

**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  
COGENERATION ASSOCIATION OF CALIFORNIA AND  
THE ENERGY PRODUCERS AND USERS COALITION**

Michael Alcantar  
Donald Brookhyser  
Alcantar & Kahl LLP  
1300 SW Fifth Avenue  
Suite 1750  
Portland OR 97201  
503.402.8702 direct  
503.402.8882 fax  
[mpa@a-klaw.com](mailto:mpa@a-klaw.com)  
[deb@a-klaw.com](mailto:deb@a-klaw.com)

Counsel to the  
Cogeneration Association of California

Evelyn Kahl  
Alcantar & Kahl LLP  
33 New Montgomery Street  
Suite 1850  
San Francisco CA 94105  
415.421.4143 office  
415.989.1263 fax  
[ek@a-klaw.com](mailto:ek@a-klaw.com)

Counsel to the  
Energy Producers and Users Coalition

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Pursuant to Rule 13.11 of the Commission Rules of Procedure, the Cogeneration Association of California (CAC)<sup>1</sup> and the Energy Producers and Users Coalition (EPUC)<sup>2</sup> file this opening brief following the hearing in Track IV of this proceeding.

**I. SUMMARY**

This track addresses the issues related to fulfilling local capacity requirements (LCR) arising from the retirement of the San Onofre Nuclear Generating Station (SONGS). There are significant uncommitted preferred resources in the study area to be procured first, consistent with the Loading Order. Those resources may likely fulfill the entire residual need for LCR, and no additional procurement should be authorized in

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<sup>1</sup> CAC represents the combined heat and power and cogeneration operation interests of the following entities: Coalinga Cogeneration Company, Mid-Set Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company, Midway Sunset Cogeneration Company and Watson Cogeneration Company.

<sup>2</sup> EPUC is an ad hoc group representing the electric end use and customer generation interests of the following companies: Aera Energy LLC, Chevron U.S.A. Inc., ExxonMobil Power and Gas Services Inc., Phillips 66 Company, Shell Oil Products US, Tesoro Refining & Marketing Company LLC, THUMS Long Beach Company, and Occidental Elk Hills, Inc.

this track. The Commission in its Track I decision identified these uncommitted preferred resources.<sup>3</sup> Neither the CAISO, nor SCE, included such available, uncommitted resources in their modeling. As a result, their calculations of residual need are overstated. In addition, SCE is not taking any action to procure those resources identified in the Track I decision. Requiring the utilities to give priority to first acquiring those identified preferred resources not only enforces the Commission's prior order but also reinforces the Loading Order.

## **II. THERE ARE SIGNIFICANT PREFERRED RESOURCES AVAILABLE IN THE STUDY AREA**

In its Track I Decision, the Commission found there were 1,000 MWs of uncommitted preferred resources in the LA Basin ("the Preferred 1,000 MWs"). The Commission also found that these resources had been "undercounted."<sup>4</sup> The resources included energy efficiency, combined heat and power (CHP) and demand response. The Commission's conclusions regarding the availability of the Preferred 1,000 MWs was based on two stated grounds. First, an extensive review of the CAISO's modeling. Second, consideration of the mandates for procurement of preferred resources from the Governor's Clean Energy Jobs Plan and the Commission's commitment to encouraging distributed generation through a number of programs, including the CHP Settlement.<sup>5</sup> The Commission authorized procurement in Track I of only a maximum of 1,800 MWs because it found that the Preferred 1,000 MWs would be available, and procured. Given that the Loading Order required preferred resource procurement, the Commission's conclusions regarding procurement of the Preferred 1,000 is reasonable.

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<sup>3</sup> *Decision Authorizing Long-Term Procurement for Local Capacity Requirements*, D.13-02-015, February 13, 2013.

<sup>4</sup> *Id.*, at p. 65.

<sup>5</sup> *Id.*, at pp. 45-59.

In finding that there were 1,000 MWs of uncommitted preferred resources, and that SCE should be required to procure those resources before any additional authorization in Track I, the Commission explicitly rejected the CAISO's assertion that such resources could not be relied upon to meet local capacity requirements:

*As with uncommitted energy efficiency, we are convinced the ISO should have included some projection of uncommitted CHP into its models. As with energy efficiency, a significant amount of what the CEC categorized in 2009 as uncommitted CHP is now more certain to exist.<sup>6</sup>*

In finding that such preferred resources should be first procured, the Commission also reiterated the primacy of the Loading Order:

*By assuming higher levels of these resources [energy efficiency, demand response and CHP] than the ISO, we are promoting the policies of the Loading Order and reducing the anticipated LCR need.<sup>7</sup>*

....

*Any RFO shall include the following elements:*

- g) Provisions designed to be consistent with the Loading Order approved by the Commission in the Energy Action Plan and to pursue all cost-effective preferred resources in meeting local capacity needs; ...<sup>8</sup>*

....

*In its application [for approval of contracts], SCE shall show:*

- Consistency with the Loading Order, including a demonstration that it has identified each preferred resource and assessed the availability, economics,*

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<sup>6</sup> *Id.*, at p. 59.

<sup>7</sup> *Id.*, at p. 78.

<sup>8</sup> *Id.*, at pp. 92, 132.

*viability and effectiveness of that supply in meeting the LCR need; ...*<sup>9</sup>

- *... To the extent that the availability, viability and effectiveness of resources higher in the Loading Order are comparable to fossil-fueled resources, SCE shall show that it has contracted with these preferred resources first.*<sup>10</sup>

#### *Conclusion of Law*

*2. Consistent with 454.5(b)(9)(C), which states that utilities must first meet their “unmet resource needs through all available energy efficiency and demand response resources that are cost-effective, reliable and feasible,” and the Commission’s Loading Order established in the Energy Action Plan, utility LCR procurement must take into account the availability of preferred resources before procuring non-preferred resources.*<sup>11</sup>

To ensure that its mandates from its Track I decision are fully completed, and consistent with the Loading Order, the Commission’s analysis of the residual need after SONGS retirement must require that the Preferred 1000 MWs be first procured. As the next section demonstrates, the utilities and the CAISO ignored the potential for those resources and pretended that they would not exist while computing their residual need.

### **III. THE MODELING OF LCR IN THIS TRACK DOES NOT INCLUDE THE PREFERRED 1,000 MW**

The testimony by the CAISO and SCE in this case establishes they both ignored the availability of the Preferred 1000 MWs in modeling any residual need in this Track. Robert Sparks testified on cross-examination that the CAISO had simply subtracted the

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<sup>9</sup> *Id.*, at pp. 93, 135.

<sup>10</sup> *Id.*, at pp. 94, 135.

<sup>11</sup> *Id.*, at p. 127.

1,800 MWs authorized by the Track I decision without also considering the procurement of the uncommitted Preferred 1000 MWs.<sup>12</sup>

The CAISO also did not assume the procurement of any of the buckets of preferred resources authorized by the Track I decision. Although the Track I decision authorized a total procurement of up to 1,800 MWs, it only authorized the procurement of 1000-1200 MWs of gas-fired resources.<sup>13</sup> The remaining balance was to be procured through specific allocations of preferred resources. Mr. Sparks testified that the resources in those additional buckets were not included in the modeling of residual need.<sup>14</sup>

Similarly, Carl Silsbee on behalf of SCE testified that they subtracted the 1,800 MWs authorized by the Track I decision to arrive at a residual need,<sup>15</sup> and did not assume procurement of any other resources either identified or authorized by the Track I decision.

Not only did SCE not model the procurement, but it has taken no steps to implement any procurement. Colin Cushnie testified:

*Q And has Edison undertaken any efforts to procure those preferred resources since the Track 1 decision was issued?*

*A I don't believe that we have done anything substantial in that regard. The intent will be to develop the EE and DR resources in the context of those specific proceedings. We'll need to bring to the Commission's attention in those proceedings the Commission's assumptions in the Track 1 decision.<sup>16</sup>*

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<sup>12</sup> Transcript, at p. 1522.

<sup>13</sup> D.13-02-015, Ordering Paragraph 1, at p. 131.

<sup>14</sup> Transcript, at p. 1522.

<sup>15</sup> Transcript, at p. 2094.

<sup>16</sup> Transcript, at p. 1998.

Thus, SCE's request in this Track for authorization to procure an additional 500 MWs does not reflect procurement of any of the Preferred 1000 MWs. It also is not assuming procurement of any of the 600-800 MWs of preferred resources specifically mandated in the Track I decision. SCE is effectively requesting that the Commission disregard its finding that those uncommitted preferred resources are available, and pretend they cannot exist and be procured. Disregard of a binding Commission decision should not be allowed.

The Commission apparently needs to repeat its finding of the availability of those resources and their absolute priority under the Loading Order in the decision in this proceeding as well. Procurement of the Preferred 1,000 MWs will likely eliminate any residual need. SCE should not be authorized to procure any additional resources in this Track until it completes procurement of the Preferred 1,000. To answer the ALJ's first question,<sup>17</sup> the Commission should not authorize any additional procurement in this Track.

Additionally, SCE requires some explicit direction from the Commission to begin procurement of the preferred resources identified and authorized in the Track I Decision. The Commission should set a deadline for SCE to commence an RFO for preferred resources to implement the Track I Decision.

#### **IV. ANY PROCUREMENT AUTHORIZED IN THIS CASE MUST BE CONSISTENT WITH THE LOADING ORDER**

Even if procurement of the available preferred resources does not completely fill the residual need, it must enforce the utilities' requirement to follow the Loading Order for procurement. This principle holds even if the Commission does authorize any

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<sup>17</sup> "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?"



procurement for local capacity requirements in this Track. An explicit directive from the Commission is necessary because SCE will otherwise procure through an all-source RFO, or other means to defeat the Loading Order procurement directives. Mr. Cushnie stated that if authorized to procure its requested 500 MWs, it would do so in an all-source RFO, and preferred resources would have to compete on a least-cost/best-fit basis. That is clearly a violation of both the language and the spirit of the Loading Order. As directed in the Track I Decision, SCE “*must first meet [its] unmet resource needs through all available energy efficiency and demand response resources that are cost-effective, reliable and feasible.*”<sup>18</sup>

## **V. CONCLUSION**

The Commission must first ensure that its prior decisions related to Loading Order procurement, and particularly the Preferred 1,000, are enforced. The Commission recognized in its Track I decision that there were 1,000 MWs of preferred resources available in the LA Basin, and SCE should be required to procure those resources first, before receiving any additional authorization. SCE also proposes to implement any authorization received in this Track through an all-source RFO. Consistent with the Loading Order, SCE should be required first to give priority to

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<sup>18</sup> *Decision*, pp. 93, 135.

procurement of preferred resources in fulfilling any procurement authorization granted in this Track.

Respectfully submitted,



Michael Alcantar

Counsel to the  
Cogeneration Association of California



Evelyn Kahl

Counsel to the  
Energy Producers and Users Coalition

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