

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

12-02-09

03:11 PM

Order Instituting Rulemaking to Consider
Refinements to and Further Development of
the Commission's Resource Adequacy
Requirements Program.

R.05-12-013
(Filed December 15, 2005)

**COMMENTS OF THE WESTERN POWER TRADING FORUM
ON THE PHASE TWO PROPOSED DECISION**

Daniel W. Douglass
DOUGLASS & LIDDELL
21700 Oxnard Street, Suite 1030
Woodland Hills, California 91367
Telephone: 818.961.3001
Facsimile: 818.961.3004
E-mail: douglass@energyattorney.com

Attorneys for
WESTERN POWER TRADING FORUM

December 2, 2009

TABLE OF CONTENTS

I.	Introduction.....	1
II.	The PD’s Statements with Respect to Hybrid Markets are Inconsistent with Commission Policy, Outside of Scope and Should be Removed.	3
III.	The PD Proposes a Model that Must Be Implemented With Effective Market Mechanisms to Avoid Significant Harmful Consequences to Competitive Wholesale and Retail Entities in the California Market	5
IV.	Conclusion	8

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Consider Refinements to and Further Development of the Commission’s Resource Adequacy Requirements Program.

R.05-12-013
(Filed December 15, 2005)

**COMMENTS OF THE WESTERN POWER TRADING FORUM
ON THE PHASE TWO PROPOSED DECISION**

In accordance with Rule 14.3 of the Commission’s Rules of Practice and Procedure, the Western Power Trading Forum (“WPTF”)¹ respectfully submits these comments on the Proposed Decision of Administrative Law Judge (“ALJ”) Mark S. Wetzell entitled, “Decision On Phase 2 – Track 2 Issues: Adoption Of A Preferred Policy For Resource Adequacy,” issued November 3, 2009 (“PD”).

I. Introduction

The PD demonstrates the fundamental flaws inherent in an approach that cherry picks aspects from a variety of proposals that represent fundamentally different views of how investment will take place in California. In essence, the issue is about whether investment will be based on market principles that support economic investment and fair allocation of the cost responsibility for reliability or Commission mandates for new investment. The result is a framework supported by only one party, PG&E, and that leaves many questions with regard to

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.

the feasibility of implementation. Of particular concern to WPTF is the fact that the PD makes a significant error when it describes the current transitional hybrid market as being an “end-state policy preference” of the Commission. This is inaccurate, and inconsistent with the fundamental premise that launched this proceeding – namely that the outcome of this proceeding should provide a path away from the transitional hybrid market. These statements must be deleted from any final decision that is issued by the Commission in this phase of the RA proceeding.

The Commission should consider that one of the most valuable attributes of a market is to reward smart, economic investment and punish poor investment choices. The hybrid market structure does nothing to capture these benefits for consumers as it provides a mechanism to guarantee recovery of uneconomic investment. The PD states its desire to merge the long term procurement proceeding into the multi-year forward capacity compliance forum, but without tools to manage risk, commitments and obligations, and a mechanism for price discovery which supports economic transactions, the Commission is simply missing the mark in its stated desired to supplant the utility backed investment paradigm that exists today.

The Commission’s decision for a long-term resource adequacy (“RA”) framework must facilitate both retail and wholesale markets and provide for the promised transition away from the unsustainable hybrid market structure. While the PD focuses on reliability, it gives short shrift to implementation, risk management, cost, and competitive market concerns, especially at the retail level.

II. The PD's Statements with Respect to Hybrid Markets are Inconsistent with Commission Policy, Outside of Scope and Should be Removed.

With respect to the hybrid market, the PD incorrectly asserts that the "Commission has stated its end-state policy preference for a hybrid wholesale generation market."² While a focused examination of hybrid market policy is not within the scope of this proceeding, the Commission has repeatedly looked to the outcome of this proceeding in its transition *away* from the hybrid market structure. D.07-12-052 stated:

CMA's position that continued reliance on UOG (and ratepayer-backed PPAs) is incompatible with the development of a competitive market model that stimulates private investment is consistent with basic economic theory. The Commission is taking measured, cautious steps in the direction of this end-state, and a number of programs and security measures must be developed and tested before California relies on competitive markets to provide this critical resource to our state. D.06-07-029 stated that we were in a transitional period, and this remains the case. Anticipated rulings on forward RA requirements (and the market structures for acquiring these resources) in Phase 2 of the RA proceeding and the development of a transparent PRM methodology in the PRM rulemaking are key steps in this process. To a great extent, they represent the "horse" to this proceeding's "cart," and we must be mindful that our actions do not put the cart in front of – and, more importantly, in the way of -- the horse.

We recognize the need for policy consistency with the forward RA structure and revised PRM methodology, but until they are developed and implemented this proceeding will continue to be relied upon to (among other things) ensure that sufficient resources are available to ensure system reliability throughout the state. We are prepared to curtail or prohibit new, fossil fuel UOG, and even ratepayer-backed PPAs, if we are convinced that other mechanisms are in place to perform this function. Until we are further down this path, though, we see no reason to dismiss out-of-hand any particular method for acquiring these resources.³

The declaration that the hybrid market is an, "end-state policy preference" goes far beyond established policy and must be removed. In fact, in the last long-term proceeding, the problems inherent in the hybrid market structure prompted the Commission to look to this proceeding to provide the way out of the hybrid market transition. The regulatory instability

² PD, at p. 39.

³ D.07-12-052 page 199-200

created by this lack of consistent policy is reaching a new level, thus further undermining investment and confidence in the California market. Most importantly, the Commission has made it clear that the hybrid market is to be a transitory phase on the way to a fully competitive market and not an “end-state policy preference”:

The Commission has repeatedly stated its desire to develop a functional competitive energy market in California, and as noted earlier in this section, we are in the process of implementing a number of programs and safety mechanisms in support of this end state. In the interim, we are operating in an evolving “hybrid market,” and the issue at hand represents one of the challenges posed by such a market.⁴

The statement in the PD that the hybrid market is a desired end state simply cannot be reconciled with the Commission’s earlier findings and constitutes a major policy revision on a topic that should be addressed in the procurement docket rather than in this RA docket. This statement must be removed from the PD. While the Commission repeatedly states that it is in transition, this is the proceeding that is supposed to develop the end state structure that facilitates retail market and support private sector investment. The proposal as it stands does neither and simply perpetuates the constant state of regulatory ambivalence that has characterized energy policy for nearly ten years. The Commission must in some other proceeding evaluate and decide whether the hybrid market is actually working and achieving the goals set for it, and such review should occur sooner rather than later. There will never be a level playing field and a true competitive market as long as projects underwritten by ratepayers are allowed to participate while private capital is expected to shoulder risk. However, this is not that docket and the PD should not be revising Commission policy vis-à-vis the hybrid market in this PD.

What this PD needs to do is to act on its promise to implement a RA framework that can in fact support investment and provide for the transition away from the hybrid market structure.

⁴ Id at p. 205 (emphasis added).

For this construct to work it must provide a means for LSEs to meet their obligation through a market, state that the Commission intends for the forward compliance showing to be the primary means for investment, and provide that the next phase of this proceeding will address how the forward RA framework will supplant the current LTPP proceeding.

III. The PD Proposes a Model that Must Be Implemented With Effective Market Mechanisms to Avoid Significant Harmful Consequences to Competitive Wholesale and Retail Entities in the California Market

Adoption of a multi-year forward commitment (“MFC”) *may* be part of an appropriate solution, but it is critical that the Commission recognize that by combining the MFC with the bilateral contracting approach, the PD would create a model that will have significant harmful consequences to competitive wholesale and retail entities in the California market, and would thwart well-established Commission policies and commitments to competitive market formation. Most importantly, the PD would adopt a requirement (the MFC) without providing a mechanism that provides any reasonable assurance that the MFC will work equitably for all market participants. Stating that “By law and by design, the RA program should be neutral with respect to the treatment of the classes of LSEs,”⁵ while at the same time explicitly stating that the impact of the market design on retail choice is a secondary consideration, is fundamentally inconsistent. In fact the PD clearly treats non-utility LSEs as second-class citizens whose legitimate concerns about survival of their business model are casually shrugged aside.

Imposition of a financial burden (MFC compliance) on a competitive market entity while providing no tools for the risk management associated with that requirement will create a significant competitive disadvantage to competitive load-serving entities vis-à-vis the utilities who have guaranteed cost recovery from ratepayers. In turn, this will increase the likelihood of

⁵ Id at p. 40.

utility investments that are allocated to all “benefitting customers,” reducing both the number of buyers and sellers in the market place and making competitive retail service that much less viable. Furthermore, the MFC can cause problems for generators in the long run. Generators who sign MFC agreements will have to hedge the pricing and outage risks that will come at a higher price without a market to manage commitments. Likewise, compliance costs for LSEs will also increase under the proposal, whether through higher credit and collateral requirements or simply the higher risk inherent in a forward commitment without a market mechanism to manage obligations.

The PD’s failure to provide a reasonable framework for competitive retail suppliers to meet the MFC obligations through a market will inevitably raise the risk for providers and ultimately consumers. Additionally, the credit requirements associated with a five-year MFC will place a tremendous burden on both RA suppliers and buyers. This requirement may well reduce the number of ESPs participating in the retail market, thereby resulting in less competition and reduced market liquidity. This is not a beneficial outcome for consumers.

Given the enormous implications to the survival of competitive electric markets in California, the shallow analysis and casual dismissal of the concerns regarding retail competition is insufficiently rigorous. For example, the statement that a MFC does not “interfere with or undermine the Commission’s policy for competitive retail markets”⁶ ignores the discrepancies between the IOU and LSE business models. Utilities have monopoly franchised service territories, guaranteed rates of return, Commission enforced rate structures and the ability to impose costs on the customers of their non-utility competitors. Conversely, non-utility LSEs have none of these institutional advantages. The statement that “the RA program should be neutral with respect to the treatment of the classes of LSEs” disregards these fundamental

⁶ Id

competitive advantages and, in fact, harms the competitive balance between utility and non-utility LSEs.

The PD also contains the remarkable statement in Conclusion of Law 9 that “Because the future form of direct access is being reviewed in other proceedings elsewhere and remains uncertain, it would be premature to conclude that a more rigorous forward RA requirement cannot or should not be adopted because of concerns regarding direct access impacts.”⁷ This conclusion ignores the fact that the Commission is required by the terms of SB 695 to reopen direct access partially by next April, before the MFC is implemented. Further, stating that it would be “premature” to draw this conclusion at this time necessarily implies that it may still be drawn later, upon further examination. This is all the more reason why the Commission should not decide in this decision to limit the scope of the future proceeding solely to implementation of a MFC.

This Commission has repeatedly expressed a commitment to competition and customer choice.

With this decision today, the Commission seeks to signal that it is committed to the fundamental principles that have guided electricity market restructuring in California and elsewhere: competition and customer choice. In particular, we intend to pursue policies to develop and maintain a viable and workably competitive wholesale generation sector in order to assure least cost procurement for bundled utility customers. At an appropriate juncture, in another proceeding, we intend to explore how we may increase customer choice, by reinstating DA or via other suitable means.⁸

This was reiterated in the direct access rulemaking, R.07-05-025, where the Commission stated that, “We also, however, affirm our ongoing commitment “to the fundamental principles that

⁷ Id at p. 89.

⁸ D.06-07-029, at p. 2 [emphasis added].

have guided electricity market restructuring in California and elsewhere: ‘competition and customer choice’ as previously stated in Decision (D.) 06-07-029.”⁹

IV. Conclusion

After years of stakeholder process, rather than choosing an integrated solution that addresses all of the policy concerns articulated in the PD, the PD endorses a proposal that is not fleshed out and has clearly negative implications for competitive retail and wholesale markets. Given the existing policy environment, this course presents significant challenges to an efficient RA framework that is sufficiently robust to finance investment in new generation.

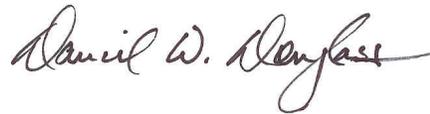
Furthermore, the PD inaccurately describes the current transitory hybrid market structure as being an “end-state policy preference” of the Commission. As discussed above, this is inaccurate and these statements must be deleted from any final decision that is issued by the Commission in this phase of the RA proceeding. The PD in fact provides inadequate attention to the features of the current transitory hybrid market structure that currently frustrate the achievement of reliability goals and deter needed new generation development. For example, the Commission’s recurring willingness to rely on out of market procurement is a significant obstacle to the encouragement of new development.

Further, the PD’s blindness with regard to the potential negative impact on competitive retail markets is highly concerning. To reiterate what WPTF has repeatedly stated since its inception – strong and competitive wholesale and retail markets are necessary corollaries of each other. If California wants a strong and competitive wholesale market and new generation development, then it needs to also facilitate vibrant retail competition.

⁹ R.07-05-025, at p. 2.

The PD repeatedly expresses the justification that the steps it takes are required to assure the state of “new generation investment.” Speaking as a trade association with many members who own and develop a significant portion of the independent generation in the state, WPTF cautions the Commission that the steps the PD proposes to take are by no means assured of achieving that goal. At best, adoption of the PD represents an incremental step, leaving much work for other proceedings.

WPTF thanks the Commission for its attention to these comments.



Daniel W. Douglass
DOUGLASS & LIDDELL
21700 Oxnard Street, Suite 1030
Woodland Hills, California 91367
Tel: 818.961.3001
Fax: 818.961.3004
E-mail: douglass@energyattorney.com

Attorneys for
WESTERN POWER TRADING FORUM

December 2, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *Comments of the Western Power Trading Forum on the Track 2 Proposed Decision* on all parties of record in *R.05-12-013* by serving an electronic copy on their email addresses of record and, for those parties without an email address of record, by mailing a properly addressed copy by first-class mail with postage prepaid to each party on the Commission's official service list for this proceeding.

This Certificate of Service is executed on December 2, 2009, at Woodland Hills, California.



Michelle Dangott

SERVICE LIST – R.05-12-013

abb@eslawfirm.com
agc@cpuc.ca.gov
aivancovich@caiso.com
akbar.jazayeri@sce.com
alho@pge.com
allwazeready@aol.com
amckenna@caiso.com
amckenna@caiso.com
andrea.morrison@directenergy.com
Audra.Hartmann@Dynergy.com
barmackm@calpine.com
bbc@cpuc.ca.gov
bblair@thompsoncoburn.com
bburns@caiso.com
bcragg@gmssr.com
bernardo@braunlegal.com
beth@beth411.com
bill.c.key@fpl.com
bk7@pge.com
blaising@braunlegal.com
bmcc@mccarthy.com
bobgex@dwt.com
braun@braunlegal.com
brbarkovich@earthlink.net
brflynn@flynnrci.com
brian.theaker@dynergy.com
btang@ci.azusa.ca.us
c.greif@comcast.net
californiadockets@pacificorp.com
carla.peterman@gmail.com
Case.Admin@sce.com
cbanks@complete-energy.com
cbaskette@enernoc.com
cem@newsdata.com
CentralFiles@semprautilities.com
centralfiles@semprautilities.com
chh@cpuc.ca.gov
chilen@sppc.com
CHinman@caiso.com
chris.ohara@nrgenergy.com
Cleni@energy.state.ca.us
cmartin@calpine.com
cmee@water.ca.gov
cmicsa@caiso.com
cmkehrin@ems-ca.com
cneedham@edisonmission.com
crmd@pge.com
curtis.kebler@gs.com
Cynthia.A.Fonner@constellation.com
daking@sempra.com
dansvec@hdo.net
david.lloyd@nrgenergy.com
david@branchcomb.com
dbr@cpuc.ca.gov
dcarroll@downeybrand.com
deb@a-klaw.com
debra.lloyd@cityofpaloalto.org
dehling@kling.com
demorse@omsoft.com
dennis@ddecuir.com
DGarber@sempra.com
Diane.Fellman@nexteraenergy.com
dirk.vanulden@ucop.edu
djh@cpuc.ca.gov
dkolk@compenergy.com
dmarcus2@sbcglobal.net
dmcfarlan@mwgen.com
douglass@energyattorney.com
dpapapostolou@semprautilities.com
dsandino@water.ca.gov
dws@r-c-s-inc.com
edchang@flynnrci.com
edd@cpuc.ca.gov
edwardoneill@dwt.com
ej_wright@oxy.com
ek@a-klaw.com
eks@cpuc.ca.gov
ELL5@pge.com
emello@sppc.com
e-recipient@caiso.com
ferguson@braunlegal.com
filings@a-klaw.com
fmason@ci.banning.ca.us
fmobasheri@aol.com
fxg@cpuc.ca.gov
garyi@enxco.com
GBass@SempraSolutions.com
gbawa@cityofpasadena.net
gdeshazo@caiso.com
george.getgen@ucop.edu
gifford.jung@powerex.com
grosenblum@caiso.com
gschott@rrienergy.com
GXL2@pge.com
harry.singh@rbssempra.com
hchronin@water.ca.gov
hchronin@water.ca.gov
htarpley@complete-energy.com
hvidstenj@kindermorgan.com
irene@igc.org
iryna.kwasny@doj.ca.gov
janreid@coastecon.com
jarmenta@calpine.com
jarmstrong@goodinmacbride.com
jderosa@ces-ltd.com
jdh@eslawfirm.com
jeff.lam@powerex.com
jeffgray@dwt.com
jennifer.chamberlin@directenergy.com
jgeorge@water.ca.gov
jgoodin@caiso.com
jhendry@sfwater.org
jim.mayhew@mirant.com
jimross@r-c-s-inc.com
jgg@eslawfirm.com
jleslie@luce.com
jluckhardt@downeybrand.com
jmcmahon@crai.com
jnelson@psrec.coop
joc@cpuc.ca.gov
joe.paul@dynergy.com
john.rolle@ucop.edu
johnrredding@earthlink.net
jolko@ci.colton.ca.us
jordan.white@pacificorp.com
joyw@mid.org
jpacheco@water.ca.gov
jscancarelli@flk.com
jsqueri@gmssr.com
judypau@dwt.com
julie.martin@bp.com
jweil@aglet.org
jwoodwar@energy.state.ca.us
k.abreu@sbcglobal.net
kalmeida@caiso.com
karen.lee@sce.com
karen@klindh.com
Kathryn.Wig@nrgenergy.com
katie@iesolutionsllc.net
kd1@cpuc.ca.gov
kdusel@navigantconsulting.com
kdw@cpuc.ca.gov
kdw@woodruff-expert-services.com
keith.mccrea@sablaw.com
Keith.richards@nrgenergy.com
kenneth.swain@navigantconsulting.com
kerry.hattevik@nexteraenergy.com
kgresham@rrienergy.com
kjohnson@caiso.com
kjsimonsen@ems-ca.com
klatt@energyattorney.com
kmkiener@cox.net
kowalewska@calpine.com
kpp@cpuc.ca.gov
ksims@siliconvalleypower.com
kswitzer@gswater.com

lau@cpuc.ca.gov
laura.genao@sce.com
lcottle@winston.com
liddell@energyattorney.com
lisa_weinzimer@platts.com
lkostrzewa@edisonmission.com
Lkristov@caiso.com
lmarshal@energy.state.ca.us
lmh@eslawfirm.com
lterry@water.ca.gov
luhler@riversideca.gov
lwong@energy.state.ca.us
marcie.milner@shell.com
mary.lynch@constellation.com
matthew.stclair@ucop.edu
mbarmack@alum.mit.edu
mclaughlin@braunlegal.com
mday@goodinmacbride.com
mdjoseph@adamsbroadwell.com
mflorio@turn.org
mgillette@enernoc.com
michael.evans@shell.com
michael.gergen@lw.com
mike.tierney@nrgenergy.com
mjaske@energy.state.ca.us
mjd@cpuc.ca.gov
mmazur@3PhasesRenewables.com
mmcnaul@thompsoncoburn.com
mniroula@water.ca.gov
mpryor@energy.state.ca.us
mramirez@sflower.org
mrh2@pge.com
mrw@mrwassoc.com
mshames@ucan.org
msw@cpuc.ca.gov
MtenEyck@ci.rancho-cucamonga.ca.us
mtierney-lloyd@enernoc.com

remmert@caiso.com
rick_noger@praxair.com
rkmoore@gswater.com
rls@cpuc.ca.gov
rmm@cpuc.ca.gov
RNicholson@Semprautilities.com
rogerv@mid.org
rsa@a-klaw.com
rschmidt@bartlell.com
rsmutny-jones@caiso.com
RStoddard@crai.com
rwalther@pacbell.net
rwinthrop@pilotpowergroup.com
saeed.farokhpay@ferc.gov
sap@cpuc.ca.gov
sberlin@mccarthyllaw.com
scott.tomashefsky@ncpa.com
sdhilton@stoel.com
sean.beatty@mirant.com
seb@cpuc.ca.gov
SEHC@pge.com
shawn_cox@kindermorgan.com
shess@edisonmission.com
sisser@goodcompanyassociates.com
skeehn@sempra.com
skg@cpuc.ca.gov
sls@a-klaw.com
smithmj@calpine.com
sscb@pge.com
ssciortino@anaheim.net
steven.huhman@morganstanley.com
steven.schleimer@barclayscapital.com
steven@iepa.com
sue.mara@rtoadvisors.com
svs6@pge.com
tbo@cpuc.ca.gov
tbrill@sempra.com

william.tomlinson@elpaso.com
william.v.walsh@sce.com
wwester@smud.org
wynne@braunlegal.com
myuffee@mwe.com
nlong@nrdc.org
oren@ieor.berkeley.edu
pcg8@pge.com
perlism@dicksteinshapiro.com
peter.pearson@bves.com
pherrington@edisonmission.com
philha@astound.net
philm@scdenergy.com
pmaxwell@navigantconsulting.com
pmills@semprautilities.com
ppettingill@caiso.com
ptellegen@complete-energy.com
ralf1241a@cs.com
rcounihan@enernoc.com
RegRelCPUCCases@pge.com
tcarlson@rrienergy.com
tcorr@sempraglobal.com
tdarton@pilotpowergroup.com
tdillard@sppc.com
theresa.mueller@sfgov.org
tim.drennan@fpl.com
tjl@a-klaw.com
tomk@mid.org
Tony.Zimmer@ncpa.com
traceydrabant@bves.com
ttutt@smud.org
unc@cpuc.ca.gov
vjlw3@pge.com
wamer@kirkwood.com
wbooth@booth-law.com
will.mitchell@cpv.com
mvillar@nevpc.com