

**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.

Rulemaking 12-03-014
(Filed March 22, 2012)

**RESPONSE OF CAITHNESS ENERGY, L.L.C.
IN OPPOSITION TO THE PETITION OF
TERRA-GEN POWER, LLC
FOR EXPEDITED MODIFICATION OF DECISION 13-02-015**

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Pursuant to Rule 16.4(f) of the Rules of Practice and Procedure, and in accordance with a ruling by Administrative Law Judge David Gamson shortening time for responses, Caithness Energy (“Caithness”) hereby responds in opposition to the Petition for Expedited Modification (“Petition”) of Terra-Gen Power, LLC (“Terra-Gen”), dated June 3, 2014.

For the reasons explained more fully below, Caithness respectfully urges that the Commission deny the Petition, and not postpone or otherwise interfere with the ongoing Requests for Offers (“RFOs”) that Southern California Edison Company (“SCE”) is conducting at this time for generation resources in the Los Angeles Basin pursuant to Commission Decision No. (“D”) 13-02-015 and D.14-03-004.

I.

CAITHNESS ENERGY’S INTEREST IN THESE PROCEEDINGS

Caithness is an independent developer of power generation facilities in California and throughout the United States. Caithness separately has already moved for party status in these proceedings, in order to be in a position to respond to Terra-Gen’s Petition. Caithness has a

legitimate and compelling interest in the issues raised by Terra-Gen in its Petition. Caithness brings an important perspective to these issues.

II.

TERRA-GEN'S PETITION

A. Summary of Terra-Gen's Proposed Modifications To D.13-02-015

In its Petition, Terra-Gen asks the Commission to modify the language of D.13-02-015 concerning SCE's use of "locational effectiveness factors" (sometimes referred to as "LEFs") in evaluating bids received in the solicitations SCE already has conducted and will conduct for capacity resources in the Los Angeles Basin. In D.13-02-015, the Commission ordered SCE to consider "effectiveness ratings" in its bid evaluations. Terra-Gen acknowledges that the Commission directed SCE to use "the most up-to-date effectiveness ratings" issued by the CAISO. Nevertheless, Terra-Gen argues that this language should be clarified by adding the words "as of the date the RFO is issued." (Petition, p. 16 (describing Terra-Gen's "Proposed Modifications" to D.13-02-015.)

According to Terra-Gen, SCE issued its Track 1 RFO on September 12, 2013. (Petition, p. 4.) Thus, as applied to the Track 1 RFO, the modifications to D.13-02-015 proposed by Terra-Gen would prohibit SCE from using local effectiveness factors identified by the CAISO after September 12, 2013.

Terra-Gen further proposes that the Commission "ask the CAISO to provide revised LEFs for each of the substations listed in the Procurement Plan," and "order SCE to use the results of the CAISO's nodal analysis in the manner described in the Procurement Plan." (Petition, p. 16.) Terra-Gen suggests the scheduling of "an abbreviated workshop or stakeholder

process” with the goal of completing final selection of winning bids by July 29, 2014. (Id., p. 17.) However, Terra-Gen also asks the Commission to “order a short pause” in SCE’s ongoing RFO process, pending the completion of the workshop process Terra-Gen has requested. (Id., p. 16.) “If the Commission acts quickly,” Terra-Gen argues, “an abbreviated workshop or stakeholder process could be completed without affecting the scheduled timing of final selection on July 29, 2014.” (Id., p. 17.)

B. Terra-Gen’s Rationale For Its Proposed Modifications To D.13-02-015

In its Petition, Terra-Gen concedes that the language of Ordering Paragraph 4 in D.13-02-015 “appears to be susceptible” to an interpretation with which Terra-Gen disagrees. (Petition, p. 10.) “The key language,” Terra-Gen states, “is the requirement of Ordering Paragraph 4(l), to use ‘the most up-to-date effectiveness ratings.’” (Id.)

Terra-Gen claims that requiring SCE to use the effectiveness ratings as of “the date the RFO is issued” (*i.e.*, September 12, 2013) will avoid “disruption of the RFO process.” (Id., p. 12.) According to the Petition, “[t]his interpretation gives effect to all of the language in Ordering Paragraph 4 and allows bidders to proceed with some confidence that the evaluation criteria will remain transparent and stable.” (Id.)

Terra-Gen faults SCE for updating its RFO criteria, while the current RFO was still pending, to take into account new effectiveness factors based on the CAISO’s issuance of a

Revised Draft 2013-2014 Transmission Plan in mid-March 2014.¹ Terra-Gen expresses particular concern with the following paragraph in the CAISO Transmission Plan:

Most effective locations for mitigating post transient voltage instability due to the critical contingency were determined to be in the San Diego local capacity area and the southwest LA Basin subarea. The resources in the southwest LA Basin are approximately 50% as effective as resources located in the San Diego area due to the southwest LA Basin's close proximity to San Diego local capacity area. *The resources located in the northwest LA Basin were determined not to be effective for mitigating the post transient voltage instability concern due to the critical N-1-1 contingency.*

(Petition, pp. 6-7, *quoting* Draft 2013-2014 Transmission Plan, p. 104 (emphasis added).²

Terra-Gen complains that SCE has applied this revised CAISO effectiveness assessment to the bids in its ongoing RFO. (Petition, p. 8.) According to Terra-Gen, this “has resulted in the elimination from further consideration of projects located outside of the newly created southwest zone, which means that projects located in roughly two-thirds of the West LA Basin subarea – the original target of the procurement authorized in D.13-02-015 – are no longer eligible.” (*Id.*) Terra-Gen characterizes this as a “drastic change in the eligibility requirements” which has had the effect “of significantly changing the procurement process, converting LEFs from one among several qualitative factors considered in the bid evaluation to a new threshold eligibility requirement, not stated in the RFO documents.” (*Id.*, pp. 8-9.)

¹ Although Terra-Gen omits this fact from the Petition, on March 20, 2014, the CAISO Board of Governors voted to approve the 2013-2014 Transmission Plan. The approved Plan can be viewed at: <http://www.caiso.com/planning/pages/transmissionplanning/2013-2014transmissionplanningprocess.aspx>

² This same language (without the emphasis) also appears in the final version of the 2013-2014 Transmission Plan approved by the CAISO Board of Governors on March 20, 2014.

Terra-Gen argues that the language of Ordering Paragraph 4 should be amended to clarify that “the obligation to include the most up-to-date effectiveness ratings when the RFO is *issued* does not create a requirement to change the evaluation criteria *after* the RFO is issued and particularly not after bids are submitted.” (Petition, p. 10 (emphasis in original.) Terra-Gen claims that SCE’s updating of the effectiveness criteria this late in the RFO process “has the additional significant flaw of undermining and destabilizing the procurement process.” (Id.)

Terra-Gen also raises several concerns about the CAISO’s revised effectiveness factors for the Los Angeles Basin, in particular the CAISO’s use of broader geographic “zones” rather than specific nodes in its analysis. (Petition, pp. 14-15.) Terra-Gen urges “greater transparency” in the development and application of local effectiveness factors, and claims that an independent analysis it solicited suggests that continued use of a “nodal analysis” would yield better results than the “zonal” approach used by the CAISO in the Transmission Plan. (Id., p. 15.) Terra-Gen requests that the Commission convene a public workshop to explore these methodological issues, “where the CAISO could explain the assumptions and methodology it uses to perform its LEF calculations.” (Id., p. 16.)

III.

OPPOSITION TO THE PETITION

For the reasons stated below, Caithness strongly opposes the Petition, and respectfully requests that the Commission reject the changes to D.13-02-014 and the other measures Terra-Gen has proposed. SCE has acted in a forthright and reasonable manner in response to the most recent Transmission Plan issued by the CAISO, by eliminating from further consideration projects that no longer have the prospect of providing a local reliability benefit in the Los Angeles Basin. Indeed, it would be irresponsible for SCE to do otherwise, or for the

Commission to require SCE to do otherwise. Moreover, both this Commission in D.13-02-015, and SCE in its Track 1 Procurement Plan and in its bid materials and communications with prospective bidders, gave clear notice to all bidders that SCE would use the most recent effectiveness factors available when evaluating bids. In these circumstances, the Commission should take no action to suspend the ongoing RFO. And, finally, Terra-Gen has provided no substantial evidence casting doubt on the validity of the CAISO's conclusions, nor otherwise justified its request for a Commission "workshop" process regarding the CAISO's new effectiveness factors.

A. SCE Has Acted Reasonably In Using Updated Local Effectiveness Factors

In assessing Terra-Gen's Petition, it is helpful to take a step back and recall that the Commission Decision at issue here (D.13-02-015) concerns the important topic of "local capacity requirements" ("LCRs") in the West Los Angeles sub-area of the Los Angeles basin local reliability area that will exist by 2021. (D.13-02-015, p. 2.)³ Indeed, as the Commission stated in the very first paragraph of the Decision: "The LCRs require resources *be located in a specific transmission-constrained area* in order to ensure adequate available electrical capacity to meet peak demand, and ensure the safety and reliability of the local electrical grid." (Id. (emphasis added).)

Obviously, achieving this goal requires close coordination and interplay with the CAISO, as the CAISO carries out its transmission planning process. Never has this task been more important than at the present time, as the Los Angeles Basin faces the unplanned closure of the

³ "A local capacity area is a geographic area that does not have sufficient transmission import capacity to serve the customer demand in the area without the operation of generation located within that area." (D.13-02-015, p. 6, fn. 3.)

San Onofre Nuclear Generating Station (“SONGS”), with the retirement of once-through-cooling generators looming just on the horizon. System planning in the wake of these developments is among the very highest priorities of California energy regulators. California must marshal an appropriate, cost-effective combination of resources, both transmission and generation projects (which include demand response and energy storage as well as more traditional forms of generation), to meet this enormous challenge in the LA Basin.

In anticipation of this need to stay in synch with the CAISO’s transmission planning process, the Commission in Ordering Paragraph 4 of D.13-02-015 expressly ordered SCE to procure resources needed to “meet the identified reliability constraint” and to use “the most up-to-date effectiveness ratings” in its evaluation process.

Despite Terra-Gen’s arguments to the contrary, the very words used by the Commission in Ordering Paragraph 4 (*i.e.*, “***the most*** up-to-date effectiveness ratings”) convey the plain intention that SCE ***not*** seek to procure – and therefore cease from evaluating – resources that the CAISO has concluded are not likely to be effective in alleviating a transmission constraint (emphasis added to the foregoing quote).

In D.13-02-015, the Commission emphasized that it was attempting to “strike a balance among the Commission’s three primary statutory directives for ensuring reliability, reasonable rates and a clean environment.” (D.13-02-015, p. 36.) If SCE were to do as Terra-Gen urges, and entertain bids for resources that the Transmission Plan confirms are no longer effective in relieving constraints (*i.e.*, if SCE were to rely on outdated effectiveness factors), then it is fair to say SCE would fail on all three goals – reliability, reasonable rates and a clean environment. In terms of reliability, SCE would be at risk of double-procuring both transmission and generation

resources to alleviate the same constraint. This would senselessly burden ratepayers with duplicative and therefore excessive costs, and create the risk of imposing unnecessary impacts on the natural environment. Arguably, this would violate the very statutory balance the Commission described in D.13-02-015. In baseball terms, Terra-Gen has struck out on three pitches.

SCE has acted in a manner consistent with the expressed intention of the Commission in D.13-02-015, and in accordance with the mandate of Ordering Paragraph 4 to use “the most up-to-date effectiveness ratings.” In particular, SCE has responded appropriately to the 2013-2014 Transmission Plan as it was initially proposed and then ultimately adopted by the CAISO Board of Governors. The natural consequence is that the effectiveness factors for generation projects located in the Northwest Los Angeles Basin sub-area have been reduced to levels so low as to warrant excluding them from further consideration in the ongoing RFP process.

For project developers who may have invested time and resources in developing projects in the Northwest LA Basin, such an outcome understandably is disappointing. But it is simply one of the risks associated with this business. In this respect, picking a location that proves to be ineffective in relieving a constraint is akin to the risk that one’s bid will lose out to a competitor who employs newer, recently-licensed technology, or more efficient equipment. Project developers often attempt to locate their projects in transmission-constrained areas, on the assumption that such constraints will make their projects more desirable to the load-serving entities, and ultimately result in higher project returns. For Terra-Gen now to propose that it be evaluated as though that locational advantage still exists (*i.e.*, as though its site continues to be in a constrained area, when the constraint in fact no longer will exist) is like asking the Commission to extend it an insurance policy against competitive risk.

B. Bidders Were On Notice That SCE Would Rely Upon Updated Local Effectiveness Factors As They Became Available

All of the bidders in SCE’s procurement process were given plenty of notice that SCE would evaluate bids based on the most recent effectiveness factors identified by the CAISO. There was no element of surprise here.

First, as recited above, the Commission’s Decision itself expressly required SCE to use “*the most* up-to-date effectiveness ratings” in its evaluation of bids. (D.13-02-015, Ordering Paragraph 4(l) (emphasis added).) This was more than adequate notice to bidders that SCE would take into account the latest available effectiveness ratings. It would not be reasonable to interpret the language of Ordering Paragraph 4(l) to require SCE in effect to “freeze” the effectiveness ratings as of the date its RFO was issued (in this case, September 12, 2013), and *not* consider updates as they became available. No bidder reasonably can claim to have had such an expectation, given the plain language of Ordering Paragraph 4(l).

Second, SCE in its Track 1 Procurement Plan, which was submitted to the Commission’s Energy Division and distributed to prospective bidders in August 2013, explained in clear terms that effectiveness factors were subject to being updated. In a section of the Procurement Plan entitled “Consultation with California Independent System Operator (CAISO),” SCE indicated that it was “proactively consulting with CAISO on a regular basis on matters related to SCE’s LCR Procurement Plan,” and that the local effectiveness factors the CAISO had provided as of that time were “subject to change.” (SCE Track 1 Procurement Plan, pp. 5 and 6.) SCE included as Figure I-2 in the Plan what it labeled as “Indicative Locational Effectiveness Factors” for a constraint west of the Serrano Substation. (*Id.*, p. 7.) In addition to using the term “indicative”

to label this figure, in the text immediately preceding the Figure I-2, SCE also expressly stated: “The LEFs in Figure I-2 are subject to change.” (Id., p. 6.)

The SCE Track 1 Procurement Plan also provided (at p. 47) a detailed description of how SCE intended to use local effectiveness factors in the bid evaluation process. It included an illustrative example showing how SCE would calculate the net present value of a contract with 100 megawatts (“MW”) of contract capacity, 60 MW of countable resource adequacy capacity, and a point of interconnection at a location with a maximum local effectiveness factor of 30%. (Track 1 Procurement Plan, p. 47.) Again, SCE explained that it would use “the most up-to-date effectiveness ratings” when calculating the net present value in this example. (Id.) The purpose of applying the up-to-date effectiveness factors, SCE explained, was to “direct procurement towards projects that more effectively address the CAISO-identified reliability concern.” (Id.)

Subsequently, in the September 12, 2013 Transmittal Letter to RFO participants, SCE used this same example to explain to prospective bidders how it would use effectiveness factors in calculating the net present value of bids received. (SCE 2013 Request for Offers – Local Capacity Requirements, Transmittal Letter dated September 12, 2013.)

Finally, at a Bidders Conference a month later, on October 16, 2013, SCE personnel also clearly explained to prospective bidders that locational effectiveness factors were subject to change over time, and that SCE would use the latest locational effectiveness factors in its analysis. This point was made orally by a presenter from SCE, and also in the accompanying slide deck. Slide 32 explains how SCE will value the resource adequacy (“RA”) benefit of each bid, and includes a bullet which reads: “Locational effectiveness factors may affect the project’s RA MW used in the valuation.” After providing an arithmetical example, Slide 32 goes on to

state that SCE “[w]ill use the most recent LEFs published by CAISO.”⁴ Then, in response to an audience question, the SCE presenter cautioned that the CAISO’s locational effectiveness factors tended to “change over time” because of changes in power flows, generation and other factors. He then said: “We want to make sure we’re not giving too much credence to the LEFs that are posted right now, because they *will* change...” (Emphasis in the speaker’s voice).⁵

In short, it is difficult to envision how SCE could have been more explicit in putting bidders on notice that updated local effectiveness factors would be used in evaluating bids. Along with the plain language of Ordering Paragraph 4(l), which required use of “the most up-to-date effectiveness factors,” all of SCE’s communications with bidders (*i.e.*, the Procurement Plan, the RFO Transmittal Letter, and the explanation at the Bidders Conference) gave ample notice that local effectiveness factors were subject to change as the RFO process ran its course.

A final weakness in Terra-Gen’s position is the fact that the RFO also included a very broad “reservation of rights,” which among other things permitted SCE, “at any time, in its sole discretion,” to, among other things, “change the basis for evaluation of [o]ffers,” with no recourse for the bidder. Thus, even in the absence of all of the above-referenced warnings about the use of up-to-date effectiveness factors, Terra-Gen would have no basis for complaint here.⁶

⁴ The slide deck presented by SCE at the Bidders Conference, which includes the above-referenced Slide 32, is available at: <https://www.sce.com/wps/wcm/connect/4a1e7afb-9a7b-4337-a685-c02d6c7764b7/BiddersConferencePresentationLCRRFO.pdf?MOD=AJPERES>

⁵ The above-quoted oral statement by the SCE presenter can be heard on the recording of the Bidders Conference beginning at hour 1:36:07. The SCE representative begins speaking on the recording at hour 1:36:45.

⁶ Additionally, the September 12, 2013 RFO Transmittal Letter (at pp. 28-29) also states that, during the pendency of any bidder protest filed with the Commission, the RFO “will continue as if the protest had not been filed, unless the CPUC issues an order suspending the LCR RFO or SCE has elected to terminate the LCR RFO.”

D. Terra-Gen Has Provided No Substantial Evidence Of Error Or Impropriety In the CAISO's Conclusions Regarding Effectiveness Factors

In its Petition, Terra-Gen attempts to cast doubt upon the credibility of the CAISO's Transmission Plan and the local effectiveness factors the CAISO updated in connection with the Plan. Terra-Gen argues that there is a lack of "transparency" in the CAISO's analysis, and that by modifying certain assumptions, or by using "nodal" rather than a "zonal" effectiveness factors, the CAISO might have reached different conclusions about the need for generation resources in the Northwestern LA Basin sub-area. (Petition, pp. 13-16.)

Terra-Gen's approach, if adopted by the Commission, would blur the functional lines between the responsibilities of the CAISO and the responsibilities of the Commission in this matter. In D.13-02-015, at pages 34-36, the Commission explained in detail the statutory basis in the Public Utilities Code for the respective roles played by the CAISO and the Commission in implementing California's energy policy. The Decision emphasized that the Commission's role, in contrast to the CAISO's, requires a balancing of reliability, ratepayer cost and environmental goals, whereas the CAISO by statute is focused exclusively on reliability. By the same token, the Commission owes at least some degree of deference to the CAISO's expert analysis concerning transmission constraints, transmission infrastructure investments, and the consequences in terms of local effectiveness factors. It is this analysis that is embodied in CAISO's 2013-2014 Transmission Plan. SCE should not be required to ignore the updated effectiveness factors that result from the Transmission Plan, particularly in the absence of any convincing showing by Terra-Gen that would warrant reopening the CAISO's Board-approved Transmission Plan.

IV.

CONCLUSION

For the reasons set forth above, the Commission should deny the Petition for Modification of D.13-02-015 and the other measures Terra-Gen has proposed.

Respectfully submitted June 20, 2014.

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