BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development	R.01-10-024

COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION ON THE PROPOSED ALTERNATE DECISION OF COMMISSIONER LYNCH MAILED ON DECEMBER 4, 2003

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I. INTRODUCTION

In accordance with California Public Utilities Commission ("CPUC") Rules 77.2 and 77.3, the California Independent System Operator Corporation ("ISO") respectfully submits its Comments on the Alternate Proposed Decision of Commissioner Lynch ("Lynch Alternate") mailed on December 4, 2003. Although the Lynch Alternate constitutes a positive step toward ensuring resource adequacy in California, the ISO believes that the Alternate Proposed Decision of Commissioner Peevey ("Peevey Alternate") mailed on November 18, 2003 provides a more comprehensive and effective framework for promoting resource adequacy. Accordingly, the ISO urges the CPUC to reject the Lynch Alternate and adopt the Peevey Alternate (with the limited modifications thereto proposed by the ISO). Consistent with CPUC Rule 77.3, the ISO has attached hereto in Appendix A its proposed revisions to the respective Findings of Fact and Conclusions of Law in the Lynch Alternate.

On December 8, 2003, the ISO filed Comments ("December 8 Comments") regarding the Peevey Alternate and the Proposed Decision of ALJ Walwyn ("Proposed Decision"). In its

December 8 Comments, the ISO expressed its support for the Peevey Alternate. The ISO requested that the CPUC reject the Proposed Decision (as well as the Lynch Alternate) and approve the Alternate (along with certain limited modifications proposed by the ISO). In particular, the ISO urged the CPUC to approve the following Findings and/or Conclusions in the Alternate which the ISO believes constitute essential elements of an effective resource adequacy framework in California: (1) a 17 percent planning reserve requirement; (2) an effective date for the reserve requirement of January 1, 2005; (3) a requirement that utilities procure 90% of their capacity requirements, *i.e.*, their load requirement, plus the planning reserve margin, a year ahead, and 100% of their capacity requirements a month ahead; (4) "reasonable consequences" for failure to procure sufficient capacity and *ex ante* cost recovery mechanisms; (5) a deliverability requirement; and (6) a reporting requirement whereby utilities demonstrate on a monthly basis that they have procured sufficient capacity.

The Lynch Alternate does not adopt any of the aforementioned elements as part of the resource adequacy program.[1] Accordingly, the Lynch Alternate is deficient in this regard. Instead, the Lynch Alternate adopts many of the Findings of Fact and Conclusions of Law in the

[1] The Lynch Alternate has left certain other elements of the resource adequacy framework to be resolved via the workshop process (or following the workshop process) without making a threshold declaration that they are essential elements of a resource adequacy plan These elements include (1) workable counting rules, (2) standardized load-forecasting procedures and (3) deliverability These elements are integral to an effective resource adequacy framework The CPUC should, prior to the workshops, declare as a threshold matter that deliverability, workable and logical counting rules, and consistent, standardized load forecasting guidelines are essential elements of the resource adequacy program the CPUC ultimately will adopt

One issue that was not addressed in Lynch Alternate is the ISO's ability to use resources that the utilities have "locked-up" through the procurement process Any well-defined resource adequacy plan must provide that resources procured by load serving entities are made available to the ISO when they are needed to balance supply with load The CPUC should adopt such a requirement as a threshold matter and permit the details to be worked out in a collaborative and coordinated manner consistent with the discussion in the ISO's December 8 Comments.

Proposed Decision with respect to these issues.[2] For the reasons set forth in the ISO's December 8 Comments, the CPUC should approve the Findings and Conclusions in the Peevey Alternate's on theses issues and reject the corresponding Findings and Conclusions in the Lynch Alternate (and the Proposed Decision).[3] In its December 8 Comments, the ISO addressed certain Findings and Conclusions that were the same in both the Lynch Alternate and the Proposed Decision. There is no need to repeat that discussion in its entirety here. The instant comments will only focus on those issues of interest to the ISO where the Findings and Conclusions in the Lynch Alternate differ from the Findings and Conclusions in the Proposed Decision.

II. COMMENTS

A. Waiting Until The End Of 2008 To Fully Phase-In The Reserve Requirement Is Problematic

One area where the Lynch Alternate differs from both the Peevey Alternate and the Proposed Decision is the implementation date for the reserve requirement. The Peevey Alternate directs the utilities to meet the reserve requirement by the beginning of 2005. Peevey Alternate at 199. The Proposed Decision gives the utilities until the end of 2006 to meet the reserve requirement. Proposed Decision at 23. On the other hand, the Lynch Alternate would not require full implementation of the reserve requirement until the end of 2008. Lynch Alternate, Conclusion of Law No. 5.

As the ISO indicated in its December 8 Comments, the implementation date proposed in the Peevey Alternate is reasonable and should be adopted by the CPUC. Compared to the

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[2] For example, the Lynch Alternate finds that the appropriate planning reserve requirement should only be 15% Further, the Lynch Alternate does not find that any *ex ante* financial consequences (*i.e.*, a surcharge on spot market energy purchases) should apply to utilities that fail to procure sufficient capacity to meet their resource adequacy requirements The ISO's opposition to these specific Findings and Conclusions is adequately set forth in the ISO's December 8 Comments and will not be repeated herein

[3] The ISO hereby incorporates it December 8 Comments by reference

Peevey Alternate and the Proposed Decision, the Lynch Alternate offers the least amount of "insurance" for Californians in the near term and could prove to be more costly to Californians in the long-term. It should be noted that the utilities are only being required to procure capacity not energy. This point is of particular importance because the purchase of capacity is significantly less expensive than the purchase of energy. December 8 Comments at 10.

The reasons given for a longer phase-in period appear to be (1) the concern that the utilities might be at a competitive disadvantage if they are required to ramp up too quickly from their current resource position to a level that includes a planning reserve margin of 17% (*i.e.*, they might be subject to the exercise of market power by suppliers), and (2) the concern that a shorter phase-in period will unduly drive up the utilities' near-term costs. The ISO is sympathetic to the concern that utilities should not be placed at a competitive disadvantage vis-à-vis suppliers. However, parties have acknowledged that there currently is a surplus of resources throughout the region. This makes the conditions favorable for the utilities to begin procuring resources on a long-term basis. The current availability of excess resources argues for a shorter phase-in period, not a longer phase-in period as proposed in the Lynch Alternate.

The ISO is very concerned that, by allowing an extended phase-in period, the current resource balance that the utilities claim is favorable will degrade. The result would be that the full planning reserve margin would become effective at the time when supplies become tighter and more expensive. Under this scenario, the likely result would be that the utilities would end up paying more for capacity than they would pay now when market conditions are favorable. As ISO witness Dr. Sheffrin emphasized, it makes sense to "lock-in" resources during times such as now when, according to the testimony of the Joint Parties, there is considerable excess." Tr.

(Sheffrin) at 4473: 7-11. It is illogical to wait until supply margins are tighter to negotiate capacity contracts.

The Lynch Alternate appears to rely on the assumption that there will be adequate excess capacity through 2008. This is a risky assumption to make. In that regard, on October 10, 2003, the ISO published a new Five Year Assessment (2004-2008). *See www.*caiso.com. The assessment shows that there could be a supply shortage by 2008 under base case conditions for resources, coupled with high peak demand. However, the Lynch Alternate does not require the reserve requirement to be fully implemented until the **end of 2008**. Moreover, the Five-Year Assessment shows that, under certain adverse conditions (*e.g.*, higher than average temperatures, low hydro in the West), there could be supply problems as early as Summer 2004.

Further, the Five-Year assessment was undertaken before the recent "mothballing" of approximately 1,400 MW of generation. The possibility also exists that an additional 3,000-4,000 MW of generation could be "mothballed" or retired. If this were to happen, the supply situation would be significantly more tenuous than that reflected in the Five-Year Assessment. Therefore, requiring a reserve requirement to become effective in 2005 could significantly help minimize the risk of mothballing and/or retirement of existing capacity. Under these circumstances, the ISO is concerned that, unless the utilities take steps in the near term to enter into commitments with existing and potential new resources, the excess that is currently available may narrow considerably well before the end of 2008.

The Lynch Alternate not only ignores the fact that there are excess resources available today, it also ignores the fact that the State's long-term contracts already cover approximately 70 percent of the utilities' net short load requirement during peak periods.[4] Further, over the past

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[4] *See* California Independent System Operator Corporation, 2002 Annual Report on Market Issues and Performance, p E-7 (April 2003)

year, real-time volumes have been extremely small, typically representing less than 3% of system loads. In other words, the utilities are almost fully hedged right now as a result of the State contracts, utility retained generation and short-term bilateral contracts. Thus, even if the utilities are required to implement the reserve level requirement by 2005, there will not be a huge amount of demand chasing a limited amount of supply. Rather, it will involve the utilities procuring an incremental amount of demand in surplus conditions. This will significantly limit the utilities' exposure to any potential exercise of market power by suppliers.[5]

B. Only Requiring That Utilities Procure 90% Of Their Summer Peak Needs A Year Ahead Of Time Is Inadequate

Another significant area where the Lynch Alternate differs from the Proposed Decision is the timeframe within which a utility must "lock up" its capacity requirements. In that regard, the Proposed Decision concludes that the utilities should procure 90% of their capacity needs a year in advance. Proposed Decision at 218. On the other hand, the Lynch Alternate only establishes a requirement (by 2005) that utilities forward contract 90% of their summer peak needs a year in advance (subject to adjustment if implementation results in either significantly increased costs or fosters collusion and/or the exercise of market power in Western energy markets). Lynch Alternate at 12. The Peevey Alternate – which the ISO supports --established a requirement that

[5] It is pure speculation at this time whether the utilities would even be subjected to the exercise of market power by suppliers if the reserve requirement is made effective January 1, 2005 As the ISO indicated in its December 8 Comments, if the Alternate is adopted, and the utilities find that they are being subjected to market power, then it would be appropriate for them to bring this matter to the CPUC's attention and for the CPUC to consider extending the phase-in period. Further, the Alternate contemplates a possible 2% deviation from the 17% reserve requirement Thus, the utilities would have sufficient flexibility to deal with a situation where suppliers are exercising market power. However, the mere potentiality that suppliers might exercise market power should not deter the CPUC from adopting the proper decision now, *i.e* , approving a 17% reserve margin effective January 1, 2005, while retaining the flexibility to extend the phase-in period if the utilities encounter the exercise of market power by suppliers.

utilities forward contract 90% of their capacity needs a year in advance and 100% of their capacity needs a month in advance.[6] Peevey Alternate at 23-24.

In the ISO's opinion, the approach adopted in the Lynch Alternate will be significantly less effective for purposes of ensuring resource adequacy than either the Proposed Decision or the Peevey Alternate. The ISO supports the findings in the Peevey Alternate as to when a utility should be required to "lock-up" its capacity requirements. A requirement that utilities meet 90% of their projected peak load, plus applicable planning reserve, in the year ahead time frame and 100% in the month-ahead time frame will preclude the utilities from placing reliable and reasonably priced service to load at risk, by waiting until the last minute to procure the resources needed to serve load. An obligation to meet capacity requirements by the month-ahead will ensure that resources are locked up to serve California load.[7]

A month ahead requirement allows for an orderly and timely process of identification by the utilities of the resources they will rely on to meet their load, communication of this information to the ISO and to the CPUC, and an opportunity before the fact to identify any potential deliverability or other concerns. If a utility is short on resources, there would still be time to take more measured actions to procure capacity, rather than rely on resources only potentially available in the day ahead/real-time timeframes. Because all necessary commitments would be made at least a month ahead of time, the risk that either the utilities or the ISO will be

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[6] A potential disconnect between the Lynch Alternate and the Peevey Alternate may be different interpretations of forward contracting The Lynch Alternate seems to consider forward contracting to mean forward purchases of "Energy" and possibly "Ancillary Services" The ISO agrees that the LSEs should not be required to forward contract for 100% of their energy and Ancillary Service needs The 100% "capacity" obligation stated in ISO's proposal (and the Peevey Alternate) may be met by a combination of forward "Energy", "Ancillary Services", and "Availability" contracts The latter can be extremely inexpensive since all the supplier is expected to do is bid in the market at any price it desires (subject to prevailing bid caps and market power mitigation measures) The 100% requirement is primarily a measure against physical withholding, a phenomenon that paved the way for the exercise of market power by the suppliers during the California energy crisis

[7] Waiting until the last minute to procure resources creates the risk that at the last minute resources may not be available or may be available only at a very high price. Further, as Dr Sheffrin testified, even fairly high levels of excess capacity can quickly evaporate in adverse conditions, such as dry hydro conditions or a West-wide heat wave. Tr (Sheffrin) at 4412 22-28, 4413 1-5

scrambling at the last minute to obtain power under adverse conditions will be significantly reduced. *See* Tr. (Sheffrin) at 4423: 22-28.

The Lynch Alternate only establishes a requirement that the utilities forward contract for 90% of their summer peak capacity needs. This proposal does not provide sufficient "insurance" to California consumers. The approach in the Lynch Alternate is based on the following erroneous assumptions: (1) if there are adequate resources during the summer months, adequate resources likely will be available for the remaining months of the year, and (2) there is no need to "lock-up" capacity for non-peak periods. Just because there are adequate resources lined up to meet summer peak loads does not guarantee that such resources will "be there" in other months because California utilities will not have "locked up" such resources. By not requiring the utilities to procure sufficient capacity to serve non-summer loads, the Lynch approach also is "gambling" that the utilities will not need such capacity. Based on past experience in California, this could easily be a losing proposition. In that regard, a number of California blackouts occurred during the off-peak winter months. Further, price spikes regularly can occur during the shoulder months, especially when there are "heat waves," low hydro levels, and/or significant quantities of capacity are on scheduled outages.[8] Thus, the Lynch approach could unnecessarily expose consumers to high spot market prices and potential curtailments during non-summer months.

Finally, having a summer-only requirement will skew investment and contracting decisions toward summer peak loads only. This could result in under-investment in "base load" units that are needed to meet generally increasing demand in California and in the capacity needed to meet winter peak. It will be much more effective to have separate monthly peak

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8 *See* Motion for Leave to File Answer and Answer of the California Independent System Operator Corporation to Protests, Docket No ER02-1656, p 27 and Attachment A (June 17, 2002)

requirements as proposed by the ISO. That way, the utilities can procure the specific amount of capacity that is expected for each month. Further, a monthly obligation will encourage investment in California electric infrastructure that provides protection against excessive prices in the shoulder months and ensures that adequate capacity is "available" to California year-round. Finally, a monthly obligation protects against an inappropriate requirement that might have the utilities over-procure capacity by requiring that utilities lock-in summer reserve levels throughout the year.

III. CONCLUSION

For the reasons set forth herein and in the ISO's December 8 Comments, the ISO respectfully urges the CPUC to reject the Lynch Alternate and approve Peevey Alternate (with the limited modifications proposed by the ISO). This will provide for an effective resource adequacy requirement in California by promoting, reliable operation of the transmission grid, investment in California's electric infrastructure, and the development of competitive electricity markets in the State.

Date: December 11, 2003

Respectfully submitted,

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APPENDIX A

APPENDIX A

PROPOSED CHANGES TO THE LYNCH ALTERNATE

Additions indicated in underline, and deletions indicated in redline.

Findings of Fact

19. A ~~15%~~ 17% reserve level with an error band of +/- 2%, strikes an appropriate balance for ensuring reliable service by providing incentives to encourage the retention of existing resources, whereas setting reserves at a higher level could require the utilities to make short-term investment decisions inconsistent with the Energy Action Plan's preferred "loading order" of new resources.

20. ~~It is reasonable to adopt a 90% level of forward contracting for each utility's summer peak needs one year in advance and it is appropriate to defer implementation of this requirement until 2005.~~ It is reasonable to adopt a 90% level of forward contracting at one year in advance and a 100% level of forward contracting at one month in advance. We should allow the utilities the flexibility to justify to the Commission, on a case-by-case basis, excursions below this level. It is appropriate to defer implementation of this requirement to 2005.

27. The issue of deliverability is an issue that needs further study. However, resources procured by the utilities must be deliverable to load when needed.

87. Reasonable financial consequences should exist for a utility's failure to procure sufficient reserves. Forward, ex-ante, financial consequences are necessary to encourage compliance with the reserve requirements. The consequence should be a surcharge on all real time energy purchases during the period in which the utility fails to satisfy it capacity commitments.

88. A meaningful monthly reporting requirement is necessary to enable the Commission and the ISO to monitor compliance with the resource adequacy requirement.

89. The adoption of standardized and workable load forecasts and methodologies for counting resources are necessary to timely monitor compliance with the resource adequacy requirement, ensure consistency across the ISO Control Area and ensure that the specified reserve level are adequate.

90. In order to support grid reliability and ensure that there are sufficient supplies to balance load, the ISO needs to be able to utilize the resources procured by utilities to meet their resource adequacy obligation when the utilities do not schedule such resources in the day ahead.

Conclusions of Law

4. A ~~15%~~ 17% reserve level with an error band of +/- 2%, strikes an appropriate balance for ensuring reliable service by providing incentives to encourage the retention of existing resources, whereas setting reserves at a higher level could require the utilities to make short-term investment decisions inconsistent with the Energy Action Plan's preferred "loading order" of new resources.

5. The utilities should meet this ~~15%~~ 17% requirement by no later than the end of ~~2008~~ 2004 ~~with interim benchmarks established.~~ These are minimum standards. ~~If cost effective, the utilities may chose to meet this level sooner than 2008.~~ If cost effective, the utilities may choose to meet this level sooner. The utilities should forward contact 90% of their capacity requirements a year in advance and 100% of their capacity requirements a month in advance.

13. We should seek another round of comments, as part of this proceeding, as to how to assess and develop workable deliverability standards. Deliverability is an essential element of the resource adequacy plan, and the utilities must demonstrate that their resources are deliverable.

75. The ISO must be able to utilize resources procured by the utilities to meet their resource adequacy requirements when such resources are not otherwise scheduled in the day ahead market.

77. The utilities should face reasonable financial consequences for their failure to procure adequate resources to satisfy their capacity requirements regardless of whether the ISO is in a staged emergency.

78. A meaningful monthly reporting requirement is a necessary element of the resource adequacy plan.

79. There should be consistent, standardized and logical conventions for the calculation of load forecasts and the counting of resources.

PROOF OF SERVICE

I hereby certify that on December 11, 2003 I served, by electronic and U.S. mail, Comments of The California Independent System Operator Corporation On The Proposed Alternate Decision of Commissioner Lynch Mailed on December 4, 2003 in Docket # R. 01-10-024.

DATED at Folsom, California on December 11, 2003

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