BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.	Rulemaking 12-03-014 (Filed March 22, 2012)

MOTION OF GENON ENERGY, INC. TO STRIKE PORTIONS OF THE TRACK 1 REPLY TESTIMONY OF RON CALVERT SUBMITTED ON BEHALF OF CALPINE CORPORATION

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Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission") and the schedule established by Administrative Law Judge ("ALJ") Gamson,[1] GenOn Energy, Inc. ("GenOn") hereby moves to strike portions of the Track 1 reply testimony of Ron Calvert submitted on behalf of Calpine Corporation ("Calvert Reply Testimony") on grounds that such testimony improperly responds to the opening testimony of the California Independent System Operator Corporation ("CAISO" or "ISO").

At the prehearing conference on July 9, 2012, ALJ Gamson instructed parties that their reply testimony cannot include responses to the CAISO's testimony served on May 23, 2012:

> ALJ GAMSON: Right. And I should mention that . . . that's true. . . that the first, that the ISO did serve the first round of testimony. We've already had essentially responses to the ISO testimony. So now it would only be responses to parties who are either responding to the ISO testimony or have their own positions above and beyond that.[2]

ALJ Gamson reiterated that "reply testimony is in response to other parties, not in response to ISO."[3]

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[1] ALJ Gamson established August 3, 2012 as the deadline for submission of motions to strike reply testimony in this proceeding. Reporter's Transcript, July 9, 2012, page 206 lines 18-20.

[2] *Id.* at page 168 line 24 – page 169 line 4.

[3] *Id.* at page 169 lines 23-25.

The Calvert Reply Testimony impermissibly responds to the CAISO's testimony by presenting, for the first time on reply, the results of a "preliminary power flow analysis of the Moorpark sub-area" that Mr. Calvert performed for Calpine. Mr. Calvert presents his preliminary analysis to contradict the CAISO's recommendation, presented in the direct testimony of Robert Sparks, that new or replacement generating capacity is needed in the Moorpark subarea to satisfy local capacity requirements needs associated with the expected retirement of generating units in that sub-area that utilize once-through cooling technology. Mr. Calvert presents his preliminary analysis to suggest that transmission projects could be built instead of adding generating capacity in the Moorpark sub-area as recommended by the CAISO's Mr. Sparks.

In responding to the CAISO's testimony, the Calvert Reply Testimony violates the ALJ's instructions regarding the permissible scope of reply testimony. Mr. Calvert states that his reply testimony addresses "issues raised in direct testimony regarding the need to procure new generation resources to meet local capacity requirements ("LCR") in the Big Creek/Ventura area and Moorpark sub-area, located in southern California,"[4] and purports to be responding to direct testimony served by the Division of Ratepayer Advocates ("DRA") and Southern California Edison Company ("SCE").[5] However, Mr. Calvert does not actually respond to DRA or SCE, but instead simply concurs with recommendations in their direct testimony. Starting with the sentence that begins on page 2 line 9, and continuing for the remainder of the Calvert Reply Testimony, Mr. Calvert focuses on presenting a preliminary power flow analysis that contradicts

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[4] Calvert Reply Testimony, page 1.

[5] DRA's direct testimony suggests that there is no immediate need for new LCR generation in the area, and SCE's direct testimony recommends that the Commission defer authorizing the procurement of new LCR generation to another proceeding. *See* Testimony of Robert M. Fagan on Behalf of DRA at 27; 2012 Long-Term Procurement Plan – Testimony of Southern California Edison Company on Local Capacity Requirements (Minick) at 10-11.

the CAISO's recommendations for adding new generating capacity in the Moorpark subarea as set forth in Mr. Sparks' testimony. Such a contradictory analysis could have been presented in direct testimony (in which parties were permitted to respond, and did respond, to Mr. Sparks' testimony for the CAISO), but the analysis presented in the Calvert Reply Testimony is not properly submitted on reply.

Presiding ALJs in other proceedings have determined that reply testimony that is not "rebuttal" to other parties' direct testimony should be excluded.[6] Because the Calvert Reply Testimony simply agrees with the direct testimony of DRA and SCE, and then presents a preliminary analysis that actually is responsive to the CAISO's position, the Calvert Reply Testimony should be stricken on grounds that it violates the ALJ's instruction.

Allowing the Calvert Reply Testimony into the record would be prejudicial to parties who may oppose Mr. Calvert's preliminary suggestions, but are now deprived of any opportunity to present their own evidence contradicting Mr. Calvert's analysis and conclusions. In determining the admissibility of evidence, the desire for a complete record can be weighed against the degree of prejudice to other parties if the evidence is allowed.[7] It would be unfair and prejudicial to allow the Calvert Reply Testimony to stand when other parties are now unable to present their own evidence opposing Mr. Calvert's testimony. Accepting the Calvert Reply Testimony also would single out one party for special treatment by allowing Calpine a second chance (not provided to other parties) to respond to the CAISO testimony. The presiding ALJ in

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[6] *See* Administrative Law Judge's Ruling Denying in Part Motions to Strike at 8 (Application 03-06-040) (Nov. 3, 2003).

[7] *See* Administrative Law Judge's Ruling Granting in Part and Denying in Part Motion to Strike at 2 (Application 10-07-007) (April 27, 2011).

another proceeding recognized the impropriety of such differential treatment absent unique circumstances and granted a motion to strike on that basis.[8]

Finally, even if other parties were authorized to present additional evidence in response to Mr. Calvert's preliminary analysis, it would be extremely difficult, if not impossible, for GenOn and other prejudiced parties to retain a transmission expert who could address Mr. Calvert's analysis in the remaining time before hearings.

For these reasons, the portions of the Calvert Reply Testimony that respond to the CAISO's testimony, specifically beginning with the sentence that starts on page 2 line 9, and continuing through the end, should be stricken and should not be admitted into the record.

August 3, 2012

Respectfully submitted,

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[8] *See* Administrative Law Judge's Ruling Granting Motion to Strike Testimony of Arrival at 3 (Application 05-02-027) (July 27, 2005) ("It would not be fair to single out Arrival for special treatment by allowing it to serve rebuttal testimony in response to other parties while denying the same opportunity to all other intervenors. Setting such a precedent could open the door for other requests for special exceptions and deviations from adopted schedules and procedures . . . In the interests of maintaining integrity in the process and schedule, Arrival's rebuttal testimony shall be stricken. Arrival has not identified any extraordinary or overriding factors that would warrant granting it special treatment in this manner.").