decision 12-04-046 erroneously concluded that there was no “real risk” of any uncontracted existing resources shutting down for economic reasons.¹⁷

Rule 16.1 of the Commission’s Rules of Practice and Procedure provides that an application for rehearing shall set forth the grounds on which a Commission decision is

¹² Resolution E-4471, mimeo at 2.

¹³ See Resolution E-4471, mimeo at 2.

¹⁴ See Resolution E-4471, mimeo at 4.

¹⁵ See *Draft* Resolution E-4471 at 1, 10 (Ordering Paragraph 1).

¹⁶ Decision 02-09-055, mimeo at 5.

erroneous. In light of the fact that the findings and conclusions supporting rejection of the Calpine proposal were known to be incorrect at the time Decision 12-04-046 was issued, it was legal error for the Commission to reject the Calpine proposal.

III. REHEARING WILL ALLOW THE COMMISSION TO TIMELY ADDRESS THE RISK OF ECONOMIC SHUTDOWNS

While Sutter was the first resource to put the issue of an economic shutdown squarely before the Commission, the market and procurement policies which led to Calpine's decision affect all existing non-IOU generation resources without contracts. The record in the 2010 LTPP demonstrates that compensation from the markets currently available to uncontracted existing resources has been declining¹⁸ and is expected to drop even further as more renewable resources come on-line.¹⁹ The adverse impacts from declining market revenues are further exacerbated by the fact that current procurement policies and practices exclude existing resources from participating in long-term resource solicitations.

Under these circumstances, if compensation from the available markets is not sufficient and stable enough to recover going forward costs (including major maintenance costs), uncontracted existing resources will be at risk for economic retirement. The comments submitted on *Draft* Resolution E-4471 demonstrate that a diverse cross section of parties consisting of IOUs,²⁰ independent generators,²¹ electric service providers²² and end-use

¹⁷ Decision 12-04-046, mimeo at 16.

¹⁸ Calpine/Barmack, Exh. 601 at 6-9.

¹⁹ Calpine/Barmack, Exh. 601 at 9 (*quoting* CAISO *Integration of Renewable Resources; Operational Requirements and Generation Fleet Capability at 20% RPS* ("CAISO 20% RPS Integration Study") at v (August 31, 2010).

²⁰ *See e.g.*, Comments of Southern California Edison at 2 ("Because there is no regulatory requirement to procure capacity needed beyond the current Resource Adequacy (RA) year, plants like Sutter may shut down and be unavailable in the future when they may be needed. A systematic and market-based mechanism that is consistent with the overall market design needs to be established to address this issue.")

²¹ *See e.g.*, Comments of Independent Energy Producers Association, at 2 ("The circumstances that led to the draft resolution are manifestations of fundamental problems with California's energy markets.")

²² *See e.g.*, Joint Comments of Energy Users Forum, Alliance for Retail Energy Markets, Direct Access Customer Coalition, Retail Energy Supply Association; Marin Energy Authority, and Shell Energy North America, L.P. at 4 ("[T]he Commission should evaluate whether an IOU's application for a new plant, such as the Oakley plant, should
(footnote continued)

customers²³ agree that there are fundamental problems with California’s energy markets that need to be fixed.

Furthermore, even Commissioners that did not agree with the outcome in Resolution E-4471 have recognized the need for the Commission to expeditiously correct flaws in existing markets and procurement policies that led to the Sutter resolution:

However, the problem facing the Sutter plant is *system wide*: it appears we may have a “hole” in our market and planning structure whereby there are insufficient economic incentives for generating plants which provide useful flexible attributes to cover the cost of maintaining these plant[s] in operation.

I believe that the Commission, in consultation with the CAISO, needs to *immediately work to create a coordinated approach across our own Resource Adequacy and Long Term Procurement Planning procedures and the CAISO’s system and reliability planning process to address this market shortcoming.*

But it will take some months to agree on how this new approach will work, and even longer to design and execute the plan.²⁴

The Commission has indicated that it will be addressing flaws in existing procurement policies in the pending Resource Adequacy (“RA”) and 2012 LTPP proceedings.²⁵ Policy changes that may result from these two proceedings, however, are not expected to be implemented in the near future.²⁶ For instance, the recently issued proposed decision in the RA proceeding anticipates the adoption of a framework for filling flexible capacity needs “by or near

be approved, or whether it is more cost efficient for an IOU to issue an RFP for new RA capacity as an alternative. Under an RFP, Sutter and other non-RA contracted capacity would be able to bid to provide capacity.”)

²³ See e.g., Comments of California Large Energy Consumers Association at 2 (“The second [possible reason] is that there is a problem with the market structure.”)

²⁴ Resolution E-4471, mimeo at 23 (Dissent of Commissioner Mark J. Ferron) (emphasis added).

²⁵ See e.g., Proposed Decision Adopting Local Procurement Obligations for 2013 and Further Refining the Resource Adequacy Program (R. 11-10-023) at 34 (Findings of Fact No. 3) (“There is a need for refinements to the RA program to further define elements of flexibility with regard to multi-year contracts for local capacity requirements.”); Order Instituting Rulemaking (R. 12-03-014), mimeo at 8 (“Our long-term resource planning efforts will take into consideration emerging policy discussions related to the retention of existing flexible capacity resources at risk of retirement due to current market conditions.”)

²⁶ See e.g., Proposed Decision Adopting Local Procurement Obligations for 2013 and Further Refining the Resource Adequacy Program (R. 11-10-023) at 20.

the end of 2012, for implementation in the 2014 RA compliance year.”²⁷ The 2012 LTPP Scoping Memo does not even contemplate addressing long-term system reliability needs until 2013. Thus, at best, the market and procurement policy issues that have already been acknowledged by both the Commission and a broad cross section of parties will not be considered until next year.

In light of the above timing, rehearing in this proceeding provides readily available vehicle to address the risk of economic shutdowns – even if it is on an interim basis while the Commission considers broader market and policy solutions. Accordingly, the Commission should grant rehearing to correct the errors identified herein and address the risk of economic shutdowns.²⁸

IV. CONCLUSION

As described above, rejection of the Calpine proposal is not supported by the record in Decision 12-04-046 and is based on findings and conclusions that the Commission knew to be incorrect at the time the decision was issued. For these reasons, the Commission should grant this request for rehearing so that immediate steps can be taken to ensure the continued

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²⁷ See e.g., Proposed Decision Adopting Local Procurement Obligations for 2013 and Further Refining the Resource Adequacy Program (R. 11-10-023) at 20.

²⁸ Decision 12-04-046 overstates the Commission’s ability to use backstop mechanisms to prevent economic shutdowns. Even assuming the Commission has jurisdiction over non-IOU generation resources (which Calpine does not concede), General Order 167 Operating Standard 24 obligates a generating asset owner (“GAO”) to maintain “a unit in readiness for service ... only to the extent that the regulatory body with relevant ratemaking authority has instituted a mechanism to compensate the GAO for readiness services provided.” (Emphasis added).
(footnote continued)

availability of uncontracted existing resources while the Commission considers broader changes to current procurement policies.

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Thus, if a GAO is not compensated for providing readiness service – as is the case with an uncontracted existing resources – the Commission has no authority under its General Orders to prevent the GAO from retiring a resource.