

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

Order Instituting Rulemaking to Consider)
Annual Revisions to Local Procurement)
Obligations and Refinements to the Resource)
Adequacy Program)
_____)

R.08-01-025
(Filed January 31, 2008)

**RESPONSE OF THE CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION TO MOTION FOR EXPEDITED
RECONSIDERATION OF MAY 27 ALJ'S RULING**

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Pursuant to Article 11.1 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure and the June 3, 2009 Administrative Law Judge’s Ruling Granting Motion to Shorten Time, the California Independent System Operator Corporation (“CAISO”) hereby submits its response to the motion of the California Wind Energy Association (“CalWEA”), Division of Ratepayer Advocates, American Wind Energy Association, Solar Alliance, Large-Scale Solar Association, and Center for Energy Efficiency and Renewable Technology (collectively, the “CalWEA Parties”) for expedited reconsideration of the May 27, 2009 Administrative Law Judge’s Ruling on Motion to Reopen the Record to Accept Report (“May 27 ALJ Ruling”). For the reasons discussed herein, the Commission should deny the motion for reconsideration.

I. BACKGROUND

By motion dated May 6, 2009, CalWEA requested that the record be reopened in order to receive into the record a report prepared by the Integration of Variable Generation Task Force (“IVGTF”)¹ entitled “Accommodating High Levels of Variable Generation” (“IVGTF Report”). The May 27 ALJ Ruling denied CalWEA’s motion.

¹ The IVGTF was created by the North American Electric Reliability Corporation (“NERC”) Planning and Operating Committee to prepare “1) a concepts document that includes the philosophical and technical considerations for integrating variable resources into the Interconnection, and 2) specific recommendations for practices and requirements, including reliability standards, that cover the planning, operations planning, and real-time operating timeframes.” See http://www.nerc.com/docs/pc/ivgtf/IVGTF_Charter_V3_0.pdf. The IVGTF consists primarily of electric industry professionals. See IVGTF Report at 80-85.

In their motion for reconsideration, the CalWEA Parties assert that the May 27 ALJ Ruling is erroneous and should be reversed because it (1) is in conflict with Commission Rule 13.14² and (2) results in “unequal treatment” of parties.³ In the alternative, the CalWEA Parties request that the Commission take “official notice” of the IVGTF Report.⁴ Should the Commission deny the motion for reconsideration, the CalWEA Parties request the Commission put off a decision on changes to the approach for calculating resource adequacy (“RA”) values for intermittent renewable resources until a later time.⁵

II. DISCUSSION

A. The IVGTF Report does not constitute grounds for reopening the record under Commission Rule 13.14

Commission Rule 13.14(b) provides, in pertinent part:

A motion to set aside submission and reopen the record for the taking of additional evidence . . . shall specify the facts claimed to constitute grounds in justification thereof, *including material changes of fact or of law* alleged to have occurred since the conclusion of the hearing. (Emphasis added).

The CalWEA Parties assert that they satisfy the requirements in Rule 13.14 because the IVGTF Report is “highly relevant” and it was issued after the record was closed.⁶ The CalWEA Parties have not identified grounds for reopening the record under Rule 13.14.

As an initial matter, the IVGTF Report does not represent a material change of law. The report is a conceptual document issued by a task force that simply identifies a possible approach for valuing intermittent renewable resources for RA purposes that merits additional research and analysis:

As additional data becomes available (i.e. involving multiple years of hourly-resolution variable generation output data from specific geographic locations and time-synchronized with system demand),

² CalWEA Parties Motion for Reconsideration at 1-4.

³ CalWEA Parties Motion for Reconsideration at 4-5.

⁴ CalWEA Parties Motion for Reconsideration at 6.

⁵ CalWEA Parties Motion for Reconsideration at 6-8.

⁶ CalWEA Parties Motion for Reconsideration at 2.

NERC should consider adopting the Effective Load Carrying Capability (ELCC) approach.⁷

As the above quote demonstrates, the IVGTF Report merely asks NERC to *consider* adopting the ELCC approach if, in the future, additional data warrant such consideration. The report does not reach a conclusion or make a recommendation as to whether the ELCC approach should actually be adopted⁸ and NERC has not taken such action. Indeed, the report's *Conclusions and Final Recommendations* do not even refer to the ELCC methodology.⁹

In contrast, the work plan attached to the IVGTF Report identifies the ELCC approach as one of three approaches that should be further investigated over the next two years.¹⁰ The three approaches consist of:

- (1) The ELCC approach;
- (2) Contribution of variable generation to system capacity for high-risk hours, estimating resource contribution using historical data; and
- (3) Probabilistic planning techniques and approaches needed to support study of bulk power system designs to accommodate large amounts of variable generation.¹¹

Thus, in addition to the ELCC approach, the report recommends the study of approaches that look at contributions of variable resources during high risk hours using historical data to estimate resource contribution. An exceedance approach, such as that adopted in the Proposed Decision, falls under this category. In fact, the IVGTF Report recognizes the need to evaluate the capacity value of variable resources during high-risk hours,¹² which is exactly the goal of the

⁷ IVGTF Report at 41 (footnote omitted).

⁸ Indeed, the “Conclusions & Recommended Actions” section of the IVGTF Report makes no mention of the ELCC approach. See IVGTF Report at 63-65.

⁹ IVTGF Report at 63-65.

¹⁰ IVGTF Report at 69 (Appendix I: 2009-2011 Objective and Work Plan).

¹¹ IVGTF Report at 69 (Appendix I: 2009-2011 Objective and Work Plan).

¹² IVGTF Report at 41. The report also notes that the “capacity contribution of variable generation is not intuitive due to its inherent characteristics of variability and uncertainty.” IVGTF Report at 38. It is due to the extreme variability and uncertainty of wind production that the CAISO supports adoption of the exceedance approach adopted in the Proposed Decision. A simple averaging approach such as that reflected in the existing counting rule

methodology adopted in the Proposed Decision. The IVGTF Report does not represent a change in NERC policy, much less a material change of law under Rule 13.14.

In addition, the IVGTF Report does not represent a material change of fact. The ELCC approach was considered in this proceeding¹³ and the Proposed Decision came to a similar conclusion as the IVGTF Report. In rejecting the ELCC approach in favor of the “exceedance approach,” the Proposed Decision found the exceedance approach to be “the only comprehensive proposal that is ready for implementation with the 2010 compliance period.”¹⁴ This finding in the Proposed Decision is consistent with the recommendation in the IVGTF Report that NERC not consider adoption of the ELCC approach until additional data becomes available. In other words, both the Proposed Decision and IVGTF Report find that the ELCC approach is not ready to be considered for adoption. Given these consistent findings, the IVGTF does not represent a material change of fact.

The mere fact that the IVGTF Report addresses an issue being considered by the Commission in this proceeding does not satisfy the requirements of Rule 13.14 nor warrant reopening the record to consider the report.

B. The May 27 ALJ Ruling does not result in “unequal treatment” of parties

The CalWEA Parties assert that because the Proposed Decision grants a request to “supplement the record” to include the 2008 Resource Adequacy Report issued by the Commission’s Energy Division, the denial of CalWEA’s motion to reopen the record to consider the IVGTF Report is *de facto* unequal treatment of CalWEA.¹⁵ Such a position assumes that the mere fact CalWEA filed a motion to reopen the record, the record should be reopened.

does not capture this variability and uncertainty, and actual experience has shown that the existing counting methodology results in an over counting of wind resources during peak periods.

¹³ See Proposed Decision, mimeo at 47-48.

¹⁴ Proposed Decision, mimeo at 52.

¹⁵ CalWEA Parties Motion for Reconsideration at 5.

However, the fact that separate requests to reopen or supplement the record with different materials were treated differently in no way reflects unequal treatment of any party.

Whether a motion should be granted or denied should be determined on the merits of the request. In this case, the merits do not support granting the underlying CalWEA motion to reopen the record or the motion for reconsideration filed by the CalWEA Parties. As discussed above, the IVGTF Report does not make a recommendation as to whether the ELCC approach should actually be adopted by NERC and NERC has not taken such action. Rather, the work plan attached to the IVGTF Report simply identifies the ELCC approach as one of three approaches that should be further investigated over the next two years. Given the lack of any definitive conclusions and recommendations regarding adoption of the ELCC approach, it was both reasonable and appropriate for the May 27 ALJ Ruling to deny CalWEA's motion to reopen the record.

C. The Commission should not take “official notice” of the IVGTF Report

The CalWEA Parties assert that the IVGTF Report represents an “official act” of the legislative, executive, or judicial departments of the United States that should be officially noticed by the Commission under section 452 of the California Evidence Code.¹⁶ In support of its position, the CalWEA Parties note that NERC is subject to oversight by the Federal Energy Regulatory Commission (“FERC”) and governmental authorities in Canada.¹⁷

As discussed above, the *Conclusions and Final Recommendations* contained in the IVGTF Report do not recommend that NERC adopt the ELCC methodology.¹⁸ Rather, the report simply reflects the initial recommendations of a task force comprised of industry personnel, consultants, and representatives of research companies that further analysis and study of the ELCC approach is needed. The report is not a formal NERC directive. The concepts set

¹⁶ CalWEA Parties Motion for Reconsideration at 6.

¹⁷ CalWEA Parties Motion for Reconsideration at 6.

¹⁸ IVTGF Report at 63-65.

forth in the report are not binding on the CAISO, the Commission or any other entity. Indeed, it is not clear that NERC even has authority over resource adequacy in light of Section 215(i)(2) of the Federal Power Act.¹⁹ Under these circumstances, it is not at all clear that the report constitutes an official act that may be judicially noticed.

The decision whether to take judicial notice of an official act under section 452 is discretionary. The simple fact that the IVGTF Report addresses an issue being considered by the Commission in this proceeding does not, in and of itself, warrant judicially noticing the report.

D. The Commission should not delay changes to the approach for calculating the RA value for intermittent renewable resources

As the Proposed Decision correctly notes, there is little dispute that the current approach for calculating RA values overstates the availability of wind resources during peak periods “by a significant amount” and fails to account for the extreme variability of wind resources.²⁰ As a result, reliance on the current counting approach does not ensure dependable resource availability to the CAISO during peak demand periods.²¹ Notwithstanding this recognized deficiency, the CalWEA Parties would have the Commission maintain the status quo so that additional time may be taken to consider the ELCC approach discussed in the IVGTF Report. Such a position puts reliability at risk and can increase costs to ratepayers.

As noted above, the IVGTF Report recommends that the ELCC approach be analyzed over the next two years along with two other potential approaches for calculating the availability of variable generation. In contrast, the Proposed Decision finds that the exceedance approach represents a comprehensive alternative to the flawed status quo that can be implemented with the 2010 compliance period.²² In light of the recognized deficiencies in the current approach for

¹⁹ Section 215(i)(2) of the Federal Power Act provides that “[t]his section does not authorize the ERO...to set and enforce compliance with standards for adequacy.” 16 U.S.C. § 824 (o) (2005).

²⁰ Proposed Decision, mimeo at 50.

²¹ Proposed Decision, mimeo at 49.

²² Proposed Decision, mimeo at 52.

calculating RA values, it is critical that a more accurate counting convention for intermittent renewable resources be implemented as soon as practical.²³ Accordingly, the Commission should not delay changes to the approach for calculating the RA value for intermittent renewable resources.

III. CONCLUSION

For the reasons discussed herein, the Commission should deny the motion of the CalWEA Parties for reconsideration of the May 27 ALJ Ruling.

Respectfully submitted,

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²³ See Proposed Decision, mimeo at 52.

CERTIFICATE OF SERVICE

I, Judy Pau, certify:

I am employed in the City and County of San Francisco, California, am over eighteen years of age and am not a party to the within entitled cause. My business address is 505 Montgomery Street, Suite 800, San Francisco, California 94111-6533.

On June 8, 2009, I caused the following to be served:

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via electronic mail to all parties on the service lists R.08-01-025 who have provided the Commission with an electronic mail address and by First class mail on the parties listed as "Parties" and "State Service" on the attached service list who have not provided an electronic mail address.

/s/

Judy Pau

VIA EMAIL AND US MAIL

Commissioner Michael R. Peevey
ALJ Mark S. Wetzell

VIA EMAIL

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