

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)

PACIFIC ENVIRONMENT'S REPLY BRIEF ON TRACK I AND III ISSUES

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Pacific Environment submits this Reply Brief in response to the Track I and Track III testimony submitted by parties in this proceeding, as well as the evidentiary hearings held in August 2011. This brief is timely submitted in accordance with the schedule set by Administrative Law Judge (ALJ) Allen during the evidentiary hearing.

INTRODUCTION

Section 454.5 of the Public Utilities Code requires the Commission to evaluate utility plans and ensure that any procurement authorization is supported and justified, complies with California's renewable and loading order requirements, is just and reasonable, and is filled through an open competitive process. In this proceeding, due in part to California's extraordinarily large reserve margin, the Commission should not authorize *any* procurement. In fact, as reflected in the proposed settlement, the majority of the parties agree that no procurement authority is necessary at this time. Only one party, SDG&E, requests procurement authority, and it fails to offer the support or the justification necessary to authorize this procurement.

Because procurement authority is not necessary at this time, the Commission has a valuable opportunity to examine its oversight and the transparency of the procurement process going forward. Many parties and the Energy Division have offered concrete ideas to improve the procurement process by strengthening the ability of the Independent Evaluator (IE) and the Procurement Review Group (PRG) to review bids, and by making more information available to

the public. These suggestions come at a critical juncture when oversight and review are crucial as the utilities move toward meeting the State’s renewable and greenhouse gas requirements.

This proceeding also considers the implications of two of California’s key environmental requirements on rates and utility operations. The Commission’s analysis of the greenhouse gas (GHG) and once-through cooling (OTC) requirements has the potential to either support the State’s policy objectives or hinder them. To remain consistent with the State’s environmental goals, the Commission should closely examine the purposes of the GHG and OTC policies and ensure that any decision evaluates how to best achieve these purposes.

DISCUSSION

I. TRACK I ISSUES

A. **The Commission Should Approve the Settlement and Require That Other Integration Resources Besides Fossil Fuel Facilities Are Examined Before the Next Decision.**

The majority of the parties strongly support the proposed settlement and urge the Commission to approve its reasonable resolution of Track I issues.¹ Even the parties who did not sign the settlement raise concerns related only to next steps, not to the proposed settlement itself.² Importantly, consistent with the proposed settlement, the totality of the evidence demonstrates that there is no integration need or local capacity reliability need in PG&E’s or

¹ See, e.g., Pacific Environment Opening Br., at pp. 2-4; Division of Ratepayer Advocates (DRA) Opening Br. at pp. 3; The Utility Reform Network Opening Br. at pp. 1-2; Pacific Gas & Electric Company Opening Br. at p. 1; California Independent System Operator Br. at p. 1; Communities for a Better Environment (CBE) Opening Br. at p. 3; Sierra Club Opening Br. at p. 2-3; CEERT Opening Br. at pp. 1-5; Energy Producers and Users Coalition (EPUC) Opening Br. at pp. 4; GenOn Opening Br. at pp. 3-4; California Large Energy Consumers Ass’n Track I Opening Br. at pp. 1-2; Vote Solar Opening Br. at pp. 1-2; Natural Resources Defense Council (NRDC) Opening Br. at p. 1

² See AES Opening Br. at pp. 2-3 (describing how it did not sign the settlement due to concern related to the proposed path forward); Large Scale Solar Association (LSA) Opening Br. at p. 3 (support for settlement based on its understanding of what can challenge in future proceedings); Jan Reid Opening Br. at pp. 3-6 (articulating concerns about next steps and future analysis); Women Energy Matters Opening Br. at p. 19 (articulating concerns that other integration resources have not been examined yet).

SCE's territories at this time.³ For these reasons, the proposed settlement is reasonable, consistent with the law, in the public interest, and thus should be approved.⁴

While supporting the proposed settlement, parties also describe important steps outlined within it that Pacific Environment strongly believes should occur before the next evaluation of integration need.⁵ In particular, to assure a complete evaluation of integration need, Pacific Environment urges the Commission to prioritize inclusion of an analysis of alternative integration resources, which CAISO has referred to as a "Phase 2" analysis.⁶ In the proposed settlement, the parties recommend that either this or the next LTPP include an "analysis of the potential of integrating renewables with a variety of resources as intended in CAISO's proposed Phase 2 analysis."⁷ 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, including not only conventional generation but also resources such as demand response, renewable resource dispatchability, energy storage, electric vehicle charging, smart grid, and greater reliance on renewable resources that require fewer integration service, either individually or combined with a suite of other renewable resources.⁸

Without an analysis of the existing capability of the system and other technologies that can backup renewables, integration models proposed by CAISO do not reflect an appropriate

³ See Pacific Environment Opening Br. at p. 1-4.

⁴ Rule 12.1(d) of the Public Utility Commission's Rules of Practice and Procedure; *see also* Pacific Environment Opening Br. at pp. 2-4.

⁵ *See, e.g.*, CEERT Opening Br. at p. 6 ("CEERT strongly supports this ongoing [Phase 2] analysis especially consideration of resources other than 'conventional generation' to address any operation needs of renewable integration"); Green Power Institute Opening Br. at p. 14 (stating that: "A variety of new technologies and techniques will be available to help operate the electric system in 2020, with a high likelihood that renewables integration, as indeed balancing all sources of variability and unpredictability on the grid, will be accommodated almost entirely without the use of conventional gas-fired generation for integration, the only option that is considered for the job in the 2010 LTPPs."); CLECA Track I Opening Br. at p. 3; Jan Reid Opening Br. at p. 5.

⁶ See Proposed Track I Settlement at pp. 6-7

⁷ See Proposed Track I Settlement at p. 6.

⁸ See Proposed Track I Settlement at pp. 6-7; Hearing Tr. at p. 362:8-22.

estimate of what will most likely be required to attain California's 33 percent renewable goal.⁹ This Phase 2 analysis should at least consider the potential to backup renewables with renewable resources, demand response, energy storage, and existing facilities.¹⁰ Pacific Environment has previously described the import of this analysis, and spelled out how the Commission could prioritize its consideration of integration resources similar to the loading order.¹¹

To facilitate a Phase 2 analysis, CAISO recommends that parties propose sensitivities, and then a group of experts will "triage" the proposals to develop a workable list to be analyzed.¹² CAISO indicates that it has already started forming this group of "experts."¹³ This group of experts, however, does not appear to represent all the stakeholder interests participating in this proceeding.¹⁴ Pacific Environment recommends that the Commission oversee any process used to determine what analysis will be part of this or the next LTPP proceeding, and, if the Commission elects to follow CAISO's proposed process, assure that the variety of stakeholder interests from the LTPP proceeding are represented in the group of experts that triage proposals.

Commission oversight will likely be necessary to ensure that a useful Phase 2 analysis is completed. Without clear direction from the Commission, Pacific Environment is concerned that the Phase 2 analysis will not be prioritized even though several parties view its inclusion as

⁹ See Green Power Institute Opening Br. at pp. 14-15 ("It is well known that new technologies, such as smart-grid controls, storage, and plug-in vehicle charging, present potentially valuable opportunities for enhanced, non-fossil-fueled operability of the grid, even on a grid with a high level of penetration of intermittent generating sources. Until the analysis is repeated taking these new opportunities into account, there is a strong, inevitable bias towards over-identifying a need for new fossil generating resources."); CLECA Track I Opening Br. at p. 3.

¹⁰ See Large Scale Solar Association Opening Br. at p. 5 (Dr. Helman states that Phase 2 should include "consideration of a range of potential solutions to integration requirements, including those that can be provided by demand response, storage and renewable technologies."); GPI Opening Br. at p. 15.

¹¹ Pacific Environment's September 21, 2010 Comments at pp. 5-8; Pacific Environment's November 22, 2010 Comments at pp. 1-2; Pacific Environment's Prehearing Statement at pp. 2-3.

¹² CAISO Opening Br. at p. 3.

¹³ *Id.*

¹⁴ Although CAISO gave an initial list of participants, it is unclear whether this list has been finalized. See CAISO Opening Br. at p. 3 (listing likely participants). Notably, this list does not appear to include a member from an environmental organization even though several environmental organizations are participating in the LTPP.

critical to future integration determinations.¹⁵ Indeed, Pacific Environment has been advocating for the development of an analysis of alternative integration resources for many months, and to date, has not seen its suggestions implemented.¹⁶ For instance, Pacific Environment has repeatedly requested that CAISO’s model consider energy storage resources that are currently being developed and planned.¹⁷ Despite these multiple requests, the current model does not consider storage facilities, other than hydro storage facilities, that are currently on-line or are planned to come on-line within the 2020 time frame.¹⁸ This omission is made despite CAISO’s acknowledgments that “[e]nergy storage technology is rapidly advancing,”¹⁹ and “storage or curtailment opportunities should be considered in lieu of additional capacity.”²⁰

Pacific Environment views the inclusion of all types of potential alternative resources as a critical component of any future proceeding, and urges the Commission to follow this recommendation from the proposed settlement.

B. The Commission Should Reject CAISO’s Backdoor Request for Additional Testimony.

Even though CAISO signed the proposed settlement agreement, CAISO requests submission of additional testimony related to an issue in the settlement – potential renewable integration need.²¹ Pacific Environment urges the Commission to reject this request as improper, untimely, and inconsistent with the Commission’s requirements.

Initially, CAISO’s new testimony was not properly moved into evidence. Mere citation of new testimony in a brief does not comport with the Commission’s Rules of Practice and

¹⁵ See *supra* at p.3, n.5.

¹⁶ See, e.g., Pacific Environment’s September 21, 2010 Comments at pp. 5-8; Pacific Environment’s November 22, 2010 Comments at pp. 1-5; Pacific Environment’s December 16, 2011 Prehearing Conference Statement at pp. 2-3; and Pacific Environment’s January 14, 2011 Comments at p 6.

¹⁷ See Pacific Environment’s November 22, 2010 Comments at pp. 4-5; Pacific Environment’s January 14, 2011 Comments at p. 6.

¹⁸ See, e.g., CAISO’s January 14, 2011 Comments at p. 12.

¹⁹ CAISO, *Power Storage R&D: What Do The Next Five Years Look Like?*, at p. 5, available at <http://www.caiso.com/Documents/2749cb114f750.pdf>.

²⁰ CAISO Track I Testimony at p. 43.

²¹ See CAISO Opening Br. at p. 3.

Procedure.²² This request also fails to meet the requirements of this proceeding. Here, ALJ Allen set a schedule for submission of testimony.²³ CAISO's last minute request does not comply with this schedule. Furthermore, the document in question is dated August 18, 2011.²⁴ Hearings for this proceeding were held on August 30, 2011, and CAISO made no mention of this document, nor did it move for its admission despite this opportunity.

Fairness also mandates that CAISO be precluded from subsequently attempting to introduce such a document. Pacific Environment, and likely a number of other parties, has significant concerns related to the content of CAISO's proposed additional testimony. Pacific Environment has not entered its concerns into the record as testimony based on its understanding that the renewable integration issue was part of the proposed settlement.²⁵ CAISO should not be able to submit testimony that is not subject to cross-examination that other parties did not anticipate being in the record.²⁶ It is improper and unfair to all the other parties for CAISO to submit new testimony at this late stage. Further, CAISO has provided no reason why its testimony is necessary in light of the proposed settlement. For all the above reasons, CAISO's untimely and unsupported request to admit new testimony should be rejected, and all parts of CAISO's brief that rely on this improper testimony should be struck.

²² See Commission Rule of Practice and Procedure 13.8 (a) stating, "Prepared testimony shall constitute the entirety of the witness's direct testimony, and shall include any exhibits to be offered in support of the testimony . . ."; see also Commission Rule of Practice and Procedure 13.8 (b) stating, "Direct testimony in addition to the prepared testimony, other than a correction of minor typographical or wording errors that do not alter the substance of the prepared testimony, will not be accepted into evidence unless the sponsoring party shows good cause why the additional testimony could not have been served with the prepared testimony or should otherwise be admitted."

²³ See ALJ's June 2011 Ruling in R.10-05-006 (requiring submission of opening and reply testimony by CAISO on July 1, 2011 and August 11-12, 2011 respectively).

²⁴ See CAISO Opening Br. Ex. 1.

²⁵ Tr. 160:18-23 (ALJ Allen noted that if the settlement was rejected he would "have to come up with a way to get additional information on the record, because a lot of parties did not file their testimony that they would have filed testimony if the case was litigated.").

²⁶ See Commission Rule of Practice and Procedure 13.6 (a) stating, "Although technical rules of evidence ordinarily need not be applied . . . substantial rights of the parties shall be preserved."; see also D. 00-09-071 at p. 97 stating, "For the Commission to give weight to Exhibits . . . without affording anyone the opportunity to cross-examine the person who prepared these exhibits, would not preserve the substantial rights of the parties."

C. SDG&E's Request for Local Capacity Should Be Rejected.

SDG&E's Opening Brief fails to support or justify its request for 415MW for local capacity reliability. Indeed, SDG&E fails to even mention the numerous renewable resources being developed in its territory that were not included in its analysis. SDG&E also fails to justify both its decision to ignore its planned energy storage resources, and its decision to rely on energy efficiency assumptions already rejected by the Commission. Even considering these numerous flaws, as SDG&E admits, it only calculates 180 MW of need,²⁷ and it has failed to conduct any detailed analysis to determine whether that need or the cushion SDG&E proposes is even necessary.

In fact, SDG&E's speculative cushion demonstrates that its request is based largely on guesses and estimates. When asking for procurement authority, which will incur additional ratepayer costs and could potentially crowd out renewable resources, this number should be based on more than guess work and speculation.²⁸ Indeed, the Scoping Memo and the Public Utilities Code require a more detailed evaluation and justification before authorizing procurement authority.²⁹ SDG&E has provided no such justification.

Further showing that SDG&E's request should be rejected, the owner of the Encina facility, NRG, has raised valid questions related to SDG&E's retirement assumption of the Encina facility.³⁰

While any of these issues would be sufficient to reject SDG&E's request, when considered together, the evidence overwhelmingly supports its rejection.³¹ For all of these reasons, the Commission should reject SDG&E's LCR request.³²

²⁷ See SDG&E Opening Br. at p. 11.

²⁸ See Pub. Util. Code § 451 ("All charges demanded or received by any public utility . . . shall be just and reasonable."); D.11-03-036, at pp. 2-3 (rejecting project that would "subject the ratepayers to unacceptable risks," and that the utility failed to make "an adequate showing of need."); D.07-12-052, at p. 11 ("goal of AB 57 was to allow the IOUs to reliably serve their customers' needs at just and reasonable rates.").

²⁹ See Pub. Util. Code § 454.5(b)(9)(C); Pub. Util. Code § 739.10 ("The commission shall ensure that errors in estimates of demand elasticity or sales do not result in material over or undercollections of the electrical corporations.").

³⁰ See NRG Response in A.11-05-023, available at <http://docs.cpuc.ca.gov/efile/RESP/138138.pdf>.

II. TRACK III ISSUES

A. **The Commission Should Require Environmental Assessments of GHG Plans, Approve the Energy Division’s Recommended Contract Limitations for Once-Through Cooling Units, and Increase Its Oversight of the Procurement Process.**

As described in the Opening Brief, Pacific Environment requests that the Commission: (1) require consideration of emission reductions as a compliance option in the GHG compliance plans; (2) recognize that the Statewide OTC policy’s primary goal is to retire OTC units as soon as possible; (3) require explicit consideration of loading order, environmental justice, and need in bid evaluations; and (4) strengthen the role of the independent evaluator and procurement review group. Several parties provide support for Pacific Environment’s requests. For instance, the Independent Energy Producers (IEP) gives concrete reasons why the Commission should improve the bid evaluation process by requiring specific consideration of environmental criteria and viability.³³ In addition, Sierra Club points out several reasons why the Commission should evaluate offsets before approving them due to the potential environmental implications of a Commission decision.³⁴ This is consistent with the reasoning behind Pacific Environment’s request for an advice letter process. In fact, several of Pacific Environment’s requests, such as its request that IEs be hired by the Energy Division, are shared by many parties in the proceeding.³⁵

³¹ See, e.g., DRA Opening Br. at pp. 5-10 (detailing many reasons why SDG&E’s request should be rejected); Sierra Club Opening Br. at pp. 2-9; NRDC Opening Br. at 2-11.

³² Even using its unrealistic assumptions, SDG&E’s calculations do not show any need until its proposed OTC retirements at the end of 2017. CAISO is still evaluating the OTC issues for all three utilities. Other parties have requested the Commission to wait before making any determination related to OTC requirements. See, e.g., WPTF Opening Br at p. 5 (“WPTF recommends that the Commission should await the final results from the studies before making any determinations as to the need for replacement capacity associated with OTC retirements.”)

³³ See IEP Opening Br. at pp. 6-10 (stating that utilities tend to select projects with the lowest bids without giving sufficient regard to factors such as environmental impacts or the likelihood that the project would be completed).

³⁴ See Sierra Club Opening Br. at p. 16. Given the inherent risks and uncertainties, the Commission should require pre-approval for each offset transaction and reject the utilities’ request for a blanket approval at this time.

³⁵ See, e.g., WPTF Opening Br. at p. 15; DRA Opening Br. at p. 27; TURN Opening Br. at pp 8-9.

Moreover, the utilities fail to provide concrete reasons why Pacific Environment’s recommendations should not be adopted. For example, rather than respond directly to Pacific Environment’s request that IEs consider loading order, PG&E states it believes that IEs are not retained to ensure adherence to Commission policy or to decide whether a specific transaction is appropriate.³⁶

The only recommendation by Pacific Environment that received significant opposition is its support of the Energy Division’s proposal for OTC units. Although the majority of parties recognize the need to not contract beyond the compliance date pursuant to California’s policy,³⁷ none of the parties explain how allowing a utility to contract up to the compliance date is consistent with the State’s policy to end once through cooling as soon as possible. Allowing utilities to contract with OTC units up to the compliance date, as several parties request, would likely thwart this important provision of the policy. The Energy Division’s proposal, thus, is consistent with, and in furtherance of, the purpose and language of the State’s policy.

B. The Utilities’ Procurement Processes Should Be More Transparent.

Senate Bill (SB) 1488 requires the Commission to ensure that its practices pursuant to Section 454.5 of the Public Utilities Code provide for “meaningful public participation and open decision-making.”³⁸ Consistent with this requirement, the Commission has explicitly and repeatedly favored transparency in energy procurement procedures.³⁹ Indeed, as the Commission recognized: “[i]n the absence of a fair and transparent evaluation process, it is unlikely that ratepayers will benefit fully either from competition or from the utilities’ participation in a hybrid market.”⁴⁰ Citing these requirements, Pacific Environment’s Opening

³⁶ PG&E Opening Br. at p. 36.

³⁷ *See, e.g.*, DRA Opening Br. at p. 26; SDG&E Opening Br. at p. 22; PG&E Opening Br. at p. 17.

³⁸ 2004 Cal. Stats., Ch. 690, § 1 (Sept. 22, 2004).

³⁹ *See, e.g.*, D.06-06-066, at p. 2 (“This decision implements Senate Bill (SB) No. 1448 ... (which) expresses a preference for open decision making, a policy directive we embrace.”); D. 07-12-052, at p. 155 (“The evaluation criteria used in competitive solicitations must be clear, transparent, and available to potential bidders”).

⁴⁰ D.07-12-052, at p. 155.

Brief urges the Commission to increase transparency in the utilities' procurement processes by allowing the public access to publicly available material from the PRG process.⁴¹ Sierra Club also advocates for increased transparency of the PRG process.⁴² Several parties similarly ask the Commission to improve transparency in the RFO and bid evaluation process and GHG compliance instrument procurement. Pacific Environment supports these requests.

Initially, as IEP urges, the Commission should allow bid evaluation criteria to be publicly available during the RFO process.⁴³ To support this request, IEP states that “when the specific product definition and the weighting of the desired characteristics are made known to bidders in advance, bidders will provide bids that meet the utility’s needs, resulting in the best value at the lowest cost to ratepayers.”⁴⁴ IEP further cites the fact that past RFOs, such as PG&E’s 2008 LTRFO, were not sufficiently transparent to allow bidders to prudently prepare bids.⁴⁵ Improving transparency in RFO procedures, such as PG&E’s, will facilitate more effective and fairer results. Further, if UOGs are allowed to participate in RFOs, increased disclosure of bid evaluation criteria would help correct any unfair advantage enjoyed by UOG bids in competitive RFO processes.⁴⁶

In addition, as Communities for a Better Environment argues, transparency can also be improved by making the environmental evaluation of projects in the RFO process publicly available.⁴⁷ The environmental evaluation of a project is an assessment of publicly available material, making its release unlikely to impact the competitive nature of a bid. On the other hand, the environmental evaluation is most likely very important information to surrounding

⁴¹ See Pacific Environment Opening Br. at pp. 50-51.

⁴² See Sierra Club Opening Br. at pp. 19-23.

⁴³ See IEP Opening Br. at p. 8.

⁴⁴ IEP Opening Br. at p. 8.

⁴⁵ IEP Opening Br. at p. 11.

⁴⁶ IEP Opening Br. at p. 19. (“Any advantage the staff developing UOG bids may gain from having better information about the bid evaluation criteria will be dissipated if other bidders also have access to the information that is critical to bid evaluation.”)

⁴⁷ Communities for a Better Environment Tracks I and III Opening Brief (CBE Opening Br.) at p. 3.

communities. Therefore, pursuant to SB 1488, the Commission should ensure the environmental evaluation of projects allows for meaningful public participation.⁴⁸

Finally, Pacific Environment supports Green Power Institute's (GPI's) request that the Commission order PG&E to reissue its GHG plans with fewer and more appropriate redactions.⁴⁹ Utilities should only redact information as confidential if it could competitively harm the company.⁵⁰ The Commission has "a presumption that information should be publically disclosed and that any party seeking confidentiality bears a strong burden of proof."⁵¹ Therefore, the party claiming confidentiality "shall always have to make a particularized showing that its data meet the statutory definition (of confidential information), and may not simply label the data with the statutory language and rest."⁵² PG&E's cite to General Order 66-C⁵³ does not adequately fulfill the utility's "strong burden of proof."⁵⁴ Notably, neither SCE nor SDG&E redacted similar sections of their GHG compliance product procurement strategies, and PG&E failed to adequately justify its redactions as required by the Commission.⁵⁵ Furthermore, ALJ Allen specifically characterized PG&E's redactions as "a little overly aggressive," noting that PG&E "could have been a little bit more selective" in its redactions.⁵⁶

Without sufficient transparency in the GHG compliance product procurement plans, the process is not reflective of SB 1488's mandated "meaningful participation and open decision-making."⁵⁷ Therefore, Pacific Environment supports GPI's request that the Commission require PG&E to resubmit its GHG compliance product procurement strategy with "an appropriate and properly-justified level of redaction, if any."⁵⁸

⁴⁸ See D. 11-07-028, at p. 23.

⁴⁹ Green Power Institute (GPI) Opening Br. at p. 21.

⁵⁰ *Id.* at p. 8.

⁵¹ D. 06-06-066, at p. 1.

⁵² D. 06-06-066, at p. 11

⁵³ PG&E Track III Test. Declaration in Support of Confidentiality, at matrix pp. 1-2.

⁵⁴ D. 06-06-066, at p. 1.

⁵⁵ GPI Opening Br. at p. 21 (citing D.06-06-066 and R.05-06-040).

⁵⁶ Transcript at pp. 759-760.

⁵⁷ D.11-07-028, at p. 8.

⁵⁸ GPI Opening Br. at p. 21.

CONCLUSION

For the foregoing reasons, Pacific Environment recommends that the Commission adopt its recommendations.

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