

**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

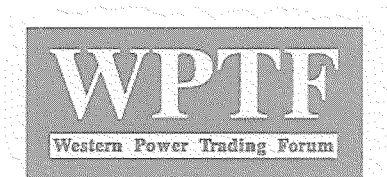
R.12-03-014  
(Filed March 22, 2012)

**COMMENTS OF THE WESTERN POWER TRADING FORUM  
ON THE TRACK 4 PROPOSED DECISION**

Daniel W. Douglass  
DOUGLASS & LIDDELL  
21700 Oxnard Street, Suite 1030  
Woodland Hills, CA 91367  
Telephone: (818)961-3001  
Facsimile: (818) 961-3004  
E-mail: [douglass@energyattorney.com](mailto:douglass@energyattorney.com)

Counsel to **WESTERN POWER TRADING FORUM**  
**WWW.WPTF.ORG**

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**TABLE OF CONTENTS**

I. Introduction and Summary ..... 1

II. The PD Does Not Provide a Course of Action if Preferred Resources are  
Unavailable in the Prescribed Amounts or are Priced Prohibitively High ..... 2

    A. There Should be an Off Ramp for the Utilities if the Availability of  
    Preferred Resources Becomes an Issue .....3

    B. The PD Does Not Define What is Meant by “Cost-Effective” Preferred  
    Resources .....4

III. Bilateral Contracts are an Inferior Approach to Procurement than All-Source  
RFOs ..... 7

IV. The Approval of CAM is Not Supported by the Record ..... 7

V. Conclusion ..... 9

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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 Forum<sup>1</sup> (“WPTF”) respectfully submits these opening comments on the February 11, 2014, proposed decision (“PD”) of Administrative Law Judge (“ALJ”) David Gamson in Track 4 of the Long-Term Procurement Plan (“LTPP”) proceeding.<sup>2</sup> 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. Introduction and Summary**

The PD authorizes Southern California Edison (“SCE”) to procure between 1900 MW (the 1,400 MW minimum from Track 1 plus the 500 MW minimum from Track 4) and 2,500 MW (the 1,800 MW maximum from Track 1 plus the 700 MW maximum from Track 4). It does

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<sup>1</sup> 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.

<sup>2</sup> Decision Authorizing Long-Term Procurement For Local Capacity Requirements Due To Permanent Retirement Of The San Onofre Nuclear Generations Stations.

not require any specific incremental procurement from gas-fired resources, meaning that all incremental procurement as a result of the PD may be from preferred resources. SCE is required to procure at least 400 MW, and up to the full 700 MW of authorized additional capacity, from preferred resources or energy storage. San Diego Gas & Electric (“SDG&E”) is authorized to procure between 500 MW and 700 MW in addition to the authorization granted in D.13-03-029. It is required to procure at least 40% -- and up to 100% -- of new local capacity from preferred resources. SCE and SDG&E are also required to procure at least 50 MW and 25 MW, respectively, from energy storage.

WPTF does not oppose the PD’s directive that SCE and SDG&E should be authorized to procure additional resources within the scope of this proceeding. However, it is concerned that the carve-outs for mandatory procurement of preferred resources does not fully contemplate or provide for the possibility that the desired preferred resources turn out not to be available up to the levels prescribed in the PD. This issue is discussed in more detail below. WPTF also offers further comments with regard to the procurement process authorized for SCE and SDG&E and the PD’s handling of the utilities’ cost allocation mechanism (“CAM”) requests.

## **II. The PD Does Not Provide a Course of Action if Preferred Resources are Unavailable in the Prescribed Amounts or are Priced Prohibitively High**

It is not clear from the record whether there can be a necessary confidence level that the proposed level of preferred resources will be available as intended, and at reasonable pricing levels. This raises the necessary question as to what the utilities are to do if the availability or cost of preferred resources in fact becomes an issue.

**A. There Should be an Off Ramp for the Utilities if the Availability of Preferred Resources Becomes an Issue**

WPTF is not alone in expressing concern about the availability of preferred resources to meet the procurement levels specified in the PD. In its reply brief, CAISO stated as follows:

...the Commission must be diligent and expeditious in tracking the development of preferred resources in order to verify that they are actually materializing in the locations and amounts predicted in the studies and resource procurement efforts that established such forecasts.<sup>3</sup>

Certainly if a particular preferred resource fails to come to fruition, it will need to be replaced. Theoretically, the utility could move to the next most economical resource that was bid to accomplish this replacement. However, the problem with the PD's approach is that there is no "off ramp" contemplated in the event the desired availability of preferred resources is simply not achieved. In other words, what happens if there is no "next" resource? An "off ramp" could take the form of allowing the utilities to come back to the Commission for modification of their procurement mandates in the event their respective RFOs reveal inadequate supplies of preferred resources bid in. Similarly, if after an RFO the development of preferred lags and appears unlikely to meet desired timing requirements, the utilities could also be permitted to return to the Commission to seek adjustments in the prescribed procurement levels. WPTF therefore suggests the following wording be added to page 95 of the PD, following the last paragraph of Section 5.1:

The Commission recognizes that the levels of procurement of preferred resources as provided above are well in excess of the amounts specified in the Track 1 decision. The proponents of preferred resources are confident of there being sufficient availability to meet these specifications. However, this potential is speculative based on the record in this proceeding. Therefore, it is only prudent for the Commission to provide for a contingency plan for the utilities in order to assure that the capacity needs identified above are met on a timely basis. In the event the utilities have reasonable cause to believe that there is significant

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<sup>3</sup> ISO Reply Brief, at p. 24, cited in the PD at p. 86.

uncertainty as to the availability of preferred resources to meet the requirements specified in this decision, they may individually or jointly approach the Commission for relief or restructuring of their respective preferred resources mandates. This approach may be in the initial form of informal consultation with Energy Division. However, any formal change to the levels prescribed herein shall require the filing of a petition for modification, with the opportunity for all parties to participate as they see fit. Further, this contingency process is not intended to permit over-procurement that would be costly for ratepayers. Rather, if a utility can demonstrate that exigent circumstances make it apparent that sufficient preferred resources are unavailable, it may petition for a reduction in its preferred resources mandate.

The wording above would at least provide the utilities with some degree of confidence that they can seek relief of the procurement mandates if the reality of preferred resource availability does not coincide with the hoped for levels. A word of caution, however, is necessary. There is no assurance that the identified need will be met on the desired timeframe if the utilities wait too long in approaching the Commission or the latter does not expeditiously process any petition for modification that may be filed. There are significant time constraints that must be dealt with in order to achieve the local capacity need level shown in the CAISO study. Prudent and timely action will be required of all parties should the availability of preferred resources be called into question.

**B. The PD Does Not Define What is Meant by “Cost-Effective” Preferred Resources**

The PD mentions the issue of cost in several areas. For example, in Section 3.3.5, while discussing the issues of *SPS and Load Shedding*, the PD states as follows:

The Commission is responsible for service reliability and maintaining reasonable rates. In previous decisions, we rejected the notion of “reliability at any cost,” indicating instead that “measures that are proposed to promote greater grid reliability should be evaluated by weighing their expected costs against the value of their expected contribution to reliability...”<sup>4</sup>

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<sup>4</sup> PD at p. 43, citing D.05-10-042 at p. 7.

In Section 4, the discussion of the *Need Determination* also contains the statement that “We continue to be concerned about the potential excess ratepayer costs resulting from over-procurement.”<sup>5</sup> Further, the PD also notes that Ordering Paragraph 4 of D.13-02-015 required SCE to include certain elements in a Track 1 RFO, including among them:

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;

h. Provisions designed to minimize costs to ratepayers by procuring the most cost-effective resources consistent with a least cost/best fit analysis;<sup>6</sup>

The PD then states that the requirements of Ordering Paragraph 4 of D.13-02-015 continue to apply to the new procurement that is authorized for SCE and that these same requirements apply to SDG&E for any RFO it issues for Track 4 procurement.

However, the discussion of precisely what is meant by the term “cost-effective” relative to preferred resources is thin at best. Footnote 3 states in part as follows:

Preferred Resources are defined in the State’s Energy Action Plan II, at 2, as follows: “The loading order identifies energy efficiency and demand response as the State’s preferred means of meeting growing energy needs. After cost-effective efficiency and demand response, we rely on renewable sources of power and distributed generation, such as combined heat and power applications. To the extent efficiency, demand response, renewable resources, and distributed generation are unable to satisfy increasing energy and capacity needs, we support clean and efficient fossil-fired generation.”<sup>7</sup>

The concept that preferred resources must also be cost-effective is also noted by the PD as being a statutory requirement: “Section 454.5(b)(9)(C) states that utilities must first meet their ‘unmet resource needs through all available energy efficiency and demand reduction resources that are

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<sup>5</sup> Id at p. 66.

<sup>6</sup> PD, at p. 111 (emphasis added).

<sup>7</sup> Id at pp. 6-7 (emphasis added).

cost-effective, reliable and feasible.”<sup>8</sup> Finally, the PD also noted that the Clarified Loading Order provides that, “Instead of procuring a fixed amount of preferred resources and then procuring fossil-fuel resources, the IOUs are required to continue to procure the preferred resources ‘to the extent that they are feasibly available and cost effective.”<sup>9</sup>

One thing is missing, however. What does “cost-effective” actually mean? Presumably it does not mean that preferred resources at any price are acceptable. However, the PD provides no guidance other than to invoke the “cost-effective” phrase repeatedly. This gives no guidance to the utilities and leaves ratepayers exposed to the possibility of excessive costs. The Commission should instead consider providing explicit guidance in this regard, perhaps in the form of a price limitation. For example, it could provide that a preferred resource is presumed to be “cost-effective” if the price is no more than a specified percentage above the cost of conventional resources for which bids are accepted in the same all-source RFO. Whatever approach is taken, it is clear that there needs to be some clarity as RFOs are issued as to what will and will not meet the cost effectiveness criteria. As the statute requires that utilities must meet their “unmet resource needs through all available energy efficiency and demand reduction resources that are cost-effective, reliable and feasible,” it is incumbent upon the Commission to give meaning and definition to what is meant by the statute’s use of that term. As the Commission has rejected the notion of “reliability at any cost,” it must now give guidance to when costs are reasonable.

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<sup>8</sup> Id at p. 13 (emphasis added).

<sup>9</sup> PD at pp. 14-15, citing D.12-01-033 at p. 21 (emphasis added).



### **III. Bilateral Contracts are an Inferior Approach to Procurement than All-Source RFOs**

The PD authorizes both SCE (at p. 89) and SDG&E (at p. 2) to engage in both bilateral contract negotiations as well as to hold all-source RFOs. WPTF reiterates its comments in its opening brief. The use of bilateral negotiations does 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 all-source RFOs be the sole means for procurement of resources required to meet the identified need. This will prevent the possibility of favoritism and go a long way towards ensuring that ratepayers receive the lowest cost, reliable supplies.

We note that this recommendation is also in concert with that of SCE. As the PD notes:

SCE recommends combining new LCR all source procurement from Track 4 with its all-source procurement RFO authorized in D.13-02-015. SCE argues this combination will both improve the competitiveness of all source bidding, allow for a more optimal selection of resources, and reduce administrative costs to ratepayers of issuing two separate all source solicitations. SCE recommends that this solicitation not be limited to any particular resource type or project size.<sup>10</sup>

WPTF totally agrees with SCE’s recommendation and endorses its inclusion in the final decision as opposed to the bilateral option contained in the PD.

### **IV. The Approval of CAM is Not Supported by the Record**

A review of the brief discussion on the utilities’ CAM requests reveal that the approval in the PD is not supported by the record. It is important to note that in its recent decision D.13-08-023, the Commission set specific and clear guidelines for the showing that must be made and the examination that the Commission must perform before approving a CAM request. In that decision the Commission established that CAM requests will be determined on a case-by-case basis, stating as follows:

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<sup>10</sup> PD, at p. 103.

It is not only reasonable but necessary to make cost-allocation decisions on a case-by-case basis informed by the specific contexts in which costs are incurred. (emphasis added)<sup>11</sup>

This is echoed in Conclusion of Law 6, which states that, “It is reasonable to address cost allocation and non-bypassable charge mechanisms as they arise in proceedings, on a case-by-case basis.”<sup>12</sup> Yet the PD premises its CAM approval on the approval of the Track 1 procurement authorization granted to SCE as opposed to examining the CAM request on a standalone case-by-case basis, contrary to the directive in D.13-08-023. This is an inadequate foundation for the simple reason that the utilities made it very clear that their Track 1 procurement was *not* intended to replace SONGS. SCE’s Track 4 testimony in fact acknowledged that Track 1 did not address SONGS replacement.<sup>13</sup>

Commission policy requires that CAM requests must be made individually and not simply based on a reference to a prior authorization, as confirmed in Finding of Fact 5 in D.13-08-023:

The determination of whether a specific IOU proposal meets the requirements for collection from unbundled customers can only be determined through a thorough review of the proposal itself by this Commission.<sup>14</sup>

Put simply, the PD contains no such “thorough review.” Rather, it simply references the prior CAM approval in Track 1, makes an unsubstantiated statement that all ratepayers benefit by the proposed procurement and authorizes CAM treatment. This complies with neither the letter nor the spirit of the “thorough review” commitment made in D.13-08-023. The fact that the PD ignores the fact that the requested procurement is to replace a resource that solely met bundled customer needs is also remarkable. The need was occasioned by the SCE and SDG&E decision

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<sup>11</sup> D.13-08-023, at p. 14, emphasis added.

<sup>12</sup> Ibid.

<sup>13</sup> Referring to the Track 1 decision D.13-02-015, SCE states, “This procurement is to meet the LCR need associated with retirement of all OTC facilities, except SONGS.” SCE-1, at p. 2.

<sup>14</sup> Id, at p. 23.

to retire SONGS, an asset that solely served bundled customer need and that was essentially solely paid for by bundled customers. The CAM decision now makes direct access and any future community choice aggregation customers responsible for a share of these costs, despite the fact that these customers' resource adequacy needs are already being met by their own suppliers.

In conclusion, the PD continues the Commission's previous policy of treating CAM requests without the necessary and appropriate due diligence to which such requests should be subjected. It is indisputable that the utilities wish to burden their competitors with extra costs in an effort to make the retail market less competitive and less attractive to prospective customers. Therefore, it should be the Commission's practice when reviewing CAM requests to do so with an in depth and probing review. In summary, the Commission needs to give more focused attention to the full implications of these repeated CAM requests that are being so casually approved.

## **V. Conclusion**

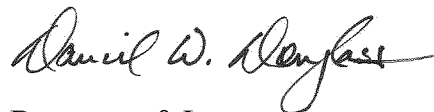
The PD seeks to aggressively expand the use of preferred resources, requiring them to constitute a significant element of the procurement authorizations granted to SCE and SDG&E. WPTF does not object to this requirement. However, it notes that the PD does not adequately address the issue of what the utilities are to do if insufficient preferred resources are available or if they are available only at a prohibitive cost. We suggest in Section II above proposed "off ramp" language that should be added to the final decision. Further, it is suggested that the final decision give greater meaning and definition to what is meant by the oft-repeated phrase of "cost-effective" preferred resources.

WPTF also continues to object to the utilities being granted bilateral contracting authority in lieu of reliance solely on all-source RFOs. Finally, we note that the PD's discussion of the

CAM issue is inadequate and commits both legal and factual error that holds the potential for protracted appeals that could unnecessarily delay the implementation of the needed procurement authorizations.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel W. Douglass". The signature is fluid and cursive, written over the printed name.

DOUGLASS & LIDDELL

Attorneys for the  
**WESTERN POWER TRADING FORUM**

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