

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

Application of San Diego Gas & Electric Company (U902E) for Authority to Partially Fill the Local Capacity Requirement Need Identified in D.14-03-004 and Enter into a Purchase Power Tolling Agreement with Carlsbad Energy Center, LLC.

Application 14-07-009
(Filed July 21, 2014)

**RESPONSE TO MOTION OF THE OFFICE OF RATEPAYER ADVOCATES TO
REQUEST OFFICIAL NOTICE**

I. INTRODUCTION

Pursuant to Rule 11.1(e) of the Commission’s Rules of Practice and Procedure, the California Independent System Operator (CAISO) hereby files this opposition to the Office of Ratepayer Advocates’ (ORA’s) Motion to request official notice (Motion).

ORA requests that the Commission take official notice of an excerpt from the rebuttal testimony of Neil Millar, on behalf of the CAISO, “for the limited purpose of clarifying the CAISO’s position on its ultimate procurement recommendation in R.12-03-014.”¹ ORA’s Motion is not legally supported nor is it necessary to clarify the record. As a result, the Motion should be denied.

II. DISCUSSION

ORA seeks to introduce one question from the rebuttal testimony of CAISO witness Neil Millar in R.12-03-014. ORA cites Rule 13.9 of the Commission’s Rules of Practice and Procedure as the basis for taking official notice of this testimony. Rule 13.9 provides that “[o]fficial notice may be taken of such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 et. seq.” ORA goes on to cite

¹ ORA Motion at 1.

California Evidence Code Section 452(c), which states that judicial notice may be taken of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.”

ORA admits that the CAISO is not an administrative agency of the state of California.² Yet, ORA contends that “it would be reasonable to take official notice of Millar’s testimony” because the CAISO is a non-profit public benefit corporation charged with ensuring the efficient use and reliable operation off the electric transmission grid. Put simply, this is no basis for taking official notice of the CAISO’s testimony. The CAISO is not a part of the legislative, executive or judicial branch of the state, nor is it’s testimony before the Commission an “official act.” Official notice is not appropriate in this circumstance.

In addition to there being no legal basis for official notice, there is also no practical basis for including Mr. Millar’s Track 4 testimony in the record of this proceeding. Mr. Millar’s Track 4 testimony could have been introduced during the course of the evidentiary hearing. CAISO witness Robert Sparks was directly questioned regarding whether the CAISO recommended that the Commission authorize procurement in R.12-03-014 (Track 4).³ Mr. Sparks correctly answered in the affirmative.⁴ There is no need to clarify the record in this proceeding. If ORA or any other party had additional questions related to Mr. Millar’s Track 4 testimony, those questions should have been addressed to Mr. Sparks during the course of the evidentiary hearing. Allowing a party to introduce evidence after hearing is potentially prejudicial, and, as such, should be rejected.

² ORA Motion at 2.

³ Tr. At 283:15-18. Counsel for the Sierra Club specifically asked “did the ISO recommend the Commission make a procurement decision based on its Track 4 modelling [sic] results?”

⁴ Tr. At 283:19; ORA Motion at 3.

The CAISO notes that the determinative finding of need is in the Commission’s decision in D.14-03-004, which found that San Diego Gas & Electric Company (SDG&E) was authorized to procure between 500 megawatts (MW) and 800 megawatts (MW) of new capacity.⁵ The Commission authorized up to 600 megawatts (MW) of capacity from any resource, including natural gas fired generation.⁶ The CAISO’s procurement recommendation in R.12-03-014 is not relevant to question at issue in this proceeding, namely, whether “the Carlsbad [power purchase tolling agreement] a reasonable means to meet the 600 megawatt (MW) of identified [local capacity requirement] that D.14-03-004 determined may be met by conventional resources.”⁷ The testimony cited by ORA is not relevant to whether the Carlsbad power purchase tolling agreement meets the need actually identified by the Commission.

The CAISO is opposed to including the requested excerpt from Mr. Millar’s Track 4 testimony, however, if the Commission is inclined to include this excerpt, the CAISO requests that the entire Track 4 testimony of Mr. Millar be noticed or entered into the record in this case. It is unclear how ORA intends to use the excerpt from Mr. Millar’s Track 4 testimony, but in any event the testimony is one, cohesive document that cannot be severed without losing meaning. If the excerpt in question is mischaracterized, the CAISO and all parties should have the opportunity to respond by reference to the full text. Taking notice of one question and answer out of context is inappropriate in any circumstance.

III. CONCLUSION

It is neither legally supported nor practically appropriate to take official notice of Mr. Millar’s Track 4 testimony at this point in the proceeding. Official notice is reserved for official

⁵ D.14-03-004 at 96-97.

⁶ *Id.*

⁷ Assigned Commissioner’s Scoping Memo and Ruling, A.14-07-009, dated September 12, 2014 at 2.

acts of legislative, executive or judicial departments of the state. The CAISO does not fit any of these categories. Furthermore, this testimony could have been introduced during the course of the evidentiary hearing and is not relevant to the question of whether the Carlsbad Energy Center power purchase tolling agreement meets the Commission identified local capacity requirement for SDG&E. Attempting to introduce the evidence after hearing potentially prejudices the proceeding. As a result, ORA's Motion should be denied.

Respectfully submitted,

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