

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  
(May 6, 2010)

**RESPONSE OF THE DIVISION OF RATEPAYER ADVOCATES  
TO PETITION OF CALPINE CORPORATION FOR  
MODIFICATION OF DECISION 12-04-046**

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**I. INTRODUCTION AND SUMMARY**

Pursuant to Rule 16.4 of the Commission’s Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) hereby responds to the Petition of Calpine Corporation for Modification of Decision (D.) 12-04-046 (“Petition”).

In this Petition, Calpine requests that D.12-04-046 be modified to direct the investor-owned utilities (“IOUs”) to hold intermediate term (3-5 years) resource solicitations to procure “flexible capacity”<sup>1</sup> from uncontracted existing resources.<sup>2</sup> Calpine claims that these solicitations are necessary to address the risk of economic shutdowns in the near term.<sup>3</sup> The Commission rejected this same suggestion from Calpine in D.12-04-046 because Calpine did not provide any evidence that any combined

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<sup>1</sup> Flexible capacity has not yet been defined by the Commission. Through the Commission’s current Resource Adequacy (RA) proceeding, Energy Division Staff is trying to incorporate flexibility needs in the RA program in a systematic and equitable fashion. Most recently, on August 13, 2012, Energy Division Staff held a workshop to discuss a simple definition of flexibility that is translatable into procurement obligations and contractual terms. Flexible capacity is generally understood to relate to the regulation, load following and ramping characteristics of a resource.

<sup>2</sup> Petition of Calpine Corporation for Modification of Decision 12-04-046, at 1.

<sup>3</sup> *Id.* at 1.

cycle plants are facing a real risk of economic shutdown and because both the Commission and the CAISO have mechanisms to mitigate the risk of a power plant shutting down.<sup>4</sup> The Commission's rationales for rejecting Calpine's argument hold true today. In fact, the Commission implemented one of its mechanisms to mitigate the risk of Calpine Sutter shutting down by issuing Resolution E-4471 and ordering the IOUs to negotiate with Calpine for contracts with its Sutter facility.

DRA opposes this proposed modification because Calpine has not shown changed circumstances that warrant modifying the decision.

## **II. CALPINE DID NOT PROVIDE SUFFICIENT JUSTIFICATION FOR THE COMMISSION TO MODIFY THE DECISION**

### **A. Calpine Has Failed To Show Sufficient Evidence Of Changed Circumstances To Support The Requested Modification.**

Calpine has failed to present new facts about changed circumstances that support a modification of D.12-04-046. The Calpine Sutter Energy Center ("Sutter") is the only existing generator that has threatened to shut down for financial reasons. To date, no other generator has notified the Commission that it is going to shut down for financial reasons.

In November 2011, Calpine submitted a notice to the Commission that it planned to retire Sutter in 2012 due to economic reasons.<sup>5</sup> Calpine also requested from CAISO a designation pursuant to CAISO's Capacity Procurement Mechanism ("CPM") in order to provide Sutter with payments to keep it online in 2012.<sup>6</sup> The Commission responded to this situation by issuing Resolution E-4471, which directed the three major California IOUs to engage in negotiations with Calpine Sutter for a price below the CPM price.<sup>7</sup>

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<sup>4</sup> D.12-04-046 at 16.

<sup>5</sup> Petition at 2.

<sup>6</sup> *Id.*

<sup>7</sup> Resolution E-4471.

As a result of these negotiations, Calpine obtained contracts for Sutter that ensured that it would not shut down in 2012, so Calpine never provided to the Commission financial information showing that it would shut down. One threat of economic shutdown is not sufficient evidence for the Commission to make a 180 degree change in its decision. In the 2010 LTPP proceeding, Calpine provided market evidence that compensation for existing resources has been declining,<sup>8</sup> but thus far has failed to provide evidence of threatened economic shutdowns aside from Sutter.

**B. The Commission Will Work With The California Independent System Operator To Develop a Coordinated Solution.**

In its Petition, Calpine states that its proposal was “consistent with the path the Commission embarked upon in Resolution E-4471.”<sup>9</sup> In support of its request, Calpine cites language from Commissioner Ferron’s dissent where he states that the Commission needs to coordinate with the California Independent System Operator (“CAISO”) to address the economic issues facing existing generation facilities.<sup>10</sup> Although Calpine uses Commissioner Ferron’s dissent in support of its petition, those words contradict Calpine’s request. Commissioner Ferron clearly stated that the Commission should work with the CAISO to address any shortcomings in the Commission’s Resource Adequacy and Long Term Procurement Planning procedure instead of the Commission taking steps in isolation. Commissioner Ferron was referring to the 2012 LTPP, not the 2010 LTPP that is the subject of this petition.

**C. The 2012 Long Term Procurement Planning Proceeding Is the Appropriate Forum For Revisiting Calpine’s Alleged Problem.**

Phase 3 of the 2012 LTPP Proceeding (R.12-03-014) will address the issue of long-term contract solicitation rules. Phase 3 begins in December of this year. Calpine

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<sup>8</sup> Petition at 4.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 3.

introduced its request for intermediate-term solicitations for existing generation in the 2010 LTPP proceeding, but did not provide sufficient evidence in support of its request.<sup>11</sup> The 2012 LTPP proceeding provides Calpine with a second chance to make its case in support of the need for intermediate-term solicitations for existing generation. Numerous parties are involved in the 2012 proceeding and will have the opportunity to weigh in on Calpine's proposal. The 2012 LTPP proceeding provides due process for all parties and an opportunity to develop an up-to-date record. It is a superior vehicle for analyzing Calpine's request.

#### **IV. CONCLUSION**

For the reasons stated herein, DRA urges the Commission to deny Calpine's Petition for Modification.

Respectfully submitted,

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<sup>11</sup> D.12-04-046 at 16.