

**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 COGENERATION ASSOCIATION OF CALIFORNIA ON
TRACK I SYSTEM PLANS AND TRACK III PROCUREMENT RULES**

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The Cogeneration Association of California (CAC)¹ submits this opening brief pursuant to the Assigned Commissioner's Scoping Memo of December 3, 2010 and the Administrative Law Judge's Ruling of June 13, 2011. The June 13 ruling includes an alarming Track III proposal to issue a compendium of procurement policies (Rulebook) established by previous CPUC decisions. Under the proposal, the Commission would adopt the Rulebook as a General Order, thereby giving it precedential value superior to the same decisions it summarizes. The precedential effect of the proposal creates a number of issues:

- Opening decided issues to re-litigation;
- Creating administrative inefficiencies;
- Confusing the relevant issues for resolution among interested parties; and
- Imposing unwarranted oversight obligations on the Commission.

¹ CAC represents the combined heat and power and cogeneration operation interests of the following entities: Coalinga Cogeneration Company, Mid-Set Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company, Midway Sunset Cogeneration Company and Watson Cogeneration Company.

The Commission should only adopt a properly vetted Rulebook as a non-enforceable reference to previous procurement decisions. The Commission should conduct that vetting to avoid establishing potentially inconsistent directives.

Finally, the vast majority of parties in this proceeding submitted a motion to settle issues regarding Pacific Gas & Electric Company (PG&E) and Southern California Edison's (SCE's) Track I system procurement plans. The Commission should grant joint parties' motion.

I. THE COMMISSION SHOULD AVOID CREATING INCONSISTENCY BETWEEN THE RULEBOOK AND ESTABLISHED PROCUREMENT DECISIONS

The proposed Rulebook would include dozens of decisions, the magnitude and complexity of which require it to be a reference-only compendium instead of a standalone order. The Energy Division proposes to *“adopt a Rulebook, or procurement manual, as a fully enforceable document”* that would *“supersede existing decisions”* regarding procurement.² Parties comments' on the Energy Division's draft Rulebook, issued June 2, 2010, almost unanimously prefer the Rulebook to be a *“non-enforceable, reference-only interpretation”* of existing procurement rules.³

This near-unanimous opposition is well founded. Adopting the Energy Division's proposal invites re-litigation of already decided issues. Due process requires that parties be allowed to comment on the language and summaries included in the Rulebook, allowing parties to attempt to chip away at and modify unfavorable decisions. Further, parties' interpretations of previous decisions can vary widely, and the Energy

² *Administrative Law Judge's Ruling Addressing Motion for Reconsideration, Motion Regarding Track I Schedule, and Rules Track III Issues*, R.10-05-006, Appendix B, page 2 (June 13, 2011). The only commenter that endorsed Energy Division's proposal was Southern California Edison.

³ *Id.*

Division's interpretation of each decision will be scrutinized by every party implicated by each rule. The resolution of any conflicts resulting from this scrutiny is almost certain to be time consuming and contentious and could result in numerous petitions for rehearing or modification or appeals to higher courts.

Further, the proposal will reduce clarity by ignoring the depth and detail required to fully explain all of the complex procurement rules that exist. Even the most well-intentioned summaries can distort the meaning of an original decision. A discrepancy between a superseding Rulebook and an original decision would be resolved in favor of the Rulebook, which results in reliance on a summary's stark language instead of the rich record upon which the original decision was based. For example, the June 2, 2010 draft of the Rulebook did not include D.10-12-035, which created the Qualifying Facility/Combined Heat and Power (QF/CHP) Program, a fundamental shift in the pricing and procurement rules regarding CHP generators. A Rulebook that inadvertently misinterprets the QF/CHP Program's terms could undo that decision, which approved a settlement resolving decades of contentious issues.

An enforceable Rulebook would need to be constantly updated in a timely manner to prevent the existence of two sets of conflicting procurement rules. This requirement could tax Commission resources, and any oversight in updating the Rulebook would cause unnecessary confusion and complexity.

The Rulebook must be properly vetted before it is adopted as either a superseding or reference-only document. The Energy Division issued the June 2, 2010 Rulebook as a 132-page draft, giving parties less than a month to review the document and provide comments. This time allowed for a cursory review of the Rulebook, but

parties have not been able to fully analyze a revised draft since that time. The Commission should allow time for a comprehensive review of each section of the document, especially if it is to carry precedential value.

II. CAC CONTINUES TO SUPPORT THE MOTION TO SETTLE TRACK I ISSUES

Track I's principal purpose is to determine the procurement need for each utility and authorize each utility's system procurement plan to meet that need.⁴ Numerous parties, including CAC, moved to settle this issue as it pertains to PG&E and SCE on August 3, 2011. CAC continues to support this settlement.

III. CONCLUSION

The Commission should adopt the Rulebook as a non-enforceable reference document once it is properly vetted and should grant the parties' settlement motion.

Respectfully submitted,



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⁴ *Motion for Expedited Suspension of Track 1 Schedule and For Approval of Settlement Agreement*, R.10-05-006 (August 3, 2011).