

139 FERC ¶ 61,072  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

California Independent System Operator Corporation      Docket No. ER12-897-000

ORDER GRANTING MOTION TO HOLD PROCEEDING IN ABEYANCE

(Issued April 26, 2012)

1. On March 23, 2012, the California Independent System Operator Corporation (CAISO) submitted to the Commission a motion requesting that this proceeding be held in abeyance for a period not to exceed 90 days. In this order, we will grant CAISO's request.

**I. Background**

2. On January 26, 2012, CAISO submitted a request for waiver of section 43.2.6(3) of its tariff, which specifies that CAISO may only offer a capacity procurement mechanism (CPM) designation for capacity at risk of retirement if that resource is shown to be needed for reliability purposes in the following year. In its waiver request, CAISO explains that the waiver was necessitated by a November 11, 2011 request to CAISO by Calpine Corporation (Calpine) for a risk of retirement CPM designation for its Sutter Energy Center (Sutter). CAISO states that Sutter meets all but one of the CAISO tariff requirements for a risk of requirement tariff designation. Currently, the tariff limits the procurement of capacity at risk of retirement to cases in which such capacity is needed the next resource adequacy compliance year. CAISO states that its assessment of reliability needs indicates that Sutter will not be needed for reliability purposes until the end of 2017. As a result, CAISO's request for waiver, if granted, will enable CAISO to procure the Sutter capacity for 2012 based on CAISO's determination of need by the end of 2017. CAISO originally requested that the Commission act on its request by March 29, 2012.<sup>1</sup>

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<sup>1</sup> CAISO January 26, 2012 Waiver Request.

3. On March 22, 2012, the Public Utilities Commission of the State of California (CPUC) approved a resolution that directs three of the state's investor-owned utilities to commence contract negotiations with Calpine to procure Sutter's capacity, in order to allow Sutter to remain operational in 2012. Under the resolution, the investor-owned utilities have 30 days to complete negotiations and submit the outcome of those negotiations to the CPUC. The resolution directs Sutter to remain in operation until this matter is resolved.<sup>2</sup>

4. On March 23, 2012, as a result of CPUC's action on the resolution, CAISO submitted to the Commission a motion requesting that this proceeding be held in abeyance for a period not to exceed 90 days. CAISO states that it anticipates that the CPUC process will yield a resource adequacy contract for Sutter that will render any further action by the Commission or CAISO unnecessary. CAISO states that if and when the CPUC proceeding results in final approval of a contract that addresses the need that would have been met through the CPM designation, CAISO will submit a filing to withdraw its January 26, 2012 waiver request.<sup>3</sup>

## **II. Notice and responsive Pleadings**

5. Notice of the motion to hold the proceeding in abeyance was issued on March 27, 2012, with comments or protests due on or before April 2, 2012. CPUC and Calpine filed timely answers in support of CAISO's motion. Calpine states that it supports the motion to the extent that the Commission should hold the proceeding in abeyance only as long as the CPUC process is ongoing. Calpine asserts that if negotiations do not result in a contract for Sutter, the Commission should lift the abeyance and immediately issue an order on CAISO's waiver request.<sup>4</sup> CPUC also filed a motion to lodge the CPUC Resolution. In its answer, Calpine states that it supports CPUC's motion to lodge.<sup>5</sup>

6. The NRG Companies and the Dynegy Companies (collectively NRG) filed a motion in opposition to CAISO's motion. NRG observes that the CPUC Resolution only requires the investor-owned utilities to negotiate with Calpine, but does not mandate that the parties enter into a contract. Thus, NRG rejects as unfounded CAISO's claim that the

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<sup>2</sup> CPUC, Resolution E-4471 (March 22, 2012), *available at* [http://docs.cpuc.ca.gov/WORD\\_PDF/FINAL\\_RESOLUTION/162985.PDF](http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/162985.PDF) (CPUC Resolution).

<sup>3</sup> CAISO March 23, 2012 Motion to Hold Proceeding in Abeyance.

<sup>4</sup> Calpine April 2, 2012 Answer at 1-3 (Calpine Answer).

<sup>5</sup> *Id.* at 4-6.

CPUC process will yield a contract. NRG argues that if the CPUC contract negotiations fail, Sutter's plight will remain unchanged. NRG also contends that the potential retirement of Sutter reflects market deficiencies that are not addressed by the CPUC Resolution. Accordingly, NRG asserts that the Commission should reject the CAISO Motion as premature and should find *sua sponte* that CAISO's existing market is unjust and order appropriate changes.<sup>6</sup>

### **III. Discussion**

#### **A. Procedural Matters**

7. The Commission finds that, because NRG's motion responds to CAISO's request to hold this proceeding in abeyance, it is properly styled as an answer to CAISO's motion and we will treat it as such.

8. Motions to lodge decisions from other proceedings may be appropriate in some instances to supplement the Commission's record. Here, we find that the CPUC Resolution has assisted us in our decision-making, and we therefore grant CPUC's motion to lodge.

#### **B. Commission Determination**

9. We will grant CAISO's motion. We find that the CPUC Resolution puts into motion a process whereby the investor-owned utilities will negotiate with Calpine with the goal of securing a contract that will keep Sutter in operation in 2012. If the CPUC process results in a contract, Sutter will no longer be at risk of retirement in 2012 and there will be no need for CAISO to issue a CPM designation for Sutter. Thus, while we acknowledge that the CPUC resolution does not guarantee that Sutter will successfully negotiate a contract with the investor-owned utilities, we find that it is appropriate to delay Commission action on CAISO's waiver request until the state process is completed.

10. We are not persuaded by NRG's arguments in opposition to CAISO's motion. As discussed above, we are aware that the CPUC Resolution may not result in an executed contract for Sutter's capacity. However, we do not find that this uncertainty constitutes a reason to deny CAISO's motion. Rather, because the outcome of CPUC process will not be known until the utilities have had the opportunity to negotiate with Calpine, we find that it is reasonable to withhold judgment on CAISO's waiver request until we know whether Calpine is able to negotiate a contract with the investor-owned utilities. Importantly, Calpine, the party most directly affected by our action here, does not oppose

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<sup>6</sup> NRG April 2, 2012 Motion in Opposition to Motion to Hold Proceeding in Abeyance.

CAISO's motion. Further, we find that NRG's arguments regarding market deficiencies are beyond the scope of CAISO's motion, which focuses solely on the issue of delaying Commission action on CAISO's waiver request while contract negotiations with Sutter are ongoing.

The Commission orders:

(A) CPUC's motion to lodge is hereby granted, as discussed in the body of this order.

(B) CAISO's motion to hold this proceeding in abeyance is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.