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 COMMENTS ON PROPOSED TRACKS I AND III DECISION OF ALJ ALLEN

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Pursuant to Article 14 of the Commission's Rules of Practice and Procedure, Pacific Environment submits these comments on the Proposed Decision of Administrative Law Judge (ALJ) Allen, distributed on February 21, 2011 in this application, which considered issues presented in Tracks I and III of the Long Term Procurement Plan (LTPP) proceeding. Rule 14.3(c) provides that comments "shall focus on factual, legal or technical errors" in the Proposed Decision. The Proposed Decision is generally well-reasoned and well-written and, except for a few instances, free of errors. Pacific Environment's comments thus are limited to only a few issues in the Proposed Decision that require clarification, are erroneous, or contain inaccuracies.

Specifically, Pacific Environment believes that the Commission should require utilities to evaluate actual GHG emission reductions as a compliance strategy to meet California's Global Warming Solutions Act of 2006 (hereinafter "AB 32") requirements. Pacific Environment also requests that the Commission reevaluate its approval of futures and forward contracts for allowances after a year of market experience as these compliance mechanisms disincentivize actual emission reductions. Additionally, Pacific Environment supports the Commission's assertion that a tiered CEQA review is necessary for new types of offset transactions. Finally, Pacific Environment urges the Commission to decide that the Energy Division should hire Independent Evaluators as a policy matter and allow the Energy Division time to determine how to administer the program.

I. The Commission Should Require the Utilities to Consider Actual GHG Emission Reductions in Their GHG Compliance Plans.

In Track III of the 2010 LTPP, the Commission instructed utilities to consider how they planned to "meet their anticipated California GHG compliance obligations"[1] including an assessment of "risk management approaches the IOUs plan to employ to manage this new risk."[2] The utilities' GHG compliance obligations include meeting the requirements of CARB's cap-and-trade system and the legislative directives contained in AB 32.[3]

To fully analyze potential ratepayer risks, the utilities should have included a process for considering actual emission reductions as a method of compliance.[4] The utilities' plans, however, focused exclusively on buying GHG compliance instruments,[5] and the Proposed Decision fails to require utilities to examine emission reductions as an option for meeting their GHG compliance obligations before purchasing allowances. In AB 32, the California legislature asserted that "direct emission reduction measures" were an important first step in the State's plan to meet its GHG goal.[6] While buying, selling, and trading allowances helps utilities meet their compliance obligations for a specified time period, direct emission reductions from the sources themselves are permanent tools for compliance.

Reducing GHG emissions will not only provide numerous environmental benefits, but it could be more beneficial and less risky for ratepayers.[7] Conversely, reducing emissions at the source would allow the ratepayers to incur a one-time cost while continuing to reap the benefits

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[1] *See* Order Instituting Rulemaking at p. 17.
[2] *Id.*
[3] Cal. Health & Safety Code § 38500 *et seq.*
[4] *See* Tr. 497:25-498:8 (Buerkle, SCE) (stating that if the use of GHG emitting fuels was reduced, then the utilities would have a "lower compliance burden").
[5] *See* Tr. 806:12-21 (Miller, SDG&E) (stating that SDG&E did not "evaluate the cost of GHG reduction strategies in relation to the cost of allowances").
[6] CA Health and Safety Code § 38561(b).
[7] *See* Tr. 511:3-6 (Buerkle, SCE) (stating that it is "quite possible" that "changes to the regulatory framework could result in a loss of value to the allowances"); DRA Track I and III Reply Brief at p. 11 (stating, "Pacific Environment makes the very good point that reducing emissions (as opposed to buying allowances or offsets) has the advantage of reducing the risks posed by potentially fluctuating prices of allowances.").

of increased emission reductions.[8] For example, a utility may be able to institute new innovative energy efficiency measures at its facility that would save the utility from having to purchase many years of allowances to offset those emissions.[9] Failure to require that utility plans evaluate actual GHG emission reductions as a strategy for meeting their compliance obligations ignores legislative directives that prioritize emission reductions and fails to help assure that ratepayers are receiving just and reasonable rates.[10]

To fully comply with the legislative intent of AB 32 and to help save ratepayer money, the Commission should require the utilities to set forth GHG compliance plans that require periodic evaluation strategies that achieve "real, permanent, quantifiable, verifiable, and enforceable"[11] GHG emission reductions.

II. The Commission Should Reevaluate Approval of Futures and Forwards for Allowance Transactions After a Year of Market Activity As These Contracts Disincentivize Actual Emission Reductions and May Not Be Reasonable.

Allowance future and forward contracts constitute transactions "where a utility contracts for delivery of CARB-issued allowances at a future date."[12] The Proposed Decision approves future and forward contracts for the utilities out to 2015.[13] The Proposed Decision's approval of these mechanisms is not based upon factual data, but upon hypothetical scenarios containing the possibility of a need to contract for delivery of allowances at a future date. Though compliance periods have been set by CARB, there is currently no known amount of compliance instruments needed for these future dates.

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[8] DRA Track I and III Opening Brief at p. 16 (noting that, "future procurement planning should be done with the benefit of an analysis that captures the effects of *reducing* GHG emissions (as opposed to simply purchasing GHG allowances or offsets). Reducing GHG emissions associated with IOU procurement could be a more cost-effective way of meeting AB 32 emission reduction goals than purchasing GHG compliance products each year.") (emphasis in original).

[9] *See* Tr. 499:4-21 (Buerkle, SCE) (stating that investing in "energy efficiency can reduce your emissions requiring less GHG emissions").

[10] *See* Tr. 801:20-802:6 (Miller, SDG&E) (noting that "the purpose of the cap-and-trade program is to send price signals to lower emissions").

[11] Cal. Health and Safety Code § 38562(d)(1).

[12] Track I and III Proposed Decision at p. 49.

[13] Track I and III Proposed Decision at p. 54.

Indeed, the future need for these compliance instruments could change drastically if actual emission reduction measures are implemented as a result of both GHG regulations and the integration of renewables into the system.[14] Futures and forwards give the utilities no incentive to employ actual emission reductions techniques. These compliance instruments allow the utilities to buy future allowances without evaluating whether their future need for compliance instruments could decrease due to emission reductions.

The Commission's limitations, which are currently based upon an unknown, hypothetical situation, should be reconsidered as the system itself adapts based on real, quantifiable data, and the increased system integration of renewables.[15] Notably, the Commission has previously granted interim authority when a market was uncertain, stating,

> We recognize that the outcome of IOU participation in convergence bidding activities is uncertain. However, the authority granted through this decision is only interim authority, and will continue to be reviewed. The ultimate scope of IOU authority, whether in this proceeding or a subsequent proceeding, may increase or decrease the authority granted here based on the experience gained during this interim period.[16]

The Commission should follow this same path here. One year of market activity would allow the Commission time to make a determination as to what extent futures and forwards are truly necessary.[17]

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[14] *See* Tr. 497:25-498:8 (Buerkle, SCE) (stating that if the use of GHG emitting fuels was reduced, then the utilities would have a "lower compliance burden").
[15] *See* Tr. 508:2-0 (Buerkle, SCE) (noting that CARB has not yet finalized the program regulations); *See* Tr. 511:3-512:8 (Buerkle, SCE) (noting that SCE should "exercise more constraint, perhaps less forward procurement" due to the uncertainties of the system).
[16] D. 10-12-034 at p. 12
[17] The Commission has previously granted interim authority when a market was uncertain; *see* D. 10-12-034 at p. 12 (stating, "We recognize that the outcome of IOU participation in convergence bidding activities is uncertain. However, the authority granted through this decision is only interim authority, and will continue to be reviewed. The ultimate scope of IOU authority, whether in this proceeding or a subsequent proceeding, may increase or decrease the authority granted here based on the experience gained during this interim period.").

III. Pacific Environment Supports the Commission Conducting a CEQA Analysis for New Offset Projects.

The Proposed Decision noted that, "to the extent that the Commission approves specific offset projects, the Commission will consider tiering off the CARB document as appropriate."[18] Pacific Environment believes that approval of additional, specific offset projects should require a CEQA analysis, consistent with the Proposed Decision's suggestion. Tiering has been defined as "a process by which agencies can adopt programs, plans, policies, or ordinances with EIRs focusing on 'the big picture,' and can then use streamlined CEQA review for individual projects that are consistent with…local agencies' governing general plans and zoning."[19] Here, the Commission is correct in seeking to tier from the general cap-and-trade program to a narrower scope for specific offset projects. Specifically, the Commission should require a tiered CEQA analysis if: 1) utilities propose to create their own offsets projects, or 2) utilities seeks to utilize a new category of offsets that have not previously been evaluated under CEQA. Both of these types of offset categories have not been reviewed under CARB's original analysis.[20] . Because there is a fair argument that these new projects may cause significant environmental impacts and because they would not have been evaluated in the prior, more general cap-and-trade EIR, tiering would be appropriate. [21]

IV. The Commission Should Approve the Proposal that the Independent Evaluator be Contracted by Energy Division and Allow Energy Division Time to Work on Administrative Issues.

Separation of the utilities from the selection of IEs helps ensure the integrity of the process. It has been noted that achievement of the benefits associated with IE analysis of

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[18] Track I and III Proposed Decision at p. 46.

[19] *Koster v. County of San Joaquin,* 47 Cal.App.4th 29 at 36 (3d Dist. 1996) *quoting* Remy et al., Guide to the Cal. Environmental Quality Act (CEQA), p. 234, col. b.

[20] *See* CARB's Functional Equivalent Document prepared for the California Cap on GHG Emissions and Market-Based Compliance Mechanisms, Cap-and-Trade Regulation CEQA Functional Equivalent Document, pp. 215-339 (Oct. 2010) found at: http://www.arb.ca.gov/regact/2010/capandtrade10/capv5appo.pdf.

[21] *Sierra Club v. County of Sonoma,* 6 Cal.App.4th 1307 at 1313 (1st Dist. 1992) (holding that "the proper test is whether the administrative record contains substantial evidence to support a fair argument that [a] proposed site-specific project may cause significant adverse effects on the environment that were not examined in a prior, more general program EIR").

projects "requires a degree of separation between independent [evaluators] and the utilities they are overseeing."[22] In consideration of this type of reasoning, the Proposed Decision notes that while, "it would be preferable for IEs to be hired by and report to the Commission, rather than the utilities,"[23] there are still "practical and administrative hurdles to overcome"[24] before such a shift can be accomplished. These unspecified hurdles are the only justification given by the Commission as to why such a shift cannot occur even when the Proposed Decision finds that the shift is "preferable."[25] This justification is insufficient as the Commission possesses the authority to allow this change to be phased in over time to work out such administrative and practical issues with the Energy Division.

The Commission stated in the 2006 LTPP that while transferring IE contracting authority was not feasible at that time, the Commission sought to continue to explore ways to make such a contracting shift in the future.[26] Thus, this contracting shift has been contemplated for nearly six years. Pacific Environment is concerned that if a policy decision is not made in this proceeding, change will not occur. After considering this issue for years, the Commission should make the policy change that it has already acknowledged as "preferable."[27] Importantly, during the course of this proceeding, Energy Division's proposal that the Commission hire the IEs was expressly supported by diverse parties including DRA, WPTF, TURN, Pacific Environment, and other parties.[28] Most notably, none of the utilities have opposed this shift outright. PG&E did not oppose the transfer of contracting authority to the Commission as long as such a shift did not create unacceptable delays in the procurement process.[29] SCE also stated that it was not opposed to having the Commission pay for the IEs.[30] While SDG&E generally objected to the shift in

[22] Analysis Group Economic, Financial, and Strategy Consultants, *Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices* at p. 22.
[23] Track I and III Proposed Decision at p. 64.
[24] *Id.*
[25] *Id.*
[26] D. 07-12-052 at p. 136; Track I and III Proposed Decision at p. 64.
[27] Track I and III Proposed Decision at p. 64.
[28] *Id.* at 63.
[29] Ex. 109 (PG&E Track III Reply Test.), at p. 22; PG&E Reply Brief at p. 21.
[30] Tr. 565: 12-25 (Cushnie, SCE).

contracting,[31] it nonetheless admitted that if the Commission determined that the hiring shift was preferable, then its only condition would be that the Commission hire IEs based on expertise.[32]

In addition to the wide support for this change shown through the record in this proceeding, other jurisdictions, such as Oregon and Utah, now employ a process by which the their commission, rather than the utilities, contracts with the IEs.[33] While stakeholders in the proceeding, such as utilities and prospective bidders, can still have some input in the selection, the ultimate authority for selection of the IE rests with these states' commissions.[34] California has been at the forefront of many progressive energy policy decisions. The Commission should maintain this trend by shifting the hiring and contracting of the IE's to Energy Division.

CONCLUSION

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

[31] SDG&E Reply Brief at pp. 40-42.
[32] Ex. 315 (SDG&E Track III Rebuttal Test.), at p. 11.
[33] Analysis Group Economic, Financial, and Strategy Consultants, *Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices* at p. 22, FN 34; found at: http://www.analysisgroup.com/uploadedFiles/Publishing/Articles/Competitive_Procurement.pdf
[34] *Id*; *see* Oregon Public Utilities Commission Order No. 06-446 at p. 6 (stating "Commission Staff, with input from the utility and interested, non-bidding parties, will recommend an IE to the Commission, which will then select or approve an IE for the RFP. The IE must be independent of the utility and likely, potential bidders, and also be experienced and competent to perform all IE functions identified in these Guidelines.") found at http://apps.puc.state.or.us/orders/2006ords/06-446.pdf; *see* Utah Code § 54-17-203 (stating "(1) (a) The commission shall: (i) appoint an independent evaluator to monitor any solicitation conducted by an affected electrical utility under this chapter; and (ii) oversee or direct the division to oversee the independent evaluator in monitoring any solicitation conducted by an affected electrical utility under this chapter.") found at http://le.utah.gov/~code/TITLE54/htm/54_17_020300.htm.

Respectfully submitted,

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