

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)

**COMMENTS OF THE  
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES  
ON PROPOSED DECISION ON BUNDLED PROCUREMENT PLANS**

November 30, 2011

SARA STECK MYERS  
Attorney for the  
Center for Energy Efficiency and  
Renewable Technologies

122 – 28<sup>th</sup> Avenue  
San Francisco, CA 94121  
Telephone: (415) 387-1904  
Facsimile: (415) 387-4708  
E-mail: [ssmyers@att.net](mailto:ssmyers@att.net)

**SUBJECT INDEX**

*Page*

Subject Index ..... i  
Table of Authorities.....ii

I. WHILE THE PROPOSED DECISION CORRECTLY STATES  
THE COMMISSION’S STATUTORY OBLIGATIONS AND  
APPLICABLE POLICY, ITS REJECTION OF A RENEWABLES  
BUNDLED PRODUCT IS INCONSISTENT WITH BOTH AND  
IS NOT SUPPORTED BY THE RECORD OR ANY FINDING .....1

II. CONCLUSION.....7

APPENDIX A: PROPOSED FINDINGS OF FACT, CONCLUSION OF LAW, AND  
ORDERING PARAGRAPH

## TABLE OF AUTHORITIES

*Page*

### **CPUC DECISIONS**

Decision (D.) 08-02-008.....	5
D.07-12-052 .....	3
D.07-02-011 .....	5
D.06-05-039 .....	5
D.05-07-039 .....	5

### **CALIFORNIA PUBLIC UTILITIES CODE**

PU Code Section 399.11.....	5
PU Code Section 399.14.....	5
PU Code Section 454.5.....	<i>passim</i>
PU Code Sections 1757, 1757.1 .....	6

### **MISCELLANEOUS**

Energy Action Plan.....	1, 2
-------------------------	------

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)

**COMMENTS OF THE  
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES  
ON PROPOSED DECISION ON BUNDLED PROCUREMENT PLANS**

The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these Comments on the Proposed Decision of Administrative Law Judge (ALJ) Allen Approving Modified Bundled Procurement Plans (Proposed Decision). The Proposed Decision was mailed on November 10, 2011. These Comments are timely filed and served pursuant to Article 14 of the Commission's Rules of Practice and Procedure and the instructions accompanying the Proposed Decision.

**I.**

**WHILE THE PROPOSED DECISION CORRECTLY STATES THE  
COMMISSION'S STATUTORY OBLIGATIONS AND APPLICABLE POLICY, ITS  
REJECTION OF A RENEWABLE BUNDLED PRODUCT IS INCONSISTENT  
WITH BOTH AND IS NOT SUPPORTED BY THE RECORD OR ANY FINDING.**

The Proposed Decision makes clear that its dual purpose in reviewing and approving the utilities' bundled procurement plans is to ensure that those plans (1) meet the statutory requirements of Public Utilities (PU) Code Section 454.5 to preserve just and reasonable rates for pre-approved procurement pursuant and (2) follow the Energy Action Plan "loading order." That "loading order" directs the utilities to procure "preferred resources" in the following order: cost-effective energy efficiency and demand response, followed by renewable resources of power and distributed generation, and, last, clean and efficient fossil-fired generation "[t]o the

extent efficiency, demand response, renewable resources, and distributed generation are unable to satisfy increasing energy and capacity needs.”<sup>1</sup>

In doing so, the Proposed Decision provides significant direction on the criteria that govern the adequacy of the utilities’ proposed bundled procurement plans. Thus, the Proposed Decision interprets Section 454.5 as requiring the Commission to set “an upper boundary” on that procurement to permit “the utilities [to] procure up to that level without coming back to the Commission.”<sup>2</sup> According to the Proposed Decision, this approach “makes it easier for the Commission to find that the resulting rates are just and reasonable, as there is effectively a cap on procurement amounts and associated costs.”<sup>3</sup> As a result, the Proposed Decision requires that “procurement activities (consistent with this and other Commission decisions) that result in no more than a 10% system average rate increase over a rolling 18-month period are reasonable.”<sup>4</sup> The application of “standardized planning assumptions” between the utilities is also embraced by the Proposed Decision to ensure that the utilities’ plans are “comparable.”<sup>5</sup>

With respect to the policy goals to be achieved by the bundled procurement plans, the Proposed Decision confirms that “[a]ll utility procurement must be consistent with the Commission’s established loading order”<sup>6</sup> and “must comply on an ongoing basis with the Commission’s loading order.”<sup>7</sup> While program goals for resources high in the loading order may be set in other proceedings, the Proposed Decision makes clear that this proceeding is to decide what “the obligation to procure resources in the sequence set forth in the loading [order]” means and if that obligation is being met in the plans at issue here.

---

<sup>1</sup> EAP II, at p. 2.

<sup>2</sup> Proposed Decision, at p. 7.

<sup>3</sup> Id.

<sup>4</sup> Proposed Decision, at pp. 13-14.

<sup>5</sup> Proposed Decision, at p. 15.

<sup>6</sup> Proposed Decision, at p. 16.

<sup>7</sup> Proposed Decision, Ordering Paragraph 5, at p. 49.

To that end, the Proposed Decision determines that the “correct implementation” of the “loading order” means that “the utility obligation to follow the loading order is ongoing” and the “loading order applies to all utility procurement, even if pre-set targets for certain preferred resources have been achieved.”<sup>8</sup> Applied to the bundled procurement plans, the “loading order,” therefore, requires:

“If the utilities can reasonably procure additional energy efficiency and demand response resources, they should do so. This approach also continues for each step down the load order, including renewable and distributed generation.”<sup>9</sup>

CEERT fully agrees with the Proposed Decision’s determinations and focus on cost containment and policy obligations applicable to the utilities’ bundled procurement plans. However, the Proposed Decision fails to follow through on these findings by rejecting the request by Southern California Edison Company (SCE) to include renewable energy transactions among its pre-approved bundled procurement.<sup>10</sup> This proposal was supported by SCE, CEERT, *and* PG&E (never cited by the Proposed Decision) in testimony and briefs, including references to applicable law, policy, and fact. As CEERT stated in its Opening Brief, the integration of renewables procurement into long term procurement plans, whether bundled or system, is “long overdue” and, more importantly, is a necessary means for utilities to ensure compliance with the “loading order” and address past Commission criticism of utility plans in Decision (D.) 07-12-052.<sup>11</sup>

As SCE testified, its proposal would also permit the utility to focus on cost-effective, near term opportunities for renewable procurement. In this regard, CEERT noted in its Opening Brief:

---

<sup>8</sup> Proposed Decision, at p. 20.

<sup>9</sup> Proposed Decision, at p. 21.

<sup>10</sup> Proposed Decision, at pp. 38-39.

<sup>11</sup> CEERT Opening Brief, at pp. 6-10; see also, Exhibit (Ex.) 1100 (CEERT (Ferguson)), at pp. II-3 – II-5.

“In support of its proposal, SCE states, among other things, that Commission review and approval today of every renewable transaction by the utility, including those of 5 years or less, has imposed an inflexible regulatory process on renewables procurement that ‘impedes progress toward California’s renewable goals’ and, in particular, has resulted in lost short-term contracting opportunities. [Ex. 200 (SCE (Marcella)), at p. 59.] According to SCE, its request for Commission pre-approval of a certain amount of short-term renewable transactions as part of its BPP is directly responsive to the facts that ‘renewable resources are preferred over conventional resources and higher in the state’s Loading Order.’”<sup>12</sup>

CEERT, therefore, agreed with SCE that “SCE’s proposal for authority to enter into short-term (5 years or less) renewable contracts brings greater flexibility to higher Preferred Load Order resources and removes certain barriers to the procurement of renewables, which do not exist for non-renewable generation.”<sup>13</sup> This view was shared by PG&E in its testimony, which confirmed that “the approval standard for short-term renewables purchases is much more onerous than the standard for conventional, fossil-fired procurement of a similar term.”<sup>14</sup> PG&E further emphasized that “SCE’s proposal contains the important characteristics for a robust pre-approval process, including a competitive process to determine the Renewable Energy Credit premium price, a maximum valuation metric, and the ability to recover the costs in rates over the life of the contract.”<sup>15</sup> PG&E also concluded that the time required to develop guidelines in response to recently enacted SB 1X 2, requiring a 33% RPS by 2020, should not serve to inappropriately delay inclusion of a preapproved renewables product as part of the IOUs’ BPPs now or hamper RPS compliance.<sup>16</sup>

It must also be noted that “short-term” in this proceeding simply refers to the length of contract otherwise permitted to be included as a pre-approved bundled product. Thus:

---

<sup>12</sup> CEERT Opening Brief, at p. 2, citing Ex. 200 (SCE (Marcella)), at p. 59.

<sup>13</sup> Ex. 207 (SCE (Cushnie)), at p. 2,

<sup>14</sup> Ex. 103 (PG&E (Buller, et al.)), at p. IV-6.

<sup>15</sup> Ex. 103 (PG&E (Buller, et al.)), at p. IV-6.

<sup>16</sup> Ex. 103 (PG&E (Buller, et al.)), at p. IV-6.

“‘Short term’ in this context does *not* refer to the *long term* planning process at issue here, but rather serves as a point of comparison between the contract length required for pre-approved BPP products (5 years) and contracts of 10 years or more procured by an IOU through a Renewable Portfolio Standard (RPS) Program-specific solicitation. For purposes of this proceeding, however, a five-year or less delivery term is required for any single electrical energy transaction pursuant to an IOU’s AB 57 Bundled PP authorization, regardless of resource type.<sup>17</sup>

In addition, while the “procurement related dockets” identified in this rulemaking include those implementing the specific Renewable Portfolio Standard (RPS) Program statute (PU Code §399.11, et seq.), neither this rulemaking nor the later-issued Scoping Memos excluded *renewable generation*, especially as a “preferred resource,” from inclusion in the IOUs’ *long term* procurement plans, whether bundled or system, or found that issue to be outside the scope of this proceeding.<sup>18</sup> More significantly, as CEERT stated in its Opening Brief:

“Specifically, while the *annual* RPS-specific procurement plans required by PU Code Section 399.14 would continue to be filed and considered in the RPS rulemakings, ‘*long-term RPS planning*’ is to be addressed in the ‘*long term procurement planning component of R.04-04-003 [LTPP] or its successor, as contemplated by §399.14(a).*’ [D.05-07-039, at p. 29; emphasis added.] This directive has *not* been changed in any subsequent decision issued on RPS-specific procurement plans.<sup>19</sup>

Disappointingly, the Proposed Decision elects not to discuss any of the record testimony or legal arguments offered in support of SCE’s proposal, ignores PG&E’s, SCE’s and CEERT’s testimony and briefs, and instead summarily concludes: “This issue is more appropriately addressed in the Commission’s RPS proceeding (R.11-05-005), where the Commission is comprehensively examining issues relating to the implementation of the recently amended RPS

---

<sup>17</sup> CEERT Opening Brief, at p. 2; Ex. 200 (SCE (Cushier/Marcella)), at pp. 49, 60.

<sup>18</sup> See, Assigned Commissioner and Administrative Law Judge’s Joint Scoping Memo and Ruling issued December 3, 2010 (December 2010 Scoping Memo) and Assigned Commissioner’s and Administrative Law Judge’s Scoping Memo for Track II Bundled Procurement Plans issued January 13, 2011 (Track II Scoping Memo).

<sup>19</sup> CEERT Opening Brief, at p. 6, citing D.06-05-039, at p. 7; D.07-02-011, at p. 6; D.08-02-008, at pp. 5-6.



statute, including contracting issues”<sup>20</sup> and the “merits” of the proposal will not be considered “here.”<sup>21</sup>

The Proposed Decision completely fails to support this determination to “kick the can down the road” in this manner. It provides no citation to any record in this or any other proceeding that indicates that some “contracting issue” is currently pending that would prevent the Proposed Decision, especially in the face of otherwise applicable law and policy, from approving SCE’s proposal here.

In fact, the only finding that CEERT can locate that seems to be tied to this issue is Finding of Fact 22: “Issues relating to the duration of RPS contracts are being addressed in R.11-05-005.” On this point, however, CEERT is only guessing because there is nothing in the discussion of SCE’s proposal in the Proposed Decision that ever mentions that “*contract duration*” is the basis for “not approv[ing]” SCE’s proposal to include a pre-approved renewables procurement product in its bundled procurement plans. Further, the Proposed Decision fails to cite to any ruling or order in R.11-05-005 that would in fact support this finding.

Fundamentally, if this determination by the Proposed Decision is allowed to stand, the Commission will not only be acting contrary to the Section 454.5 and the “loading order” policies announced in the Proposed Decision, but will be ignoring a key requirement of the legal sanctity of its decision-making. Namely, its decisions must be “supported by the findings.”<sup>22</sup> In this case, the findings of the Proposed Decision simply do not support (nor have they been supported by) any statement or analysis contained in the Proposed Decision. Further, such decision-making, which summarily dismisses and fails to consider record evidence and briefs,

---

<sup>20</sup> Proposed Decision, at p. 38.

<sup>21</sup> Proposed Decision, at pp. 38-39.

<sup>22</sup> See, e.g., PU Code Sections 1757 and 1757.1.

has the additional, adverse effect of discouraging future participation in Commission proceedings, especially participation aimed at offering proposals that meet the Commission's twin goals of cost-savings coupled with advancement of preferred resource procurement.

CEERT, therefore, urges the Commission to modify the Proposed Decision, consistent with its interpretation of the "loading order" and Section 454.5, and adopt SCE's proposed renewables procurement product. This decision represents an opportunity for the Commission to finally integrate renewable procurement into utility procurement planning generally. Nothing pending in R.11-05-005 will alter the need for this step to be taken or conflict with that outcome. If the Commission wishes to ensure that result, its final decision can certainly confirm that any procurement undertaken by SCE pursuant to this authority must be RPS-compliant.

## **II. CONCLUSION**

It is clear that SCE's proposal for limited renewable procurement authority as part of its AB 57 bundled procurement plan is consistent with applicable statute and Commission decisions and policy and would represent a significant first step in fully integrating renewables in utility long term procurement plans in a cost-conscious manner. CEERT urges the Commission to grant this authorization requested by SCE and extend that authority to include the other two utilities (PG&E and SDG&E) as well.

Respectfully submitted,

November 30, 2011

/s/ SARA STECK MYERS

Sara Steck Myers  
Attorney for CEERT

122 – 28<sup>th</sup> Avenue  
San Francisco, CA 94121  
Telephone: (415) 387-1904  
Facsimile: (415) 387-4708  
E-mail: [ssmyers@att.net](mailto:ssmyers@att.net)

## APPENDIX A

### PROPOSED FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDERING PARAGRAPH

Consistent with its Comments herein, CEERT recommends that the following modifications be made in the Findings of Fact and Conclusion of Law of the Proposed Decision of ALJ Allen Approving Modified Bundled Procurement Plans issued in R.10-05-006 (LTPP) on November 10, 2011. Please note the following:

- A page citation to that Proposed Decision is provided in brackets for each Finding of Fact and Conclusion of Law in the Proposed Decision for which a modification is proposed.
- Added language is indicated by **bold type**; removed language is indicated by **bold strike-through**.

#### PROPOSED FINDINGS OF FACT:

18. [45] ~~The existence of This Commission has~~ of an open RPS docket (R.101-05-005) that may address how certain resources are counted for RPS compliance **does not alter or limit the need for the Commission to ensure that adopted long term bundled procurement plans meet both the statutory requirements of Section 454.5 as well as the established “loading order” for resource procurement in this proceeding.**

22. [46] ~~Issues relating to the duration of RPS contracts are being addressed in R.11-05-005.~~ SCE’s proposal to include a renewables procurement product in its pre-approved bundled procurement plan is consistent with both Section 454.5 and the “loading order.”

#### PROPOSED CONCLUSION OF LAW:

19. [48] ~~This is not an appropriate proceeding for addressing the duration of RPS contracts.~~ SCE’s proposal to include a renewables procurement product in its pre-approved bundled procurement plan is reasonable, and authority to include this product should extend to the bundled procurement plans of all three utilities.

#### PROPOSED ORDERING PARAGRAPH:

15. [51] Southern California Edison Company’s proposal to enter into short-term renewable energy transactions is ~~not approved, but may be addressed in the Renewables Portfolio Standard proceeding, Rulemaking 11-05-005.~~