BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate Procurement Policies and Consider Long-Term Procurement Plans	Rulemaking 06-02-013 (Filed February 16, 2006)

COMMENTS OF

WEST COAST POWER LLC AND NRG ENERGY, INC.

ON POLICIES TO SUPPORT

NEW GENERATION AND LONG-TERM CONTRACTING

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I. INTRODUCTION AND SUMMARY

Pursuant to the Order Instituting Rulemaking ("R.") 06-02-013 dated February 16, 2006 and the Administrative Law Judge's ("ALJ's") Ruling dated February 23, 2006, West Coast Power LLC and NRG Energy, Inc. ("WCP")[1] submits these comments on policies to support new generation and long-term contracting.[2] WCP presents its comments below and also provides answers to the specific questions posed in the February 23, 2006 ALJ Ruling (Appendix A).

[1] West Coast Power LLC ("WCP") is a partnership equally owned by subsidiaries of Dynegy Power Corp. and NRG West Coast LLC that owns and operates approximately 1,808 MW of generation in California. Specifically, WCP operates the following generating units; Cabrillo I LLC, located in Carlsbad, CA; Cabrillo II LLC, peaking units located throughout San Diego County and El Segundo Power LLC, located in El Segundo, CA. West Coast Power also owns the retired Long Beach generation facility. NRG Energy, Inc. and Dynegy Inc. have obtained authorization for NRG to acquire Dynegy's 50 percent indirect ownership interest in West Coast Power and this transaction is expected to close on March 31, 2006. In addition, NRG indirectly owns and operates the 49 MW Chowchilla, CA generation facility and the 44.8 MW Red Bluff, CA generation facility.

[2] The OIR states, "the first order of business for this proceeding will be to review additional policies to support new generation and long-term contracts in California, including consideration of transitional and/or permanent mechanisms (e.g., cost allocation and benefit sharing, or some other alternative) which can ensure construction of and investment in new generation in a timely fashion."

II. COMMENTS

WCP has consistently advocated the need for long-term contracts as the best means to attract new generation in California. Due to the looming shortfall of generation needed to assure reliability, WCP has urged this Commission to act expeditiously on this matter and is pleased that the Commission has chosen the consideration of new policies to promote new generation and long-term contracts a "first order of business" of its Long-Term Procurement Plan ("LTPP") Rulemaking.[3] The need for action for the state as whole and specific regions in the state is of paramount importance towards meeting the future electricity needs of California. This proceeding provides the opportunity for the Commission to provide a clear and direct process for setting the procurement process and the method by which costs may be recovered. The need for action is now before the Commission. This will help end the on and off again procurement process which has plagued the state. Specific direction will provide action towards the repowering of existing generation sites as well as the development of new generation as soon as possible.

A. THE COMMISSION MUST ACT NOW TO MEET THE CLEAR NEED FOR NEW GENERATION RESOURCE PROCUREMENT

The Commission has rightly separated the procurement process and resource adequacy into two separate proceedings. As noted by the Commission, the purpose of this proceeding is to focus on the review and adoption of resource procurement plans and the development of policies to ensure the construction of additional resources to meet the identified State's identified shortfall. Separate policy issues related to the determination of capacity markets, capacity products, local resource needs and other items will be addressed in the Resource Adequacy proceeding, R.05-12-013. That proceeding will be critical for the creation of a long-term solution that provides adequate incentives for new generation investment via the creation of a durable resource adequacy framework and capacity market. However, the Resource Adequacy proceeding cannot guide the current phase of the instant proceeding, which must quickly begin to

[3] WCP Comments on Assigned Commissioner's Ruling Regarding Next Steps in Procurement Proceeding, December 12, 2005, page 2.

correct the lack of generation investment that underlies California's impending reliability crisis.

This proceeding provides the forum for quickly implementing contracts for new and existing generation. WCP urges the Commission to use this proceeding to create an effective procurement program, capable of immediate implementation. To achieve this goal, the Commission must:

- Determine the quantity of new resources as needed that shall be procured (the "net short") for the state as a whole as well as for individual utilities;
- Identify the parties who will procure the net short;
- Approve a fair and efficient procurement process that will select the most cost-effective resources, consistent with state policy guidance; and
- Adopt a method to allocate the cost of the procured resources in a manner that is competitively neutral, pragmatic, and consistent with the adoption of a well-designed capacity market.

WCP reiterates the urgent need for the Commission to resolve these four critical issues. There is no credible dispute that California is facing a looming capacity shortfall, and that additional generation must be procured to prevent an erosion of reliability. Generation resources for the state are inter-related between regions and that fact requires a policy approach that shows how the shortfall for the entire state will be met as well as for specific regions. The Commission's emphasis should be on how the state will make up the deficiency and how all entities including nonutility Load Serving Entities ("LSEs") and municipals, will contribute to the resources that the state requires. Specific direction can then be given for regions that have individual shortfalls.

The shortfall is especially significant in South of Path ("SP") 26 zone in the California Independent System Operator ("CAISO") control area. Demand in Southern California is growing at a rate of approximately 2% per year or 700 MW/year (including associated reserve requirements).[4] Few new sources of additional capacity have been committed to the region and the risk of retirement for older units is significant. With these basic fundamentals in hand, the California Energy Commission ("CEC") projects that SP26 cannot meet the industry-standard

[4] SP26's 2006 1-in-10 year peak demand is approximately 29,600 MW. 700 MW is 115% x 2% of this amount. CEC Presentation, December 12, 2005.

levels of reliability today and that the capacity shortfall by 2010 approaches 3,000 MW.[5] The CEC tempers this net short in with the addition of demand response and peak load reductions resulting from interruptible load programs. By 2010, the CEC estimates the value of these demand side resources is approximately 1,800 MW. WCP endorses the maximum use of appropriate and accurately-estimated demand response but notes that CEC's estimates are aggressive and need further vetting as described further below.

Within SP26, there is need both within SCE's and SDG&E's distribution areas for additional capacity. However, it is relatively easy to discern the need between these two large distribution areas ("distribution footprints"). The requirement for SDG&E can be ascertained because its distribution footprint matches a defined CAISO local reliability area. SDG&E has the required resources in its local reliability area through at least 2009, assuming the successful construction and commissioning of the Otay Mesa Power Plant. SDG&E is also forecasting retirements for several older steam-boiler units after 2009. The net effect of these resource additions and subtractions is that, SDG&E will need to procure substantial amounts of new capacity beginning in 2010.[6] WCP recommends that the Commission determine an equitable and accurate net short for both the SDG&E and SCE distribution footprints.

WCP notes that the CEC's outlook assumes that, under adverse load conditions, the CAISO can rely on 1,800 MW of demand response and interruptible programs in SP26 in 2010.[7] The Commission must question the CEC as to whether this assumption is overly optimistic. CAISO has also questioned the assumptions underlying this number in the past, and to WCP's knowledge, the differences have yet to be worked out by the two agencies.[8] Demand response and interruptible programs although important and of demonstrated use can not alone provide a full substitute for actual physical generation resources that are used for long term reliability.

The Commission should use this proceeding to resolve the differences in the CAISO and

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[5] CEC Presentation, December 12, 2005, p. 14.

[6] The proposed Sunrise PowerLink or other new transmission line into the San Diego load pocket would still require at long-term capacity commitments although the locations suitable for such capacity may change as a result of new transmission.

[7] CEC Presentation, December 12, 2005, p. 6 shows that the impact of demand response and interruptible ("DR/I") programs is equivalent to 5.8% of demand. This percentage translates into a total DR/I MW figure in SP26 of approximately 1,800 MW.

[8] See, for example, CAISO comments on the over reliance by CEC on these programs. *Transcript of Energy Action Plan Joint Meeting,* December 12, 2006, pp. 31, 32, and 37. Available at http://www.cpuc.ca.gov/static /energy/electric/energy+action+plan/eap_121205.pdf (last viewed on February 21, 2006).

CEC assumptions so that correct amount of procurement can be undertaken and resource adequacy be achieved. To that end, WCP encourages the Commission to request that CEC and CPUC make a joint presentation to explain and reconcile their forecast differences as a part of this proceeding. It is paramount that the procurement required in the State be accurately determined so that the Commission takes the necessary steps to ensure that this *entire* net short be procured.

B. CALIFORNIA SHOULD LOOK TO REPOWERING AS THE PREFERRED APPROACH TO PROCURE NEW MEGAWATTS.

Existing generation sites are ideal locations for the development of additional capacity resources for California. Much of the existing generation is located in specific load pockets where additional generation would meet the immediate reliability requirements of the State's electric grid. Many of these generation sites have access to water, transmission, fuel supply and other infrastructure requirements that cannot be easily replaced, duplicated or developed for new sites in a timely manner. For these reasons, repowering of existing facilities offers the most cost-effective and well-situated means of addressing the need for adequate generation resources in the state. Accordingly, the Commission should rely on the repowering of older existing power plants as a key part of the solution for meeting the State's need for new generation.

Repowering is also consistent with prior Commission policies and with state law. For example, the Commission recognized the benefits of repowering in a prior Long Term Procurement Order (D.04-12-028). In that proceeding, the Commission stated that it is sound policy to consider "brownfield" sites before developing "greenfield" sites. These policy benefits include immediate location to load centers, meeting existing reliability needs, availability of current transmission infrastructure and proximity to load centers. In its Order, the Commission stated,

> "Therefore, we direct the IOUs to consider the use of brownfield sites first and take full advantage of their location before they consider new generation on greenfield sites. If IOUs decide not to use brownfield, they must make a showing that justifies their decision."[9]

[9] D.04-12-048, pp. 146-147

The California Legislature and the Governor have also declared that a repowering policy is in the public interest through the adoption of Assembly Bill ("AB") 1576.[10]

Section 1 of AB 1576 states:

(e) Because of their strategic location and existing infrastructure, it is in the best interest of the state to encourage the replacement or repowering of these facilities.

(f) Investment in replacement or repowered electric generating facilities replaces our aging facilities with more efficient and cost-effective facilities that enhance environmental quality and provide economic benefits to the communities in which they are located.

(g) Therefore, it is in the public interest for the state to facilitate investment in the replacement or repowering of older, less-efficient electric generating facilities in order to improve local area reliability and enhance the environmental performance, reliability, efficiency, and cost-effectiveness of these facilities.

(h) An effective means for facilitating that investment, while ensuring adequate ratepayer protection, is to authorize electrical corporations to enter into long-term contracts for the electricity generated from these facilities on a cost-of-service basis.

The new law specifically allows for recovery on a cost to serve basis for the costs related to the repowering.

The CEC has made it an express goal to either retire or replace aging and less efficient generation and has also supported repowering as noted in its Integrated Energy Policy Reports of 2003 and 2004.[11]

Finally, the CPUC has recently moved forward with procurement standards that minimize the emission of greenhouse gases ("GHG").[12] The Commission's procurement standard is load-based and primarily focuses on procurement for the California's three major utilities. With this policy now adopted, the CPUC must consider in this procurement proceeding GHG emissions associated with any new capacity procured to addresses California's looming shortfall.

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[10] Assembly Bill 1576, by Speaker Fabian Nuñez, an act to add Section 454.6 to the Public Utilities Code, relating to public utilities was signed into law on September 29, 2005, by Governor Arnold Schwarzenegger and filed with the California Secretary of State on the same date (Chapter 374). This bill became law on January 1, 2006.

[11] California Energy Commission 2003 Integrated Energy Policy Report 03-IEP-01 ("Aging Power Plant Study"), November 2003 and 2004 California Energy Commission Integrated Energy Policy Report Update 100-04-006CM (Chapter 2-Aging Power Plant Study), November 2004.

[12] CPUC, D.06-02-032 Opinion on Procurement Incentives, February 16, 2006.

Appropriate repowering of existing generation sites is one way to simultaneously meet the State's reliability and GHG emission goals.[13]

In summary, it is clear that considerations of reliability, efficiency, policy and law all encourage repowering of existing generation. WCP urges the Commission to expressly adopt repowering as desired outcome of this proceeding.

C. RECOMMENDED ADDITIONAL POLICIES TO SUPPORT NEW GENERATION AND LONG-TERM CONTRACTS IN CALIFORNIA

For California to reap the benefits of a low cost, balanced resource portfolio, it must quickly develop a well-designed wholesale electricity market based on market responses and incentives that will support competition for new resource development without the need for prescriptive procurement orders by the Commission. The ultimate solution is the creation of stable and efficient energy and capacity markets that will provide price signals on both a near- and long-term basis that in turn promote bilateral contracting and new market-based generation investment. That process is still underway with the development of CAISO's new wholesale market rules and the Commission's future action to develop a capacity market or similar market mechanism in the Resource Adequacy proceeding. As important as the task of developing these markets is, it will take time to design and implement them, as well as prove to investors that they are both functional and effective.

Meanwhile, a clearly defined procurement process is required to get new capacity constructed and solve California's immediate resource needs. Little to no generation will be built unless its developer has some assurance that its costs can be financed and recovered. Lenders simply will not provide funding to merchant generators to build new generation based on the existing California wholesale energy market. With respect to gas-fired projects, capital markets generally will not lend to project developers unless they have secured a 7-to-10 year

[13] The CPUC, in its Policy Statement on Greenhouse Gas Performance Standards, October 6, 2005, directed the its staff and General Counsel to investigate a GHG performance standard applicable to all long-term (greater than three years) procurement based upon the emission levels of a "state-of-the-art, combined-cycle natural gas turbine."

purchased power or tolling agreement.[14] Medium-term contracts (terms of less than five years) simply will not be long enough to amortize the debt associated with such projects. As a result, an underlying contract that supports new generation will be required before either the lender or the generation developer will proceed with any new projects. Thus, California needs an interim procurement process that will provide competitive generation, including repowering projects, the opportunity to enter into long-term contracts.

Equally important, it is clear that utilities will not enter into such contracts unless they have some assurance that they can collect these procurement costs from customers without putting themselves at a long term competitive disadvantage relative to other providers, including nonutility LSEs. Absent action by the Commission to address both an interim contract-based process that procures the resources needed now for reliability, and the equitable allocation of the resulting contract costs to all customers who benefit from that reliability, no independent action will be undertaken to solve the resource needs of the State. It is unreasonable, absent a well-functioning capacity market, to expect either utility or non-utility LSEs to enter into contracts for resources that provide reliability to all, if doing so means putting themselves at a competitive disadvantage in terms of their cost profile relative to competing LSEs.

To resolve the standoff created by the gap between the reliability needs of the state and the obligation of LSE's to make long-term commitments to satisfy the state's reliability needs, WCP urges the Commission to implement transitional measures that will support both the contracts needed to support immediate repowering or development of new generation, and the competitively neutral allocation of the costs of those contracts.[15]

WCP notes that the Joint Parties of which NRG Energy, Inc. is a party[16] are filing comments in this proceeding that provides both a methodology to procure resources and a means by which the net cost of those resources will be allocated to all connected customers, consistent with a transition to a capacity market when it is implemented in California. LSEs that are

[14] "Financial Markets' View of California Energy Investment Climate" Presented by Union Bank of California at California Foundation for the Environment and the Economy Electricity Workshop, St. Helena, CA, January 27, 2006.

[15] The transitional procurement can result in specific procurement contracts between 5 to 10 years in length. Contracts with tenors of less than 10 years will need to reflect prices that would allow for accelerated recovery of debt and other fixed cost obligations.

[16] Joint Parties Comments of Southern California Edison Company, Pacific Gas and Electric Company, the Utility Reform Network and NRG Energy, Inc. in this proceeding.

allocated costs of resources procured under the Joint Parties proposal would also receive resource adequacy benefits proportional to their allocation. WCP is supportive of the Joint Parties approach. However, such a solution should be designed to create a level playing field across the entire state, and thus should be designed to procure the entire net short faced by the State.

An important feature of such a solution is its consistency with the transition to a capacity market. Upon the development of a capacity market, the costs of interim contracts can be treated as remaining underlying system costs that will still be collected by the utilities from all connected customers, net of the capacity revenues the resources enjoy in the capacity market. The residual cost of the contracts–if any–would thus be assigned to the underlying customers within a zone, irrespective of who may be their LSE. Such a mechanism would be more competitively neutral than attempting to rely on the utilities alone to fill the entire net short to benefit of all customers in the region.

The responsibility to make interim resource commitments and associated allocation of costs must be addressed head-on in order for contracts to be let to provide the resources needed for reliability. The Joint Parties proposal provides a well-reasoned approach and a reasonable allocation of the costs of reliability procurement as a system cost. With this well-reasoned solution to a key barrier to procurement of needed resources, the Commission must quickly put into place procurement rules that will allow market based, efficient and least cost development of new and existing generation. The Commission's policies adopted in this proceeding should also expressly promote repowering existing units and units that have sufficient permitting to become constructed and operational on an accelerated basis.

The Commission should also not fall in the trap of requiring LSEs to procure only their portion of the net short unless it is fully confident this obligation will be respected uniformly. If the utilities procure only to meet their net short and other LSEs fail to take steps to make commitments that result in the construction of new capacity to meet their net short, the reliability objectives of the CPUC's procurement program will fail.

A final area that the Commission must address in its effort to get new capacity constructed is to ensure that any RFO results in effective competition among a sufficient set of offered resource alternatives. The Commission has already addressed this issue in prior orders. In particular the Commission has mandated the use of an Independent Evaluator ("IE") in "All

Source" solicitations whenever there is submission of a utility, utility-affiliate, or utility turnkey offer.[17] The Commission also held utility projects to a cost cap equal to the offered in capital cost.[18] WCP recommends that the Commission strictly apply Edgar standards[19] when considering the selection of any utility or utility-affiliate project. Use of an IE for the RFO is also essential. Finally, the Commission must assure potential entrants that it is serious and not allow the utilities to continue to delay the start of the RFO process.

III. CONCLUSION

For the foregoing reasons, WCP respectfully requests prompt adoption of additional policies that promote the construction of additional market based procured generation from new and existing sites in a time frame that meets California's pressing reliability needs.

Respectfully submitted this March 7, 2006 in San Francisco California.

By: s/ G. Alan Comnes
On Behalf of West Coast Power LLC

By: s/ Joseph M. Paul
On Behalf of Dynegy, Inc.

By: s/ Jesus Arredondo
On Behalf of NRG Energy, Inc.

[17] CPUC, D.04-12-048, Conclusion of Law No. 26, p. 245
[18] D.05-09-022. This policy is subject to rehearing in a latter phase of the instant docket.
[19] 108 FERC 61,081 (July 29, 2004), paragraph 67.

Appendix A

WCP's Answers to Questions Posed in ALJ'S February 23, 2006 Ruling Setting Prehearing Conference and Workshop on Review of Policy Proposals to Support New Generation

(1) Is there a need for the State to adopt additional policies to support the development of new generation and long-term contracts in California? If so, describe a policy proposal that serves that goal, such as the consideration of a transitional and/or permanent cost allocation or alternative mechanisms that would serve the same goal.[footnote omitted] Proposals should include detailed information about how costs and benefits of new generation contracts will be allocated and shared, how the policy will be implemented, over what timeframe, and with what safeguards.

Answer of WCP: Yes, there is clearly a need for additional policies. See WCP's policy proposal contained in Section II.C, in these comments.

(2) Is there a need for the Commission to act on the proposal urgently? What are the relevant timelines that will be affected by the Commission's action on this proposal? Are there new generation projects or solicitations that will be delayed if this proposal is not acted upon?

Answer of WCP: The CEC needs demonstration calls for new physical capacity by 2007 for Southern California and 2008 for Northern California. The need only grows thereafter. In the context of Southern California, WCP is unaware of any existing or pending RFOs by creditworthy LSEs that would procure contracts of sufficient term to support new plant construction. Thus, Commission action appears acutely necessary to spur action. Even with a prompt Commission Order, the time associated with conducting procurement process, timelines associates with necessary permits and interconnections studies, and, lastly, the timeline associated with actual plant construction is on the order of 2 to 4 years; thus time is of the essence.

(3) Why is the existing regulatory authority insufficient to ensure that contracting for new generation occurs?

Answer of WCP: The Commission has adequate authority to address the impending capacity shortfall. WCP suggests that it is not particularly relevant whether the lack of extant RFOs or other solicitation processes is a result of a failure to comply with existing policies or is due to imperfection of the policies themselves. The fact is, insufficient new MWs are committed for construction and something needs to be done.

(4) How will ratepayers be affected by adoption or rejection of the policies proposed?

Answer of WCP: WCP suggests that the cost of providing reliability to comply with industry standards is far less costly than the negative impacts associated with degraded reliability: uncertainty, blackouts and de-investment within the State. The State and the Commission have set high standards with respect to the quality of the portfolios that it requires jurisdictional LSEs to procure for its customers. One need only consider the renewable portfolio standards, GHG emission standards, or the high mitigation required to obtain construction permits. WCP suggests that the incremental cost of maintaining reliability is relatively small compared to these many other procurement requirements LSEs face in this State.

(5) How much new generation would the new policies apply to? If the policies apply to all contracts for new generation, on what date would application begin, and until what date/event would it continue?

Answer of WCP: The Commission should focus on the entire net short expected to be needed in areas with critical reliability problems until longer-term investment incentives (locational capacity, universal forward procurement requirements, etc.) are put into place.

(6) How does the proposal apply to the need determinations made by the Commission for Pacific Gas and Electric Company and Southern California Edison Company in Ordering Paragraphs (OP) 4 and 5 in D.04-12-048? Does the proposal apply only to the amount of new generation authorized in D.04-12-048? Does the proposal apply to a larger amount of new generation? If so, how much and how is that larger amount determined?

Answer of WCP: D.04-12-048, Ordering Paragraph 5 required SCE to procure peaking capacity, in part, via long-term contracts. To WCP's knowledge, no such contracts have been let since the issuance of D.04-12-048. In any event, WCP recommends that the need estimate be updated. Nearly two years has passed since the record relied upon by this decision was developed and much of the data necessary to evaluate utility claims regarding net short were subject to onerous confidentiality requirements that have since been modified by the Commission.

(7) How will the proposal affect the Commission's ability to consider capacity markets in R.05-12-013? Are there steps the Commission can take to ensure that new policies do not foreclose the possibility of capacity markets?

Answer of WCP: As discussed in the main body of our comments, WCP recognizes that a properly structured capacity market will also provide incentives for the maintenance of existing capacity and the construction of new MWs in locations where they are needed for reliability. The Commission has appropriately taken a parallel track in the development of a capacity market and the determination of actionable orders for utility procurement. It is unrealistic to expect a new capacity market in California to solve California's investment problem immediately, even if it could somehow be implemented on a near term basis. Finally long-term contracts entered into subsequent to the policy orders in the instant docket, can flow into any well-designed capacity market ultimately adopted in California. Any shortfall or surplus between the capacity market clearing price and the cost stream associated with the vintage transition contract can be subject to an appropriate system allocation policy.

CERTIFICATE OF SERVICE

I, Melinda LaJaunie, certify that I have on this 7th day of March 2006 caused a copy of the foregoing

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to be served on all known parties to R.06-02-013 via email to those listed with email on the most recent service list on the CPUC website, and via U.S. mail to those without email service. I also caused courtesy copies to be hand-delivered as follows:

Commissioner Michael R. Peevey California Public Utilities Commission 505 Van Ness Avenue, Room 5218 San Francisco, CA 94102	ALJ Carol A. Brown California Public Utilities Commission 505 Van Ness Avenue, Room 5103 San Francisco, CA 94102

I declare on penalty of perjury under California law that the foregoing is true.

Executed this 7th day of March 2006 at San Francisco, California.

*/s/Melinda LaJaunie*____
Melinda LaJaunie

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(Updated March 3, 2006)

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