

**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)

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

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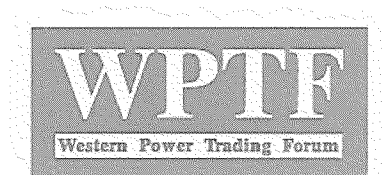


TABLE OF CONTENTS

I. The Final Decision Should Address the Possibility that Preferred Resources
May Not be Available in the Prescribed Amounts or at a “Cost-Effective Price. 1

II. The Discussion of Bilateral Contracting Processes Needs Revision 3

III. The Approval of CAM is Not Supported by the Record 4

IV. Conclusion 5

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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 submits these reply 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.²

I. The Final Decision Should Address the Possibility that Preferred Resources May Not be Available in the Prescribed Amounts or at a “Cost-Effective Price.”

In its opening comments, WPTF expressed concern as to 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. Other parties concurred. For example, AES Southland noted that, “If the Commission’s aggressive assumptions and goals concerning preferred resources even slightly overestimate the ability of those resources to timely materialize in the right amounts and in the right locations, reliability in Southern California will suffer a

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.

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

significant impact. Nor will there be sufficient time to develop additional gas-fired resources to replace any preferred resources that fail to materialize.”³ Further, the California Independent System Operator (“CAISO”) stated that it “remains concerned that resource development may lag behind the milestone dates needed to ensure that resources are in place in time to meet the specific target dates driven by the OTC compliance requirements. This is true of all resource types. If resources are not materializing at the necessary pace, it will be critical to address deficiencies expeditiously, or grid reliability will be in jeopardy.”⁴

Several parties, including both affected utilities, opposed having any carve-outs for preferred resources. Southern California Edison (“SCE”) said that its Track 4 procurement authorization should not “pre-determine any further technology mix without the benefit of being informed by technical assessments, commercial viability determinations, and estimated cost of competing options.” San Diego Gas & Electric (“SDG&E”) also concurs with SCE, “SDG&E recommends that the resource carve-outs proposed in the PD be eliminated.”⁵ NRG Energy, Inc. (“NRG”) recommended that the Commission should, “Allow for all-source procurement to meet the procurement targets and eliminate any ‘carve-out’ for preferred resources.”⁶

While WPTF does not oppose the concept of carve-outs for preferred resources, we reiterate that the PD does not address the question as to what the utilities are to do if either the availability or the costs of preferred resources in fact become problematic. While some parties contend that preferred resources can be relied on to supply all of the utilities’ SONGS

³ AES Opening Comments, at p. 3.

⁴ CAISO Opening Comments, at p. 4.

⁵ SDG&E Opening Comments at p. 3.

⁶ NRG Opening Comments, at p. ii.

replacement needs,⁷ the record does not support this overly rosy forecast. Therefore, it is prudent for the Commission to have an advance contingency plan in place should the availability or costs of preferred resources prove to be an issue. As discussed in more detail in our opening comments, there should be an “off ramp” for 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.

On a related matter, while the issue of cost is mentioned in the PD in several areas, there is no definition of precisely what is meant by the term “cost-effective” relative to preferred resources. The Commission should provide explicit guidance in this regard, perhaps in the form of a price limitation. As noted in our opening comments, since the Commission has rejected the notion of “reliability at any cost,” it must now give guidance to what constitutes “cost-effective” preferred resources. In this regard, WPTF also concurs with the comments of Wellhead Electric Company, Inc. (“Wellhead”) that “the procurement/selection of resources should be based on an analysis that takes full account of all of the costs, fixed and variable, that must be paid to a project in order to make use of the attributes needed to meet local reliability concerns.”⁸

II. The Discussion of Bilateral Contracting Processes Needs Revision

WPTF has long been of the opinion that the use of bilateral negotiations does not ensure that the least cost option will be identified and selected.⁹ In the opening comments, the Independent Energy Producers Association (“IEP”) observed that the Commission recognized in D.12-11-016 that negotiation of bilateral agreements must be informed by the results of

⁷ See, e.g. California Environmental Justice Alliance Opening Comments, at p. 2; Sierra Club California Opening Comments at pp. 10-11; and Vote Solar Initiative Opening Comments, at p. 2.

⁸ Wellhead Opening Comments, at p. 2.

⁹ 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.

contemporaneous competitive solicitations.¹⁰ However, since SDG&E has not recently conducted a request for offers (“RFO”), IEP recommends requiring “a competitive solicitation that would inform the assessment of any bilateral agreements that SDG&E may pursue to meet the Track 4 needs.”¹¹

WPTF continues to believe that the Commission should require all-source RFOs to be the sole means for procurement of resources required to meet the identified need. Bilateral contracts should be allowed only after the failure of an RFO as RFOs are the only way to evaluate whether or not there is significant market power that would justify the use of bilateral negotiations, and because an RFO process the best “check” on bilateral negotiations.

III. The Approval of CAM is Not Supported by the Record

The opening comments of the Direct Access Customer Coalition (“DACC”) and the Alliance for Retail Energy Markets (“AReM”) provide an extensive recitation of the legal and factual errors contained in the PD’s all too brief analysis of the utilities’ respective CAM requests. Meanwhile, The Utility Reform Network (“TURN”) commits precisely the same error as does the PD by simply noting the finding that “all of the new resources it authorizes SCE and SDG&E to procure are needed to meet local reliability criteria for the benefit of all utility distribution customers in the affected area”¹² without any effort whatsoever to explain why this is in fact true. Both TURN and the PD it supports ignore completely the fact that P.U. Code Section 1757 requires that a Commission decision must be “supported by the findings” and the findings must be “supported by substantial evidence in light of the whole record.” Put simply, there is no record to support the finding that CAM is justified in this situation.

¹⁰ IEP Opening Comments, at pp. 10-11.

¹¹ Id at p. 11.

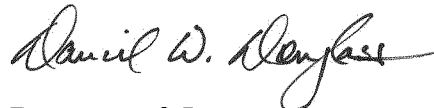
¹² TURN Opening Comments, at p. 3.

It is hardly surprising that TURN “is hopeful that the PD’s simple, straight-forward findings will serve to limit redundant litigation over these issues in the future,” as its witness confirmed on the stand that the CAM-induced cost shifting would lessen costs for its constituency.¹³ However, its wish that this Track 4 decision will lessen future litigation is likely to be denied. Instead, it is likely to lead to more, rather than less, such litigation.

IV. Conclusion

The final decision should provide an off-ramp for utilities in the event the availability or costs of preferred resources become problematic. If bilateral contracting is to be permitted, it should be informed by the conduct of a reasonably concurrent RFO and subject to cost-of-service requirements. Finally, the CAM treatment proposed in the PD should be rejected.

Respectfully submitted,



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¹³ TR, at pp. 2265-2266.