

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 COMMENTS ON THE
PROPOSED TRACK II DECISION OF ALJ ALLEN**

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Pursuant to Article 14 of the Commission’s Rules of Practice and Procedure, Pacific Environment submits this reply to the comments submitted on November 30, 2011 regarding Administrative Law Judge Allen’s Proposed Decision (“PD”).

Pacific Environment reiterates its strong support for the PD’s interpretation of the loading order as imposing on the utilities an ongoing duty to procure preferred resources to fill residual energy needs. As the PD correctly concludes, “[t]he loading order applies to all utility procurement, even if pre-set targets for certain preferred resources have been achieved.”¹ The PD’s conclusion is unassailable: it is true to the plain language of AB 57,² it is consistent with the Commission’s last LTPP decision,³ and it is supportive of the Commission’s overarching policy of maximizing the procurement of preferred resources.⁴ The PD’s construction of the loading order is further supported by a recent California appellate court decision interpreting AB

¹ Proposed Decision, at p. 20

² See Pub. Util. Code, §§ 454.5(a)(9)(A) & (C).

³ D.07-12-052, at p. 271 (Findings of Fact Nos. 6 & 7).

⁴ *Id.* at p. 271 (Finding of Fact No. 2) (“The primary principal guiding the Commission in its review of the [procurement] plans is whether the IOUs are procuring preferred resources as set forth in the Energy Action Plan, in the order of energy efficiency, demand response, renewables, distributed generation and clean fossil-fuel resources.”).

57.⁵ There, the fourth appellate district held that “[s]ection 454.5 must be applied *as a whole* to utilities’ ‘proposed procurement plans.’ As part of its evaluation of proposed procurement plans . . . the commission must ensure unmet resource needs are addressed with energy efficiency and demand reduction resources.”⁶

Predictably, PG&E⁷ repeats its contention that meeting preferred resource requirements in other proceedings eliminates the need to fill residual energy requirements with preferred resources.^{8 9} As fully discussed in Pacific Environment’s Track II briefing,¹⁰ this truncated view of the loading order is inconsistent with AB 57 and was squarely rejected by the Commission in D.07-12-052 – which admonished the utilities for assuming that “once state mandates for preferred resources are met, filling net short positions with fossil resources is somehow a foregone conclusion.”¹¹ The PD properly rejects the utilities’ truncated view of the loading order again in this proceeding as contrary to Commission precedent and policy. Accordingly, the Commission should adopt the PD’s application of the loading order to the utilities’ Track II bundled plans without modification.

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⁵ See *Ames v. Public Utilities Com. of State* (2011) 197 Cal.App.4th 1411.

⁶ *Id.* at 1420 (emphasis added).

⁷ Compare PG&E Comments on Proposed Decision, at p. 9 with PG&E Track II Opening Brief, at p. 9 (“the procurement strategies incorporated into the BPP are being addressed in other Commission proceedings, such as proceedings addressing EE, DR, and RPS.”).

⁸ For its part, SCE attempts to clarify its position, stating that it fundamentally agrees with the PD that the loading order requires the utilities to “procure all cost-effective preferred resources prior to procuring conventional resources” See SCE Comments on Proposed Decision, at p. 3. This appears to be different than SCE’s original position on the loading order. See SCE’s Opening Track II Brief, at p. 7 (“specific concerns regarding procurement of preferred resources should be addressed in the proceedings dealing with such preferred resources”).

⁹ For its part, SDG&E agrees “with the general policy regarding adherence to the loading order set forth in the PD” SDG&E Comments on Proposed Decision, at p. 13.

¹⁰ Pacific Environment’s Opening Track II Brief, at pp. 7-15; Pacific Environment’s Reply Track II Brief, at pp. 2-4.

¹¹ D.07-12-052, at p. 6.

CONCLUSION

For the foregoing reasons, Pacific Environment recommends that the Commission adopt the PD's interpretation of the loading order without modification.

Respectfully submitted,

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