

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

**COMMENTS OF
COGENERATION ASSOCIATION OF CALIFORNIA
ON PROPOSED DECISION**

Michael Alcantar
Donald Brookhyser
Alcantar & Kahl LLP
33 New Montgomery Street
Suite 1850
San Francisco CA 94105
415.421.4143 phone
415.989.1263 fax
mpa@a-klaw.com
deb@a-klaw.com

Counsel for the
Cogeneration Association of California

November 30, 2011

SUBJECT INDEX

1. The Proposed Decision should not respond to the deficiencies in PG&E's procurement plan by imposing a 10% cap on rate increases. The Conclusions of Law and Order should be revised to deny prospective approval and require reasonableness review of procurement costs.

TABLE OF AUTHORITIES

None cited.

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

**COMMENTS OF
COGENERATION ASSOCIATION OF CALIFORNIA
ON PROPOSED DECISION**

The Cogeneration Association of California (CAC) makes the following comments on the Proposed Decision Approving Modified Bundled Procurement Plans issued by Judge Allen on November 10, 2011 pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure.

I. SUMMARY

CAC supports the PD's finding that the bundled procurement plans must include a concrete obligation to procure QF/CHP capacity during the Second Program Period of the QF/CHP Settlement. The PD correctly recognizes the IOUs' on-going obligation to procure QF/CHP capacity and uses the Standardized Planning Assumptions to fix that obligation.

Although the PD correctly finds that PG&E's plan is deficient in not modeling specific procurement for the planning period, the PD improperly grants procurement authority to PG&E as long as it results in no more than a 10% rate increase. Such a generic boundary of a 10% rate increase does not serve to protect the ratepayers' interests in just and reasonable rates. The Commission may feel compelled to expedite this proceeding, but it should not excuse PG&E's deficiencies and should place the consequences of failing to file an adequate plan on PG&E.

Finally, CAC supports the PD's continued enforcement of the Loading Order and its use in framing the direction for each of the bundled plans.

II. IOUs' CONTINUING OBLIGATION TO PROCURE QF/CHP CAPACITY MUST BE RECOGNIZED

The PD correctly recognizes SCE's error in failing to provide for continuing QF/CHP procurement after 2015, the Second Program Period under the QF/CHP Settlement.¹ As adopted by the Commission in D.10-12-035, the IOUs have an obligation during the Second Program Period to procure (a) any portion of the utility's MW target that was not attained in the Initial Program Period; and (b) additional CHP capacity necessary to meet the utility's greenhouse gas emission reduction target as established by the Commission in the LTPP, taking into account the progress toward the MW target in the Initial Program Period.²

Although those two obligations should invoke regular modeling by the IOUs to calculate their remaining obligations, CAC supports the PD's resolution to use the procurement targets for CHP in the Standardized Planning Assumptions.³

III. RATE INCREASE LIMITATION IS NOT AN ADEQUATE SUBSTITUTE FOR PROCUREMENT PLANNING

The PD finds that PG&E's plan does not comply with Public Utility Code §454.5, in that PG&E claims it is "free to procure any amount or mix of resources regardless of what the Commission bases its decision upon..." in this proceeding.⁴ As the PD notes,

¹ PD, pp. 30-31.

² *Schoenbeck Testimony* at 4; D.10-12-035, Attachment A: Settlement Agreement Term Sheet §2.3, December 21, 2010, A.08-11-001.

³ PD, Ordering Paragraph 10.

⁴ PD, p. 10.

this violates the basic paradigm of Section 454.4 that the Commission gives up after-the-fact reasonableness review in exchange for approval of specific procurement plans. Only with such a pre-approval of specific plans can the Commission meet its statutory obligation to approve just and reasonable rates.⁵

Having found that PG&E's plan is inadequate, the PD proposes to impose a 10% cap on rate increases as a substitute for approval of specific procurement.⁶ CAC objects to that proposal as having no rational connection to just and reasonable rates. The Commission will not be approving any specific procurement plan for PG&E; it cannot know what resources PG&E will procure or at what cost. The 10% cap may produce rates grossly in excess of the prudent costs to meet demand. The Commission cannot know and, therefore, is abdicating its responsibility under Section 454.4.

The PD identifies the appropriate alternative to this prospective rate cap: the utilities face after-the-fact reasonableness review. Given that PG&E failed to provide an adequate plan, it should assume the responsibility and deal with the consequences. Having not provided sufficient information to justify Commission pre-approval, PG&E must return to the prior regulatory scheme and face Commission review of its procurement activities. The PD should be revised to find that PG&E's plan is deficient and that the Commission is unable to provide prospective approval.

IV. THE PLANS MUST COMPLY WITH THE IEPR LOADING ORDER

The PD appropriately recognizes that the Loading Order is an ongoing obligation that must be met for each procurement decision, regardless of whether a utility has met

⁵ *Id.*, p. 11.

⁶ *Id.*, pp. 13-14.

its procurement obligation for certain resource types through other CPUC programs.⁷
CAC supports the PD's highlight of the "centrality" of the Loading Order in all
procurement decisions.

V. CONCLUSION

The Proposed Decision should be adopted with a revision deleting Conclusion of
Law #4 and Ordering Paragraph #2 and ordering that PG&E must submit all
procurement decisions to the Commission for after-the-fact reasonableness review.

Respectfully submitted,

ALCANTAR & KAHL LLP

A handwritten signature in cursive script that reads "Donald Brookhyser". The signature is written in dark ink and is positioned below the firm name.

Michael Alcantar
Donald Brookhyser

November 30, 2011

⁷ *Id.*, p. 20.

APPENDIX A

Conclusions of Law

~~4. It would be reasonable to impose an upper boundary on the procurement costs of PG&E and SDG&E to ensure compliance with state law.~~

4. The procurement costs of PG&E and SDG&E will be reviewed by the Commission in after-the-fact reasonableness reviews.

IT IS ORDERED that:

~~2. Approval of Pacific Gas and Electric Company's and San Diego Gas & Electric Company's bundled procurement plans includes a cap set at 10% of each utility's system average rate over a rolling 18-month period.~~

~~3. Utility rate recovery of costs above the 10% cap is not consistent with a pre-approved procurement plan, and is subject to reasonableness review.~~

2. The bundled procurement plans of PG&E and SDG&E are not approved for the purpose of providing approval of cost recovery, and utility recovery of costs will be subject to reasonableness review.