

**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. 12-03-014
(Filed March 22, 2012)

**RESPONSE OF CALPINE CORPORATION
TO MOTIONS TO STRIKE REPLY TESTIMONY**

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Pursuant to Rule 11.1 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, Calpine Corporation (“Calpine”) submits this response to the motions to strike Calpine’s reply testimony filed by GenOn Energy, Inc. (“GenOn”), Southern California Edison Company (“SCE”), and the California Independent System Operator Corporation (“CAISO”) (collectively, GenOn, SCE and the CAISO are referred to as the “Moving Parties”).

The Moving Parties assert that Calpine’s reply testimony should be stricken because it (1) exceeds the scope of reply testimony set by the assigned administrative law judge (“ALJ”) at the July 9, 2012 prehearing conference (“July PHC”);¹ (2) “contradicts” the CAISO’s prepared testimony by presenting the results of a preliminary power flow analysis;² and (3) is “prejudicial” to parties who may oppose the “preliminary suggestions” contained in the reply testimony.³ The Moving Parties mischaracterize Calpine’s reply testimony and have not identified grounds for striking the testimony.

**I. CALPINE’S REPLY TESTIMONY DOES NOT EXCEED THE SCOPE OF
REPLY TESTIMONY SET BY ALJ GAMSON**

At the July PHC, ALJ Gamson stated that the purpose of reply testimony is to respond “to parties who either are *responding to the [CA]ISO testimony* or have their own positions

¹ See e.g., GenOn Motion to Strike at 1-2; SCE Motion to Strike at 2, CAISO Motion to Strike at 2.

² GenOn Motion to Strike at 2-3.

³ GenOn Motion to Strike at 3; see also SCE Motion to Strike at 3, CAISO Motion to Strike at 2.

above and beyond that.”⁴ In replying to testimony that responds to the CAISO testimony, a party must necessarily address issues first raised by the CAISO. As discussed below, Calpine’s reply testimony addresses specific issues raised in prepared testimony submitted by the Division of Ratepayer Advocates (“DRA”) and the Center for Energy Efficiency and Renewable Technologies (“CEERT”). Accordingly, the mere fact that Calpine’s reply testimony makes reference to issues first raised in the CAISO’s testimony does not amount to impermissible reply testimony nor is it grounds for striking Calpine’s testimony.

II. CALPINE’S REPLY TESTIMONY RESPONDS TO ISSUES RAISED BY DRA AND CEERT

The Moving Parties mischaracterize Calpine’s reply testimony as seeking to “contradict” the CAISO’s findings. The purpose of Calpine’s reply testimony, however, is to identify specific non-generation alternatives to help satisfy local reliability needs identified by the CAISO. This issue is addressed in testimony submitted by DRA, CEERT and SCE. Thus, while Calpine’s reply testimony makes reference to the CAISO testimony, it has an entirely different objective:

Although the CAISO's analysis and my analysis use similar inputs, *our respective studies sought different objectives*. The purpose of the CAISO's analysis is to identify the potential "need" to retain existing local OTC generation capacity for forecasted system conditions. [citation omitted] The objective of my analysis is to identify non-generation alternatives that would yield a similar level of system performance and reliability as retaining/replacing 430 MW of OTC generation in the Moorpark sub-area.⁵

⁴ Tr. at 169 (emphasis added). With respect to the scope of reply testimony, it should also be noted that ALJ Gamson specifically acknowledged that issues raised by the CAISO were appropriate for reply testimony:

In the reply testimony and possibly in answers to any ruling, questions and rulings that are put out, I really want to focus on the questions of whether it be ISO's forecasts are correct and whether those should be used as a factual basis for the Commission's decision later this year or early next year. Tr. at 162.

⁵ Calpine Reply Testimony at 3 (emphasis added).

Identifying non-generation alternatives in the Moorpark sub-area specifically responds to testimony submitted by DRA and CEERT.⁶ For example, DRA’s testimony concludes that “[m]ore careful scrutiny of sub-area concerns [is] warranted before any additional procurement authorization is given.”⁷ According to DRA, this scrutiny should include “ongoing investigation by the CPUC into *the full range of alternatives available to meet the ‘OTC needs’* that CAISO describes for sub-areas.”⁸

Unlike DRA, CEERT appears to support new resource procurement at this time. However, like DRA, CEERT recommends that non-generation alternatives, such as “transmission upgrades [and] quasi-transmission devices that function as voltage support such as synchronous condensers” be considered to help satisfy local reliability needs.⁹ Although both DRA and CEERT recommend that the Commission consider various alternatives to OTC replacement generation, neither identifies any specific alternatives.

Such potential alternatives are precisely what Calpine addresses in its reply testimony. Specifically, Calpine “identifies three potential transmission upgrades that may reduce or eliminate the need for OTC replacement generation in the Big Creek/Ventura area.”¹⁰ Thus, Calpine’s reply testimony responds to, addresses, and expands upon specific issues raised by DRA and CEERT in their respective testimony. Furthermore, Calpine’s reply testimony is specifically within the scope of reply testimony as set by the ALJ in the July PHC.

⁶ SCE also addresses the ability of transmission upgrades/additions to reduce the need for OTC replacement generation but focuses more on the Los Angeles Basin. *See e.g.*, 2012 Long-Term Procurement Plan – Testimony of Southern California Edison Company on Local Capacity Requirements (Cabbell) at 8-9 (“The CAISO’s study identified a range of new LCR need from 1,870 MW to 3,896 MW. This range may be reduced by additional transmission facilities.”)

⁷ Testimony of Robert M. Fagan on Behalf of DRA at 23.

⁸ Testimony of Robert M. Fagan on Behalf of DRA at 23 (emphasis added).

⁹ CEERT Reply Testimony at II-1.

¹⁰ Calpine Reply Testimony at 5.

III. REJECTING THE MOTIONS TO STRIKE WILL NOT PREJUDICE ANY PARTY

The Moving Parties suggest that, absent an opportunity to respond, they will be prejudiced by allowing Calpine's reply testimony in the proceeding. As discussed above, Calpine's reply testimony properly responds to important issues raised in prepared testimony submitted by DRA and CEERT. To the extent the Moving Parties have questions regarding Calpine's reply testimony, they – like every other party in the proceeding with respect to every other piece of testimony - will have an opportunity to cross-examine the sponsoring witness.

GenOn also cites to two ALJ Rulings as support for its position that allowing Calpine's reply testimony will prejudice parties.¹¹ Neither of these rulings, however, are relevant to Calpine's reply testimony. One of the rulings involves hearsay evidence, which was presumably stricken because the declarant was not subject to cross-examination at the evidentiary hearings:

The testimony and data responses of Cal Am affiliates in proceedings in other states will be excluded as *hearsay*. The Commission is not bound by the Federal Rules of Evidence and may admit hearsay, but the desire for a complete record is weighed against the degree of prejudice to any other party if the evidence is allowed.”¹²

In the other ruling, a party's rebuttal testimony was stricken because the “adopted schedule” in the proceeding did not allow for rebuttal testimony by the party in question.¹³ In this case, reply testimony is clearly allowed and the witness sponsoring Calpine's reply testimony will be subject to cross-examination at the evidentiary hearing.

¹¹ GenOn Motion to Dismiss at 3.

¹² Administrative Law Judge's Ruling Granting in Part and Denying in Part Motion to Strike at 2 (Application 10-07-007) (April 27, 2011) (emphasis added) (*cited in* GenOn Motion to Dismiss at 3.)

¹³ Administrative Law Judge's Ruling Granting Motion to Strike Testimony of Arrival at 2-3 (Application 05-02-027) (July 27, 2005) (“It is ruled that the motion to strike the Arrival testimony is hereby granted. Arrival was provided the opportunity to submit testimony on June 24 along with other intervenors, but did not do so. The adopted schedule does not provide for a subsequent submission of testimony by intervenors. The ALJ had previously stated by ruling that only the Applicants were to serve Rebuttal testimony. Yet, Arrival served rebuttal testimony on July 8 anyway.”)

IV. CONCLUSION

For the reasons discussed above, the Commission should deny the motions to strike Calpine's reply testimony.

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