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 (VSK) (Filed May 6, 2010)

REPLY BRIEF OF SIERRA CLUB CALIFORNIA ON TRACK I AND TRACK III ISSUES

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ARGUMENT

I. The Commission Should Reject SDG&E's Request For Authority To Procure Additional Capacity To Meet Local Capacity Requirements.

In Sierra Club's Opening Brief on Track I and Track III Issues, it described how San Diego Gas & Electric ("SDG&E") has attempted to justify local capacity requirement ("LCR") need by adjusting the Commission's Standardized Planning Assumptions based on arguments that have already been rejected in this proceeding. SDG&E's Opening Brief offers nothing new. SDG&E continues to argue that the energy efficiency assumptions must be "cost effective, reliable and feasible" and that, as a result, all Big Bold Energy Efficiency Strategies must be removed from the analysis entirely. *See* Op. Br. of San Diego Gas & Electric Co. (U 902 E) Regarding Track I and Track III Issues, at 11-12 (Sept. 16, 2011). SDG&E offers no analysis or support for its conclusion that each of these strategies fails to meet the "cost effective, reliable and feasible" test. There is no response to the Commission's earlier conclusion that the utilities already have strategies in place to implement some of these measures and that the best way to account for the uncertainty is to use the low-case values from the California Energy Commission's final Committee Report on Incremental Uncommitted Energy Efficiency. *See*

"Assigned Commissioner and Administrative Law Judge's Joint Scoping Memo and Ruling," at 36 (Dec. 3, 2010) (hereinafter "Scoping Memo and Ruling").

Similarly, SDG&E's claim that it is appropriate to discount the remaining energy efficiency assumptions using a 70 percent realization rate has already been rejected and has no basis. *See* Opening Br. of Sierra Club California on Track I and Track III Issues, at 8-9 (Sept. 16, 2011). SDG&E's Opening Brief again offers no analysis of why the cherry-picked discount number from the 2006-2008 suite of energy efficiency programs is appropriate for the particular programs being considered going forward. *See* Op. Br. of San Diego Gas & Electric Co. (U 902 E) Regarding Track I and Track III Issues, at 12-13. As the Natural Resources Defense Council explains, SDG&E's discount cannot be justified as necessary to avoid overlap with CEC assumptions and is inappropriate given the utility's obligation to meet these energy efficiency goals. *See* Op. Br. of the Natural Resources Defense Council (NRDC) on Track I System Resource Plans, at 7 (Sept. 16, 2011).

In the end, the only argument that SDG&E can offer is based on its *belief* that more conservative assumptions should be used. But even this generalized notion is undermined by the record in this proceeding demonstrating that the standardized assumptions are already very conservative. Sierra Club agrees with the arguments offered in the opening briefs of the Division of Ratepayer Advocates, Natural Resources Defense Council and Pacific Environment showing that the standardized assumptions already exclude significant planned storage and solar resources, as well as numerous energy efficiency programs for appliances and televisions. *See* The Division of Ratepayer Advocates' Op. Br. on Track I and Track III Issues, at 8 (Sept. 16, 2011); Op. Br. of the Natural Resources Defense Council (NRDC) on Track I System Resource Plans, at 2-5; Pacific Env't's Op. Br. on Track I and III Issues, at 10-15 (Sept. 16, 2011).

SDG&E simply cannot meet its burden of proof to support the changes to the Standardized Planning Assumptions that are necessary for SDG&E to demonstrate LCR need. The Commission therefore should deny SDG&E's request for procurement authority to meet this claimed need.

II. The Commission Should Reject The Utilities' Requests For Authority To Purchase Offsets To Comply With AB32.

The Commission does not have an adequate record to support approval of the utilities' requests to procure offsets to comply with California's Global Warming Solutions Act ("AB32"), Health & Safety Code § 38500 *et seq.* The issue of greenhouse gas product procurement was a late addition to the issues to be considered in this proceeding and, as a result, has not been fully vetted or analyzed. The utilities have asked for procurement authority without describing any consequences, risks or alternatives. As several parties have noted, there has been no analysis of the policy implications of allowing the utilities to purchase these offsets. *See, e.g.*, Pacific Env't's Op. Br. on Track I and III Issues, at 20-22 (recommending analysis of alternatives that would reduce actual emissions); The Division of Ratepayer Advocates' Op. Br. in Track I and Track III Issues, at 16 (calling for an analysis of how to maximize the use of preferred resources). The Commission is not equipped, based on this record, to assess how the purchase of offsets will support or undermine Commission policy regarding the loading of preferred resources and the promotion of the efficient use of fossil fuels. *See, e.g.*, Pub. Util. Code § 635.

Nor can the Commission assess the environmental impacts of its discretionary approval. The California Air Resources Board has identified potentially significant adverse environmental impacts from offset projects. *See* Opening Br. of Sierra Club California on Track I and Track III Issues, at 17-18. That analysis, however, was a programmatic review only and was developed to

consider the alternatives to a cap and trade program not to look at the alternatives available at the source implementation level being addressed here. *See* CARB, "Functional Equivalent Document Prepared for the California Cap and Trade Regulation," Appendix O, at 26 (Oct. 28, 2010) (available at: http://www.arb.ca.gov/regact/2010/capandtrade10/capv5appo.pdf). While there may be some opportunity to "tier" a new environmental analysis off of the work the Air Resources Board has already completed, the analysis has not been conducted and there has been no exploration of the options available to the utilities for minimizing or avoiding these significant environmental impacts altogether.

Before approving procurement of these offsets, the Commission should also ask the utilities to consider safeguards against the financial and other risks associated with this procurement. Pacific Environment and the Division of Ratepayer Advocates offer several potentially important mechanisms to minimize risk. *See, e.g.*, Pacific Env't's Op. Br. on Track I and III Issues, at 23-28 (recommending limited cost recovery and greater Commission oversight of individual transactions); The Division of Ratepayer Advocates' Op. Br. in Track I and Track III Issues, at 14-20. Sierra Club believes the policy analysis, environmental analysis and safeguard analysis should be conducted together to allow for a complete review of the issues and alternatives before the Commission grants the requested procurement authority.

Sierra Club agrees with Pacific Environment and the Division of Ratepayer Advocates that there is time for the Commission and utilities to conduct the missing analyses before acting on the utilities' requests. First, compliance with the AB32 cap and trade program has been delayed. *See* Pacific Env't's Op. Br. on Track I and III Issues, at 28-29; The Division of Ratepayer Advocates' Op. Br. in Track I and Track III Issues, at 13-14. Moreover, even once the AB32 cap and trade program is up and running, the utilities do not need authority to purchase

offsets in order to comply with AB32. *See* Op. Br. of Sierra Club California on Track I and Track III Issues, at 16-17. The Commission should deny the unanalyzed requests for offset procurement authority in this proceeding and take up the issue again in the next long-term procurement proceeding.

III. The Commission Should Require the Procurement Review Groups to Comply With California's Open Meeting Law.

California law requires public agencies and their advisory bodies to conduct public meetings. The Bagley-Keene Act requires meetings of a state body to be open to the public and that public notification of meetings include a specific agenda. Gov. Code §§ 11125.7, 11125(b). The Public Utilities Code incorporates the requirements of the Bagley-Keene Act and reinforces the Commission's duty to public meetings and public notice. Pub. Util. Code § 306(b). California's Public Records Act ("PRA") also favors public disclosure, and states that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." Gov. Code § 6250; *see also* Pacific Env't's Op. Br. on Track I and III Issues, at 50-51 ("non-confidential PRG information should be publicly accessible").

Sierra Club urges the Commission to require strict adherence to the Bagley-Keene Act. As advisory bodies to the Commission, PRGs are subject to the Bagley-Keene Act. *See* Gov. Code § 11121(c); Op. Br. of Sierra Club California on Track I and Track III Issues, at 20-21. Additionally, Sierra Club agrees with the Division of Ratepayer Advocates and Pacific Environment that the Energy Division Staff recommendations should be adopted by the Commission. *See* The Division of Ratepayer Advocates' Op. Br. in Track I and Track III Issues, at 27; Pacific Env't's Op. Br. on Track I and III Issues, at 53. While these proposals do not bring the PRGs into compliance with the Bagley-Keene Act, these proposals at least provide the participants in a PRG process a better opportunity to meaningfully participate.

CONCLUSION

For the foregoing reasons and those articulated in Sierra Club's opening brief, Sierra Club respectfully requests that the Commission adopt the recommendations set forth in this brief and in its opening brief.

Respectfully submitted,

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