

**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 COMMENTS OF GENON ENERGY, INC.  
ON PROPOSED TRACK 3 PROCUREMENT RULES**

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November 30, 2012

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**I. INTRODUCTION.**

Pursuant to the Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge, dated May 17, 2012 (“Scoping Memo”), GenOn Energy, Inc. (“GenOn”) provides these reply comments in Track 3 of this Long-Term Procurement Plan (“LTPP”) proceeding on proposed procurement rule changes. By email dated November 1, 2012, the assigned Administrative Law Judge clarified that reply comments could be filed on November 30, 2012.

In these reply comments, GenOn focuses on two recommendations in the opening comments filed by Southern California Edison Company (“SCE”). First, GenOn concurs with SCE that the Commission should reconsider the limits placed on contracts with units utilizing once-through cooling technology (“OTC”), and should allow utilities greater flexibility to contract with OTC units without pre-approval provided that the contract’s duration does not extend beyond the applicable OTC deadline established by the State Water Resources Control Board (“Water Board”). Second, GenOn also concurs with SCE’s recommendation to make the very slight modification to allow expedited processing for procurement contracts with terms that are “five years or less.” GenOn’s support for these recommendations is explained below.

**II. THE ONLY INCREMENTAL RESTRICTION THAT SHOULD BE PLACED ON CONTRACTS WITH OTC FACILITIES IS THAT SUCH CONTRACTS SHOULD NOT EXTEND PAST APPLICABLE WATER BOARD COMPLIANCE DEADLINES.**

In Decision 12-04-046, the Commission imposed pre-approval restrictions on the utilities' ability to sign power purchase agreements ("PPAs") with facilities using OTC that are more restrictive than the pre-approval requirements imposed on PPAs with non-OTC facilities. In its opening comments, SCE outlines a number of reasons why the Commission should rescind all but one of those restrictions. SCE explained that the new restrictions could increase the cost of capacity, are inconsistent with the Resource Adequacy ("RA") program compliance timelines, and unduly limit contracting with important resources in local capacity areas. SCE asks the Commission to allow utilities to contract with OTC facilities without pre-approval for contract terms consistent with the utility's procurement authority for non-OTC facilities, provided that the contract's duration does not extend beyond the applicable Water Board deadline. GenOn agrees with SCE's statements and supports its proposal.

Another issue not addressed in SCE's comments is the impact of the ongoing outage at the San Onofre Nuclear Generating Station ("SONGS"). The absence of the 2,200 megawatts of capacity represented by SONGS jeopardizes local reliability. Under those circumstances, the existing OTC facilities, particularly those located in Southern California, are important resources. The new restrictions imposed on OTC contracts earlier this year clearly represent an effort to drive the OTC facilities into retirement sooner than the compliance deadlines established by the Water Board. Instead of attempting to expedite the retirement of OTC facilities, the Commission should preserve its ability to utilize all resources with the capability to meet reliability needs in local areas. To further that objective, the Commission should adopt SCE's recommendation to rescind the restrictions imposed on contracts with OTC facilities, with the exception that such contracts should not extend past applicable Water Board deadlines.

### **III. COMMISSION REVIEW OF PROCUREMENT AGREEMENTS SHOULD APPLY TO CONTRACTS LONGER THAN FIVE YEARS IN DURATION.**

Under current procurement rules, utilities may enter into agreements less than five years in duration without additional Commission scrutiny. Procurement agreements with terms that are five years or more in length must obtain prior Commission approval for the utility to be assured of cost recovery. As a result, utilities and counterparties desiring five year contracts end up contracting for unusual periods such as four years, eleven months. Such odd contract durations complicate contract administration and provide no real protection for ratepayers. Accordingly, the Commission should correct what was presumably an unintended consequence. Specifically, the Commission should modify the bundled procurement plans for each of the utilities to provide that prior approval of procurement agreements is required for contracts of duration “more than” five years. The Commission should also specify that this modest change is not intended to supersede the Commission precedent established over the years determining how to apply the duration limitation.

### **IV. CONCLUSION.**

Based on the foregoing, the Commission should modify procurement rules for contracts with OTC facilities to be consistent with the rules applied to procurement agreements with non-OTC agreements, with the exception that the term of a procurement agreement with an OTC facility should not extend beyond that facility’s applicable Water Board compliance deadline. In addition, the Commission’s pre-approval requirement for procurement agreements should apply to contracts with terms greater than five years.

November 30, 2012

Respectfully submitted,

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