ALLIANCE FOR NUCLEAR RESPONSIBILITY

PO Box 1328
San Luis Obispo, CA 93406
(858) 337-2703
(805) 704-1810
www.a4nr.org

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Commissioner Carla Peterman
Lead Commissioner, 2012 Integrated Energy Policy Report Update
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Re: Comments on Draft *2012 IEPR Update*, Docket 12-IEP-1A

Dear Commissioner Peterman:

The Alliance for Nuclear Responsibility (A4NR) commends your leadership in assembling an outstanding draft for the *2012 IEPR Update*. We find the draft to be an intelligent assessment of Southern California's daunting electricity infrastructure challenges, and consider its recommendations particularly astute.

There are two elements, however, which may cast the situation in Southern California in even more dire terms than the draft *2012 IEPR Update* suggests: 1) the ISO's calculation of Local Capacity Requirements in the Los Angeles Basin optimistically relies upon a hypothetical load transfer – which no one seems to be pursuing -- between two distribution substations to reduce need by 2 – 3,000 MW; and 2) the compliance deadlines for phasing out once-through-cooling enjoy considerably greater legal heft under the federal Clean Water Act than a mere discretionary state policy, and may be much more difficult to relax than state energy agencies appear to believe. Both of these issues deserve careful consideration before final adoption of the *2012 IEPR Update*.

1. Distribution system planning is opaque, traditionally left unattended by regulators, and perhaps a dubious setting for a "Hail Mary" pass.

The evidentiary record developed in the CPUC's long-term procurement proceeding (R-12-03-014) raises significant doubt about the distribution load transfer. As excerpted from pages 4 – 6 of A4NR's opening brief in that proceeding:

Under questioning from Assigned Commissioner Florio, ISO witness Sparks described the even larger optimism (in terms of megawatts) assumption embedded in the ISO's studies concerning the transfer of 600 MW of load from the Mira Loma substation to the Rancho Vista substation.[1]

Q. I want to make sure I understand. You're saying that it takes 2- to 3000 megawatts of OTC generation to relieve that overload under the current configuration or under the future configuration?

A. Oh, no. Under – without the distribution project we just discussed –

Q. Okay.

A. -- it required 2 to 3000 megawatts more. If we put in the distribution project, we could reduce the amount by 2 to 3000 megawatts.

Q. Would that be a direct reduction to the LCR requirement then?

A. Yes. In the overall LA Basin, as well as with the western LA basin.

Q. So that's pretty significant, isn't it?

A. Yes. That's why we, as we proceeded with the studies, we tended to assume that would be in place.[2]

Mr. Sparks' elaboration of just what lies behind this assumed load transfer, worthy though it may conceptually be, revealed an unmistakably vaporous quality:

We discussed it with Edison in a couple of conversations. But it's actually a distribution project, so it's difficult for the ISO to lead that process. But we have raised it with Edison … My understanding is that it is sort of the master plan that Edison has for their distribution system and that there may be a need to accelerate it and to relieve some transmission constraints. But the cost of it is not small. At least our expected cost of it we don't have an estimate from Edison.[3]

Indeed, on redirect, Mr. Sparks backtracked considerably:

Q. And I believe that you mentioned that it was your understanding that the Mira Loma mitigation plan was in Southern California Edison's master plan, is that correct, that is what you stated yesterday?

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[1] "(W)e installed some 230 to 66 kV transformers, and some limited amount of 66 kV distribution lines to enable some of the load that – currently at Mira Loma, the two substations are fairly close together to be transferred over to Rancho Vista so that the 500 230 kV transformer at Mira Loma can be relieved, the loading can be relieved." R.12-03-014 Transcript, August 7, 2012, p. 83.
[2] R.12-03-014 Transcript, August 7, 2012, p. 85.
[3] R.12-03-014 Transcript, August 7, 2012, pp. 83 – 84.

A. I believe I mentioned that, yes.

Q. Have you had an opportunity to have additional discussions with Southern California Edison since the time you presented that information to Commissioner Florio?

A. Yes, I have.

Q. And what did you learn?

A. SCE informed me that isn't part of their master plan at this point in time.[4]

SCE's prepared reply testimony also downplayed the significance of the Mira Loma/Rancho Vista load transfer, saying politely, "*The feasibility of the proposal has not been fully developed.*"[5] On cross-examination, however, SCE witness Cabell was more dismissive: *"I am questioning the feasibility because we have not, as I said in my testimony, the feasibility has not been fully developed."*[6]

Q. Isn't it true that SCE has not performed any technical analysis on the 600-megawatt load transfer?

A. Not at this point in time.

Q. No power flow analysis was done by SCE in regard to this transfer?

A. Not at this point in time.

Q. And SCE has not done any other technical analysis regarding the 600-megawatt transfer?

A. Not at this point in time.

Q. Has SCE analyzed CAISO's power flow modeling in this proceeding as related to the 600-megawatt load transfer?

A. What do you mean by analyze?

Q. Have you done your own analysis on their numbers?

A. No, we have not.[7]

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[4] R.12-03-014 Transcript, August 8, 2012, pp. 264 – 265.
[5] SCE-02, p. 19.
[6] R.12-03-014 Transcript, August 13, 2012, pp. 827 – 828.
[7] R.12-03-014 Transcript, August 13, 2012, p. 828. As Ms. Cabell had responded to Commissioner Florio, "We haven't actually studied it. It was discussed with the ISO as a possibility in light of these proceedings. It's something that would need a lot of further investigation to determine basically how you would go about and design the system to be able to transfer that much load to another station and obviously the cost and feasibility of it." *Ibid.,* p. 782.

2. Federal courts may attach considerably more seriousness to OTC compliance deadlines than utilities and state energy planners appear to.

This issue is also embedded in the CPUC's long-term procurement proceeding. As excerpted from pages 14 – 15 of A4NR's opening brief in R.12-03-014:

> A4NR considers the comments by various witnesses in the R.12-03-014 proceeding about the State Water Resources Control Board's ("SWRCB") compliance schedule for OTC generation to be unrealistically casual. The prevailing opinion seems to be that this is a discretionary policy on the part of California, rather than a legal obligation under the federal Clean Water Act.[8] The *Riverkeeper II* decision of the 2nd Circuit Court of Appeals[9] "continues to provide some legal authority" according to the SWRCB,[10] despite its partial reversal by the U.S. Supreme Court. More significantly, after the Supreme Court reinstated the challenged federal regulations, the EPA withdrew them – making the standard applied by the SWRCB "best professional judgment."[11]The "best professional judgment" standard remains applicable only as long as there is no nationwide standard, and the EPA recently amended its settlement agreement with the *Riverkeeper II* plaintiffs to commit to placing notice of a new proposed nationwide standard in the Federal Register no later than June 27, 2013.[12]

[8] Codified as 33 U.S.C. § 1326(b) but commonly referred to as §316(b) of the federal Clean Water Act .

[9] *Riverkeeper, Inc. vs. U.S. E.P.A.*, 475 F.3d 83(2007). The U.S. Supreme Court subsequently reversed the decision in part, upholding the federal Environmental Protection Agency's ("EPA") use of cost-benefit analysis and reinstating the regulations at issue. *Entergy Corp. v. Riverkeeper, Inc.,* 556 U.S. 208 (2009).

[10] SWRCB, Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling, May 4, 2010, p. G-11.

[11] Ibid., p. G-14. As described by the SWRCB, "Best professional judgment" is a term of art used in developing technology-based limitations under §402(a)(1)(B) of the federal Clean Water Act ("such conditions as the [EPA] Administrator determines are necessary to carry out the provisions of this chapter") with factors set forth at 40 CFR §125.3.

[12] U.S. EPA, SECOND AMENDMENT TO SETTLEMENT AGREEMENT AMONG THE ENVIRONMENTAL PROTECTION AGENCY, PLAINTIFFS IN CRONIN, ET AL. V. REILLY, 93 CIV. 314 (LTS) (SDNY), AND PLAINTIFFS IN RIVERKEEPER, ET AL. V. EPA, 06 CIV. 12987 (PKC) (SDNY), July 17, 2012, accessible at http://water.epa.gov/lawsregs/lawsguidance/cwa/316b/loader.cfm?csModule=security/getfile&PageID=627843

As described in Footnote 1 above,[13] the repeated failure of the Commission's LTPP process to retire, replace, or repower the Southern California coastal plants that are at issue in the SWRCB's OTC policy establishes a lamentable historic record. Whether a question to be determined under new EPA regulations, or California public trust doctrine, or the "best professional judgment" of the SWRCB, any material relaxation of the existing OTC compliance schedule is likely to be hotly litigated in the federal courts. Court administration of California's prison health care system has not been a particularly pleasant experience for state government. Judicial supervision of electricity grid management and utility procurement decisions could be considerably worse.

A4NR believes the Commission should assume the SWRCB's current compliance schedule remains intact.

3. Conclusion.

A4NR considers the draft *2012 IEPR Update* a worthy follow-up to the Commission's 2011 IEPR recommendation that the CEC, CPUC and ISO more forthrightly address the contingencies of extended outages at the state's rapidly aging nuclear plants. Significantly, the draft *2012 IEPR Update* describes an attentiveness to these challenges by the three agencies that is long overdue. We have focused our comments on two non-nuclear issues we believe may exacerbate the challenges facing Southern California, rather than speculate on whether either SONGS unit will be a productive asset again. Anyone witnessing the spectacle of uncertainty pervading the NRC-SCE meeting last Friday can recognize this crisis is deepening. The draft *2012 IEPR Update* identifies an intelligent and pragmatic manner in which to proceed.

Sincerely,

/s/

Rochelle Becker
Executive Director

[13] The reference is to Footnote 1 of A4NR's brief, which reads: "D.06-07-029, citing 'the urgent need to bring new capacity on line as soon as 2009, at least for Southern California' (p. 3) and 'the fact that SCE has not signed any long-term contracts to promote new generation' (p. 10) despite having been previously authorized by D.04-12-048 to do so, ordered SCE to procure 1,500 MW (p. 61, Ordering Paragraph #1). Notably, in the same proceeding the California Energy Commission ('CEC') had recommended a four-year phase-out of reliance on 8,088 MW of aging plants, including all of the OTC units, because 'it would be imprudent for SCE to contract with these aging units beyond 2012.' CEC Final Transmittal of 2005 Energy Report Range of Need and Policy Recommendations to the California Public Utilities Commission, Publication # CEC-100-2005-008-CMF., December 16, 2005, p. 114."