

**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 No. 12-03-014

(Filed March 22, 2012)

**REPLY COMMENTS OF COMPETITIVE POWER VENTURES, POWER
DEVELOPMENT, INC. ON TRACK III RULES ISSUES**

May 10, 2013

William Kissinger
Sarah Barker-Ball
Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, CA 94111

Attorneys for
Competitive Power Ventures,
Power Development Inc.

**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 No. 12-03-014

(Filed March 22, 2012)

REPLY COMMENTS OF COMPETITIVE POWER VENTURES, POWER DEVELOPMENT INC. ON TRACK III RULES ISSUES

Competitive Power Ventures, Power Development, Inc. (CPV) respectfully submits these reply comments in response to parties' opening comments to Administrative Law Judge (ALJ) David M. Gamson's Ruling Seeking Comment on Track III Issues (the "Ruling").

1. The Commission Should Expand the Residual Market for Existing Generators

a. Existing Generators Currently Lack Appropriate Market Opportunities and Investment Incentives

CPV agrees with the opening comments of NRG Energy, Inc. (NRG), Calpine Corporation ("Calpine"), the Independent Energy Producers Association (IEP), and the Western Power Trading Forum (WPTF) regarding the lack of robust market opportunities for existing generators after the expiration of their initial power purchase agreements (PPAs). As recognized by these parties, the State's current electric market structure generally does not afford existing generators the ability to recover new fixed costs, thereby discouraging investments in their facilities that could lead to efficiency gains,

reliability improvements, and other benefits. *See* NRG Opening Comments at p.2; Calpine Opening Comments at p.3; IEP Opening Comments at p.4; WPTF Opening Comments at p.2. Single-year resource adequacy (RA) contracts lack sufficient long term revenue certainty to help generators survive post-PPA.

b. Improving Bilateral Contracting Opportunities Best Addresses the Challenges Currently Facing Generators

CPV agrees with NRG, Calpine, IEP and WPTF that the Commission should help create appropriate market opportunities to allow existing generators to survive post-contract. *See* NRG Opening Comments at p.1; IEP Opening Comments at p.4; Calpine Opening Comments at p.4; WPTF Opening Comments at p.2. Establishing a centralized capacity market, however, may not necessarily be the best solution for California and could, inadvertently, create its own new set of issues for State regulators. The Commission should instead, as suggested by some of the questions posed by Administrative Law Judge Gamson in this proceeding, explore ways to establish more robust contracting opportunities for existing generators and, in effect, focus on creating an effective “residual market” for them. This can take any number of forms. As discussed further below, one of the more promising solutions is to create viable contracting opportunities for existing generators in the Request for Offers (RFO) process. The Commission should structure RFOs such that the load-serving entities (LSEs) first identify their needs, and then all generators – existing and new – with the attributes to meet those needs can bid. Other approaches might incorporate a cost of service approach

for such facilities although it would have to be tempered in a manner that leaves risk on the generator.

2. The Commission Should Ensure that Existing Power Plants Can Meaningfully Participate in the RFO Process

a. Any Generator That Can Meet the Utilities' Needs Should Be Able to Compete in RFOs

As suggested by several parties, future RFOs should be structured around the identified needs of the IOUs or other LSEs, and not restricted by the vintage or technology of the offered resource. *See, e.g.*, IEP Opening Comments at pp.2, 5; WPTF Opening Comments at p.7. In this vein, the utilities should evaluate their needs, and identify the specific products or attributes necessary to meet those needs, and clearly specify evaluation criteria for considering products that respond to the RFO.

Any generator – including those with upgraded, retrofitted, or repowered facilities – that can provide the requested product should be permitted to compete in utility RFOs, a concept endorsed by numerous parties. *See, e.g.*, San Diego Gas and Electric Company (SDG&E) Opening Comments at pp.7-8; Southern California Edison Company (SCE) Opening Comments at p.6; IEP Opening Comments at p.3; WPTF Opening Comments at p.7; AES Southland, LLC (AES) Opening Comments at p.3; TAS Energy Opening Comments at pp.2-3; The Utility Reform Network (TURN) Opening Comments at p.5.

Pacific Gas and Electric Company (PG&E) disagrees. In its Opening Comments, PG&E proffered two justifications for its position that future utility RFOs should exclude upgraded facilities, neither of which is compelling. *See* PG&E Opening Comments at p.9. First, PG&E argued that allowing upgraded facilities to bid may lead to over-

generation because the resulting contract would likely cover the entire upgraded facility. *See id.* The Commission can readily address this concern by adopting standards to ensure that the utilities' needs assessment are based upon realistic assumptions regarding the expected output of existing facilities in absence of a new contract. In addition, as suggested by several parties, the Commission may opt to restrict RFOs to the *incremental* new generation provided by an upgraded facility. *See* AES Opening Comments at p.3; Division of Ratepayer Advocates (DRA) Opening Comments at p.7; SCE Opening Comments at p.6. Second, PG&E argued that upgraded facilities may claim an unfair price advantage by bidding at prices just below that of new or repowered generators. *See* PG&E Opening Comments at p.10. CPV, however, trusts the Commission to uphold its obligation to ensure that all contract prices – including those for upgraded facilities – are just and reasonable.

b. The Commission Should Not Require Uniform Contract Terms for All Types of Generators

CPV disagrees with the comment that “[t]o the extent that a repowered or upgraded facility is bidding into a new generation RFO, it should be restricted to the same length of contracts as new facilities.” AES Opening Comments at p.6; SCE Opening Comments at p.8. Different contract term lengths are appropriate for different-vintage facilities, with shorter contracts available for upgraded facilities than for new/repowered facilities, as has also been suggested by some parties. *See, e.g.,* CEJA Opening Comments at p.9; Sierra Club California Opening Comments at p.12. While it is critical to provide multi-year contracts for upgraded facilities so that generators can

recapture the capital expenditures necessary to complete the retrofits, upgraded facilities will not require as long to recover costs as would a new or repowered facility. The utilities and the Commission should be afforded the ability to determine what contract lengths are just and reasonable under the particular circumstances at hand.

3. Conclusion

CPV appreciates the opportunity to submit reply comments in this proceeding.

Respectfully Submitted,

By: /s/William Kissinger
 William Kissinger

Attorney for Competitive Power Ventures,
Power Development Inc.
Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, CA 94111-4067
T 415.393.2850
F 415.393.2286
william.kissinger@bingham.com

DATED: May 10, 2013