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September 5, 2014

Commissioner Michael R. Peevey, President
Commissioner Michel Peter Florio
Commissioner Catherine J.K. Sandoval
Commissioner Carla J. Peterman
Commissioner Michael Picker

Re: Public Agenda 3342 (Meeting of September 11, 2014) – Agenda Item 22:
R.12-03-014 – Petition for Modification of Decision 13-02-015 –
Response of Caithness Energy, L.L.C., in Opposition
To August 27 Letter from Terra-Gen Power, LLC

Dear Commissioners:

On behalf of Caithness Energy, L.L.C., we write in response to the letter addressed to you on August 27, 2014, by Terra-Gen Power, LLC. Caithness fully supports the Proposed Decision issued by Administrative Law Judge David Gamson in this case on July 29, 2014, and, therefore, opposes Terra-Gen's request that an alternate or modified Proposed Decision be issued in its place. Simply put, Terra-Gen has not shown any error in Judge Gamson's Proposed Decision – which would deny a petition by Terra-Gen to modify two Ordering Paragraphs of Decision 13-02-015. Indeed, Terra-Gen now appears to distance itself from its own June 3 Petition for Expedited Modification of Decision 13-02-015 ("Petition").

In Decision 13-02-015, the Commission required Southern California Edison Company ("SCE"), in connection with an ongoing request for offers ("RFO") of local resources in the Los Angeles Basin, to use "updated local effectiveness factors" (sometimes referred to as "LEFs") in evaluating responsive bids. In its Petition, Terra-Gen asked that these two paragraphs be modified to require SCE to use local effectiveness factors in effect "as of the date the RFO is issued." (*See* Petition, p. 16) (setting forth Terra-Gen's proposed modifications to D.13-02-015, Ordering Paragraphs 4(a) and 4(l).) In other words, Terra-Gen simply asked that local effectiveness factors not be updated after the date the RFO was issued, which in this case was September 12, 2013.

The Proposed Decision would deny this request, and continue to require SCE to use updated, rather than outdated, local effectiveness factors, especially in the wake of the closure of the San Onofre Nuclear Generating Station ("SONGS").

In its August 18 Comments on the Proposed Decision, as well as in its August 27 letter to the Commissioners, Terra-Gen now has attempted to change the relief it initially sought in its Petition. In short, rather than continuing to argue that the Commission should freeze local effectiveness factors “as of the date the RFO is issued,” Terra-Gen chose to advance entirely different, although equally deficient proposals.

In its August 18 Comments on the Proposed Decision, Terra-Gen argued that Commission should “modify the PD, grant Terra-Gen’s petition, and (1) affirm, consistent with Ordering Paragraph 4(c), that effectiveness factors should be used to adjust the valuation of a proposed project, but should not be used as an eligibility requirement to eliminate otherwise viable projects from submitting final bids, and (2) conduct a public workshop where the CAISO would be invited to explain its assumptions and LEF calculations, SCE would explain how it proposes to use LEFs in its bid evaluation, and the Commission can respond by providing specific guidance on how LEFs should be used in bid evaluation in the procurement process.” (Terra-Gen Comments, p. 7.) Gone was any mention of Terra-Gen’s original proposal to freeze the use local effectiveness factors “as of the date the RFO is issued.”

Then, in its August 27 letter, Terra-Gen again altered its request, this time asking the Commission to: “(1) require SCE to obtain a best and final price for all shortlisted projects, (2) authorize SCE to conduct a validation of locational effectiveness at the node level using a legitimate third party consultant, and (3) utilize the resulting nodal effectiveness in the resources selection process.” (August 27 Letter, p. 2.)

In seeking to modify Decision 13-02-015, Terra-Gen was obligated by Rule 16.4(b) of the Commission’s Rules of Practice and Procedure to “concisely state the justification for the requested relief,” and to “propose specific wording to carry out all requested modifications to the decision.” Indeed, in its June 3 Petition, Terra-Gen did just that; it clearly requested that the Commission add the words “as of the date the RFO is issued” at two places in the Ordering Paragraphs of Decision 13-02-013. Nevertheless, the Proposed Decision, for reasons that Caithness believes to be compelling, denied this requested modification, finding that it would require SCE to ignore subsequent developments after issuance of the RFO. “Indeed,” as the Proposed Decision states, “a major reliability event occurred in southern California while the RFO was in process – the early retirement of SONGS.” (Proposed Decision, p. 9.) Ignoring the closure of SONGS in the evaluation of local reliability projects cannot be said to be in the best interests of SCE’s customers or the reliability of the grid.

Caithness believes the Proposed Decision was entirely correct in denying Terra-Gen’s Petition and in affirming the requirement that the latest local effectiveness factors be used by SCE in evaluating bids. But, in addition to the merits, Caithness also respectfully suggests that Terra-Gen, while understandably frustrated by the rejection of its specific proposal, should not now be permitted to ask that the Proposed Decision be modified to include what Terra-Gen now thinks the Commission should do. Surely the fact the Commission’s rules require a party to

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“propose specific wording to carry out all requested modifications to the decision,” means that upon issuance of a Proposed Decision rejecting such a requested modification, the requesting party may not then alter, much less entirely ignore, its initial request, and seek some *different* relief in its opposition to such proposed Petition. Rather, if Terra-Gen now wants to seek some *other* modification to Decision 13-02-015, rather than the modification sought in its June 3 Petition, then Terra-Gen would need to file a new Petition for Modification.

In sum, it is not proper for Terra-Gen, in the guise of critiquing Judge Gamson’s Proposed Decision, now to propose a different set of modifications from those it initially proposed but that Judge Gamson rejected. Accordingly, Caithness respectfully asks that the Proposed Decision be adopted by the Commission without change.

Respectfully submitted,



Larry F. Eisenstat

cc: Administrative Law Judge David Gamson
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**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)

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of **LETTER TO COMMISSIONERS DATED SEPTEMBER 5, 2014** on all parties identified on the attached service list(s) **R.12-03-014**. Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. See attached email service list.

Placing the copies in sealed envelopes and causing such envelopes to be delivered by hand or by overnight courier to the offices of the Assigned ALJ(s) or other addressee(s).

Placing copies in properly addressed sealed envelopes and depositing such copies in the United States mail with first-class postage prepaid to all parties for those listed on the attached non-email list.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this **September 5, 2014**, at San Francisco, California.

/s/ Kim Harris

Kim Harris
Legal Secretary

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