

**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

**RESPONSE OF PACIFIC GAS AND ELECTRIC
COMPANY (U 39 E) TO APPLICATION OF CALPINE
CORPORATION FOR REHEARING OF
DECISION 12-04-046**

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Dated: June 8, 2012

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COMPANY (U 39 E) TO APPLICATION OF CALPINE
CORPORATION FOR REHEARING OF
DECISION 12-04-046**

Pursuant to Rule 16.1(d) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) provides this response to the application for rehearing of D.12-04-046 filed by Calpine Corporation (Calpine) on May 24, 2012.

Calpine's application for rehearing should be denied. As set forth in the Commission's Rules of Practice and Procedure, "[t]he purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously." Calpine's application for rehearing fails because Calpine's rehearing request fails to identify any legal error in the decision.

Calpine's application for rehearing attempts to address the requirement that it show legal error, but completely fails. The application for rehearing states that "D.12-04-046 contains significant legal error in that findings and conclusions made by the decision are not supported by the record. . . ." ^{1/} However, to defend this assertion Calpine refers, not to evidence that it or anyone else presented in this proceeding, but rather to comments presented in another Commission proceeding, the one evaluating draft resolution E-4471. ^{2/} Those comments in another Commission proceeding are not a part of the record in this proceeding, and so cannot provide any support for Calpine's application for rehearing.

Putting aside whether Calpine has accurately characterized the import of the comments that were submitted on draft resolution E-4471, they are not record evidence in this proceeding. Calpine's reliance on them, to support its claim that the record in this proceeding does not support the conclusions reached in this proceeding, is completely misplaced.

In this proceeding Calpine had the opportunity to make its case for its proposal, but the

1/ Calpine Application for Rehearing, p. 1.

2/ Calpine Application for Rehearing, pp. 5-6.

extremely limited, generic assertions Calpine made were unsupported by any underlying facts and did not persuade the Commission to adopt Calpine's proposal. As the Commission noted in D.12-04-046,

other than generic market data showing that revenues for combined cycle generation have generally been declining, Calpine presented no evidence to support its claim that its uncontracted generation resources are at risk of shutting down, and it could not even identify any uncontracted non-Calpine generation resources, much less show that they were at risk of economic shutdown.^{3/}

In short, Calpine chose what evidence to present, and what evidence not to present, in this proceeding. As the above discussion from D.12-04-046 makes clear, Calpine did not make any case whatsoever, let alone a compelling case, for its positions in this proceeding. Calpine has identified no legal error in the rejection of its proposal. Calpine's claim that the findings in D.12-04-046 are unsupported by the record in this proceeding is unfounded. Calpine's application for rehearing should be rejected.

Respectfully Submitted,

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3/ D.12-04-046, p. 15.