

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate and	)	
Refine Procurement Policies and Consider Long-	)	R.12-03-014
Term Procurement Plans.	)	(Filed March 22, 2012)

**MOTION OF THE CALIFORNIA INDEPENDENT  
SYSTEM OPERATOR TO STRIKE  
PORTIONS OF REPLY TESTIMONY**

Consistent with ALJ Gamson's ruling at the July 9, 2012 prehearing conference in this proceeding and pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, the California Independent System Operator (ISO) moves to strike all or portions of the reply testimony submitted by Calpine Corporation (Calpine), Division of Ratepayer Advocates (DRA) and the California Environmental Justice Alliance (CEJA), for the reasons described below.

**Introduction**

The ISO submitted the initial testimony of Robert Sparks and Mark Rothleder in this proceeding on May 23 and the supplemental testimony of Robert Sparks on June 19. Interested parties were given an opportunity to respond to the ISO's testimony on June 25, 2012. The ISO and other parties could submit reply testimony, responsive to the June 25 testimony, on July 23, 2012. At the prehearing conference held on July 9, ALJ Gamson made it clear that the July 23 reply testimony was intended to respond to the opening testimony submitted by other parties on June 25 and not directed to the ISO testimony.<sup>1</sup> He further explained that the July 23 testimony was not to contain new information.<sup>2</sup> The testimony or portions of the testimony which the ISO seeks to strike does not come within this framework for reply testimony established by the ALJ.

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<sup>1</sup> Transcript, 168:24-169:4, 170:19-172:2.

<sup>2</sup> *Id.*, 165:17-20.

**A. Calpine Witness Ron Calvert Reply Testimony.**

The ISO moves to strike all of the reply testimony of Calpine witness Ron Calvert. This testimony does not “reply” to the opening testimony submitted by the parties on June 25, but it does respond the testimony presented by Mr. Sparks and introduces new information into the record. Specifically, Mr. Calvert has conducted a power flow analysis, using the ISO inputs and assumptions, for the Moorpark sub-area for the purpose of considering non-generation alternatives.<sup>3</sup> While Mr. Calvert attempts to link this study to comments made by DRA and SCE, the study is clearly directed to the ISO’s OTC study results and this information should have been presented in the June 25 Calpine opening testimony in response to Mr. Sparks testimony. If Mr. Calvert’s power flow results had been introduced at the appropriate stage, the ISO would have had an opportunity to respond in its July 23 reply testimony. By inappropriately including the study results in reply testimony, the ISO has been prejudiced and deprived of the opportunity to respond. Thus, if the ISO’s motion to strike all of this testimony is not granted, the ISO should be given an opportunity to conduct additional discovery regarding the Calpine study, if necessary, and submit surrebuttal testimony responding to the study results.

**B. DRA Witness Robert Fagan Reply Testimony.**

The ISO moves to strike the following portions of DRA witness Fagan’s reply testimony: 1) page 4, beginning at line 19 and ending on page 5, line 10; and 2) page 6, beginning at line 13 and ending at page 12, line 1. Like Calpine, at these portions of the reply testimony, Mr. Fagan does not actually “reply” to anyone else but the ISO and he introduces a new analysis for a

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<sup>3</sup> Calpine Reply Testimony, 2:17-3:10.

smaller LCR sub-area.<sup>4</sup> Mr. Fagan admits that the load and resource table on page 8 is “analogous” to the one he presented in his initial testimony in response to the ISO testimony.<sup>5</sup> This is new information that should have been set forth in Mr. Fagan’s opening testimony so that the ISO would have had an opportunity to respond. Should this motion to strike not be granted, the ISO seeks an opportunity to respond to this additional analysis through surrebuttal testimony.

**C. Supplemental Direct Testimony of CEJA witness Julia May.**

CEJA, through the “supplemental” testimony of Ms. May dated July 22, takes the opportunity to introduce much new information into the record, almost all of which addresses the ISO’s LCR study methodology and should have been included in the CEJA opening testimony. Accordingly, the ISO moves to strike Ms. May’s testimony beginning on page 5 starting at Section C. through page 10 ending at Section F. With respect to Sections C, D and E of the testimony, Ms. May cites to one paragraph of SCE testimony, where SCE addresses concerns about the effect of the ISO’s grid planning standards, and then she discusses reserve margin requirements, SCE outage data, an ERCOT report and other subjects. None of these topics has anything to do with the ISO’s grid planning standards. However, the subject matter of Ms. May’s supplemental testimony- the ISO’s purportedly “over-stringent” LCR study assumptions- is also the subject of her opening testimony.<sup>6</sup>

As with the other witnesses, producing new information on these topics eliminates the ISO’s opportunity for responsive testimony. The portions of the CEJA testimony described above are clearly outside the bounds of the ALJ’s ruling and should be stricken from the record.

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<sup>4</sup> Mr. Fagan states that he disagrees with AES and SCE because “they relied upon the CAISO analysis,” and then goes on to conduct an additional analysis using the ISO’s resource inputs.

<sup>5</sup> Fagan Reply Testimony, 9:2-3.

<sup>6</sup> See May Opening Testimony, pages 36-43.

Alternatively the ISO requests the opportunity for surrebuttal if the testimony is allowed to become part of the record.

Respectfully submitted,

**By: /s/ Judith B. Sanders**

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