

**\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)

**OPENING BRIEF OF THE WESTERN POWER TRADING FORUM
ON TRACK 4 ISSUES**

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RECOMMENDATIONS

1. Subject to the caveats and safeguards recommended in its opening testimony and discussed herein, WPTF does not oppose the SCE Contingent Resources Strategy. WPTF takes no position on the amounts of the proposed SDG&E procurement but offers certain other recommendations concerning the utility's plans.
2. Rather than mandating that any procurement authorization be made solely for preferred resources, the Commission should mandate an all-resource Request for Offers ("RFO"). Since the Commission has yet to determine how preferred resources should count towards local capacity requirements ("LCR"), it should provide guidance to the utilities on this topic.
3. WPTF believes that an all-source RFO is preferable for securing the Track 4 Option Contracts proposed by SCE, in which all parties with credible proposals can participate.
4. The utilities must allow existing brown field or OTC units to participate in their respective Track 4 RFOs.
5. The Commission should not issue a procurement authorization that contains a condition that allows the level of the procurement to be adjusted downward by a subsequent decision.
6. The procurement approved here should not in any way be deemed to undermine the previously litigated and Commission-approved principle that SCE project development costs may not be recovered from ratepayers if the development leads to utility-owned generation ("UOG").
7. The Commission should make it explicitly clear that the SCE contingency plans will not be permitted to be converted at a later date into new UOG. This can be accomplished by setting forth explicit criteria pursuant to which the Option Contracts can and will be terminated, and explicit criteria pursuant to which the sites established pursuant to the Contingent Site Development will be made available to prospective developers.
8. The utilities' respective requests for CAM treatment for their planned procurement should be denied on the grounds that each has failed to make the necessary showing to justify its application.

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ON TRACK 4 ISSUES**

The Western Power Trading Forum¹ (“WPTF”) respectfully submits this opening brief in Track 4 of the Long-Term Procurement Plan (“LTPP”) proceeding pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission” or “CPUC”) and the schedule set forth by Administrative Law Judge (“ALJ”) David Gamson on November, 1, 2013 at the conclusion of hearings.

This opening brief also conforms to the directives concerning briefs that were contained in ALJ Gamson’s November 4, 2013 email, which directed that, “Based solely upon the record in this proceeding, briefs should include a clear argument setting forth the party’s position on what determinations the CPUC should make on the following issues.” WPTF responds herein to each of the five issues identified by ALJ Gamson.

¹ 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.

I. Response to ALJ Gamson’s Questions

A. Should the CPUC authorize SCE and/or SDG&E to procure additional resources at this time for the purposes within the scope of this proceeding?

In Chapter VII of the Southern California Edison (“SCE”) testimony, it proposes a “Contingent Resources Strategy.” Specifically, SCE plans to pursue two forms of contingent generation development to “backstop” the utility’s Transmission and Preferred Resources strategies. SCE proposes to undertake a Preferred Resources “Living” Pilot Program to procure and evaluate the ability of Preferred Resources to meet LCR needs. The Pilot will focus on Preferred Resources that are located in the southern portion of SCE’s service area in Orange County; specifically the areas served by the Johanna and Santiago substations. SCE is also planning to construct the Mesa Loop-In transmission expansion that will reduce the need for any additional new LA Basin LCR resources. SCE’s Track 4 proposal contains a contingency plan for this project as well. SCE’s Mesa Loop-In contingency proposal is to solicit and execute additional long term gas-fired PPAs that contain a buyer’s right to terminate subject to a termination payment, referred to as “Option Contracts.”

These additional PPAs would be solicited in the same RFO that will be conducted as a result of the Track 1 authorization. In summary, SCE requests authorization to procure up to 500 MW of new resources to cover the contingency that the Mesa Loop-In might not be placed into service as expected. Subject to the caveats and safeguards recommended in its opening testimony and discussed below in greater detail in Section E, WPTF does not oppose the SCE Contingent Resources Strategy. WPTF takes no position on the procurement proposed by San Diego Gas & Electric (“SDG&E”).

B. If so, what additional procurement amounts should be authorized at this time? Please specify any calculation that leads to this position.

WPTF notes that SCE’s testimony is not specific with regard to the amount of Option Contracts it plans to solicit. At one point, SCE says that after subtracting the LA Basin procurement already authorized in Track 1 of this proceeding from the 2800 MW need identified in SCE’s Track 4 studies, there is a remaining need for about 1000 MW.”² The utility states that, the “development of Mesa Loop-In and the strategically located Preferred Resources could displace the need for any additional new LCR resources, while still meeting NERC Reliability Standards.”³ Later, however, SCE states that the Mesa Loop-In by itself reduces the need for additional LCR resources by 1,196 MW.⁴ So, it is not precisely clear what the failure or delay of the Mesa Loop-In might mean in terms of what amount of contingent resource contracts are required.

WPTF recommends the Commission make it clear in the Order just what the circumstances and time frame will be pursuant to which termination rights embedded in the Option Contracts must be exercised. Such specifics are necessary to ensure that the Option Contracts do not become the premise for more “unique fleeting opportunity” applications by SCE for utility owned generation (“UOG”) at a later date, as explained in more detail in Section E.4 below.

² SCE-1, at p. 3.

³ Id.

⁴ SCE, at p. 8.

C. What additional resources, if any, should be authorized to fill procurement needs? Should there be any requirements or restrictions on procurement amounts for any specific resources or categories of resources?

WPTF recommends against the adoption of any standards that mandate the procurement of specific resources or categories of resources. As noted in its rebuttal testimony, WPTF recommends that rather than arguing for or against gas-fired or any other type of generation it makes more sense simply to determine the technical specifications as to what sort of resources are needed to operate the grid reliably and economically and then direct that the utilities hold all-source RFOs that seek resources that meet the approved technical specifications. This recommendation is made to address the concerted effort by certain parties in opposition to the use of gas-fired generation to meet the utility-identified resource needs.

WPTF certainly does not oppose the development of preferred resources; WPTF's membership includes developers and owner/operators of both conventional and renewable resources, and providers of demand response services. Nonetheless, WPTF believe that dictating specific levels of preferred resource procurement in this phase of the LTPP proceeding is ill-advised and counterproductive. Instead, the Commission should identify the operating characteristics that are needed to meet the southern California electric grid needs reliably and economically. Specifying "winners and losers" as to generation types should not occur. Instead, ratepayer interests will best be served by directing that all resources, preferred, renewable, and conventional, should be allowed to participate in the SCE and SDG&E RFOs. Such an all-resource RFO will elicit the most competitive offers and ensure that the system needs that have arisen due to the early closure of the San Onofre Nuclear Generation Station ("SONGS") are appropriately resourced.

WPTF notes, further, that one fundamental issue that remains unresolved is how preferred resources should count towards meeting local area requirements. SCE and SDG&E

will need to understand how these resources count towards meeting local area capacity requirements. If the utilities cannot determine how many preferred resources to procure, they will find it difficult to know how many conventional resources to procure in concert with the preferred resources. It is incumbent upon the Commission, working in concert with the CAISO, to provide guidance to the utilities on how preferred resources are to be counted. WPTF offers this comment in the hope that other parties will also choose to address this issue in their reply briefs. In the words of the famous “Little Rascals” quote, we currently seem to be in the situation where we, “don’t know where we goin’, but we’re on our way!” Determining how best to count preferred resources will certainly add definition and credibility to the itinerary we have embarked upon.

D. What process should the utilities use to fill any procurement amounts authorized at this time?

WPTF recommends, as it always has recommended, the use of all-resource RFOs to meet the needs identified by the utilities and approved by the Commission. WPTF opposes the concept of using bilateral negotiations for securing the Option Contracts proposed by SCE. There is a very simple primary reason for this. Namely, bilateral negotiations do not ensure that the least cost option will be identified and selected. Further, it gives the opportunity for the utility to pick “winners and losers” on criteria other than least cost. The Commission should instead require SCE to include the contingent contract approach in its planned RFO for both Track 1 and Track 4 resources, and prohibit separate bilateral negotiations. In this regard, we note the following exchange that occurred during cross-examination of SCE witness Colin Cushnie:

Q. At line 6 do you state that Edison intends to bilaterally negotiate its contingent GFG contracts?

- A That is correct.
- Q. How do you select the limited field of parties that you decide to approach to enter into negotiations?
- A. SCE's intention is to contact all bidders that submit gas-fired generation proposals in our Track 1 all-source solicitation and pursue the potential for a gas-fired generation contingent PPA.
- Q. Why do you propose bilateral negotiations as opposed to simply holding an RFO for these contingent GFG contracts?
- A. Our objective in putting in place these contingent PPAs is to negotiate something at the lowest possible cost for customers that provide some certainty that the project can move forward in an expeditious manner. We believe the best way to achieve that result would be through bilateral negotiations with each of the potential project developers.⁵

WPTF is supportive of SCE's efforts to procure power "at the least possible cost for customers." We also find it encouraging that the utility plans to contact all bidders that submitted gas-fired generation proposals in the Track 1 all-source solicitation. This is certainly better than only picking two or three potential suppliers and dealing solely with them on a bilateral basis, and this intent had been unclear from a review of SCE's testimony. However, it is still not optimal, simply because the fact remains that a party that did not respond to the Track 1 solicitation might now be in a position to offer a cost-effective resource to SCE. This was further discussed in cross-examination of Mr. Cushnie:

- Q. Couldn't someone who didn't respond to the Track 1 RFO actually be willing to offer a contingent contract at a better price than those who did?
- A. Conceivably. We would not preclude the consideration of such. To be clear, Edison would broadly broadcast its intention to seek to negotiate such a contract.
- Q. And you would be willing to at least talk to folks who had not responded to the Track 1 or participated in the Track 1 RFO?

⁵ Tr., at pp. 1992-1993.

A. If they have a credible project, yes. It's not clear to me why they wouldn't be participating in the Track 1 solicitation if they had such a project.⁶

There are a variety of reasons why a party might not have participated in the Track 1 solicitation. The party's resource(s) may have been subject to another power sales agreement that had since terminated, or the owner might have decided for strategic reasons of its own to wait for the Track 4 solicitation. Regardless of the reason, what is important here is that witness Cushnie has clarified SCE's willingness to deal with any and all parties. These comments make an even stronger case for an all-party RFO as being preferable for securing the Track 4 Option Contracts. SCE could also consider holding an open window period for all interested parties to submit letters of interest if they have a proposal(s) that they want considered for an Option Contract.

E. Are there other determinations the CPUC should consider, or conditions the CPUC should impose, regarding Track 4 procurement?

WPTF makes several further recommendations that should be made applicable to Track 4 procurement, as described below.

1. The utilities' Track 4 RFOs should be open to existing brown field or once-through cooling ("OTC") sites.

In its opening testimony, WPTF advocated that the Commission should make it clear that in pursuing both the Contingent Site Development and the Option Contracts contingency proposals, SCE should allow existing generators, including OTC unit owners, to offer their sites for redevelopment. WPTF makes a similar recommendation with respect to procurement approved for SDG&E. The "redevelopment" of an existing brown field or OTC site can offer several advantages. These sites already have air permits, transmission interconnections, natural gas interconnections, and can often be redeveloped on a timelier basis and at less cost than new

⁶ Tr., at pp 1994-1995.

green field development. Therefore, any approval of the SCE Option Contract strategy or the SDG&E procurement recommendation should note the potential for such proposals and require the utility to specifically allow such proposals to be considered in all aspects of the Track 4 procurement.

Furthermore, such a directive would be consistent with SCE's Generation Resource Approach, as described in Section III.A.3 of its opening testimony.⁷ In it, the utility notes that its analysis began with the development of an initial generation build out and that "an initial configuration of generation resources was developed, placing heavy reliance on repowering at known favorably situated OTC sites and/or nearby electrically equivalent locations (i.e. 1,400 MW near Alamitos Generating Station and 1,000 MW near Huntington Beach Generating Station) in the LA Basin."⁸ This "heavy reliance" on repowering should be reflected in the two SCE contingency proposals. Furthermore, SCE witness Jonathan Ruble indicated during cross-examination SCE was willing to do so:

Q Does SCE intend to allow existing brown field generators including OTC units to offer their sites for redevelopment?

A. As I understand now, I am not aware of any intent to preclude any parties from participating in this future-to-be-determined RFO.⁹

Therefore, WPTF recommends that the Commission decision in this Track 4 mandate that the utilities must allow existing brown field or OTC units to participate in the utilities' respective Track 4 RFOs.

⁷ SCE-1, at pp. 14-15.

⁸ Ibid,

⁹ Tr., at p. 2074.

2. The procurement authorizations granted in this Track 4 should be firm and not interim.

Several parties support the concept of an interim procurement authorization decision, conditioned upon the Commission being able to reduce that authorization in a subsequent decision. These parties fail to recognize the commercial impracticality of pursuing such a course of action. If the Commission were to issue an interim procurement authorization and leave open the possibility that the authorization could subsequently be reduced, any resulting utility RFO will most certainly be unsuccessful and under-subscribed. As noted by SCE in its September 10 opening comments on schedule, “It is commercially impractical for SCE to contract to procure more generation than the Commission will ultimately authorize.”¹⁰ SCE further observes that, “If resource developers are uncertain of whether the Commission will ultimately authorize SCE to contract with them in the final Track 4 decision, they may not be motivated to pursue contracts.”¹¹ In its comments, NRG Energy Inc. explains the rationale for this lack of motivation, “From a project developer’s perspective, an interim, conditional decision is really no decision at all. Absent a contract approved by the Commission without threat of revocation or modification, developers will not move beyond the initial phases of project development to expend the tens of millions of dollars that will be required to complete a project.”¹²

The Independent Energy Producers Association (“IEP”) also explains the commercial impracticality of issuing a conditioned procurement authorization:

If the procurement commitments authorized by the interim decision could later be undone by a subsequent decision, it is unlikely that the interim decision will result in any procurement at all. Considerable time and financial commitment are required to prepare a bid for a Request for Offers (RFOs), and if the commitments

¹⁰ Opening Comments of Southern California Edison Company (U 338-E) on Schedule, at p. 2.

¹¹ Id, at p. 3.

¹² September 10, 2013, Comments of NRG Energy, Inc. in Response to Scheduling Issues Raised at the September 4, 2013 Prehearing Conference, at p. 2.

to the resources procured pursuant to the interim decision are contingent or subject to later revocation, few bidders are likely to participate in the RFO. The procurement authorized by the interim decision should be “no regrets” procurement that will be needed regardless of what comes out of the TPP, and the interim decision procurement should not be subject to later revocation.¹³

It would be a futile waste of time for the Commission to issue a conditioned procurement authorization that could be adjusted downward by a subsequent decision. As noted in the comments above, developers need certainty that they are not chasing ephemeral Commission authorizations and that their substantial investments in project development will not be undercut by a subsequent “never mind” ruling from the Commission.

3. Approval of the SCE Contingent Resources Strategy should not compromise the fundamental principle that IOU development costs are at risk and not ratepayer guaranteed.

WPTF’s opening testimony highlighted the past history of SCE General Rate Cases in which the funding of the utility’s Project Development Division has been considered. In successive rate cases, the Commission has been receptive to WPTF’s concerns that ratepayer funds not be utilized for SCE project development efforts. In D.06-05-016, the Commission agreed with these concerns, finding that:

While we recognize there is value in having more participants such as SCE in the process, we find it necessary to subject SCE to the same cost recovery risks as faced by independent producers. Independent producers’ development costs associated with unsuccessful projects are not recoverable from ratepayers. It is a matter of fairness that SCE assume that same risk, if it chooses to participate.¹⁴

Subsequently, in its 2009 GRC (A.07-11-001), SCE sought a vast expansion of the PDD budget. The utility requested \$5,012,000 to continue the PDD activities authorized for rate recovery in the 2006 GRC and another \$21,572,000 to begin generation-related technology

¹³ September 10, 2013, Comments of the Independent Energy Producers Association on the Schedule for Track 4, at p. 2.

¹⁴ D.06-05-016, at p. 52.

demonstration, testing, and evaluation and to fund the incremental staffing required to conduct that work. Once again, WPTF objected to this expansion of the PDD, and once again the Commission agreed:

For the same reasons as set forth in D.06-05-016, we reject SCE's \$20 million request for cost recovery of RD&D. In D.06-05-016, the Commission expressed concerns regarding the potential to create an uneven playing field for competitors. The Commission stated, "...from a policy perspective, we feel it is important that the project development costs for proposed new projects should not be specifically included in rates." These same concerns continue to exist. To address these concerns, the Commission excluded SCE's entire PDD request from rates.¹⁵

This same battle was fought and resolved in the same manner in SCE's 2012 GRC.¹⁶ During cross-examination of SCE witness Rumble, this topic was discussed:

Q. Mr. Rumble, you're the current manager for generation planning; is that correct?

A. That's correct.

Q. And that was previously known as the Project Development Division?

A. That's correct.

Q. As such, then are you presumably familiar with the litigation that has occurred in the past Edison general rate cases with regard to whether or not Edison could recover project development costs in rates?

A. Generally, yes.

Q. Okay. Are you familiar with the fact that the Commission has said that since independent producers development costs associated with unsuccessful projects are not recoverable from ratepayers, it's a matter of fairness that SCE assume the same risk, should it propose to develop utility-owned generation?

A. I am familiar with that specifically towards utility-owned generation.

...

Q. Prior GRC decisions have said utility project development costs that lead to UOG should not be included in rates, correct?

A. Development costs that lead to UOG, I agree.

¹⁵ D.09-03-025, at pp. 41-42.

¹⁶ See D.12-11-051, at pp. 77-79.

Q. Okay. Would you agree that anything that is being done in this proceeding should not be considered to undermine or contradict those principles established in the GRCs?

A. I agree that nothing should undermine those principles. To be clear, we are not proposing any UOG. And we do not intend to propose any UOG in the future.¹⁷

There is no dispute here. However, for certainty, WPTF recommends that it be made clear that the procurement approved here shall not in any way be deemed to undermine the previously litigated and Commission-approved principle that SCE project development costs may not be recovered from ratepayers if the development leads to UOG. SCE has stated its agreement and further indicated it does not intend to propose any UOG in the future. The decision to be issued herein should memorialize these facts, and specifically impose a prohibition on any new UOG in connection with this Track 4 procurement, which will ensure that there will be no improper recovery of project development costs.

4. Track 4 should not be permitted to eventually evolve into SCE's next "unique fleeting opportunity."

On a related matter, WPTF's opening testimony noted that SCE's Track 4 proposals have customers paying for two very big layers of contingencies and that the Commission should be careful to recognize the momentum that can build behind such planning efforts. Once SCE starts spending money on these efforts, it will be natural for those involved to want their efforts to be more than merely hypothetical backstops. Moreover, as spending on these contingency plans continues, the fact that much of the cost is now sunk will make the contingency options look like increasingly attractive additional "insurance" even if the underlying projects (both the Mesa Loop-In and Preferred Resources) are moving forward.

¹⁷ TR., at pp. 2075-2077.

This leads to the possibility that the SCE contingency plans could become the next “unique fleeting opportunity” for additional generation, and perhaps even UOG that causes the system to be overbuilt, erodes competition, and raises rates. While WPTF does not oppose SCE’s Contingent Resources Strategy, subject to the comments and recommendations discussed above, it recommends that the Commission make it explicitly clear that such contingency plans will not be permitted to be converted at a later date into new generation proposals, either through PPAs or new UOG. This can be accomplished by setting forth explicit criteria pursuant to which the Option Contracts can and will be terminated, rather than being built, and explicit criteria pursuant to which the sites established pursuant to the Contingent Site Development will be made available to prospective developers.

5. The Utilities have not met the burden for justifying application of the Cost Allocation Mechanism.

SCE’s request for Track 4 procurement authorization for 500 MW of new resources and potential contingent gas-fired generation Option Contracts, as well as the Contingent Site Development all appear to be premised on SCE receiving Cost Allocation Mechanism (“CAM”) treatment. SDG&E similarly requests CAM treatment for the procurement authorization it seeks. For reasons described in more detail in the opening brief of the Direct Access Customer Coalition and Alliance for Retail Energy Markets, which WPTF supports, WPTF believes that the utilities have each failed to meet the burden on each to demonstrate that CAM treatment is justified. In a recent decision rejecting the call for a rulemaking on cost allocation issues, the Commission made it explicit that there is a burden on utilities to make a clear showing to justify their CAM requests:

At the same time, we emphasize that IOUs must provide clear explanations of and support for their cost allocation proposals in applications and supporting

testimony, to facilitate the development of a sufficient record on which to evaluate such proposals.¹⁸

Put simply, both the SCE and SDG&E showings in this regard are bereft of the type of clear explanation and support that the Commission has said is a necessary prerequisite to CAM application.

II. Conclusion

WPTF reiterates the recommendations made above that:

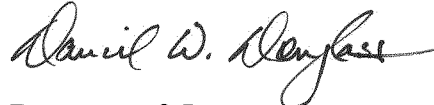
1. Subject to the caveats and safeguards recommended in its opening testimony and discussed herein, WPTF does not oppose the SCE Contingent Resources Strategy. WPTF takes no position on the amounts of the proposed SDG&E procurement but offers certain other recommendations concerning the utility's plans.
2. Rather than mandating that any procurement authorization be made solely for preferred resources, the Commission should mandate an all-resource RFO. Since the Commission has yet to determine how preferred resources should count towards local capacity requirements, it should provide guidance to the utilities on this topic.
3. WPTF believes that an all-resource RFO is preferable for securing the Track 4 Option Contracts proposed by SCE, in which all parties with credible proposals can participate.
4. The utilities must allow existing brown field or OTC units to participate in their respective Track 4 RFOs.
5. The Commission should not issue a procurement authorization that contains a condition that allows the level of the procurement to be adjusted downward by a subsequent decision.

¹⁸ Id, at p. 16

6. The procurement approved here should not in any way be deemed to undermine the previously litigated and Commission-approved principle that SCE project development costs may not be recovered from ratepayers if the development leads to utility-owned generation (“UOG”).
7. The Commission should make it explicitly clear that the SCE contingency plans will not be permitted to be converted at a later date into new UOG. This can be accomplished by setting forth explicit criteria pursuant to which the Option Contracts can and will be terminated, and explicit criteria pursuant to which the sites established pursuant to the Contingent Site Development will be made available to prospective developers.
8. The utilities’ respective requests for CAM treatment for their planned procurement should be denied on the grounds that each has failed to make the necessary showing to justify its application.

WPTF thanks the Commission for its attention to the issues and discussion contained herein.

Respectfully submitted,



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November 25, 2013