BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.	Rulemaking 04-04-003 (Filed April 1, 2004)

COMMENTS OF THE WESTERN POWER TRADING FORUM ON THE ASSIGNED COMMISSIONER'S RULING OF COMMISSIONER PEEVEY

Daniel W. Douglass

DOUGLASS & LIDDELL
21700 Oxnard Street, Suite 1030
Woodland Hills, California 91367
Telephone: (818) 593-3939
Facsimile: (818) 593-3911
douglass@energyattorney.com

Attorneys for
Western Power Trading Forum

December 12, 2005

TABLE OF CONTENTS

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.	Rulemaking 04-04-003 (Filed April 1, 2004)

COMMENTS OF THE WESTERN POWER TRADING FORUM ON THE ASSIGNED COMMISSIONER'S RULING OF COMMISSIONER PEEVEY

In accordance with the schedule provided in the December 2, 2005, Assigned Commissioner's Ruling issued by Commissioner Peevey ("ACR") in the above captioned docket, the Western Power Trading Forum ("WPTF")[1] offers the following comments on the ACR.

I. INTRODUCTION

As background, the ACR indicates that the current proceeding (R.04-04-003) will be closed and two successor proceedings will be initiated. The Commission will open a new Order Instituting Rulemaking ("OIR") on resource adequacy, "as the forum to consider future RA issues, including implementation matters related to existing RA requirements, as well as the extension of RA mandates to local area and multi-year requirements."[2] There will also be a successor procurement OIR to handle the biennial long-term procurement planning cycle and

[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] ACR, at p. 3.

other procurement issues. Appendix A of the ACR lists the following Proposed Goals of Long-Term Procurement Proceeding:

1. A review of the need for new generation in California, including consideration of temporary 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;

2. A review of long-term resource plans, including an integrated resource planning process for all IOU planning areas;

3. Updates to IOU procurement policies and practices; including review and approval of new 10-year procurement plans; and

4. Any procurement policy issues not handled in R.04-04-003 or other procurement related dockets.[3]

WPTF concurs with this list and offers comments herein that focus primarily on items 1 and 4 above. We also note that Section 3 of Appendix A observes that the utilities are required to file updates to their procurement policies and practices. Section 3 then provides a list of "Questions that may be included in this part of the proceeding…"[4] Among these questions is a list of issues that may need to be filed as part of the utility procurement plans and a query as to whether workshops are required on specific procurement issues. WPTF takes no position at this time as to the need for workshops, but we commend the Staff for raising the list of issues that may need to be included in the LTPPs. As comment, WPTF offers a brief synopsis of several related procurement issues that should be included in the forthcoming LTPPs. Specifically, WPTF notes that:

---

[3] Appendix A, at p. 2

[4] Ibid., at pp. 10.

1. There remain a series of outstanding issues that must be resolved in order to provide a level playing field for all market participants.

2. Utilities should use the same template reporting format contained in the Integrated Energy Policy Report ("IEPR") for filing information in their new long-term procurement plans ("LTPPs").

3. Market participants should be provided access to utility net short positions in a manner that addresses individual utility confidentiality concerns while still providing prospective suppliers with information needed for the market to function more efficiently.

4. The Commission's acceptance of a hybrid market should be reconsidered, with a preference expressed for a fully competitive market rather than a hybrid.

5. The future reopening of retail direct access should be factored into the LTPP of every LSE that is required to submit a LTPP.

6. The Commission should clearly direct that both new and old generating facilities should be allowed to bid in utility Requests for Offers ("RFOs").

7. WPTF challenges the assumption in that IOUs will build new generation for bundled customers as contained in the staff work plan attached to the ACR as Appendix A.

Each of these matters is discussed below in greater detail in Section II.

II. DISCUSSION

A. There remain a series of outstanding issues that must be resolved in order to provide a level playing field for all market participants.

Although the Commission's Long-Term Procurement decision was seen as a major victory for advocates of competitive procurement, it was unclear, or may have erred on several critical competitive process issues. The resolution of the issues listed below will determine how level the playing field will be between merchant generators and IOUs.

1. Bid Evaluation Criteria

The Commission should clarify the following bid evaluation criteria:

- **O&M and Future Plant Additions:** Utility-owned resources were given the option of selecting cost of service ratemaking treatment for future plant additions and annual operating and maintenance ("O&M") expenses. If this anti-competitive option remains in place, the Commission should at least issue a directive as to how these utility costs will be evaluated in comparison to PPAs that include these costs.
- **Project Development Costs:** The decision provides minimal guidance on how project development costs associated with the preparation of a procurement bid should be handled. Both utility shareholders and non-utility bidders should be required to bear these costs, reflect them in their bids, and forgo their recovery for unsuccessful bids.
- **Greenhouse Gas Adder:** The decision suggests that the future cost of compliance with greenhouse gas regulations, associated with procurement decisions, would be passed through to ratepayers but fails to address how these costs would be handled for utility and non-utility fossil projects.
- **After-Contract Value:** New utility-owned fossil-fueled resources were directed to recover costs over a 15-year period, but the decision failed to address how to evaluate the resource's value after the contract, or the abandonment costs, for both utility and non-utility projects.

- **Debt Equivalence:** The appropriate risk factor and overall justification remain in dispute.
- **Qualitative Attributes:** The vagueness of this category should be minimized by creating quantitative guidelines.

2. Bid Solicitations

The Commission should require the utilities to develop well-designed bid solicitations through a collaborative process that includes the participation of prospective bidders. RFPs should specify products, process, bid evaluation criteria, and if the utility intends to bid.

3. Independent Evaluator

The decision fails to ensure the independence of the "Independent Evaluator" by allowing the utilities to contract directly with them and to control their payments. The existing Procurement Review Groups are clearly not independent and should be eliminated.

4. Transparency

The Commission has allowed excessive confidentiality of utility procurement information in comparison to industry standards, which are now under reconsideration. The Commission should require the publication of a summary of winning bids.

5. No Conduit Rule Needed

The Commission should adopt a no conduit rule to prevent the utilities' project development personnel from acquiring or using confidential bid information from merchant generators to their competitive advantage.

B. IOUs should use the same template reporting format contained in the Integrated Energy Policy Report ("IEPR") for filing information in their new long-term procurement plans ("LTPPs").

The ACR notes that "As part of its Integrated Energy Policy Report ("IEPR") proceeding, the CEC adopted the Committee Final Transmittal of 2005 Energy Report Range of Need and Policy Recommendations to the California Public Utilities Commission (Transmittal Report) on November 21, 2005. The report focuses on the IOU range of need, and specifically on the contractual net short for each IOU. The Transmittal Report provides information on IOU supply and demand, with a focus on the years 2009-2016. Parties are not invited to comment on the contents of the Transmittal Report; however, they are invited to comment on how the Transmittal Report can be used as an input in the 2006 proceeding."[5] As noted in the Transmittal Report, the data is based on utility submittals from early 2005 and needs to be updated. Specifically, the Report provides:

> The Energy Commission recommends that the CPUC direct the utilities to update their utility-controlled and contractual resource status by filing in the 2006 LTPP a listing of all contracts and other projects committed to, and all contracts terminated or owned resources retired, since January 1, 2005. This filing should clearly indicate whether these projects were included in the reference case resource plan filed at the Energy Commission during the *2005 Energy Report* proceeding. The energy and capacity values of those projects can then be added to the appropriate existing and planned resource line and, if it is a preferred resource, subtracted from the appropriate preferred resource line of the range of need tables and the resulting totals recalculated.

WPTF believes that the Transmittal Report was particularly useful for market participants due to its use of a template reporting format that clearly shows the utilities' contractual resource status. It would therefore be highly useful if the utilities were to use this format in the preparation and filing of their respective LTPPs. The utilities should be directed to include in

---

[5] ACR at p. 9.

their filings, figures comparable to those contained in Appendix B of the Transmittal Report (specifically, Figures B-1 through B-6), as these figures provide a user-friendly format for interested parties to review the updated load and resource data contained in the utilities' filings.

As the California Energy Commission ("CEC") has developed this informative and clear reporting format for the IEPR, it would be practical and efficient for it to become the model for how utility information is reported in the future. Having once "invented the wheel" and found that it is good, we should avoid the confusion and inefficiency associated with reinvention should the utilities utilize new and different formats in their future LTPPs.

C. Market participants should be provided access to utility net short positions in a manner that addresses individual utility confidentiality concerns while still providing prospective suppliers with information needed for the market to function more efficiently.

As noted above, the CEC's Transmittal Report focused on the utilities' range of need, and specifically on the contractual net short for each utility. Much of this information was redacted for public dissemination and thus was not available to other market participants. WPTF strongly suggests that public dissemination of this information in a form so as to protect legitimate utility confidentiality concerns should be a goal of the upcoming proceedings. At a minimum, net short positions should be disclosed by each utility for the timeframes that are relevant to the LTPP. The disclosure of net short information will lead to a more efficient and transparent market that should benefit all market participants, including end-users, utilities and suppliers.

D. The Commission's acceptance of a hybrid market should be reconsidered, with a preference expressed for a fully competitive market rather than a hybrid.

The Commission has previously endorsed a hybrid market for generation.[6] Although not precisely defined, the characteristics of this hybrid market structure appear to be defined in D.04-01-050 as including, "a portfolio mix of short-term transactions, new utility-owned plant, and long-term PPAs is optimal, combining the security of generation assets under the full regulatory oversight of the Commission with the flexibility of ten-year contracts, and the potential benefits of operating efficiencies and lower costs from a competitive market."[7] The same decision, however, notes that, "The presumption that utilities may favor their own capacity at the expense of third-party generators is well founded, with effects in both procurement of power from existing resources and in the procurement of new capacity."[8]

This decision also stated that, "At same time [sic] we provide an opportunity for the utilities to own new generation, we want to provide assurance to the third-party generators that we see a meaningful role for them in California's energy future. Third-party generating capacity, if contracted properly, holds a number of advantages for California ratepayers. Moreover, it is necessary to have a thriving independent generating sector for these advantages to be secured."[9]

Fundamentally, the hybrid market allows the incumbent utility to rely on cost-of-service backstops that provide utility ratepayers inadequate protection from cost over runs and severely limit the incentive for outside investors to come in and provide capital to allow California to

---

[6] *See*, D.04-01-050, at p.3: "We endorse a hybrid market structure for generation."

[7] Id., at p. 60.

[8] Id., at p. 61.

[9] Id., at p. 62.

address its need for new infrastructure. Put simply, WPTF seriously questions whether a hybrid market structure will in fact provide that "meaningful role" or offer the claimed advantages for California's ratepayers.

WPTF believes that only through adoption and implementation of a fully competitive market will the operating and cost efficiency goals articulated by the Commission be achieved. WPTF believes that the utilities must engage in competitive bidding, and that third-party providers should not be subject to discriminatory treatment relative to utility-build options. The hybrid market structure simply does not provide those protections and we therefore recommend that the forthcoming OIR consider whether maintenance of the hybrid market structure is in fact beneficial for California's ratepayers or whether a transition to a fully competitive market should instead be adopted.

E. All LTPPs should be required to consider the future reopening of retail direct access.

Since Commission resource adequacy requirements have now been adopted for all load-serving entities, including electric service providers, and the intended purposes served by suspending direct access ("DA") either have been served or been addressed through other means, WPTF believes that retail access in California should be reinstated as soon as practicable. Markets of many buyers and many sellers are highly desirable and California should move in that direction now that the issues that gave rise to the original suspension of direct access have all been resolved.[10]

[10] For example, the DWR bonds were successfully issued at investment grade, the Commission has established a non-bypassable charge to recover bond-related costs from all customers, DWR's procurement authority has expired and the IOUs have resumed their procurement responsibilities. The Commission has established IOU charges to recover ongoing DWR contract costs from bundled customers, and it established the CRS mechanism to ensure that DA customers pay their "fair share" of such costs. Furthermore, as is currently being discussed by DA CRS

As a result, the utilities' new LTPPs should be cognizant of the fact that DA may re-open, causing current utility bundled customers to return to, or opt for, competitive markets. The Commission should direct that their plans reflect this potential reality, in order to ensure that there is no cost-shifting in either direction between bundled and competitive market customers and that, further, no new stranded costs are created for competitive market customers such as those caused by utility procurement that exceeds the needs of the utilities' core bundled customer base.

The Staff Work Plan attached as Appendix A notes that, "IOUs (SCE in particular via A.05-06-003) have expressed concerns that adding the specified new generation amounts when only bundled customers pay for new generation may be problematic. It is far from ideal to separate this issue from the full integrated resource planning process we envision for 2006, but it may be necessary to address this question first."[11] Although WPTF disagrees sharply with the SCE suggestion that new generation should be paid for by anyone other than bundled customers, we concur with Staff's observation that this is a priority issue.

WPTF also notes that Ordering Paragraph ("OP") 9 of D.04-12-048 provides that, "In future procurement plans, the IOUs shall incorporate reasonable anticipated CCA departing load."[12] Precisely the same direction should apply to reasonable anticipated DA departing load. To do otherwise would merely raise the specter of further stranded costs that will burden retail competition, frustrate the exercise of customer choice and serve the anti-competitive aims of incumbent monopoly utilities.

Working Group participants in Rulemaking 02-01-011, a final reconciliation of DWR contract cost obligations is likely possible.

[11] Staff Work Plan, at p. 3.

[12] D.04-12-048, at p. 239.

F. The Commission should clearly direct that both new and old generating facilities should be allowed to bid in utility Requests for Offers ("RFOs").

WPTF notes that ALJ Carol Brown has recently issued her proposed decision ("PD") with regard to several outstanding petitions to modify D.04-12-048. In a section entitled, "*The Role of Exclusions in All-Source Solicitations*," the PD explored the issue of whether RFO eligibility requirements should be permitted to, "limit participation in the solicitation due to the specified operational date requirement."[13] The PD observes that, "it is unclear to us as to how a utility can tie any of its resource needs to only new or only existing generation types. In fact, a megawatt-hour is a megawatt-hour, and a kilowatt-hour is a kilowatt-hour (green power and Renewables Portfolio Standard issues aside), regardless if it was generated from a 'new' or 'existing' resource."[14] ALJ Brown concludes that:

> …exclusion of certain resources will decrease competition and might affect the prices. D.04-12-048 established solicitation bidding guidelines, but it did not make a distinction between old and new generation and all-resource solicitation referred to types of resources such as IOU-built, turnkey, buyout and PPAs. Even though there is merit to utilities' reasoning, the all-source solicitation should encompass all existing and future resources and should not bar any entity from participating in the RFO. To the greatest extent possible, the utilities should conduct power solicitations for the specific power products needed to meet their load-serving obligations. The utilities should avoid the exercise of monopsony power through arbitrary segmentations of potential bidders.[15]

WPTF applauds ALJ Brown's findings and recommends strongly that the Commission make it explicitly clear that the utilities' new LTPPs may not discriminate between existing and future resources.

---

[13] PD, at p. 15.

[14] Id., at pp. 15-16.

[15] Id., at pp. 16-17.

G. WPTF challenges the assumption that utilities will necessarily build new generation for bundled customers.

The Staff Work Plan provides that, "After establishing the need for new generation, the Commission will need to establish the range of options for cost and benefit allocation for new generation. <u>It has been assumed that IOUs will build new generation on behalf of IOU bundled customers</u>. If there is a need to reconsider this issue to ensure additional investments in new generation, then this question may be addressed here."[16] [Emphasis added.]

WPTF submits that there is absolutely no reason to accept as a given that utilities will build new generation for bundled customers. We note that OP 26 of D.04-12-048 provides that, "all-source open solicitations need to be transparent and competitive, and in addition, need to be open to all resources" and, further, that "The IOUs will employ the Least-Cost Best-Fit methodology when evaluating PPAs and utility-owned bids in an all-source open RFO, taking into account the qualitative and quantitative attributes associated with each bid."[17]

It should seem obvious that an all-source open solicitation requirement, coupled with a least cost, best fit requirement, should not predetermine that utility generation projects will necessarily be successful. Instead, as noted previously, California should move to a fully competitive market that does not automatically allocate the bundled market, or any particular share of it, to utility-build generation projects.

---

[16] Staff Work Plan, at p. 5

[17] D.04-12-048, at p. 244.

III. CONCLUSION

WPTF supports the procedural goals that are contained in the ACR. The recommendation to terminate the current docket and to commence two new OIRs to deal, respectively, with the utilities' LTPPs and future resource-adequacy related issues is both appropriate and efficient. We note, however, that there remain a number of issues that need to be addressed in the utilities' 2006 LTPPs.

The primary issue is that there is not yet a level playing field for all market participants. Inadequate market transparency continues to be a stumbling block to efficient procurement and the Commission's previously expressed preference for a hybrid market is more likely to cause problems in the long run that would be avoided should the State instead opt for a fully competitive market.

WPTF has suggested herein several practical steps that could aid in creating a more efficient market. We recommend, for example, the following:

Utilities should use the same template reporting format contained in the IEPR for filing information in their new long-term procurement plans.

Market participants should be provided access to utility net short positions in a manner that addresses individual utility confidentiality concerns while still providing prospective suppliers with information needed for the market to function more efficiently.

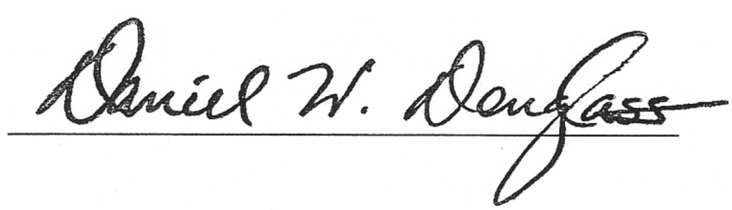
WPTF also strongly recommends that the utility LTPPs should account for the future reopening of retail direct access, which should occur as soon as is practicable.

Further, the Commission should clearly direct that both new and old generating facilities should be allowed to bid in utility RFOs.

Each of these steps, if implemented, will lead to a more efficient and desirable market with many buyers and many sellers that will encourage the construction of new generation and benefit all California electricity consumers.

WPTF thanks the Commission for its attention to these comments.

Respectfully submitted,



Daniel W. Douglass
DOUGLASS & LIDDELL
21700 Oxnard Street, Suite 1030
Woodland Hills, California 91367
Telephone: (818) 593-3939
Facsimile: (818) 593-3911
douglass@energyattorney.com

Attorneys for
Western Power Trading Forum

December 12, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document on all parties of record in the above captioned proceedings by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is unavailable.

Executed on December 12, 2005, at Woodland Hills, California.

Michelle Dangott