

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)

**ALLIANCE FOR NUCLEAR RESPONSIBILITY'S
COMMENTS ON ALJ GAMSON'S PROPOSED DECISION
AUTHORIZING LONG-TERM PROCUREMENT FOR
LOCAL CAPACITY REQUIREMENTS**

JOHN L. GEESMAN

DICKSON GEESMAN LLP
1999 Harrison Street, Suite 2000
Oakland, CA 94612
Telephone: (510) 899-4670
Facsimile: (510) 899-4671
E-Mail: john@dicksongeesman.com

Date: January 14, 2013

Attorney for
ALLIANCE FOR NUCLEAR RESPONSIBILITY

SUBJECT INDEX

- 1. Mischaracterization of the distribution load transfer.....pp. 3 - 7**
- 2. Omission of SCE & SDG&E procurement coordination.....pp. 7 - 10**
- 3. Misstatement of CPUC statutory “balancing” authority....pp. 10 - 12**

TABLE OF AUTHORITIES

CALIFORNIA SUPREME COURT CASES

<i>Southern Pac. Transp. Co. v. Public Utilities Commission, 134 Cal. Rptr. 189 (1976)</i>	12
--	----

CALIFORNIA PUBLIC UTILITIES CODE

§ 345.....	11
§ 380(c)	11
§ 399.11	15
§ 451.....	15
§ 454.....	15
§ 454.5(b)(9)(C).....	15

TITLE 20, CALIFORNIA CODE OF REGULATIONS

Rule 14.3 of the Rules of Practice and Procedure	1, 3
--	------

CALIFORNIA PUBLIC UTILITIES COMMISSION DECISIONS

D.06-07-029	1
D.04-12-048.....	1

OTHER AUTHORITIES

58 Cal. Jur. 3d Statutes § 119.....	12
7 Witkin Summary 10 th Const. Law § 115.....	12
CEC Final Transmittal of 2005 Energy Report Range of Need	1

I. INTRODUCTION.

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission” or “CPUC”), the Alliance for Nuclear Responsibility (“A4NR”) respectfully submits its comments on Administrative Law Judge David Gamson’s proposed “Decision Authorizing Long-Term Procurement For Local Capacity Requirements” filed December 21, 2012 (“Proposed Decision” or “PD”).

Bravely ignoring the obvious irony, the Proposed Decision declares itself “a measured first step in a longer process”¹ which it quickly acknowledges dates back to 2001.² Historically, this regulatory pageantry has been particularly unsuccessful in prodding Southern California Edison (“SCE”) to significantly diminish its reliance upon aging gas-fired plants along the coast.³ Now, looming deadlines under the federal Clean Water Act for the phase-out of once-through-cooling compel the Commission to try again.

Measured by proclaimed result, A4NR is not dissatisfied with the PD insofar as it appears, consistent with California’s acclaimed Loading Order, to have authorized a range of procurement in the LA Basin of up to 3,019 – 3,219 MW (2,019 MW of which are to be

¹ PD, p. 3.

² PD, p. 4.

³ D.06-07-029, citing “*the urgent need to bring new capacity on line as soon as 2009, at least for Southern California*” (p. 3) and “*the fact that SCE has not signed any long-term contracts to promote new generation*” (p. 10) despite having been previously authorized by D.04-12-048 to do so, ordered SCE to procure 1,500 MW (Ordering Paragraph 1). Notably, in the same proceeding the California Energy Commission (“CEC”) had recommended a four-year phase-out of reliance on 8,088 MW of aging plants, including all of the OTC units, because “*it would be imprudent for SCE to contract with these aging units beyond 2012.*” CEC Final Transmittal of 2005 Energy Report Range of Need and Policy Recommendations to the California Public Utilities Commission, Publication # CEC-100-2005-008-CMF., December 16, 2005, p. 114.

distributed generation, preferred resources, or energy storage).⁴ Additionally, the PD directs SCE to show, in the procurement plan it submits for Energy Division review, “that it has a specific plan to undertake integration of energy efficiency, demand response, energy storage and distributed generation resources in order to meet or reduce local capacity requirement needs through 2021.”⁵ Significantly, SCE “shall not go forward with any public procurement process until the Energy Division approves the process in writing.”⁶

A4NR takes some comfort from the narrative discussion in the PD concerning this Energy Division review. The PD recognizes that the Commission’s Loading Order responsibilities center on implementation rather than sterile forecasting:⁷

*Because the range of LCR need we establish herein includes between 50% and 100% of uncommitted energy efficiency and uncommitted CHP resources (as well as a higher forecast of distributed generation), SCE will need to ensure that these resources do exist in the future in order to ensure local reliability. As part of our review of SCE’s procurement plan, and when considering SCE’s procurement application, **we will require SCE to show that it has done everything it could to obtain cost-effective demand-side resources which can reduce the LCR need, and cost-effective preferred resources and energy storage resources to meet LCR needs...***

*We have identified the potential for a gap between our assumed 1,519 MW of distributed generation in the LA Basin local area and SCE’s current distributed generation procurement authority. **We direct SCE to analyze this potential gap in preparing their procurement plan for additional preferred resources and take all necessary steps to close any gap that may be discovered with new distributed generation.**⁸ (emphasis added)*

⁴ PD Ordering Paragraph 1.

⁵ PD Ordering Paragraph 7.

⁶ PD Ordering Paragraph 6.

⁷ A4NR applauds the PD for avoiding the trap of considering uncommitted energy efficiency and other preferred resources as primarily a challenge of predicting what volume is likely to occur.

⁸ PD, pp. 76 - 77.

Nevertheless, A4NR remains deeply concerned over the Commission's difficulty in adapting its cumbersome procurement processes to address the rapidly declining prospects for SONGS availability. This inability makes future reliance on ad hoc LCR emergency measures unavoidable. Kicking this can of procurement worms into I.12-10-013 has yet to reduce the likelihood of an ongoing string of RMR contracts from the ISO or perhaps even a backs-against-the-wall replay of the Peevey/Freeman contracting binge of 2001.⁹ R.12-03-014 Track 1's postulated availability of both Unit 2 and Unit 3 at full capacity throughout the ten-year planning period implicitly adds 2,246 MW to every discussion of LCR need in the PD if this Pollyannaish premise proves inaccurate. Omission of any candid acknowledgment of this lynchpin in the PD invites talk of a parallel universe.

Rule 14.3(c), however, affords no weight to comments on epistemological mistake. Instead A4NR focuses its comments on three mundane but consequential errors in the PD: two from the technical/factual genre and one legal in nature.

II. MISCHARACTERIZING A "2 – 3,000 MW" ASSUMPTION ENHANCES THE LIKELIHOOD THAT ITS FUTURE MONITORING WILL FALL BETWEEN THE CRACKS.

The PD mistakenly identifies the concerns identified in A4NR's Opening Brief¹⁰ about a shift of 600 MW of load on the distribution system as "a 600 MW transmission transfer."¹¹ This

⁹ A4NR continues to believe it would be prudent, in addition to the various other post-Decision recalibrations of LCR need discussed in the PD, to revisit Track 1's assumptions about SONGS – whether in this proceeding or in I.12-10-013 – shortly after the ISO Board of Governors adopts its 2012 – 2013 Transmission Plan. The ISO's prepared testimony in R.12-03-014 indicated that for this next 10-year exercise, "the ISO is performing a transmission planning study to evaluate the long-term reliability impacts if SONGS were not available for operation." ISO-01, p. 15.

¹⁰ A4NR Opening Brief, pp. 4 – 6.

¹¹ PD, p. 33.

mischaracterization may have material adverse consequences in the future for the following five inter-related reasons:

1. The ISO assumed that 600 MW of load would be shifted from the Mira Loma substation to the Rancho Vista substation.

“(W)e installed some 230 to 66 kV transformers, and some limited amount of 66 kV distribution lines to enable some of the load that – currently at Mira Loma, the two substations are fairly close together to be transferred over to Rancho Vista so that the 500 230 kV transformer at Mira Loma can be relieved, the loading can be relieved.”¹²

2. The assumed load transfer significantly reduced the ISO’s estimate of LCR need.

Q. I want to make sure I understand. You’re saying that it takes 2- to 3000 megawatts of OTC generation to relieve that overload under the current configuration or under the future configuration?

A. Oh, no. Under – without the distribution project we just discussed –

Q. Okay.

A. -- it required 2 to 3000 megawatts more. If we put in the distribution project, we could reduce the amount by 2 to 3000 megawatts.

Q. Would that be a direct reduction to the LCR requirement then?

A. Yes. In the overall LA Basin, as well as with the western LA basin.

Q. So that’s pretty significant, isn’t it?

A. Yes. That’s why we, as we proceeded with the studies, we tended to assume that would be in place.¹³

¹² ISO-Sparks, RT 83.

¹³ ISO-Sparks, RT 85. The questioner is Assigned Commissioner Florio.

3. The ISO's derivation of this significant assumption was quite casual.

*We discussed it with Edison in a couple of conversations. **But it's actually a distribution project, so it's difficult for the ISO to lead that process.** But we have raised it with Edison ... My understanding is that it is sort of the master plan that Edison has for their distribution system and that there may be a need to accelerate it and to relieve some transmission constraints. But the cost of it is not small. At least our expected cost of it we don't have an estimate from Edison.¹⁴ (emphasis added)*

4. The ISO acknowledged overstating the project's status in Edison's planning process.

Q. And I believe that you mentioned that it was your understanding that the Mira Loma mitigation plan was in Southern California Edison's master plan, is that correct, that is what you stated yesterday?

A. I believe I mentioned that, yes.

Q. Have you had an opportunity to have additional discussions with Southern California Edison since the time you presented that information to Commissioner Florio?

A. Yes, I have.

Q. And what did you learn?

A. SCE informed me that isn't part of their master plan at this point in time.¹⁵

5. SCE's testimony was unsupportive of the Mira Loma/Rancho Vista load shift.

SCE's prepared reply testimony downplayed the significance of the Mira Loma/Rancho Vista load transfer, saying politely, "The feasibility of the proposal has not been fully developed."¹⁶ On cross-examination, however, SCE's witness was more

¹⁴ ISO-Sparks, RT 83 – 84.

¹⁵ ISO-Sparks, RT 264 – 265.

dismissive: “I am questioning the feasibility because we have not, as I said in my testimony, the feasibility has not been fully developed.”¹⁷

Q. *Isn't it true that SCE has not performed any technical analysis on the 600-megawatt load transfer?*

A. *Not at this point in time.*

Q. *No power flow analysis was done by SCE in regard to this transfer?*

A. *Not at this point in time.*

Q. *And SCE has not done any other technical analysis regarding the 600-megawatt transfer?*

A. *Not at this point in time.*

Q. *Has SCE analyzed CAISO's power flow modeling in this proceeding as related to the 600-megawatt load transfer?*

A. *What do you mean by analyze?*

Q. *Have you done your own analysis on their numbers?*

A. *No, we have not.*¹⁸

Based on the evidentiary record, neither A4NR nor the Commission has any way of knowing whether the transfer of 600 MW of load between the Mira Loma and Rancho Vista substations is a good idea or not, **but it underpins “2 – 3,000 MW” of reduction in LCR need in every one of the ISO scenarios.** At a minimum, the status of the proposed load shift project

¹⁶ SCE-02, p. 19.

¹⁷ SCE-Cabell, RT 827 – 828.

¹⁸ SCE-Cabell, RT 828. As SCE's witness responded to Commissioner Florio, “We haven't actually studied it. It was discussed with the ISO as a possibility in light of these proceedings. It's something that would need a lot of further investigation to determine basically how you would go about and design the system to be able to transfer that much load to another station and obviously the cost and feasibility of it.” SCE-Cabell, RT 782.

should be carefully tracked in the future to properly calibrate LCR procurement need. The PD's mischaracterization of the project as a "transmission transfer" may complicate this tracking because, as the ISO witness was quick to point out, **"it's actually a distribution project, so it's difficult for the ISO to lead that process."** Expecting the ISO to track this project would be reckless.

The potential for this **"distribution project"** to slide off the radar screen is made obvious by the PD's discussion of SCE's approach to energy efficiency and other preferred resources: "The remainder of SCE's LCR need will need to be met by supply-side resources¹⁹ and cost-effective **transmission** upgrades."²⁰ (emphasis added) Where does this **distribution** load transfer fit? As Lou Costello asked Bud Abbott, "Who's on first?"²¹

Correcting the PD and accurately characterizing the assumed load shift as a distribution project will not, in itself, resolve the dilemma of corroborating this "2 – 3,000 MW" reduction in LCR need. Given the vague description of the project in the record ("some 230 to 66 kV transformers, and some limited amount of 66 kV distribution lines ... so that the 500 230 kV transformer at Mira Loma can be relieved, the loading can be relieved."²²), it is not clear where or when in SCE's distribution planning process it would ordinarily become identifiable to the CPUC (i.e., the load transfer may not be a single "project", but individual components -- perhaps phased over several rate case cycles -- which never trigger the Commission's PTC or CPCN size thresholds). A4NR believes that the Commission should direct SCE to assess the

¹⁹ In the PD's taxonomy, distributed generation and energy storage are apparently not categorized as "supply-side".

²⁰ PD, p. 79.

²¹ The December 26, 1999 issue of Time magazine named this routine the Best Comedy Sketch of the 20th Century.

²² ISO-Sparks, RT 83.

merit of the proposed project and report on its status to the Energy Division prior to filing (or contemporaneously with) its proposed procurement plan.

III. Omitting discussion of the necessary coordination between SCE and SDG&E LCR procurement worsens this proceeding's blind spot regarding SONGS.

The PD's failure to make even cursory mention of the need to coordinate SCE's LCR procurement with that of San Diego Gas & Electric ("SDG&E") is an especially disconcerting illustration of the peril stemming from the Commission's willful optimism about SONGS availability. This error of omission comes despite a clear and uncontested evidentiary record in R.12-03-014. As ISO witness Millar underscored:

I do need to emphasize that the SONGS generation is a bit unique because it is part of the qualified resources inside the LA Basin. It is a key injection point into the San Diego area. So this power plant, because of its location, plays a role in an even more complex way than most of the generation that we're talking about.²³

SDG&E witness Jontry explained that generation in the Western LA Basin, particularly the Ellis subarea and San Onofre, is very effective in allowing energy to flow down Path 44.

So it's necessary to have sufficient generation available in the LA Basin in order to reliably flow energy up to its path rating, which is 2500 megawatts.

... Path 44 is a WECC-recognized path with a capability of 2500 megawatts. We would like the Commission to minimize the LCR requirement on procurement across both San Diego and the Los Angeles areas, minimize the overall costs, but at the same time we have reliability need to maintain that 2500 megawatt capability post-contingency.

²³ ISO-Millar RT 370.

To the extent that they don't require enough resources in the Western LA Basin in order to flow that 2500 megawatts, they will have to acquire more resources in San Diego to make up for that, for that inability.

*... I think they would have to look at – the ISO would obviously have to be a part of this because they do the LCR need studies. They will have to look at the resources that are available both in San Diego and the LA Basin and determine what the overall least cost or best fit that allows both the capability of flowing that 2500 megawatts on Path 44 **and minimize the overall cost for the combined basket of resources.**²⁴ (emphasis added)*

A4NR is not a party to the proceeding addressing SDG&E's LCR procurement needs, but is quite aware of the extraordinary rebuke the Proposed Decision and Alternate Decision in A.11-05-023 recently drew from California Energy Commission Chairman Robert Weisenmiller. As described in his December 13, 2012 letter to President Peevey, which was formally served in A.11-05-023:

The need for new flexible generation to support integration of renewables is critical, but it is actually overshadowed by the reliability crisis posed by the indefinite shutdown of the San Onofre nuclear facilities. California must be acting now to ensure system reliability in Southern California for the contingency that San Onofre will not be available through 2014, if ever.²⁵

Significantly, the Proposed Decision and the Alternate Decision in A.11-05-023 share the same "magical thinking"²⁶ imposed in this proceeding's Track 1 about the uninterrupted availability of both SONGS Unit 2 and Unit 3. This assumption appears to have been too much for Chairman Weisenmiller:

The nature of this crisis is very public, and the subject of much discussion by both state

²⁴ SDG&E-Jontry, RT 1228 – 1230.

²⁵ Letter from Robert B. Weisenmiller to Michael R. Peevey, December 13, 2012, p. 2.

²⁶ This characterization is from A4NR's Opening Brief, p.9, not Chairman Weisenmiller's letter.

*and federal agencies, including the Nuclear Regulatory Commission, the CAISO, the CPUC, and the Energy Commission. The absence of San Onofre generation imperils electric reliability in the San Diego area. The results of the CAISO's Addendum to the 2013 Local Capacity Technical analysis report show that, without San Onofre, there are voltage deviations at all substations in the southern Orange County and San Diego areas, as well as shortages in resource adequacy.*²⁷

Chairman Weisenmiller's letter takes specific aim at the finding in both the A.11-05-023

Proposed Decision and the Alternate Decision "that there is no need for more generation prior to 2018, a conclusion that is simply untenable in light of the factors discussed above."²⁸

To prevent any suggestion that it has mischaracterized the Weisenmiller letter, A4NR is attaching it to these Comments as Appendix B. Without being drawn into any SDG&E matters to which it is not a party, A4NR strongly endorses Chairman Weisenmiller's closing observation ("Our agencies now face respective challenges to our ability to match our administrative processes to the rapid march of events that unfold so rapidly that it is hard for the planning process to match them."²⁹) and recommends that, at a minimum, the R.12-03-014 Track 1 PD be revised to require that the SCE procurement plan to be filed with the Energy Division describe in detail how it has been coordinated with SDG&E's LCR procurement.

IV. The Public Utilities Code requires the Commission to meet each of its statutory obligations, not to "balance" them.

In its tortuous search for a Goldilocks solution to the right amount of LCR procurement to authorize – not too much, not too little – the PD recites a litany of the CPUC's multiple

²⁷ Letter from Robert B. Weisenmiller to Michael R. Peevey, December 13, 2012, p. 2.

²⁸ *Ibid.*

²⁹ *Ibid.*

statutory duties to contrast them with the single burden shouldered by the ISO.³⁰ It showily (and inaccurately) claims to “strike a balance among the Commission’s three primary statutory directives for ensuring reliability, reasonable rates and a clean environment”³¹ before arriving (correctly) at the only result legally available to the Commission:

*We cannot, and will not, sacrifice or ignore any of these imperatives. Nor need we do so; the record in this case supports outcomes which enable us to accomplish all our goals, meet statutory requirements and direct utilities to procure sufficient levels of diverse resources in a timely manner at a reasonable cost so as to ensure reliability.*³²

A4NR has no objection to harmless puffery, and the Commission is certainly entitled to proclaim its result to be a perfect equilibrium of multiple objectives. The Public Utilities Code does not proscribe self-congratulation. But neither does it allow one statutory obligation to be subordinated or tempered in deference to another. It is wrong for the PD to pretend otherwise, and a particularly dangerous precedent to implant in a Conclusion of Law.³³ Like it or not, the CPUC must perform all of the statutory duties the Legislature has imposed.

Irrespective of the inference in the PD, A4NR strongly doubts that any of the CPUC Commissioners would consider it unjust or unreasonable to recover in rates the cost of meeting the electricity reliability standards prescribed by the Federal Energy Regulatory Commission, the North American Electric Reliability Council, and the Western Electricity Coordinating

³⁰ Sensing a slight whiff of self-pity, A4NR would remind the Commission of what Tom Hanks said to Geena Davis in *A League of Their Own*: “Of course it’s hard. It’s supposed to be hard. If it were easy, everybody would do it. Hard is what makes it great.”

³¹ PD, pp. 35 – 36.

³² PD, p. 36.

³³ PD Conclusion of Law 1 states, “A significant difference between the ISO’s reliability mission under § 345 and the Commission’s reliability emphasis under § 380(c) is that the Commission must balance its reliability mandate with other statutory and policy considerations.”

Council. Nor is it remotely plausible to envision the Commissioners concluding that the Commission's statutory environmental duties would prevent such compliance.³⁴

A4NR does not question the broad judicial, legislative, and administrative powers conferred on the Commission by the California Constitution and the Public Utilities Code, including even the ability to determine the constitutional validity of statutes. *Southern Pac. Transp. Co. v. Public Utilities Commission (1976) 134 Cal. Rptr. 189, 18 Cal.3d 308, 556 P.2d 289.* But the CPUC has no legal authority, absent a determination of constitutional invalidity, to implicitly amend statutes by making one responsibility more important than another in an attempt to "balance" statutory obligations. The Commission can (and should) certainly balance competing policies or interests. When it comes to its statutory duties, however, the Commission's function is to harmonize them so that all are performed.³⁵

Unremarkably, the PD's we-cannot-and-will-not-sacrifice-or-ignore trumpet fanfare is just such a harmony – which renders the overheated claims about balancing statutory directives unnecessary. A more modest formulation (e.g., "the Commission must meet its reliability mandate consistent with other statutory and policy considerations") would avoid the impression that the PD is attempting by stealth to encroach upon the Legislature's ability to establish duties for the Commission.

³⁴ Skeptics about the asymmetry in risk of under-capacity vs. over-capacity are invited to dial 1-800-ASK-GRAY.

³⁵ Harmonization is a core tenet of statutory construction. 58 Cal. Jur. 3d Statutes § 119.7 Witkin Summary 10th Const. Law § 115.

V. CONCLUSION.

The PD should be tightened along the lines recommended above and in Appendix A to clearly establish that the Commission fully comprehends the magnitude of the LCR challenges in the LA Basin. A4NR is wary of the Commission's continued avoidance pathology regarding the public discussion of substitutes for SONGS, but remains hopeful that the ostrich will extract its head in a timely way in I.12-10-013. Even if the Commission's procedural reticence unwisely forces the SONGS contingency planning discussions behind closed doors in the Governor's Office, careful attention to detail – both in the formulation and in the follow-up expected of the Energy Division and SCE – will be a necessary component of a coherent Track 1 Final Decision. It is in that spirit that A4NR offers these Comments.

Respectfully submitted,

By: /s/ John L. Geesman

JOHN L. GEESMAN
DICKSON GEESMAN LLP

Date: January 14, 2013

Attorney for
ALLIANCE FOR NUCLEAR RESPONSIBILITY

APPENDIX A

Proposed Changes in Findings of Fact and Conclusions of Law

Findings of Fact:

7. Both under-procurement and over-procurement entail significant risks. Under-procurement entails risks of reliability problems and the impacts of mitigating such problems in a short timeframe. Over-procurement entails risks of excessive costs and unnecessary environmental degradation. ~~It is not possible~~ **No party attempted** to quantify whether the risks **consequences** of over- or under-procurement are greater.

9. It is reasonable to use the ISO's analysis of transmission for the purpose of LCR forecasting in this proceeding, **although there is uncertainty about the distribution load transfer between the Mira Loma and Rancho Vista substations.**

44. SCE will need to undertake technical studies to integrate certain preferred resources (including energy storage resources) so that they meet local reliability needs, and to work with the ISO to assess the impacts of such resources to meet or reduce LCR needs. **Similarly, SCE will need to assess the feasibility and cost-effectiveness of a 600 MW distribution load transfer between the Mira Loma and Rancho Vista substations to determine its impact on LCR projections.**

45. SCE will need to work with the ISO and SDG&E to coordinate LCR need assessments across both the Los Angeles Basin and San Diego areas to assure least cost/best fit LCR procurement which maintains Path 44's 2,500 MW capability rating.

Conclusions of Law:

1. A significant difference between the ISO's reliability mission under § 345 and the Commission's reliability emphasis under § 380(c) is that the Commission must ~~balance~~ **meet** its reliability mandate **consistent** with other statutory and policy considerations. Primarily, these considerations are reasonableness of rates under § 451 and § 454 and a commitment to a clean environment under Pub. Util. Code sections including § 399.11 (Renewables Portfolio Standard) and § 454.5(b)(9)(C) (Loading Order).

14. SCE should be required to assess the feasibility and cost-effectiveness of a 600 MW distribution load transfer between the Mira Loma and Rancho Vista substations to determine its impact on LCR projections.

15. SCE should be required to work with the ISO and SDG&E to coordinate LCR need assessments across both the Los Angeles Basin and San Diego areas to assure least cost/best fit LCR procurement which maintains Path 44's 2,500 MW capability rating.