

**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 COMMENTS OF THE WESTERN POWER TRADING FORUM
ON THE TRACK 3 PROPOSED DECISION**

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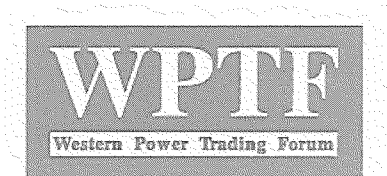


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In accordance with Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the Western Power Trading Forum¹ (“WPTF”) respectfully provides these opening comments on the January 28, 2014, proposed decision of Administrative Law Judge (“ALJ”) David M. Gamson in Track 3 of the Long-Term Procurement Plan (“LTPP”) proceeding (“PD”), as subsequently revised in a draft circulated on February 4, 2014. The PD addresses long-term procurement rules and makes several rule changes for utility procurement of electricity in California. WPTF takes no position at this time on the sections of the PD not addressed in these opening comments, but reserves the right to reply to the opening comments of other parties on such other sections as we find necessary and advisable.

I. OPENING COMMENTS

A. In discussing the issue of whether existing plants can bid into new RFOs, the definition of “incremental capacity” should be modified.

Section 6.1 of the PD addressed the following question: Should the Commission adopt a rule that explicitly indicates that existing power plants may bid upgrades or repowers into new-

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.

generation RFOs?² After summarizing various parties' positions, the PD then concludes that, "While current rules do not specifically prohibit the combination of RFOs for existing or new facilities, we hereby clarify that certain upgraded and repowered plants are allowed to bid in new generation RFOs."³ The use of the word, "certain," in this sentence in fact increases uncertainty that may confuse parties who consult this important decision in the future. For reasons more fully explained below, WPTF recommends that it be deleted, as shown below:

While current rules do not specifically prohibit the combination of RFOs for existing or new facilities, we hereby clarify that ~~certain~~ upgraded and repowered plants are allowed to bid in new generation RFOs.

Following the introduction that contains this sentence, the PD then discusses and provides definitions for the terms "Upgraded Plants" and "Repowered Plants." The introduction to these definitions is problematic, however. It reads as follows:

In discussing this issue, first we need to define the term "incremental capacity." We will take SCE's recommendation that the definition should be "capacity incremental to what was assumed in the underlying needs assessment." In other words, these are net additions. We agree with SDG&E that an existing facility may provide value to IOU ratepayers if it has a useful life extending beyond its current contract or is able to lengthen its useful life by upgrading or repowering various facility components.⁴

WPTF has no quarrel with the final sentence citing SDG&E's position, but believes that the "incremental capacity" definition should not be adopted as written and should instead be broadened. For example, a plant that changed its operating characteristics through upgrades could be valuable; could obviate the need for new resources; and yet not result in net capacity additions. Therefore, the definition of new capacity ought to be broadened to include the type of upgrades that would benefit the system even if not adding new MWs. This could, for example,

² PD, at p. 25. Note that the pagination cited for quotations from the PD is premised on the Word version sent out by ALJ Gamson on February 4.

³ Id, at p. 28.

⁴ Id at pp. 28-29.

include upgrades for environmental reasons. Therefore, the language cited above should be modified as follows:

In discussing this issue, first we need to define the term “incremental capacity.” We will not adopt ~~take~~ SCE’s recommendation that the definition should be “capacity incremental to what was assumed in the underlying needs assessment.” In other words, ~~these are~~ incremental capacity need not include net additions. We agree with SDG&E that an existing facility may provide value to IOU ratepayers if it has a useful life extending beyond its current contract or is able to lengthen its useful life by upgrading or repowering various facility components

This would be consistent with language already in the PD dealing with this possibility:

In addition, it **may be possible for an existing power plant to add capabilities** (e.g., energy storage, more optimal ramp rate, or start up times) that would enhance the operation of the plant and increase its value to the system.⁵ [emphasis added]

We also note that this is consistent with the language quoted above.

Therefore, WPTF recommends that the PD definition of “upgraded plants” should be modified as follows:

- Upgraded plants: Upgrades are defined as expanding the generation capacity at, or enhancing the operation of, a generation facility, so long as such ~~incremental MW~~ expansion or enhancements can provide the necessary attributes that the Commission has authorized the utility to procure. An upgraded plant or a plant with incremental capacity additions or enhancements would be a plant where the main generating equipment is retained and continues to operate.

Furthermore, the IOUs should not design their competitive solicitations to explicitly request new capacity on a facilities-based basis. Rather, they should express their requirements on a needs-based basis in competitive solicitations that are open to all parties. We note also that the encouragement of competitive solicitations is within the scope of the new LTPP proceeding (specifically, “Procurement Rules to Encourage Competitive Solicitations”).⁶ WPTF believes

⁵ Id at p. 28.

⁶ See R.13-12-010, at p. 12.

that the Commission should explicitly direct the utilities to identify their needs clearly and solicit proposals to meet their needs rather than a make a predetermination as to what kind of solutions there are to meet those needs. Such explicit direction to the utilities would be consistent with the following PD discussion:

Parties want to ensure neutrality between types of facilities that are competing against one another in a solicitation for capacity. Some parties doubt that utilities define capacity needs specifically enough to ensure that valuations can be neutral with regards whether the offered product meets the identified needs. We urge the utilities to remove whatever ambiguity or lack of clarity there is in RFO documents, so as to ensure that bidders know which services, quantities, or locations are the target of the RFO. While we are unaware of specific examples in this proceeding of RFOs that cause bias towards or against a type or vintage of facility through lack of clarity in bidding documents or bid valuations, parties are encouraged to bring complaints to the attention of Energy Division for investigation.⁷

In conclusion, WPTF opposes the underlying implicit assumption that the utilities should conduct “new generation” RFOs. RFOs should be issued for a need, whether it be capacity, energy, ramping capability, location or a combination of some or all of these products. Bids should be accepted from any entity that can meet the need(s) as specified. Rather than distinguishing between repowers/upgrades, unmodified existing resources, and green field development, utility solicitations should be open to all resources and types of suppliers.

B. Impacts of Transparency on Forward Procurement

The issues under consideration in Section 5 of the PD were whether the Commission should require the IOUs to provide more public transparency into the levels of future procurement for which each has entered into a contract; what confidentiality rules could be changed or removed; and how the IOUs can provide visibility to the CAISO regarding their midterm procurement contracts. These are issues of critical importance, yet the PD essentially

⁷ PD, at p. 29.

focuses solely on a brief discussion of the issue of RFO bid and offer disclosure, finding that, “the Commission has not to date allowed public disclosure of RFO bid and offer information, as such disclosure could reasonably be expected to affect the market to the detriment of IOUs and their ratepayers. Nothing has changed in this regard. We do not find it to be in the public interest to provide disclosure at this time.”⁸ By focusing solely on bid and offer information, the PD omits consideration of the critical need for greater transparency with regard to bid requirements and evaluation criteria.

1. The Commission should adopt WPTF’s recommendations on transparency of bid requirements and evaluation criteria.

The PD cites WPTF’s position to the effect that “greater transparency is needed with regard to the levels of future procurement for which each IOU has entered into contracts. WPTF believes such transparency, including in RFOs, will provide clearer signals to the market with regard to future planning and will enable prospective suppliers to better focus their future bid activities.”⁹ It also cites WPTF as suggesting that winning bid/offer information could be released five years after the fact on an anonymous basis that conceals the identity of the successful bidders. However, it does not cite WPTF’s recommendations with regard to the need for greater transparency for bid requirements and evaluation criteria.

This is unfortunate because WPTF has made meaningful arguments in support of the position that greater transparency is needed with regard to these IOU procurement activities. There need to be clearer signals to the market with regard to bid requirements and evaluation criteria that will enable prospective suppliers to better conduct forward planning and focus their future bid activities. As noted in WPTF’s April 26, 2013 Track 3 comments:

⁸ Id at p. 23.

⁹ Id at p. 19.

The bane of generators and suppliers is uncertainty; uncertainty about demand; uncertainty about what products are desired; uncertainty about utility contract terms, etc. To the extent there can be greater transparency with regard to existing contracts, the market is more likely to respond to future competitive Requests For Offers (“RFOs”) with more sharply focused products and more competitive pricing.¹⁰

In order for IOUs to conduct robust, price-competitive RFOs, there needs to be transparent bid requirements that are made widely available before bids are received. When the criteria for bid evaluations are also clear and transparent; when bidders know in advance the metrics that will be utilized by the IOU in evaluating the bids – from local reliability effectiveness to more efficient generation with the right operating attributes and environmental characteristics -- then bids will be more efficient and the most cost effective resources will be selected. To the contrary, when bid requirements and evaluation criteria are imprecise or unknown, the ability for bidders to structure their offerings is compromised. As a result, this can mean that a bidder who may have been able to offer an extremely responsive and price competitive bid fails to do so.

When suppliers have to guess or assume what an IOU wants, that uncertainty gets factored into responsive bids and usually equates to higher prices. Conversely, when bid requirements and evaluation criteria are transparent, the bidders can be more responsive and lower-price suppliers are more likely to be successful. As a result, ratepayers benefit.

WPTF therefore recommends that the PD’s discussion of transparency issues be modified to include the following language at the end of Section 5.2.3:

Finally, we note that in order for utility RFOs to achieve the most competitive and price-responsive responses, it is important that there be increased transparency with regard to both bid requirements and bid evaluation criteria. Doing so will enable respondents to “sharpen their pencils” and offer bids that are more likely to be price competitive, which will redound to the benefit of ratepayers in particular

¹⁰ Track III Comments of the Western Power Trading Forum, at pp. 3-4.

and the state's economy in general. Therefore, utilities are directed to provide greater detail in their RFOs with regard both bid requirements and the criteria for bid evaluation. Bidders should be entitled to know in advance the metrics that will be utilized by the IOU in evaluating the bids, so that respondents' bids will be more efficient and the most cost effective.

2. The PD correctly addresses the issue of overreaching non-disclosure agreements and the inability of parties to an RFO to discuss concerns with the Commission.

The PD also expresses concern “that the non-disclosure agreements that the IOUs require bidders in their RFOs to sign have impeded the ability of market participants to bring concerns regarding the conduct of RFOs to the attention of the Commission and other state officials.”¹¹ Therefore, the PD provides that “any non-disclosure agreement that the utility requires an RFO participant to sign must not bar the participant from reporting such concerns, nor may a utility arbitrarily reject the offer of a participant that engages in such a discussion with appropriate officials.” WPTF endorses this directive.

C. Modifications to the Cost Allocation Mechanism (CAM)

The PD deals with several CAM-related issues, which WPTF addresses below.

1. The Joint Parties Proposal Needs Updating

The PD eliminates any requirement that a utility undertake a CAM energy auction as a tool to net capacity costs for CAM facilities and instead requires all utilities to utilize the mechanism adopted in the Joint Party Proposal (“JPP”) adopted in D.07-09-044 to set the net capacity costs that would be allocated to benefitting customers. WPTF was a party to the Settlement that was approved in D.07-09-044. The Settlement primarily focused on how the energy auctions were to be conducted, and the JPP was a “safety valve” device to be used in the event an auction was impractical. Now, however, the JPP is being adopted for CAM calculations in all cases. While this may be convenient, it is clear that the JPP does not fully reflect the

¹¹ PD, at p. 24.

value of energy and ancillary services, given the passage of time and new market requirements and products that have arisen since its approval. Basically, the JPP needs to be updated to account for market design developments.

A primary issue is that the JPP does not include any valuation for flexibility. Without an adjustment for flexibility, the JPP is already outmoded and in need of review and modernization. WPTF therefore suggests that there should be a workshop to update the JPP to account for flexibility costs and any other updates that parties may believe to be necessary. Furthermore, it should be noted that the CAISO has a variety of ancillary services, including non-spinning reserves, an operating day-ahead and real-time market for regulation up, regulation down, and spinning reserves. All of these elements should be included in the proxy calculation, together with values for additional ancillary services products that may become available in the future.

The Commission must examine carefully how to value the energy and ancillary service component that determine the net capacity costs, whether through a modified JPP or otherwise. By ascribing too little value to the energy and ancillary service components, the IOU is able to layer more net capacity costs on competitive Community Choice Aggregation (“CCA”) and Electric Service Provider (“ESP”) suppliers, resulting in an unnecessary and unfair cost shifting to retail choice customers.

Therefore, WPTF recommends that the PD be revised to provide for a workshop at which the updating and modernization of the JPP can be considered by all interested parties. Any changes that may result from the collaborative workshop process could then be adopted in a later assigned commissioner or administrative law judge ruling.

2. Other CAM issues remain unresolved.

WPTF believes that resources that are used to meet the IOU’s bundled load requirements should never be afforded CAM treatment. The PD says that “Bundled procurement undertaken

pursuant to a utility's AB 57 bundled procurement plan is normally not subject to the CAM."¹² This is fine so far as it goes but it really doesn't go far enough in clarifying that procurement that solely serves bundled customers should NOT be afforded CAM treatment.

The PD also states that procurement that a utility is authorized or directed to undertake in the "system track" of the LTPP, to meet local or system (including flexibility) reliability needs, will ordinarily be subject to the CAM.¹³ It also states that "Since bundled plans rarely if ever direct particular procurements, this distinction should be reasonably transparent to all parties."¹⁴ In other words, the PD basically sets up a working definition that leads to the inescapable conclusion that almost all procurement outside of the bundled procurement plans will receive CAM treatment. This in turn provides a clear incentive to utilities to label as much of their procurement as possible as being necessary to meet local or system reliability needs, in order to be able to shift a portion of the associated costs to their ESP and CCA competitors. This overly broad and imprecise statement effectively sets Commission policy that could promote anti-competitive behavior, which is antithetical to Commission doctrine.

WPTF believes that resources should be evaluated for CAM eligibility on the basis of its primary purpose. That is, if the resource was added primarily to provide supply to bundled customers, then any tangential reliability improvement should not be sufficient to justify CAM treatment. While a "primary purpose" test will not offer absolute precision, it will be a definite improvement over the vague "everybody benefits" justifications that have been used to date to justify CAM treatment.

¹² PD, at p. 54.

¹³ Ibid.

¹⁴ Ibid.

D. Changes to the Forecasting Obligations by the IOUs with Regard to DA and CCA Departing Load.

Section 4.2 of the PD addresses the question of how the Commission should best balance issues regarding departing load in any future requirements for procurement. It concludes that the IOUs should estimate reasonable levels of expected Direct Access (“DA”) CCA departing load over the 10-year term of each utility’s bundled plan, using information provided by the California Energy Commission and/or by a CCA in its Binding Notice of Intent. This departing load is then to be excluded from the utility’s future bundled procurement plans, who should only procure for the assumed amounts of retained bundled load. As a result of this directive, the forecasted DA and CCA departing load “shall not be subject to non-bypassable charges for any incremental stranded procurement costs incurred by the IOUs for the period after the date of departure assumed in their approved bundled plans.”¹⁵

WPTF concurs with and supports this result. When the utilities utilize forecasts that ignore departed load or that presume such departed load will return to utility service it leads to over-procurement and unnecessary stranded costs that burden all ratepayers. While absolute precision in forecasting cannot be expected, the utilities should at least be required to use the available forecasts of departing load, and their ability to recover stranded costs from retail choice customers should be based only on the delta between their forecasted departed load and the actual level of departed load. The Commission move in this regard is a step in the right direction, although WPTF acknowledges that implementation of this directive may require additional technical attention.

¹⁵ Id at p. 2.

E. Refinements to the Independent Evaluator (IE) Program

Section 10 of the PD considers refinements to the IE Program. The PD concludes that it is not necessary to change the rules for whom or which entity may qualify to be in the IE pool; there is no evidence that IOUs have limited the IE's interaction with the Commission in terms of nondisclosure agreements that restrict information sharing; new rules facilitating IE interaction with the Commission are not necessary; and the Commission will retain the current process for IE assignment. WPTF's proposal for having the Energy Division select and pay the IE's rather than the IOU doing so is mentioned in passing,¹⁶ but never discussed or resolved.

Put simply, the most fundamental problem with the IE process is that the supposedly "independent" evaluator is selected and paid by the IOU whose procurement the IE is to evaluate. The adage that "he who pays the piper calls the tune" is totally apropos here, because in fact, the so-called "independent" evaluator process is anything but independent. Decision ("D.") 12-04-046 provided that "A number of parties support the proposal to have the Commission's Energy Division, rather than the utilities, oversee the hiring and oversight of IEs."¹⁷ It further stated:

This issue was raised in our previous LTPP proceeding, and was addressed in D.07-12-052. In that decision, we stated: "At this time, it is not practical to transfer the IE contracting authority to the Commission; however, we will continue to explore ways in which to do so in the future." (*Id.* at 136.) Unfortunately, that appears to remain the case, as there do in fact seem to be practical and administrative hurdles to overcome. We agree that it would be preferable for IEs to be hired by and report to the Commission, rather than the utilities, and to the extent the barriers to doing so can be overcome in the future, we will consider this proposal again. We do not adopt any other of the proposed changes to the procurement rules at this time, but we may consider additional changes in future proceedings.¹⁸

¹⁶ *Id.* at p. 67.

¹⁷ Decision on System Track I and Rules Track III of the Long-Term Procurement Plan Proceeding and Approving Settlement, at p. 67.

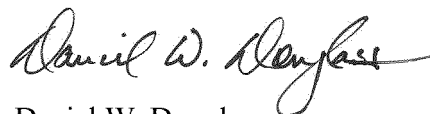
¹⁸ *Id.*, at p. 68 (emphasis added).

It is now six years later and the Commission is continuing to deal with “window dressing” issues concerning the IE program while ignoring the most fundamental issue of ensuring true independence. WPTF therefore suggests that this issue be addressed in the new LTPP proceeding, R.13-12-010, under topic 3, “Procurement Rules to Encourage Competitive Solicitations.” Competitive solicitations will certainly be enhanced if the independent evaluator process is overhauled to make it truly independent in fact and not name only.

II. CONCLUSION

WPTF thanks the Commission for its attention to the issues discussed herein and asks that it revise the PD to adopt the recommendations discussed above.

Respectfully submitted,



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