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)

REPLY COMMENTS OF THE WESTERN POWER TRADING FORUM ON TRACK 3 RULES ISSUES

Daniel W. Douglass
DOUGLASS & LIDDELL
21700 Oxnard Street, Suite 1030
Woodland Hills, CA 91367
Telephone: (818) 961-3001
E-mail: douglass@energyattorney.com

Counsel to:

WESTERN POWER TRADING FORUM
WWW.WPTF.ORG

November 30, 2012

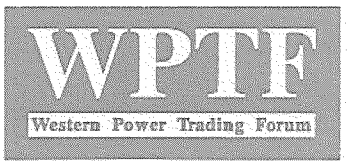


Table of Contents

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)

REPLY COMMENTS OF THE WESTERN POWER TRADING FORUM ON TRACK 3 RULES ISSUES

Pursuant to the Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge, dated May 17, 2012 ("Scoping Memo"),[1] the Western Power Trading Forum[2] ("WPTF") respectfully provides these reply comments in Track 3 of this Long-Term Procurement Plan ("LTPP") proceeding on proposed procurement rule changes that the California Public Utilities Commission ("Commission") should consider in Track 3 and adopt.

I. OVERVIEW OF REPLY COMMENTS

In Track 3 of this current LTPP cycle, the Scoping Memo invited parties to propose what changes should be made to current procurement rules. On November 2, a number of parties made such suggestions. WPTF replies herein to suggestions made by Calpine Corporation ("Calpine"), Southern California Edison Company ("SCE"), the California Environmental Justice Alliance ("CEJA"), Division of Ratepayer Advocates ("DRA"), the Green Power Institute ("GPI"), Sierra Club California ("Sierra Club"), Pacific Gas & Electric Company

[1] Administrative Law Judge (ALJ) Gamson clarified that reply comments could be filed on November 30, 2012, via an e-mail dated November 1, 2012.

[2] WPTF is a California non-profit, mutual benefit corporation. It is a broadly based membership organization dedicated to enhancing competition in Western electric markets in order to reduce the cost of electricity to consumers throughout the region while maintaining the current high level of system reliability. WPTF actions are focused on supporting development of competitive electricity markets throughout the region and developing uniform operating rules to facilitate transactions among market participants.

("PG&E"), and jointly by the Alliance for Retail Energy Markets, the Direct Access Customer Coalition and the Marin Energy Authority ("AReM/DACC/MEA").

The absence of any comments on specific rules proposals by these or any other parties should not be read to imply acquiescence with those proposals. Rather, should such proposals be accepted into the scope of this proceeding, WPTF will engage on them at such time as may be appropriate.

II. REPLY COMMENTS

A. Calpine

Calpine concludes that the Commission must make fundamental changes to the current RA and LTPP programs to incorporate: (1) Explicit multi-year forward procurement requirements; (2) Non-discriminatory long-term procurement practices that foster competition between new and existing resources of all types; and (3) Non-discriminatory methods for evaluating bids of different terms.

WPTF concurs that explicit multi-year forward procurement obligations should be added to the resource adequacy (RA) program, especially when done in the context of having such obligations managed through a centralized capacity market. More specifically, the Commission should establish a 3-5 year forward capacity procurement obligation including system, local, and, when necessary – as a transition until biddable ancillary service markets are in place – flexible capacity requirements. Moreover, the defined capacity procurement obligations should be accompanied by a forward RA capacity auction and reconfiguration auctions administered by the California Independent System Operator that will account for all supply necessary to meet forward capacity procurement obligations. The CAISO capacity auctions ultimately should encourage the development of new resources, sustain needed existing resources, and diminish, or

possibly eventually replace, the need for procurement of new resources through the LTPP process.

Importantly, Calpine observes that the "use of levelized net market values calculated over the term of the offer to compare bids of different terms biases comparisons in favor of long-term transactions, generally involving utility ownership."[3] There is a fundamental disparity when ten or fifteen-year power purchase agreements are compared with the thirty or forty-year life of utility-owned generation ("UOG") options. WPTF firmly agrees that, as Calpine recommends, the levelized net market value methodology should be revised and/or solicitations should be limited to offers of identical items. Moreover, WPTF believes that utility solicitations should be carefully tailored to meet needs, and not designed in a way that discriminates against different categories of suppliers. For example, should capacity be needed in a particular area, the solicitation should describe the desired area and the specified amount. We have observed that past solicitations have had a history of being overly focused on the ownership of generation resources, and have either disregarded or actively discriminated against power marketers who can potentially meet both energy and locational capacity requirements without owning generation units. In conclusion, solicitations should be free of biases against either bids of different terms or against different types of suppliers.

Finally, WPTF also supports Calpine's recommendation that the Commission should direct the IOUs to: (1) allow netting of collateral requirements; (2) eliminate cross-default provisions; (3) post collateral themselves; and (4) cap the collateral required for any specific contract at an amount that realistically reflects the amount that might not be recoverable from a supplier in the event of non-performance.

[3] Calpine, at p. 3.

B. Southern California Edison Company

SCE makes two recommendations with which WPTF agrees. First, it suggests the Commission should allow utilities to contract with once-through cooling ("OTC") facilities without pre-approval for contract terms consistent with a utility's existing bundled procurement plan authority for contracts with non-OTC facilities so long as the contract's duration does not extend beyond the applicable State Water Resources Control Board ("SWRCB") deadline. This is a highly reasonable proposal. Putting artificial constraints on a utility's contracting authority is unnecessary. The SWRCB deadline operates as a sufficient constraint on utilities entering into contracts of too long a duration with OTC facilities. In this case, the Commission should not feel compelled to maintain a deadline that is more stringent than that established by the state agency with primary responsibility for monitoring the activities of OTC facilities.

Second, SCE would have the Commission revise the "less than five years" contract duration for certain transactions pursuant to a utility's bundled procurement plan authority to allow a duration up to and including five years without seeking the Commission's pre-approval. SCE notes that in D.12-01-033, the Commission conceded that SCE's earlier offering of the same proposal was a minor and common-sense change that was unopposed by any party. The Commission, however, expressed mild concern that "there may be unforeseen consequences of the change."[4] WPTF can conceive of no such unforeseen consequence that would result from approval of SCE's proposal and therefore recommends its adoption.

C. California Environmental Justice Alliance and Division of Ratepayer Advocates

CEJA and DRA each independently make a recommendation with which WPTF has long been on record as supporting. Specifically, each party suggests that the Commission should

[4] *See* D.12-01-033, at p. 41.

require the Energy Division and not the utilities to select and hire the Independent Evaluator ("IE") used to evaluate utility procurement activities. WPTF continues to believe that any putative "independence" of the IEs is clearly compromised by having them selected and paid by the same utilities whose procurement activities they are required to evaluate.

It is important that the original rationale for use of the IE not be disregarded. The IE mechanism was developed in response to the Commission's decision that it was time to "allow greater head-to-head competition and hereby lift the affiliate ban on long-term power products. Accordingly, we adopt certain guidelines and safeguards, including an independent third party evaluator (IE) requirement."[5] While it was highly appropriate for the Commission to develop the IE mechanism as a counterbalance to the risks of favoritism that arise due to allowing utility affiliates to bid in utility RFOs, the Commission failed to take the steps necessary to insure actual independence. In fact, the utility IEs to date have been independent in name only, as they are both retained and paid by the utilities, which is an egregious breach of any commonsense notions of independence.

The maxim that "He who pays the piper shall call the tune" is applicable here. It is fundamentally unfair to the firms that have been retained to serve as IEs that they must rely on payment (and hopes of retention in future RFOs) on the utility whose procurement they are expected to review and critique on an independent basis. The Commission must correct this flaw in the IE mechanism and direct that henceforth all IEs are to be selected, retained and paid by the Commission itself. Only with this step can a truly independent evaluator be selected and commissioned to act as the watchdog that the interests of ratepayers deserve. The CEJA and DRA recommendation should be adopted.

[5] *See* D.04-12-048 at p. 2.

D. Green Power Institute

GPI notes that although the utilities will be given large allocations of emissions allowances, all of those allowances will be auctioned in order to generate funds to be used on behalf of ratepayers, meaning the utilities will have to acquire from the marketplace the compliance instruments needed to account for their own emissions under the cap-and-trade program. GPI suggests that the Commission consider what additional incentives "the Commission thinks are necessary at this time in order to ensure that the utilities will be adequately reducing their need to procure greenhouse-gas compliance instruments to offset the emissions of their own operations."[6]

WPTF suggests that this comment fundamentally misunderstands the concept of a cap-and-trade program. The goal is to reduce emissions across the economy at the least overall cost. Therefore, it should not be a separate goal to require utilities to decrease GHG allowance requirements, *per se*. Hypothetically, the least costly way for society to reduce total GHG emissions might be for utilities to INCREASE their sector-specific GHG emissions, if cheaper abatement opportunities exist elsewhere that can more than offset the increase. As a practical matter, of course, this is unlikely, but Commission policy should not try to "engineer" any particular result. In any case, the increasing RPS percentage will almost certainly reduce utilities' GHG allowance needs in and of itself, without further policy direction. Adding extra requirements for plans to "reduce portfolio-wide GHG emissions" adds a pointless layer of bureaucracy to an issue already well addressed by state and Commission policy, needlessly complicating LTPP procurement.

[6] GPI, at p. 2.

E. Sierra Club California

Sierra Club seeks to improve transparency within the procurement process, which is a goal with which WPTF generally concurs. In its efforts to ensure that market participants do not have access to utility market sensitive information (as that term is used in Public Utilities Code § 454.5(g), " the Commission has gone overboard in its procedures that govern access to such information. At the same time, however, WPTF does not concur with the Sierra Club recommendation that the Commission should adopt rule[s] that apply the Bagley-Keene Act to Procurement Review Groups ("PRGs"). WPTF believes this recommendation in fact gives the PRG process more credibility and stature than it actually deserves.

In fact, WPTF recommends that the use and composition of Procurement Review Groups should be reexamined and re-justified to determine whether: (a) they are in fact performing a useful function; and (b) their non-Commission staff members are overly biased toward bundled customer interests. WPTF believes that the excessive secrecy that the utilities have used in their procurement processes necessitated the original creation of PRGs. However, the PRGs were to be only an interim mechanism. D.02-10-062, issued in a prior procurement docket, states at p. 4 that, "The PRG process is an interim measure while the Commission augments its staff pursuant to the $600,000 as appropriated to the Commission for the purposes of implementing AB 57 and engages an independent consultant or advisory service to evaluate risk management and strategy as authorized under proposed Section 454.5(f)." It is now a decade later and either the staff augmentation has occurred or the Commission has otherwise structured its workforce to provide appropriate oversight to the procurement process. Nevertheless, like many bureaucratic mechanisms, the "interim" has attained at least semi-permanent status. WPTF in fact questions the need for the PRG's continuance, given the existence of the IE mechanism, particularly if the

Commission moves to provide real, rather than theoretical independence for IEs, as recommended above.

Furthermore, WPTF notes that at the Commission meeting yesterday, the commissioners unanimously approved item 42, a proposed decision that awarded, "The Utility Reform Network $660,166.25 for its substantial contributions to the procurement review groups of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company between late 2005 and May of 2012."[7] This is, to put it mildly, a great deal of money that ratepayers will have to fund, for *just one* PRG participant. Further, the same proposed decision also states that, "The Commission recognized The Utility Reform Network's (TURN) contributions to PRGs in the past: see, for example, decisions D.07-10-012 (in R.06-05-027), D.06-05-031 (in R.04-04-003), and D.04-08-042 and D.03-05-065 (in R.01-10-024), in which the Commission awarded compensation for TURN's substantial contributions to the PRG process."[8] WPTF has not taken the time to research those decisions and add up the aggregate amounts (since unlike TURN, we are not eligible for intervenor compensation for performing such research), but presumably the amounts therein were similarly impressive.

These comments should in no way be perceived as a negative reflection on the merits of TURN's many contributions, as it is an extremely valuable party that participates meaningfully in a broad variety of Commission proceedings. WPTF in fact recalls with pleasure that it has on more than one occasion filed jointly with TURN on procurement issues, which former TURN counsel and now Commissioner Florio referred to as our "shock and awe" filings. Nevertheless, this is a lot of money . . . and the fundamental question that should be examined is whether using ratepayer money to compensate certain intervenors in Commission proceedings to get access to

[7] Proposed Decision, at p. 1, Rulemaking 04-04-003.

[8] Id at p. 2.

inside information that is foreclosed to other intervenors is either equitable or cost-effective. WPTF believes the PRG process meets neither goal and it should therefore be abandoned.

F. Pacific Gas and Electric Company

PG&E's comments focus on four primary areas: flexibility procurement requirements and products (items 1 and 9 in the Ruling); multi-year forward procurement requirements (item 12); GHG procurement rules (items 3 and 4) and refinements to the ERRA compliance filing requirements (item 6). For items 1, 9, and 12, PG&E reiterates its position in its September 20th motion that these items should be moved to the current RA proceeding.

As noted in our October 5, 2012, comments in this docket, WPTF supports PG&E's request to transfer issues pertaining to flexible capacity and multi-year procurement obligations to the Resource Adequacy proceeding. Issues pertaining to flexible capacity and multi-year procurement obligations are indeed closely related, although it remains to be seen whether in fact there either is, or will emerge, any sort of real broad-based consensus on how these issues should be finally resolved. Nevertheless, it is time to move forward on them and WPTF endorses this effort. Careful analysis is required in order to ensure that any decisions made with respect to flexible capacity and multi-year procurement obligations are consistent with competitive wholesale and retail market design; that they provide price transparency; and that appropriate incentives are offered for the development of products and services that support renewable integration.

However, WPTF strongly opposes the PG&E request that the Commission delay consideration of the remaining Track 3 issues. Instead, we recommend the Commission commence with concurrent consideration of all these issues in their respective proceedings.

G. Alliance for Retail Energy Markets, the Direct Access Customer Coalition and the Marin Energy Authority

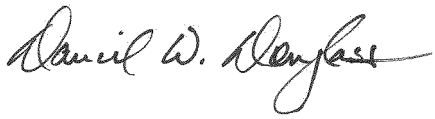
AReM/DACC/MEA provide proposed threshold rules to be applied by the IOUs in planning and procuring energy and capacity to meet the load and projected load growth of their bundled utility customers over the LTPP planning period. Specifically, they suggest that: (1) The IOUs shall develop forecasts of bundled customer load that exclude existing and forecasted direct access ("DA") and community choice aggregation ("CCA load"); (2) In developing the forecasts of bundled customer load, the IOUs shall evaluate the characteristics of the load that are driving bundled load growth, including changes to load factor (i.e., "peakiness"), and report to the Commission how these factors have been incorporated into their Bundled Procurement Plans for the long term; and (3) Each IOU shall calculate its unmet resource need by comparing its bundled customer load forecast and load characteristics with all of its resources, including utility-owned generation and power purchase agreements.

WPTF has long contended that there is a need for consistent counting rules, adoption of a uniform load forecast and a single, independently established load forecast that is applied consistently for determination of procurement needs and implementation of resource adequacy requirements. The exclusion of forecasted DA and CCA load is logical, as is the suggestion that the IOUs should be required to identify the elements that are driving load growth. The AReM/DACC/MEA suggestions with regard to load forecasts should be adopted as a means of ensuring that utility procurement more closely matches actual utility bundled customer load. Procurement in excess of this load only leads to more stranded costs and unnecessary burdens on the competitive retail supply market, neither of which is positive or beneficial to California's electricity market.

III. CONCLUSION

WPTF thanks the Commission for its attention to the issues discussed herein and asks that it adopt the recommendations discussed above.

Respectfully submitted,



Daniel W. Douglass
DOUGLASS & LIDDELL
21700 Oxnard Street, Suite 1030
Woodland Hills, CA 91367
Telephone: (818) 961-3001
E-mail: douglass@energyattorney.com

Counsel to
WESTERN POWER TRADING FORUM

November 30, 2012