STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
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December 21, 2012

Agenda ID #11816
Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 10-05-006

This is the proposed decision of Administrative Law Judge (ALJ) Peter V. Allen. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Allen at pva@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:rs6

Attachment

Decision **PROPOSED DECISION OF ALJ ALLEN** (Mailed 12/21/2012)

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 10-05-006 (Filed May 6, 2010)

DECISION DENYING PETITION OF CALPINE CORPORATION FOR MODIFICATION OF DECISION 12-04-046

1. Summary

The Petition of Calpine Corporation (Calpine) to Modify Decision (D.) 12-04-046 is denied. Calpine has failed to provide new or additional evidence or facts to support modification of D.12-04-046.

2. Background

In Decision (D.) 12-04-046, this Commission rejected a proposal by Calpine. Calpine argued that the Commission should require the investor-owned utilities to engage in intermediate term (3-5 year) solicitations aimed at existing power plants that did not have contracts with the utilities. (*Id*. at 13.) Calpine's argument was based on its assertion that:

> Current and expected wholesale market conditions do not provide uncontracted existing generation resources with reasonable opportunities to secure sufficient and stable revenue streams to recover going forward costs, including maintenance necessary to ensure availability in the future. As a result, if a procurement mechanism is not adopted in the near term to address this situation, economic retirements should be expected. (D.12-04-046 at 13, quoting Calpine Opening Brief at 3.)

The Commission considered this assertion, and acknowledged that: "Calpine may be correct that there is some level of market failure in the California electricity markets." (*Id*. at 17.) Unfortunately for Calpine's proposal, the Commission also noted:

> Other than generic market data showing that revenues for combined cycle generation have generally been declining, Calpine presented no evidence to support its claim that its uncontracted generation resources are at risk of shutting down, and it could not even identify any uncontracted non-Calpine generation resources, much less show that they were at risk of economic shutdown. (*Id.* at 15.)

Accordingly, the Commission declined to adopt Calpine's proposal on the grounds that: "[C]alpine has failed to show that the specific problem it is complaining about is as imminent or dire as it claims, and it has failed to show that the specific solution it proposes is reasonable." (*Id*. at 17.)

Calpine initially sought rehearing of D.12-04-046 on this issue. (Application of Calpine Corporation for Rehearing of Decision 12-04-046, filed May 24, 2012.) Pacific Gas and Electric Company (PG&E) and Southern California Edison (SCE) filed responses in opposition to Calpine's application for rehearing.

Calpine subsequently asked to withdraw its request for rehearing,[1] and on August 24, 2012, Calpine filed the present Petition for Modification on the same issue. Calpine's Petition is opposed by PG&E, SCE, and the Commission's Division of Ratepayer Advocates (DRA).

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[1] The Commission dismissed Calpine's application for rehearing in D.12-09-034, issued on October 2, 2012.

3. Lack of Evidence

Calpine starts from the assertion that:

> Decision 12-04-046 rejected the Calpine proposal on the grounds that the Commission did not believe "that any combined cycle plants, owned by Calpine or anyone else, are facing a real risk of economic shutdown." (Calpine Petition at 2, quoting D.12-04-046 at 16, emphasis added.)

What the Commission actually said was:

> We have no specific evidence in the record of this proceeding showing that any combined cycle plants, owned by Calpine or anyone else, are facing a real risk of economic shutdown. (D.12-04-046 at 16, emphasis added.)

The Commission did not decide this issue the way it did because of any particular "belief," but rather because Calpine presented no evidence adequate to support its position. In fact, the Commission believed and acknowledged that there might in fact be a problem with the markets, but it lacked the specific record evidence necessary to adopt (or even analyze) Calpine's recommendation.

Calpine, in filing this Petition to Modify, could have presented additional evidence in support of its position. (*See*, Rule of Practice and Procedure 16.4(b).) But Calpine has chosen to present no new or additional substantive evidence in support of this Petition to Modify. (*See*, PG&E Response at 2-3, DRA Response at 2.)

Calpine merely repeats the same generalities it presented to the Commission before:

> The record in this proceeding demonstrates that compensation from the markets currently available to uncontracted existing resources has been declining and is expected to drop even further as more renewable resources come on-line… If compensation from the available markets is not sufficient and stable enough to recover going forward costs (including major maintenance costs), uncontracted existing resources will be at

> risk for economic retirement. (Calpine Petition at 4-5, citing to Calpine Exhibit 601.)

The Commission rejected Calpine's proposal in D.12-04-046 because Calpine failed to provide adequate evidence to support its proposal. Calpine failed to provide evidence of the economics of its own plants:

> Q So Calpine hasn't provided any information about the cost of operating the existing units in its combined cycle fleet to the Commission in this proceeding, has it?
>
> A No. We haven't provided information about the specific economics of our units. (D.12-04-046 at 15, quoting Calpine witness Barmack, Transcript vol. 6 at 851.)

Calpine was also unable to provide evidence of the economics of non-Calpine plants:

> Q Dr. Barmack, what units other than the Calpine units do you believe are at risk of shutting down?
>
> A It would be purely speculation on my part, but I'm aware of other combined cycles that were built around the same time as many of our units… I'm not aware of whether those units are contracted or not. (*Id*. at 14, quoting Calpine witness Barmack, Transcript vol. 6 at 888.)

Calpine has not added anything to the evidence that the Commission properly found to be inadequate in D.12-04-046.

4. Resolution E-4471

The one changed circumstance identified by Calpine is the Commission's approval of Resolution E-4471, relating to Calpine's Sutter generation facility. This Commission was aware of Resolution E-4471 at the time it issued D.12-04-046, as the Resolution was before the Commission in draft form, and D.12-04-046 acknowledges the existence of that resolution. (*Id.* at 16, fn. 10.)

Calpine attempts to use the Commission's approval of Resolution E-4471, and the comments of various parties and Commissioners on that Resolution, as

the basis for changing a Commission decision in this proceeding. The Commission can (and has) taken notice of its own actions relating to Resolution E-4471, but those actions, and the record before the Commission on Resolution E-4471, are not evidence in this proceeding. (PG&E Response at 2, SCE Response at 2.) SCE argues that it would be a violation of SCE's due process rights for the Commission to rely in this proceeding upon "Calpine's assertions" leading to the approval of Resolution E-4471. (SCE Response at 2.)

We cannot and do not find statements relating to Resolution E-4771 to be a proper basis for modifying another Commission decision. But even if we were to give the maximum possible weight to the various party and Commissioner comments on Resolution E-4471, those comments do not support Calpine's specific request. In particular, Calpine extensively quotes Commissioner Ferron's comments on Resolution E-4471:

> However, the problem facing the Sutter plant is *system wide*: it appears we may have a "hole" in our market and planning structure whereby there are insufficient economic incentives for generating plants which provide useful flexible attributes to cover the cost of maintaining these plant[s] in operation.
>
> I believe that the Commission, in consultation with the CAISO [California Independent System Operator], needs to *immediately work to create a coordinated approach across our own Resource Adequacy and Long Term Procurement Planning procedures and the CAISO's system and reliability planning process to address this market shortcoming*.
>
> But it will take some months to agree on how this new approach will work, and even longer to design and execute the plan. (Calpine Petition for Modification at 3, quoting dissent of Commissioner Ferron, emphasis added in Calpine Petition.)

It is not clear, however, how this statement supports Calpine's proposal. This Commission acknowledged in D.12-04-046 that the current market structure

"is neither elegant nor efficient," and that there may be some level of market failure in the California electricity markets. (*Id*. at 17.) But Commissioner Ferron's statement proposes a very different solution to that problem than Calpine proposes. Commissioner Ferron proposes a "coordinated approach" across various Commission and CAISO processes undertaken in consultation with the CAISO, not Calpine's much more limited (and potentially more Calpine-favorable) approach. Calpine's proposal does not match Commissioner Ferron's recommendation. (DRA Response at 3.) Neither Resolution E-4471 nor any of the party or Commissioner comments relating to Resolution E-4471 provide a basis for modifying D.12-04-046.

5. Conclusion

Calpine has failed to provide any basis for modification of D.12-04-046. Calpine's Petition for Modification is denied.

6. Comments

The proposed decision of assigned the Administrative Law Judge (ALJ) was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

7. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Peter V. Allen is the assigned ALJ in this proceeding.

Findings of Fact

1. D.12-04-046 found that Calpine failed to provide adequate evidence to support its proposal that the Commission order the utilities to engage in a specific solicitation for generation.

2. Calpine has presented no new or additional evidence in support of its petition to modify D.12-04-046.

3. The Commission was aware of and acknowledged Resolution E-4471 in D.12-04-046.

Conclusions of Law

1. Calpine has failed to provide adequate evidence to support its petition to modify.

2. Commission approval of Resolution E-4471, and related party and Commissioner comments, are not evidence in this proceeding, and do not provide a basis for approving Calpine's petition to modify.

3. Calpine's petition to modify should be denied.

O R D E R

IT IS ORDERED that:

1. The August 24, 2012, Petition of Calpine Corporation to Modify Decision 12-04-046 is denied.

2. Rulemaking 10-05-006 is closed.

This order is effective today.

Dated _____, at San Francisco, California.