

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

**REPLY BRIEF OF GENON ENERGY, INC.  
ON TRACK 1 LOCAL RELIABILITY ISSUES**

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Pursuant to Rule 13.11 of the Commission's Rules of Practice and Procedure and the schedule established by the Administrative Law Judge, GenOn Energy, Inc. ("GenOn") submits its reply brief on Track 1 local reliability issues. This reply brief follows the common briefing outline developed for use in this proceeding, but omits Sections V-VII as GenOn is not addressing any topics in those Sections on reply.

**I.**

**EXECUTIVE SUMMARY**

The California Independent System Operator ("CAISO") recommends that the Commission authorize the immediate start of procurement for 430 megawatts ("MW") of replacement capacity in the Big Creek/Ventura local reliability area. The CAISO's recommendation is supported by its local capacity requirements ("LCR") study showing that 430 MW are needed to ensure reliable grid operations after 2020 when approximately 2,000 MW of existing once-through cooled ("OTC") capacity in Big Creek/Ventura is expected to retire to comply with state and federal law. The CAISO confirmed this recommendation in its opening brief, and emphasized that retirement of all OTC generation in Big Creek/Ventura without replacement will severely change operation of the local and surrounding transmission system and create adverse impacts on transmission voltages.<sup>1</sup> The record shows that the CAISO used reasonable assumptions regarding preferred resources. The record also shows that the CAISO

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<sup>1</sup> CAISO Opening Brief, pp. 36-37.

studied potential transmission alternatives to replacement generation. After considering the alternatives, the CAISO concluded that adding 430 MW of replacement generation is the best solution for ensuring local reliability in Big Creek/Ventura.<sup>2</sup> The path forward should be clear: the Commission must start the procurement process now for Big Creek/Ventura, or risk eroding local reliability after 2020.

The parties who oppose the CAISO's recommendation present several similar but misguided assertions. Some believe that all needs can be met through preferred resources.<sup>3</sup> Others want the Commission to defer procurement by several years to study preferred resources and transmission upgrades that may not be effective in providing local reliability support.<sup>4</sup> Following Southern California Edison Company's ("SCE's") lead, many want to defer a decision on Big Creek/Ventura to the next long-term procurement plan ("LTPP") cycle and restudy the need for new resources then.<sup>5</sup> In essence, the opposing parties want the Commission to "wait and see" if generation is needed in 2020.<sup>6</sup> If the answer turns out to be "yes," these parties believe we can simply start the procurement process a couple years out and still meet a 2020 deadline.<sup>7</sup> And if there isn't enough time, parties suggest that we can simply extend the OTC compliance deadlines beyond 2020.<sup>8</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> Division of Ratepayer Advocates ("DRA") Opening Brief, p. 14; Natural Resources Defense Council ("NRDC") Opening Brief, pp 13-14; Sierra Club California Opening Brief, pp. 25-26; California Environmental Justice Alliance ("CEJA") Opening Brief, pp. 39-40.

<sup>4</sup> Calpine Opening Brief, pp. 6-7; Center for Energy Efficiency and Renewable Technologies ("CEERT") Opening Brief, p. 17.

<sup>5</sup> SCE Opening Brief, pp. 10-11; DRA Opening Brief, p 7 and p. 27; CEJA Opening Brief, p. 40.

<sup>6</sup> *See e.g.*, SCE Opening Brief, p. 11 ("further study of LCR need in the Big Creek/Venture [sic] area can continue in the 2014 LTPP cycle"); CEJA Opening Brief, p. 50 and p. 40 ("the Commission has time to wait until the next LTPP cycle before authorizing need in the Big Creek/Ventura area").

<sup>7</sup> CEJA Opening Brief, p. 50; DRA Opening Brief, p. 33; NRDC Opening Brief, p. 15.

<sup>8</sup> California Large Energy Consumers Association ("CLECA") Opening Brief, pp. 22-25; CEJA Opening Brief, p. 27.

The Commission must decide whether there is a need for new generation in Big Creek/Ventura to accommodate the OTC policy in 2020. As stated in GenOn's opening brief, the Commission should afford substantial deference to the CAISO's recommendations for how much local generation is needed to operate the system reliably. The CAISO's LCR study is a reasonable assessment of how much local capacity is needed for reliability purposes; it uses reasonable assumptions; and it ultimately concludes that the Commission should retain only a small percentage of the generating capacity that operates in Big Creek/Ventura today. This is not an overly conservative recommendation as some parties allege, but a rational and prudent recommendation by the entity responsible for operating the system to keep the lights on.

Parties advocating the "wait and see" approach are seriously wrong that waiting will still afford sufficient time to build replacement capacity in Big Creek/Ventura by 2020. Deferring the start of procurement in Big Creek/Ventura to the next LTPP cycle means that procurement is not likely to commence until 2016 at the earliest. This assumes that a new LTPP docket will be initiated in 2014, and the Commission will issue a decision authorizing procurement by the end of 2015. Those assumptions may be optimistic given how long the Commission has been considering the need for new resources in this and prior LTPP cycles. Commencing the procurement process in 2016 leaves slightly more than four years to develop a solicitation, negotiate and execute contracts, obtain Commission approval, obtain permits and resolve appeals, close financing, design and manufacture equipment, and complete construction.

The record shows that this is not enough time to meet the 2020 deadlines. GenOn provided compelling evidence based on its own experience showing that it takes seven to nine years to build a power plant in California. Other testimony is similar, confirming that six to eight years, five to seven years, and seven to nine years, are all reasonable estimates.<sup>9</sup> Notably,

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<sup>9</sup> Exhibit IEP-1 (Monsen Reply), p. 13, lines 12-15; RT, Vol. 2, August 8, 2012 (Rothleder for CAISO), p. 313, lines 10-14; RT, Vol. 3, August 9, 2012 (Millar for CAISO), p. 371, line 18 – p. 372, line 6; RT, Vol. 6, August 14, 2012 (Minick for SCE), p. 1002, lines 10-13; RT, Vol. 6, August 14, 2012 (Minick for SCE), p. 1002, lines 2-3.

all of these estimates exceed the time available if the decision on Big Creek/Ventura is deferred to the next LTPP proceeding. If the Commission determines there is a need for new generation in Big Creek/Ventura by 2020, the evidence shows that the Commission cannot wait years to authorize its procurement. Such a procurement order must occur in this procurement cycle to provide adequate opportunity for new generation to be on-line in time to adhere to the OTC compliance deadlines. For that reason, the Commission should adopt the CAISO's recommendation and require SCE to initiate a process immediately for procuring replacement capacity in Big Creek/Ventura.

## II.

### **DETERMINATION OF LOCAL CAPACITY REQUIREMENTS (LCR) NEED IN CALIFORNIA INDEPENDENT SYSTEM OPERATOR (CAISO) STUDIES**

#### **A. CAISO's LCR And Once-Through Cooling (OTC) Generation Studies**

Parties who oppose use of the LCR studies essentially argue that the Commission should utilize less stringent reliability standards, to the point of second guessing and contradicting standards that are part of the CAISO tariff. Rather than build resources to meet local reliability needs based on contingencies provided for in industry planning standards, they want the Commission and the CAISO to use load shedding to address contingencies. This approach would be contrary to the responsibility of the CAISO and this Commission to ensure that there are adequate resources to operate the system reliably.

The CAISO's LCR study is a reasonable assessment of how much local capacity is needed for reliability purposes; it uses reasonable assumptions; and it ultimately concludes that the Commission should retain only a small percentage of the generating capacity that operates in Big Creek/Ventura today. This is not an overly conservative recommendation as some parties allege, but a rational and prudent recommendation by the entity responsible for operating the system to keep the lights on.

**B. Consideration Of Preferred Resources, Including Uncommitted Energy Efficiency, Demand Response, Combined Heat and Power, and Distributed Generation, In Determining Future LCR Needs**

**C. Appropriate Assumptions Concerning Retirement of OTC Generation**

In its testimony and opening brief, GenOn established that the Commission should assume for planning purposes that the OTC units at the Mandalay Generating Station and Ormond Beach Generating Station in Big Creek/Ventura will not operate after 2020.<sup>10</sup>

Seizing on SCE's direct testimony from June 2012, CEJA, DRA, and CEERT wrongly assert that GenOn's compliance plans for its OTC facilities in Big Creek/Ventura are unclear.<sup>11</sup> CEJA, DRA, and CEERT make these false statements in their opening briefs without any attempt to reconcile them with explicit testimony in the record from GenOn's witness, Sean Beatty. Mr. Beatty testified that SCE was not correct in its original assertion that GenOn's plans for its OTC units are unclear. Mr. Beatty confirmed that GenOn is utilizing a retire and replace approach to compliance for its OTC units in Big Creek/Ventura, and his testimony provided letters exchanged between GenOn and the California State Water Resources Control Board ("Water Board") eliminating any ambiguity, to the extent such even existed, regarding GenOn's plans to comply with the OTC policy.<sup>12</sup> GenOn's plans for its Mandalay Generating Station and Ormond Beach Generating Station have been detailed to the Water Board, and the Commission has all necessary information to make its decision. There is no reason to delay a decision in Big Creek/Ventura based on GenOn's implementation plans.

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<sup>10</sup> Exhibit GenOn-1 (Beatty Direct), Exhibit 1 (attached to testimony); GenOn Opening Brief, pp. 5-6.

<sup>11</sup> CEJA Opening Brief, p. 27; DRA Opening Brief, p. 27; CEERT Opening Brief, p. 31 (inexplicably asserting that "the owners of major existing OTC facilities in the area have announced plans to either mitigate or elect to replace some of that generation," without referring to GenOn's testimony confirming which compliance path applies.)

<sup>12</sup> Exhibit GenOn-1 (Beatty Direct), Exhibit 1 (attached to testimony).

CLECA incorrectly states that there is flexibility as to retirement dates for OTC generation and purports to detail “the flexibility built into the OTC retirement dates.”<sup>13</sup> CLECA quotes a Water Board resolution that adopted a process for the CAISO to seek a suspension of a final compliance date for an existing OTC power plant if the CAISO determines that continued operation of the existing plant is necessary to maintain the reliability of the electric system.<sup>14</sup> CEJA similarly asserts that it is unlikely that all OTC generation will retire on their initial retirement date.<sup>15</sup>

The Commission should resist any party’s invitation to ignore the deadlines set forth in the Water Board’s OTC policy. The existence of a process for seeking suspension of the final OTC compliance deadlines does not mean that such suspensions will be easily granted. And the existence of the suspension process certainly is not evidence that the OTC final compliance dates are “flexible.” Indeed, it would be irresponsible to assume that the CAISO can simply seek and obtain suspensions of the deadlines when and as needed. As Alliance for Nuclear Responsibility (“ANR”) explained, the Water Board’s OTC deadlines are based on federal law, and any effort to change those deadlines will be hotly litigated.<sup>16</sup> Other parties’ briefs echo these points. The CAISO noted that making decisions now based on assumptions that OTC compliance dates will not be met is untenable and should not be considered without substantial evidence.<sup>17</sup> TURN argued that speculation that the Water Board might extend an OTC deadline should not drive planning assumptions.<sup>18</sup> GenOn agrees. The Commission collaborated with the Water Board to set the OTC deadlines. The long-term procurement planning process should not now become an obstacle to meeting those deadlines.

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<sup>13</sup> CLECA Opening Brief, p. 22.

<sup>14</sup> *Id.*, pp. 22-25.

<sup>15</sup> CEJA Opening Brief, p. 27.

<sup>16</sup> ANR Opening Brief, pp. 14-15.

<sup>17</sup> CAISO Opening Brief, p. 30.

<sup>18</sup> TURN Opening Brief, p. 10.

Relying on the potential for suspensions would put the CAISO and the Commission in the untenable position of seeking to delay compliance with the OTC policy based on the Commission's failure to take action early enough to meet the final deadlines. As GenOn explained in its opening brief, the Commission helped establish the OTC compliance deadlines through a joint effort involving the Water Board and the CAISO. Delaying procurement could cause the CAISO to seek suspensions of deadlines that the Commission helped create. The Commission should avoid this by requiring procurement to occur on a timely basis.

**D. Transmission And Other Means Of Mitigation**

The CAISO again confirmed that the CAISO's OTC study included an analysis of transmission alternatives and other mitigation solutions to address identified reliability concerns for each of the four scenarios, including potential transmission mitigation measures, potential demand side management, and the California Energy Commission's forecast of contracted resources such as combined heat and power.<sup>19</sup> Because the CAISO thoroughly reviewed transmission and other non-generation alternatives as part of the OTC studies, there is no need for further analysis before a Track I decision authorizing procurement is issued.<sup>20</sup> With respect to the Moorpark subarea, the record in this proceeding shows that the CAISO considered transmission mitigation alternatives, but concluded that the reliability and operational benefits of having 430 MW (out of an existing 1946 MW) replaced in the Moorpark subarea is superior to utilizing a transmission solution.<sup>21</sup> The Commission should not delay procurement to conduct more studies of transmission as potential mitigation.

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<sup>19</sup> CAISO Opening Brief, pp. 30-33.

<sup>20</sup> *Id.*, p. 31.

<sup>21</sup> *Id.*, p. 36.

### III.

#### DETERMINATION OF LCR NEED SPECIFIC TO LA BASIN AND BIG CREEK/VENTURA AREA

##### A. LA Basin

##### B. Big Creek/Ventura Area

As explained in GenOn's opening brief, the Commission should give deference to the assumptions employed in the CAISO's study of long-term local reliability requirements. On top of that, the three investor-owned utilities ("IOUs") support the CAISO's analysis. Pacific Gas and Electric Company ("PG&E") states: "The need determination the Commission makes in Track 1 should be based on the local capacity technical study that the California Independent System Operator (CAISO) has presented in Exhibit ISO-1."<sup>22</sup> San Diego Gas & Electric Company ("SDG&E") echoes PG&E, stating: "The studies of the California Independent System Operator ("ISO") provide valuable information and should be relied upon by the Commission for purposes of resource planning."<sup>23</sup> SCE also supports the CAISO's studies, stating: "SCE generally agrees with the CAISO's LCR need assessment . . . ."<sup>24</sup>

Based on the CAISO's expertise, the fact that the CAISO's primary mandate is to maintain grid reliability at reasonable cost, and the deference owed to the CAISO in the context of long-term planning, as well as the IOUs' support for the CAISO's analysis, the Commission should authorize procurement in Big Creek/Ventura consistent with the CAISO's recommendation. Based on the CAISO's testimony, the Commission should mandate procurement of 430 megawatts to maintain local reliability in Big Creek/Ventura.

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<sup>22</sup> PG&E Opening Brief, p. 1.

<sup>23</sup> SDG&E Opening Brief, p. 2.

<sup>24</sup> SCE Opening Brief, p. 4.

IV.

**PROCUREMENT OF LCR RESOURCES AND INCORPORATION OF THE  
PREFERRED LOADING ORDER IN LCR PROCUREMENT**

- A. **Incorporation Of The Preferred Loading Order In LCR Procurement**
- B. **Other Commission Policies and Consideration Affecting LCR Procurement**
- C. **If A Need Is Determined, How The Commission Should Direct LCR Need To Be Met**
- D. **Appropriate Method(s) of Procurement**
- E. **Timing Of Procurement**

Based on its experience and expertise, GenOn has demonstrated that the Commission must authorize procurement by early 2013 if it is going to rely on replacement generation to meet the 2020 deadline for the Big Creek/Ventura OTC facilities. In its opening brief, GenOn summarized the detailed record addressing the project development timeline for power plants in California. GenOn's testimony shows that, in the current regulatory environment, the Commission should expect a project development timeline of seven years, broken down as follows:

- 18 months: Power purchase agreement negotiations and approval;
- 24 months: Permitting;
- 12 months: Permit appeal; and
- 27 months: Construction.
- TOTAL ELAPSED TIME: 81 months, or approximately seven years.<sup>25</sup>

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<sup>25</sup> Exhibit GenOn-2 (Beatty Reply), p. 6, lines 13-19.

Notwithstanding GenOn's highly credible testimony regarding project development timelines, several parties contend that there is no timing constraint in connection with the procurement of new resources to maintain grid reliability. CEJA contends that, "SCE has built peaker units in one year, demonstrating that units can be constructed much more quickly than seven years."<sup>26</sup> CEJA's evidence for this statement relates to the emergency construction of peakers that SCE undertook in 2006. However, times have changed significantly since 2006. Developers today face difficult permitting challenges and appeal processes in connection with new U.S. Environmental Protection Agency regulations that did not apply to SCE's construction of peakers in 2006.<sup>27</sup> Furthermore, even SCE's witness, Mr. Minick, acknowledged during cross-examination that "it seems to be taking longer now than it's ever taken in the past to go through all these hurdles on getting something built."<sup>28</sup> Mr. Minick also testified that "it is not unreasonable to assume seven to nine years" to build a new power plant.<sup>29</sup> Finally, one reason the Commission is conducting this proceeding now is to ensure that the type of inefficient emergency procurement that was ordered in 2006 does not have to occur again.

DRA suggests that, "The urgency conveyed by the CAISO and SCE is overstated because using existing sites to develop repowered generation that complies with OTC compliance would likely take less than seven years."<sup>30</sup> GenOn absolutely disagrees with DRA's unfounded conclusion. GenOn is in the process of constructing the Marsh Landing Generating Station at the site of its existing Contra Costa Generating Station. While Marsh Landing is on schedule for a commercial operation date that will result in a development timeline in excess of five years, Marsh Landing did not face the new prevention of significant determination standards applied to

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<sup>26</sup> CEJA Opening Brief, p. 50.

<sup>27</sup> Exhibit GenOn-2 (Beatty Reply), p. 4, line 19 – p. 5, line 16.

<sup>28</sup> RT, Vol. 6, August 14, 2012 (Minick for SCE), p. 1002, lines 10-13.

<sup>29</sup> RT, Vol. 6, August 14, 2012 (Minick for SCE), p. 1002, lines 2-3.

<sup>30</sup> DRA Opening Brief, p. 33.

power plants by virtue of their greenhouse gas emissions.<sup>31</sup> When GenOn testified that development in California will take seven to nine years, that assessment was based on its own experience of developing a new power plant at an existing site. The Commission should disregard DRA's unfounded statement that development at existing sites will take less than seven years.

In its opening brief, EnerNOC states that OTC policy compliance dates in 2020 give the Commission time to wait in terms of making a procurement decision.<sup>32</sup> NRDC sounds a similar note, suggesting that there is no urgency for a procurement decision because most of the identified need occurs in the out years.<sup>33</sup> These assertions ignore the seven year development timeline for new projects. The Commission must act now to ensure that there is adequate generation to replace OTC facilities, even those OTC facilities with 2020 deadlines.

Sierra Club California states that the next iteration of the LTPP is the proper place to further address local needs,<sup>34</sup> and SCE continues to advocate postponing a need determination in Big Creek/Ventura until the next LTPP cycle.<sup>35</sup> Realistically, the next LTPP rulemaking will be opened no sooner than mid-year 2014. Based on the history of prior LTPPs, there is no reason to expect that a decision in a subsequent LTPP would issue before year-end 2015, and more likely such a decision would issue some time in 2016. Based on project development timelines, a decision in 2016 simply does not provide sufficient time to conduct an efficient procurement process or to allow for contract approval, permitting and completion of appeals, financing, and construction to occur by 2020.

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<sup>31</sup> Exhibit GenOn-2 (Beatty Reply), p. 3, line 17 – p. 4, line 19.

<sup>32</sup> EnerNOC Opening Brief, p. 14.

<sup>33</sup> NRDC Opening Brief, p. 15.

<sup>34</sup> Sierra Club California Opening Brief, p. 28.

<sup>35</sup> SCE Opening Brief, p. 10.

SCE's position on Big Creek/Ventura is also peculiar given its proposal for discretionary procurement with respect to the L.A. Basin. Assuming SCE's desired outcome was realized, presumably SCE would seek similar discretionary procurement authority for Big Creek/Ventura in the next LTPP. As a result, SCE is advocating to delay a decision on Big Creek/Ventura until 2015 or later, and then would add a year or two as it pursues its discretionary procurement authority.

The contradictions in SCE's discretionary procurement proposal and its recommendation to delay procurement in Big Creek/Ventura reflect a lack of coordinated thinking. This is evidenced on page 19 of SCE's Opening Brief, where SCE asserts "assuming a seven-year time line to complete new generation, a PPA would need to be developed and approved by the Commission in 2013 for the new generation resources to be available by 2020." On the one hand SCE argues for a seven year lead time for projects in the L.A. Basin, which is consistent with GenOn's view of a realistic development timeline. On the other hand, SCE's proposal for Big Creek/Ventura leaves virtually no time for the development and construction process. Even if SCE were authorized to procure new resources in 2016 (assuming a procurement decision is issued in the next LTPP by the end of 2015), the time required to solicit resources, negotiate a PPA, and obtain Commission approval likely would extend well into 2018 or even later. Given that a Commission-approved PPA is generally required before developers can make significant financial commitments to a project, it is simply not plausible to expect developers to be able to finalize permits, complete appeals, close financing, and complete construction in less than two years. SCE's proposal for Big Creek/Ventura is simply unworkable. Accordingly, the Commission should reject SCE's recommendation and instead should mandate that SCE procure the minimum amount of new resources necessary to ensure grid reliability after 2020 in Big Creek/Ventura.

[Sections V-VII of Common Briefing Outline Intentionally Omitted]

VIII.

CONCLUSION

Based on the foregoing, the Commission should adopt the CAISO's recommendation and mandate that SCE procure a minimum of 430 megawatts of new capacity to address the deficiency in Big Creek/Ventura. Given that the timeline to construct new electric generation facilities is at least seven years, the Commission cannot wait until the next LTPP cycle. The Commission must act now to meet the deadlines established in the OTC policy, a policy the Commission helped create.

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