December 16, 2011

Comments of the California Municipal Utilities Association (CMUA)
***California ISO Report on Basis and Need for CPM Designation for Sutter Energy Center* (December 6, 2011)**

CMUA submits these comments on the proposal by the CAISO to seek waiver of relevant CAISO Tariff provisions and provide a CPM "risk of retirement" designation for the Calpine Sutter Energy Center ("Sutter Proposal"). If the intent of the Sutter Proposal is to bring focus and pressure for action on the need for multi-year procurement requirements or fleet operational characteristics that will allow integration of intermittent resources, a worse test case than the Sutter Proposal cannot be imagined. CMUA believes those policy matters are worthy of discussion and action, but it is difficult to envision how that discussion will move forward in a constructive manner in the face of and simultaneous with contentious litigation over this strained, confrontational, and controversial proposal to provide a capacity payment to Calpine based on one possible load scenario 6 years distant. With the Sutter Proposal, the CAISO is undermining its planned stakeholder process to discuss backstop or "administrative" procurement next year, and any discussion to amend long term procurement rules established by Local Regulatory Authorities. CMUA urges the CAISO to withdraw the Sutter Proposal, reject Calpine's request as inconsistent with the Tariff, and commence deliberation on the important procurement issues that CMUA agrees must be addressed. CMUA strongly opposes the Sutter Proposal.

The CAISO posted its proposal on December 6^{th}, and followed that with a stakeholder call on December 9^{th}. Given the extraordinarily truncated discussion of this issue of both dollar and policy importance, and the utter lack of empirical analysis contained in the proposal to support it, CMUA is not in a position to provide exhaustive comments. Some of CMUA's concerns are as follows:

- The *ex parte* discussion between the CAISO and President Peevey's office in October on this very matter clearly indicates that this issue has been discussed for some time. Despite the clear advanced warning that Calpine intended to submit its request, the CAISO is acting in less than a month, without Board consideration, on the extraordinary request to pay capacity payments to an uneconomic generator because of a purported need more than 6 years in the future.

- The CAISO states that it must process the request based on the analysis and submittal made by Calpine, pursuant to procedures described in Section 43.1 *et seq* of the Tariff, and as such provides no economic analysis and little operational information in the proposal. Yet, the CAISO is seeking to waive a material provision of the Tariff, namely the determination that the plant is needed in the subsequent year. The mismatch of Tariff application may be convenient, but it is not reasonable. It is inappropriate for the CAISO to not provide additional explanation, support, and scrutiny of the Calpine proposal when they are seeking to waive such a material term of the Tariff.

- Similarly, since waiver is being sought on a material term of the Tariff, it is unclear whether the CPM pricing or cost allocations are appropriate. Indeed, this does not seem like a CPM designation at all.

- Setting aside, but not waiving, its concerns regarding the waiver of key Tariff provisions, CMUA is not convinced that the CAISO has applied appropriate scenarios to determine the need for capacity in the 2017/18 time frame. The load scenarios contained in the released draft Integrated Energy Policy Report do not support the scenarios utilized by the CAISO in reaching its determination of need.

- It is not clear Calpine will shutter the plant. Just this week, the CEC took action on a Calpine proposal to transfer ownership of Sutter to a Calpine subsidiary, and to invest in a new natural gas pipeline extention that will allow it to access supply in nearby gas fields. Given the extraordinary relief, namely Tariff waiver and what must be assumed to be a multi-year capacity payment for a facility not needed for several years, greater scrutiny of the inevitability of plant retirement is required. Such scrutiny is absent from the proposal.

- By all available accounts, the Sutter plant is not highly flexible, which seems to cut at the heart of the purported operational needs of the CAISO.

- The Sutter proposal takes procurement decisions out of the hands of Local Regulatory Authorities such as the CPUC and CMUA member boards, and places them in an administrative mechanism subject to little scrutiny. This is poor policy and inconsistent with California's rejection of reliance on centralized capacity procurement.

- There is no examination of the commercial options, if any, that Calpine rejected. Normally, CMUA would grant that Calpine's commercial decisions are their own; that is, until they ask for a subsidy from load to stay in business. After that, their commercial determinations must be subject to scrutiny.

- This proposal is poor precedent. Given the experience of CMUA members in their own portfolios, it is reasonable to presume that several market participants are carrying uneconomic plants on their books due to low load and other market changes. That is market risk. Indeed, the shifting of this market risk from ratepayers to investors was touted as a primary benefit of unbundling the industry and introducing wholesale competition. The CAISO undermines this fundamental market tenet with the Sutter Proposal. It is reasonable to expect that a wave of

> similar designations will be forthcoming by plant owners who face short-term losses due to reduced load. Otherwise, why should CMUA members pay their own capacity costs and bear a socialized load-ratio share burden of CPM uplifts as well?

CMUA strongly urges the CAISO to withdraw the Sutter Proposal for tariff waiver and commence a stakeholder process to consider the procurement policy decisions that are truly at issue.

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