



Comments on California ISO Report on Basis and Need for CPM Designation for Sutter Energy Center

Submitted by	Company	Date Submitted
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San Diego Gas & Electric (“SDG&E”) submits the following comments on the *California ISO Report on Basis and Need for CPM Designation for Sutter Energy Center* (“Sutter Report”), dated December 6, 2011. Generally, SDG&E has two concerns regarding the report and its findings, neither of which was satisfied during the conference call of December 9, 2011, with ISO Staff.

First, SDG&E believes this extraordinary request should be the subject of extraordinary procedures so as to address the legitimate concerns of market participants regarding the specific and general implications of granting a tariff waiver under the circumstances described in the Sutter Report. At a minimum, the ISO should be making a concerted effort to make its evaluation process and the manner in which it weighed competing operational and policy issues fully transparent to market participants so that they can anticipate if and when additional, similarly extraordinary procurements might occur.

Second, SDG&E is concerned with the expansive application of the Capacity Procurement Mechanism (“CPM”) in this instance insofar as it reaches to address projected capacity needs in a manner not contemplated by, and in many respects contrary to, the resource-adequacy rules of the ISO and the

California Public Utilities Commission (“CPUC”). The actions contemplated by the ISO blur, if not obliterate, jurisdictional distinctions between and the relative authorities of the CPUC and the ISO and, as such, should be approached thoughtfully and taken only after careful, *public* scrutiny.

1. Special Deals Require Special Rules.

As the Sutter Report fully acknowledges, the Sutter Energy Center (“Sutter”) does not meet the eligibility requirements specified in the ISO’s tariffs for CPM designations. Specifically, although Sutter makes its request pursuant to CPM category “6” (“Capacity at risk of retirement within the current [Resource Adequacy] Compliance Year that will be needed for reliability by the end of the calendar year following the current [Resource Adequacy] Compliance Year”), both Sutter and the ISO admit the application of the tariff to Sutter would be extraordinary, hence the need to seek a waiver of the tariff rules from the Federal Energy Regulatory Commission (“FERC”).

While SDG&E concedes the ISO has the procedural right to seek a waiver of its tariffs, SDG&E believes it is incumbent on the ISO to assure market participants, as a preliminary matter, the waiver is justified. In taking its (or Sutter’s) case to market participants, however, the ISO appears consistently (and even uniformly) to have considered inferences favoring Sutter’s request and crafted tests favoring the waiver. Conversely, during the conference call of December 9, 2011, the ISO Staff refused to discuss or even consider alternative or countervailing assumptions that might militate against granting the waiver. If these appearances are misleading, SDG&E submits they can be corrected through the ISO providing greater insight into its evaluation process. But as things stand and having only the Sutter Report in hand, SDG&E has both procedural and substantive reservations as to the propriety of the waiver, that is, we are left with unaddressed concerns as to the legitimacy of both the structure of the analyses performed by the ISO and the results of those analyses. As a principal example, the Sutter Report references Section

7.3.5.2 of the Reliability Requirements Business Practice Manual as providing the analytical structure to be used in evaluating Sutter's request. That section describes a process where "the generating facility is studied for its impact on local and system reliability, operational flexibility, given the best available information regarding grid conditions for year 2 and the assumed availability in year 2 of [Resource Adequacy] procured for year 1 (including other known generator retirements) and any new generation that will achieve commercial operation to meet year 2 needs." But the Sutter Report evaluates system and local needs well beyond the Year 2 period identified in the Business Practice Manual, using outlier forecasts from an ongoing CPUC proceeding, including *estimates and assumptions for other generator retirements rather than "known" retirements*, rather than "best available" information for key variables critical to the ISO analysis. SDG&E urges the ISO, at a minimum, to provide more information regarding the evaluations it performed and the assessments it made prior to determining it would proceed with the waiver on behalf of Sutter than is provided in the Sutter Report and, where omitted, to perform the additional evaluations recommended by SDG&E in these comments.

There are no more important provisions of any tariff than the rules governing its application and, for CPM, specifying eligibility requirements. Failing those requirements should, in the absence of some extraordinary circumstance, result in the outright rejection of the Sutter request. Here, the ISO concedes Sutter fails the rules governing the application of CPM, rendering Sutter *prima facie* ineligible and its request ex-tariff *ab initio*. By proceeding to evaluate Sutter's request rather than simply discarding it, the ISO has already granted Sutter valuable concessions and a considerable benefit of the doubt. This is a particularly important consideration since CPM is the current manifestation of rules originated and "reserved for genuine emergencies."¹ More recently and specific to the approval of CPM designations for units at risk of retirement, the FERC indicated the eligibility of these units for CPM designations should not

¹ See *California Independent System Operator Corporation*, 116 FERC ¶61,274, at P266-267 (2006).

“duplicate or interfere with the CPUC or other local regulatory agencies’ jurisdiction”, consistent with the FERC’s view that this type of CPM designation would only apply to the procurement of “needed capacity, as a last resort, in the event that state or local procurement plans do not meet CAISO’s operational and reliability needs”.² The FERC specifically directed the ISO’s tariffs should reflect the ISO’s “stated intention to use the risk of retirement designation category as a limited, last resort procurement mechanism”, so that this CPM designation category “will be exercised only if all other available procurement measures fail to procure the resources needed for reliable operation” and not “in order to circumvent existing procurement mechanisms that could adequately resolve reliability needs.”³

Under the foregoing regulatory principles, the ISO should, but here did not, perform an evaluation satisfying market participants that granting the requested tariff waiver resolves “a genuine emergency” which could have been, but was not, addressed by other available procurement measures and in any event was not a circumvention of existing procurement mechanisms. To the contrary, the ISO apparently evaluated the Sutter request using an evaluation methodology incorporating a set of assumptions unabashedly favorable to the request. As a market participant originally opposed to the concept of including units at risk of retirement within the scope of CPM, SDG&E is not satisfied the ISO’s evaluation process meets the spirit of either the CPM tariffs authorizing procurement in the case of units at risk of retirement, or the specific instructions of the FERC order authorizing the implementation of those tariffs.

While the ISO liberally construed the CPM tariff’s basic eligibility requirements in Sutter’s favor, it apparently refused to adhere to the letter of remaining CPM tariff provisions whose application would have presented obstacles to granting the waiver. For example, during the conference call of December 9, 2011, ISO Staff repeatedly invoked the other provisions of the CPM tariff to justify its evaluation method and

² See *California Independent System Operator Corporation*, 134 FERC ¶61,211, at P126 (2011).

³ See *California Independent System Operator Corporation, id.*, at P130.

results. Additionally, ISO Staff indicated Sutter had filed the “requisite” documentation which, at least on its face, met most (but not all) of the tariff requirements for CPM-eligible units, and that, in evaluating the Sutter request, ISO Staff had not considered whether other procurement alternatives were available to address either the reliability need or procure Sutter’s services as a resource-adequacy unit, or considered whether Sutter had rejected a reasonable offer from a load-serving entity to provide resource-adequacy services. ISO Staff justified the narrow scope of its review on the ground additional considerations and evaluations are not required under the CPM tariff. But ISO Staff indicated the reliability need upon which the CPM designation is being justified was determined pursuant to a set of assumptions SDG&E considers, while plausible, improbable and unrealistic and whose source or character are nowhere described in the CPM tariff or the relevant Business Practice Manual. From this recounting of the analysis performed by the ISO, SDG&E believes some rules applied while others didn’t, and some deviations were allowed while others weren’t, with the ISO believing it was not obligated to explain its reasoning for the differences. SDG&E finds this lack of analytical consistency and transparency troubling.

Finally, although the FERC indicated market participants opposed to the newly proposed CPM category covering units at risk of retirement could rely on the ISO Department of Market Monitoring to review requests made under this category independently, ISO Staff indicated such a review has yet to take place with respect to the Sutter request and would not in fact take place until after the ISO had filed for the tariff waiver. Moreover, ISO Staff indicated, in any event, the ISO is under no obligation to make the Department’s evaluation or findings available to the public. Taken together, SDG&E believes all substantive and procedural inferences and preferences favoring Sutter’s request were accorded to Sutter by the ISO, leaving SDG&E to conclude, as the ISO applied or ignored the various provisions of the CPM tariff, SDG&E’s interests as a market participant to whom the costs of this CPM procurement will be allocated were dismissed or otherwise left unprotected.

Once the ISO Staff had made the determination it would consider Sutter's extraordinary, nonconforming request for a CPM designation, SDG&E submits ISO Staff should have taken comparably extraordinary measures to assure the concerns and policies articulated in the FERC's order authorizing the CPM tariff had been considered and addressed. This would have encompassed considering whether Sutter had received offers to provide resource-adequacy services to a load-serving entity for the upcoming Compliance Year and, if so, whether Sutter had placed itself, by its own decisions, in an untenably uneconomic situation. This would have included evaluating whether Sutter rejected compensatory offers available in the market in the hope of receiving a more favorable, administratively determined price under the CPM tariff. The ISO's refusal to perform this evaluation risks encouraging other generators to follow suit, especially where, as here, the ISO's need determination would justify the procurement of up to 3570 megawatts of capacity to meet the projected 2017/2018 deficiency the ISO is attempting to resolve through the Sutter tariff waiver. Additionally, the ISO should have, but once again did not, consider whether load-serving entities had been or could be given an opportunity through any means to resolve the projected 2017/2018 capacity deficiency; this would comport with the FERC's holding that the ISO should confine its procurement of units at risk of retirement to those instances where an emergency existed and other procurement mechanisms, including the CPUC's long-term procurement planning process, could not or did not resolve the deficiency. This would have required consideration of the rights and duties of load-serving entities in advance of the completion of the ISO's evaluation which, while not contemplated under the terms of the (inapplicable) tariff, would certainly have been within reason.

Even failing all these other measures, ISO could have and should have proceeded to make some attempt to assure Sutter would receive not the best price available to CPM-eligible units, but some other price, whether market-based or limited to the currently available CPM tariff price so as to make a Sutter-style bargaining strategy unattractive to others now or in the future. Once again, the ISO Staff insisted they

were bound to follow the tariff and pay tariff-specified rates, notwithstanding they had already decided the most salient tariff provisions, namely those governing eligibility, would be waived. Having determined a tariff waiver from the eligibility requirements for Sutter was appropriate, an attempt at negotiating a better price than the tariff price would also have been appropriate as a counterbalance comporting with the ISO's publicly avowed intention, exhibited across the past several years, to manage and minimize its CPM procurement costs. Rather, the ISO is contemplating an \$18,000,000 to \$23,000,000 (eighteen-million-dollar to twenty-three-million-dollar) procurement under the tariff waiver for the eight (8) months of 2012 during which Sutter is expected to receive its CPM payments. To put this expenditure in perspective, the CAISO only spent a combined \$2.7 million under the full range of its backstop capacity-procurement authorities for 2009 and 2010 according to information provided by the ISO during the FERC CPM Technical Conference conducted in April 2011. Thus, this single, eight-month CPM designation represents a six- to eight-fold increase over the ISO's total backstop procurements for those two years. At a minimum, the ISO could have and should have considered alternatives to foisting this unprecedented cost increase on load-serving entities beyond the extra-tariff remedy sought here.

2. The California Rules Governing Resource Adequacy Should Reflect Cooperation between the California ISO and the California Public Utilities Commission, and Should Not Be Subject to the Unilateral, *Ad Hoc* Revisions and Exceptions Implemented by One Agency or the Other.

As noted in the Sutter Report, the ISO justifies the waiver of the CPM eligibility requirements applicable to units at risk of retirement on the ground it is resolving a need for capacity with Sutter's operational characteristics that could arise in the 2017/2018 period. SDG&E is concerned this procurement is well beyond the bounds of the operational focus of the CPM tariff and, in SDG&E's case as a California-jurisdictional public utility, intrudes on authorities vested in the CPUC.

The Sutter Report acknowledges the CPUC's long-term procurement proceeding investigates and resolves, at least for the California-jurisdictional utilities, long-term resource needs through the

authorization of utility procurement plans. In evaluating the Sutter request for tariff waivers, the ISO relied on but one of the seven planning scenarios considered in the most recent CPUC proceeding, a matter which coincidentally remains pending decision by the CPUC. In doing so, the ISO relied upon a scenario of dubious credential, that is, one made up of outlier assumptions (e.g., a combination of higher additions of intermittent wind and solar resources and ten percent (10%) higher levels of demand compared to the other scenarios), that did not rate as being of the CPUC's four "priority scenarios", and that ISO Management itself has characterized as a "bookend" scenario.

Based on the ISO's testimony in the CPUC proceeding, SDG&E understood long-term operational resource needs to be, in the four "priority" study scenarios, fully satisfied (with the exception of certain downward balancing requirements) and, for the "bookend" scenario relied upon in the Sutter Report, subject to further study of the specific system and local capacity needs that might result from a combination of units retiring as a result of the State's once-through cooling regulations, a greater build-out of intermittent renewable resources than expected in the CPUC's "base case", and abnormally high load growth under pessimistic assumptions regarding the effectiveness and/or timeliness of future energy-efficiency programs. In its testimony before the CPUC, the ISO had indicated its assessments of reliability needs related to once-through-cooling restrictions, primarily related to local resource requirements, would not be completed until December 2011. As to the larger implications of robust renewable-resource development, the ISO indicated its analyses would be presented in the next CPUC long-term procurement proceeding.

If the ISO has now completed its study of the "bookend" scenario and considers that scenario to bear the most realistic or compelling combination of assumptions affecting long-term resource planning and system operations (or if it has completed its operational needs analyses pursuant to any other set of planning assumptions), the ISO should present its findings in the CPUC proceeding for vetting so that, if the CPUC agrees with the ISO's findings, the needs identified by the ISO can be reflected in and resolved

through (in large part) the long-term procurement plans of the state's utilities. At the very least, this would continue the cooperative and joint resolution of long-term resource-adequacy requirements by the CPUC and the ISO as has been practiced since the enactment of Section 454.5 of the Public Utilities Code.

From SDG&E's perspective, the Sutter Report is a surprising and unprecedented deviation from the transparent state-planning and -procurement practices separately but cooperatively crafted and supervised by the CPUC and ISO. SDG&E reminds the ISO that the then-new CPM designation for units at risk of retirement was presented to the FERC as a last resort, to be invoked "only if the CPUC does not act, [requiring] the ISO ... to break the glass and undertake the needed procurement." (ISO Application to FERC, December 10, 2010, at p.21.) The ISO has omitted the step it has always described as a precursor to the exercise of its tariff authority: a failure by the CPUC to act. Where, as here, the action being taken is extraordinary to the tariff, the ISO should have done even more to coordinate with the CPUC than was provided under the tariff, but failed to meet even the specific requirements of the CPM tariff related to coordinating with the CPUC to address the capacity need described in the Sutter Report.

Finally, the unilateral action taken by the ISO to resolve a perceived long-term resource need portends that the ISO, in its sole discretion, will in the future procure resources to satisfy those long-term needs without regard to any findings or directions by the CPUC. Here, the ISO is taking action to address needs not identified in the pending CPUC long-term procurement proceeding – the ISO never hinted in its record showing in that proceeding that the 2017/2018 system requirements for operationally flexible capacity were so urgent they should be addressed in and resolved by the utilities' resource plans. While the ISO may not have been aware of Sutter's intentions to forego contracting as a resource-adequacy unit or that Sutter's inability (or refusal) to execute such a contract would result in Sutter's decision to terminate its ISO Participating Generator Agreement, the 3570-megawatt need used to justify the waiver had been identified as a possibility by the ISO during the course of the CPUC proceeding but was never described as

a need the CPUC should require the utilities' long-term procurement plans to satisfy. Sutter's waiver request did not create that need, and seeking a tariff waiver on behalf of Sutter will not fully resolve the reliability need the waiver addresses. SDG&E therefore infers the ISO believes it has the authority to address any matter not explicitly resolved within the CPUC proceedings, even if not raised before the CPUC or even where the ISO's tariffs and authorities do not contemplate ISO action. The nature of this arrogation of authority is precisely the reason SDG&E opposed the creation of a CPM category for units at risk of retirement in the first place – the breach in the dike SDG&E contemplated and fought against is growing. In the absence of assurances the ISO will not further exacerbate the dam break, SDG&E's original concerns with the expansion of the CPM tariff must be revisited and we may ask FERC to retread this wet ground with us.