

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate  
and Refine Procurement Policies and  
Consider Long-Term Procurement Plans.

Rulemaking 10-05-006  
(Filed May 6, 2010)

**OPENING BRIEF OF THE  
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES  
ON TRACK I (SYSTEM PLANNING) AND TRACK III (PROCUREMENT RULES)**

September 16, 2011

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## SUMMARY OF RECOMMENDATIONS

In accordance with Rule 13.11 of the Commission's Rules of Practice and Procedure, the Center for Energy Efficiency and Renewable Technologies (CEERT) Opening Brief recommends that the Commission take the following actions in its decision(s) on Track I (System Planning) and Track III (Procurement Rules) issues:

- Track I:** The Commission should adopt the System Track I Settlement Agreement filed on August 3, 2011, without modification.
- Track I:** The Commission should direct that the California Independent System Operator's (CAISO's) Phase 2 analysis should be part of a new LTPP cycle, instituted with a Commission rulemaking issued in the first quarter of 2012, and should incorporate the demand forecast and other relevant results from the California Energy Commission's (CEC's) 2011 Integrated Energy Policy Report (IEPR).
- Track III:** The Commission should reject Energy Division's proposal that the Procurement Oversight Rules (Rulebook) should be adopted as a "fully enforceable document."
- Track III:** Any Procurement Oversight Rules (Rulebook) should only be adopted as a non-enforceable compendium of current Commission procurement requirements and should extend to *all* procurement, including Renewable Portfolio Standard (RPS) resources, demand response, and energy efficiency.

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The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits this Opening Brief on Track I System Planning and Track III Procurement Rules issues in this Long Term Procurement Plan (LTPP) rulemaking (R.10-05-006). This Opening Brief is filed and served pursuant to Rule 13.11 of the Commission's Rules of Practice and Procedure; the Administrative Law Judge's (ALJ's) Rulings issued on May 31, June 10, and June 13, 2011; and the ALJ's Ruling made during the evidentiary hearing held on August 15, 2011, establishing September 16 as the due date for Opening Briefs on Track I and Track III issues.

**I.  
TRACK I: SYSTEM PLANNING**

**A. THE SYSTEM PLANNING TRACK I SETTLEMENT AGREEMENT IS  
REASONABLE, CONSISTENT WITH LAW, IN THE PUBLIC INTEREST, AND  
SHOULD BE ADOPTED BY THE COMMISSION.**

In issuing this current LTPP rulemaking (R.10-05-006), the Commission established three tracks "for different elements" of the Investor Owned Utilities' (IOUs') LTPPs.<sup>1</sup> Track I (System Planning) was specifically aimed at identifying the "[Commission]-jurisdictional needs for new resources to meet system or local resource adequacy and to consider authorization of IOU [Investor Owned Utility] procurement to meet that need, including issues related to long-term renewables planning and need for replacement generation infrastructure to eliminate

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<sup>1</sup> R.10-05-006, at p. 9.

reliance on power plants using once-through- cooling (OTC).”<sup>2</sup> The Commission indicated that, in addition to maintaining “an adequate reserve margin,” “primary drivers for any need for new resources identified in this proceeding” would include integrating renewables, supporting OTC policy implementation, maintaining local reliability, and meeting greenhouse gas (GHG) goals.<sup>3</sup>

On August 3, 2011, CEERT joined with multiple parties made up of the IOUs, consumer advocates, and environmental and industry representatives (“Settling Parties”) in moving for expedited suspension of the System Planning Track 1 schedule (“Motion”) and approval of an attached settlement agreement reached by these parties as to that track (“Settlement Agreement”). The Settlement Agreement was also the subject of testimony by a panel of representative parties at the evidentiary hearing held in this rulemaking on August 16, 2011.

For CEERT, whose policy goal is to improve air quality in the electric generation sector in California through reduced dependence on fossil fuels and increased reliance on energy efficiency and renewable resources, this proceeding and settlement are extremely important. In this regard, CEERT has actively participated on legislative initiatives and in Commission proceedings, including this current and prior LTPP rulemakings,<sup>4</sup> to advocate for increasing renewables procurement and reducing greenhouse gas (GHG) emissions in California from the generation of electricity, among other sources.<sup>5</sup>

CEERT has also strongly supported the Commission’s further commitment to these goals through making renewables procurement the “preferred” generation resource pursuant to the Energy Action Plan (EAP) II. CEERT clearly agrees with the Commission that “procurement

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<sup>2</sup> R.10-05-006, at p. 9.

<sup>3</sup> R.10-05-006, at p. 12.

<sup>4</sup> R.06-02-013, Exhibit (Ex.) 69 (CEERT (Ferguson)).

<sup>5</sup> See, e.g., Senate Bill (SB) 2 (Stats. 2011; Ch. 1 (April 12, 2011), increasing the current Renewable Portfolio Standard (RPS) Program goal from 20% by 2010 to 33% by 2020) (Public Utilities (PU) Code §399.11, et seq.; Assembly Bill (AB) 32 (“California Global Warming Solutions Act of 2006” (Health & Safety Code §38500, et seq.) (Stats. 2006; Ch. 488.) See also, Ex. 1100 (Track II), at p. II-2 (CEERT (Ferguson)).

decisions must now consider carbon risk when filling net short positions with fossil resources, so as not to ‘crowd out’ preferred resources [footnote 13] or incur stranded costs by purchasing technology that may soon become obsolete.”<sup>6</sup> From CEERT’s perspective, California policy today should be aimed at making renewable generation, not gas or other fossil-fired generation, the “conventional,” default procurement for IOUs, with planning for that procurement accomplished in a manner that avoids “just in time planning” or unnecessary fossil procurement.

In terms of System Planning in Track 1, analysis appropriately has focused on the impacts of long-term renewables integration into the electric system and the use of scenario planning, an approach first recommended by CEERT and endorsed by the Commission in D.07-12-052, the Commission’s last decision on IOU LTPPs.<sup>7</sup> In that LTPP cycle, CEERT had specifically advocated for use of at least 3 supply scenarios aimed at reducing GHG emissions and meeting a 33% renewables target for 2020, which has now become a statutory mandate.<sup>8</sup> In this regard, the Commission found that it was “prudent” for the IOUs to develop “reasonable scenarios regarding different mixes of preferred resources and the operational characteristics of additional fossil generation that the IOUs will need to reduce their carbon emissions from electric generation resources back to, at a minimum, 1990 levels.”<sup>9</sup>

As both the Motion and the Settlement Agreement reflect, over the last year, in particular, both the IOUs and the California Independent System Operator (CAISO) have, at the Commission’s direction, performed and refined analysis of “system resource plans using four scenarios” based on “standardized planning assumptions established by the Commission.”<sup>10</sup> The

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<sup>6</sup> R.10-05-006, at p. 5. Footnote 13 states: “Preferred resources are defined by EAP II. EAP II ranks the preferred resources as follows: Cost effective Energy Efficiency and Demand Response, renewable resources, distributed generation, and clean and efficient fossil generation.”

<sup>7</sup> D.07-12-052, at pp. 5-6; 244-245.

<sup>8</sup> D.07-12-052, at p. 239-240; Senate Bill 1X 2 (Stats. 2011; Ch. 1) (PU Code §399.11, et seq.).

<sup>9</sup> D.07-12-052, at p. 6.

<sup>10</sup> Joint Parties Motion for Adoption of Settlement, at p. 3.

IOUs also “developed three scenarios and a further sensitivity analysis;” the CAISO analyzed two other scenarios; and the IOUs and CAISO, together with the IOUs’ consultant, “calculated the ‘performance evaluation metrics’ associated [with] all of these scenarios.”<sup>11</sup> This analysis also included a methodology developed by the CAISO for assessing renewable integration resource needs.

As stated in the Joint Parties’ Motion, the Settlement Agreement “addresses the fundamental issue” in this System Planning Track 1: “[S]hould the Commission determine that, due to system needs, the [IOUs] should be directed to obtain additional generation resources?”<sup>12</sup> In answer to this question, the Settling Parties agree that: “The resource planning analyses presented in this proceeding do not conclusively demonstrate whether or not there is need to add capacity for renewable integration purposes through the year 2020, the period to be addressed during the current LTPP cycle.”<sup>13</sup> Of significance, based on the application of CAISO’s renewable integration methodology to Commission-required scenarios, the Settling Parties further agree that the “results show no need to add capacity for renewable integration purposes above the capacity available in the four scenarios for the planning period addressed in this LTPP cycle (2012-2020).”<sup>14</sup> Instead, it is generally agreed that “further analysis is needed before any renewable integration resource need determination is made.”<sup>15</sup> The issue of next steps, within the context of the Settlement Agreement, is discussed in the following Section II of this brief.

Rule 12.1(d) of the Commission’s Rules of Practice and Procedure states that Commission approval of a settlement turns on findings that the “settlement is reasonable in light

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<sup>11</sup> *Id.*, at p. 3.

<sup>12</sup> *Id.*, at p. 4.

<sup>13</sup> Settling Parties Motion for Adoption of Settlement, Attachment: Settlement Agreement, at p. 5 (hereinafter “Settlement Agreement”).

<sup>14</sup> Settlement Agreement, at p. 4.

<sup>15</sup> Settlement Agreement, at p. 5.



of the whole record, consistent with law, and in the public interest.” In the motion accompanying the Settlement Agreement, the Settling Parties demonstrate that the Settlement Agreement here meets all of these criteria, along with the procedural requirements applicable to proposing and filing a settlement.<sup>16</sup>

CEERT incorporates that discussion here by reference, but emphasizes that the analysis conducted by the IOUs and CAISO met the Commission’s requirements for this LTPP cycle; commits to continued analysis of the impact on system need, if any, of integrating increasing levels of renewables generation; and is consistent with legislative and Commission mandates and policies to achieve a 33% renewables by 2020 and to ensure safe, reliable electric service. This Settlement Agreement further serves the public interest by achieving greater efficiencies in the LTPP process and ensuring that any resulting decision in this proceeding appropriately reflects the results of the current analysis of system need that, in particular, does not conclusively demonstrate any need to add capacity for renewable integration purposes through 2020.

CEERT, therefore, urges the Commission to adopt the Settlement Agreement. CEERT’s recommendations on next steps are addressed in the following section.

**B. THE CAISO’S PHASE 2 ANALYSIS SHOULD BE PART OF A NEW LTPP CYCLE THAT ALSO INCORPORATES THE RESULTS OF CEC’S 2011 IEPR.**

In the Settlement Agreement, as further attested to at the evidentiary hearing held on August 16, 2011, the Settling Parties, including CEERT, agreed that, “the Commission should, in collaboration with the CAISO, continue the work undertaken thus far in this proceeding to refine and understand the future need for new renewable integration resources.”<sup>17</sup> In this regard, the Settling Parties agreed that, “either as an extension of the current LTPP cycle, or as part of the next LTPP cycle,” the following should occur: “(i) the continued review and adjustment of the

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<sup>16</sup> Settling Parties Motion, at pp. 5-7.

<sup>17</sup> Settlement Agreement, at p. 5.

methodology and assumptions used in the renewable integration analysis; and (ii) the analysis of the potential of integrating renewables with a variety of resources as intended in CAISO's proposed Phase 2 analysis."<sup>18</sup>

According to the Settlement Agreement, the "purpose of the Phase 2 analysis is to determine the amount and operational characteristics of resources, whether supply or demand side resources, that could address the operational needs of renewable integration."<sup>19</sup> Those resources are to include not only "conventional generation," but also "demand response, renewable resource dispatchability, energy storage, electric vehicle charging, smart grid, and greater reliance on renewable resources that require fewer integration services, either individual or combined with a suite of other renewable resources."<sup>20</sup> In both the Settlement Agreement and at hearing, the results of the CAISO's additional OTC and renewable integration studies are planned by the CAISO to be provided by March 31, 2012, and parties would have an opportunity to conduct discovery, serve testimony, and participate in a hearing on these results, with a "final Commission assessment of need or a decision ... issued no later than December 31, 2012."<sup>21</sup>

CEERT strongly supports this ongoing analysis, especially the consideration of resources other than "conventional generation" to address any "operational needs of renewable integration."<sup>22</sup> As to whether that analysis should be conducted as part of this current LTPP cycle or "the next LTPP cycle," CEERT urges the Commission to move forward with a *new* LTPP cycle in which this analysis and results would be developed and examined.

In particular, CEERT believes that there is great value in incorporating and using fresh inputs and assumptions tied to the demand forecast that will be adopted by the California Energy

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<sup>18</sup> Settlement Agreement, at p. 6.

<sup>19</sup> Settlement Agreement, at pp. 6-7.

<sup>20</sup> *Id.*

<sup>21</sup> Settlement Agreement, at pp. 5-6; see also, Reporter's Transcript (RT) at 364-365 (Settling Parties (Rothleder)).

<sup>22</sup> Settlement Agreement, at p. 6.

Commission (CEC) in its 2011 Integrated Energy Policy Report (2011 IEPR). According to the CEC's "Scoping Order" for its 2011 IEPR (Docket 11-IEP-1), the 2011 IEPR will be considered for adoption by the CEC in December 2011.<sup>23</sup> The 2011 IEPR, as consistent with statute, will present "an assessment of all aspects of energy supply, demand, production, transportation, delivery, and price," with a further emphasis in this 2011 cycle, on "the most effective approaches" for implementing the Governor's Clean Energy Jobs Plan, the Governor's goals to increase renewable electricity in California through localized electricity generation, and the use of energy storage capacity to help "integrate these renewable resources into the electricity delivery system."<sup>24</sup>

These goals, and the results of the 2011 IEPR, are consistent with the direction and scope of the CAISO's Phase 2 analysis, and should be reflected in any system or renewables integration need assessment that may be made by this Commission in the next year to 18 months. CEERT recommends that this combined analysis be part of a new LTPP cycle and rulemaking instituted by this Commission during the first quarter of 2012.

## **II.**

### **TRACK III: PROCUREMENT OVERSIGHT RULES**

#### **A. CEERT JOINS THOSE PARTIES APPROPRIATELY OBJECTING TO ENERGY DIVISION'S PROPOSAL THAT ITS PROCUREMENT OVERSIGHT RULES BE ADOPTED AS A "FULLY ENFORCEABLE DOCUMENT."**

In the ALJ's Ruling issued on June 13, 2011 (June 13 ALJ's Ruling), five issues were identified as being within the scope of Track III of this proceeding, including "procurement oversight rules." On that topic, in particular, parties were directed in their testimony to address a

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<sup>23</sup> CEC Docket 11-IEP-1, Committee Revised Scoping Order, at p. 6. See: [http://www.energy.ca.gov/2011\\_energy\\_policy/notices/2011-03-30\\_Revised\\_Scoping\\_Order.pdf](http://www.energy.ca.gov/2011_energy_policy/notices/2011-03-30_Revised_Scoping_Order.pdf).

<sup>24</sup> *Id.*, at p. 2.

“Staff Proposal on Procurement Oversight Rules,” attached to the June 13 ALJ’s Ruling as Appendix B (“Staff Proposal”).

Of significance to CEERT, the Staff Proposal, in reciting the genesis of such rules, begins with noting that, based on a ruling by a previously assigned ALJ, the original “Rulebook” had been intended to be a “clear compendium of current California Public Utilities Commission (CPUC) procurement requirements.”<sup>25</sup> The “Rulebook” had been circulated in draft form and was the subject of party comments during June 2010.

As the Staff Proposal confirms:

“In [those] comments...., the parties, with the exception of Southern California Edison, *uniformly preferred* the ‘compendium’ characterization to mean that the *Rulebook should serve as a non-enforceable, reference-only summary of existing Commission procurement rules derived from various decisions*. The numerous arguments presented by parties in support of their non-enforceable, reference-only interpretation are varied and are already on record in their filed comments and replies, and so will not be repeated here. Energy Division staff, however, has consistently envisioned that the Rulebook should supersede existing decisions, in that the document would be treated as a General Order and will be fully enforceable. The Energy Division proposes that the Commission should adopt a Rulebook, or procurement manual, as a fully enforceable document.”<sup>26</sup>

Unfortunately, not only has the Energy Division in its Staff Proposal casually dismissed parties’ “arguments” against having this Rulebook serve as a “fully enforceable document,” but, by doing so, has completely failed to address or deal with the very serious legal shortcomings of its recommendation that these rules in fact be “fully enforceable.”

On this point, CEERT notes that it was, in fact, among the parties that objected to the Energy Division’s insistence on treating a *Staff-developed* “manual” as having the force and effect of law. Specifically, CEERT in its June 2010 Comments on the Rulebook stated:

“For statutes or even General Orders, case law is a critical part of interpreting individual words and mandates. The Rulebook, based on Staff’s

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<sup>25</sup> June 13 ALJ’s Ruling, Appendix B, at p. 2.

<sup>26</sup> *Id.*; emphasis added.

interpretation, seems destined to eliminate that critical component of notice and opportunity to be heard that is part of any law.

“Staff’s approach to the Rulebook also suggests that the Commission decisions are not subject to change after issuance. This assumption is wrong. Not only are all Commission decisions subject to change by future Commissions, but all are subject to change by action of the appellate courts and by party requests stemming from applications for rehearing, petitions for modifications, petitions for rulemakings, and even motion practice. . . . What is also not clear, especially in light of the June 2 ALJ’s Ruling and the ALJ’s comments at the PHC, is the source of the direction given to Energy Division to create a Rulebook in this manner in the first place. While clarity in instructions to the utilities is obviously useful, Commission decisions, taken in context, also permit some flexibility that allow the terms of those orders to apply to specific circumstances or systems.”<sup>27</sup>

At this point, there has been *no* legislative mandate *or* Commission mandate for such a “legally enforceable” document to be created or implemented in the first place, especially one that would supersede all Commissions decisions, so that those decisions are no longer legally binding or effective. Without that critical direction, the Staff has not established that the Commission has authorized, or has the authority to authorize or delegate to Staff, the creation of such “enforceable” rules or to adopt such an enforceable rulebook that permanently supersedes its decisions in the first place. A key principal of Commission decisions, in particular, is that, by statute, the “[C]ommission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it.”<sup>28</sup>

Not surprisingly, a number of parties in their Track III testimony, including even SCE, also object to Energy Division’s proposal that its Rulebook be used as a “fully enforceable document,” which would supersede all Commission decisions on which it was initially based.<sup>29</sup> CEERT, as noted above, clearly shares Pacific Environment’s concern that such an approach has

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<sup>27</sup> CEERT Comments on Rulebook (June 21, 2010), at pp. 2-3.

<sup>28</sup> Public Utilities (PU) Code §1708; emphasis added.

<sup>29</sup> See, e.g., Exhibit (Ex.) 107, at pp. 4-1 – 4-3 (PG&E (Everidge)); Ex. 211, at pp. 21-22 (SCE (Dagli)); Ex. 313, at pp. 25 - 26 (SDG&E (Eekhout)); Ex. 505, at p. 23 (Pacific Environment (Cox)).

the effect of “obscuring [the] factual context” on which these decisions were based and that “adopting enforceable rules in this manner would run afoul of the procedural rights afforded to interested parties when the Commission amends or repeals a prior decision.”<sup>30</sup> Further, as the IOUs note, the Staff Proposal also lacks sufficient specificity for this task, changes existing rules, or adds new rules, without record support.<sup>31</sup>

There is simply no basis in fact or law to support the Energy Division’s proposal that its “Procurement Oversight Rules” should be adopted by the Commission as a “fully enforceable document.” Instead, the Commission should reject this request and move forward to develop a Rulebook, as originally intended, to be a compendium or research tool to guide parties and the Commission in future procurement planning proceedings.

**B. ALL PROCUREMENT SHOULD BE INCLUDED IN ANY ADOPTED PROCUREMENT OVERSIGHT RULES OR RULEBOOK.**

Without waiving its objections stated above, to the extent that the Commission adopts the Procurement Oversight Rules, the Commission should only do so, whether as a “compendium” or “fully enforceable document,” if it includes rules for *all* procurement, including renewable resources, energy efficiency, and demand response. CEERT’s position, as stated in June 2010, continues to be as follows:

“Further, CEERT does not believe it is appropriate to adopt such a far-reaching ‘order’ (Rulebook) unless it includes rules for *all* procurement, including Renewable Portfolio Standard (RPS) resources, demand response, and energy efficiency. The June 2 ALJ’s Ruling indicates that this expansion is ‘not a near-term goal,’ and Staff stated at the PHC [Prehearing Conference] that time had not permitted inclusion of procurement rules for those resources. However, given that the Commission’s overall goal of its long term procurement planning process is to integrate all resources and that these specific resources are those highest on the Energy Action Plan’s ‘loading order,’ it is not appropriate to proceed with a ‘procurement’ Rulebook, especially one with the force and effect of law, without

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<sup>30</sup> Ex. 505, at p. 24 (Pacific Environment (Cox)).

<sup>31</sup> See, e.g., Ex. 107, at pp. 4-2 (PG&E (Everidge)); Ex. 313, at pp. 25 - 26 (SDG&E (Eekhout)).

including all resources. Such inclusiveness is needed to ensure that parties understand the differences and interaction of procurement rules as to and between all resources.”<sup>32</sup>

More than a year has passed since the concept of a “Procurement Rulebook” emerged. In that time, the RPS mandate has increased from 20% renewables procurement by 2010 to 33% by 2020. As stated previously in this brief, this mandate, along with the “preferred” status of energy efficiency, demand response, and renewables in the EAP “loading order,” places a singular emphasis on ensuring that each IOU’s long term procurement plans fully reflect and plan for these resources. CEERT, therefore, urges the Commission not to adopt any Procurement Oversight Rules or rulebook until it fully incorporates rules governing *all* procurement.

### **III. CONCLUSION**

Based on the applicable law, policy, and record in this proceeding, CEERT respectfully requests that the following be part of the Commission’s decision on Track I (System Planning) and Track 3 (Procurement Rules) in this LTPP cycle:

**Track I:** The Commission should adopt the System Track I Settlement Agreement filed on August 3, 2011, without modification.

**Track I:** The Commission should direct that the California Independent System Operator’s (CAISO’s) Phase 2 analysis should be part of a new LTPP cycle, instituted with a Commission rulemaking issued in the first quarter of 2012, and should incorporate the demand forecast and other relevant results from the California Energy Commission’s (CEC’s) 2011 Integrated Energy Policy Report (IEPR).

**Track III:** The Commission should reject Energy Division’s proposal that the Procurement Oversight Rules (Rulebook) should be adopted as a “fully enforceable document.”

**Track III:** Any Procurement Oversight Rules (Rulebook) should only be adopted as a non-enforceable compendium of current Commission procurement requirements and

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<sup>32</sup> CEERT Comments on Rulebook (June 21, 2010), at pp. 3-4; emphasis original.

should extend to *all* procurement, including Renewable Portfolio Standard (RPS) resources, demand response, and energy efficiency.

Respectfully submitted,

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