

**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)

**JOINT COMMENTS OF PACIFICORP (U 901 E), BEAR VALLEY ELECTRIC
SERVICE (U 913 E), AND CALIFORNIA PACIFIC ELECTRIC COMPANY, LLC
(U 933 E) REGARDING THE PROPOSED DECISION ON SYSTEM TRACK I AND
RULES TRACK III OF THE LONG-TERM PROCUREMENT PLAN PROCEEDING
AND APPROVING SETTLEMENT**

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Pursuant to Rule 14.3 of the California Public Utilities Commission (CPUC or Commission) Rules of Practice and Procedure, PacifiCorp (U-901-E), d.b.a. Pacific Power (PacifiCorp), Bear Valley Electric Service, a division of Golden State Water Company (U-913-E) (BVES) and California Pacific Electric Company, LLC (U-933-E),¹ (CalPeco), together as the California Association of Small and Multi-Jurisdictional Utilities (CASMU), hereby provide these joint comments to the February 21, 2012 *Proposed Decision of Administrative Law Judge Peter V. Allen* (Proposed Decision). Specific suggestions for revisions to the Proposed Decision's Findings of Fact and Conclusions of Law are provided in Appendix A.

I. Introduction

Consistent with Public Utilities Codes Section 454.5(i), CASMU members do not participate in the Long-Term Procurement Plan dockets and are not required to submit procurement plans.² In addition, the CASMU members all have characteristics that set them

¹CalPeco also does business in California as "Liberty Energy-California Pacific Electric Company, LLC." CalPeco and BVES have authorized PacifiCorp to submit this filing on their behalf.

² See D.03-07-011 (exempts PacifiCorp from the filing of procurement plans in the LTPP per Section 454.5(i) and allows other eligible utilities to file requests for such exemption by advice letter); Resolution E-4232 (exempts Bear

apart from the three large California utilities as described below.

CASMU members have relatively small customer bases when compared to the three large California utilities. Thus, reporting and compliance requirements often result in a disproportionately larger administrative burden on a per customer basis for CASMU members than is realized by the three largest California utilities. These distinctions, and the circumstances of the CASMU members, need to be reflected in the Proposed Decision and accommodations made to avoid unnecessary and disproportionately burdensome administrative costs.

A. PacifiCorp

PacifiCorp serves more than 1.7 million customers in six western states (California, Idaho, Oregon, Utah, Washington, and Wyoming). PacifiCorp also has ownership interests in thermal generation units located in three additional western states (Arizona, Colorado, and Montana). PacifiCorp has more than 10,400 megawatts of generation capacity from coal, hydro, wind, natural gas-fired combustion turbines, solar, and geothermal. PacifiCorp's California retail customers constitute only a small portion (less than 2 percent) of PacifiCorp's total retail load. PacifiCorp is uniquely situated in comparison to the other investor owned utilities in California because it has load-service obligations in six states and multi-state cost allocation considerations and PacifiCorp does not participate in the CPUC's Long Term Procurement Plan dockets.³ As a result, the procurement and planning practices associated with PacifiCorp's California customers are significantly different from other utilities in California.

Valley from the filing of procurement plans); D.04-02-044 (exempts Sierra Pacific Power Company, now CalPeco, from the filing of procurement plans).

³ See D.03-07-011, *supra*.

B. Bear Valley Electric Service

BVES is a small electric utility in the Big Bear Lake recreational area of the San Bernardino Mountains that provides electric distribution service to approximately 21,900 residential customers in a resort community with a mix of approximately 40% full-time and 60% part-time residents. Its service area also includes about 1,400 commercial, industrial and public-authority customers, including two ski resorts. BVES' service territory is connected to the California Independent System Operator ("CAISO") via agreements with Southern California Edison, including a Wholesale Distribution Access Tariff ("WDAT").

C. California Pacific Electric Company, LLC

CalPeco is an investor-owned electric utility that serves approximately 49,000 customers in the Lake Tahoe area of California. CalPeco has limited electrical connections with the rest of California and is not a part of the electrical grid controlled by the CAISO. Instead, CalPeco is included in NV Energy's multi-state balancing authority area, which is subject to Western Electricity Coordinating Council ("WECC") reliability standards. CalPeco currently procures all of its RPS requirements from out-of-state resources through a single Commission approved power purchase agreement with Sierra Pacific Power Company ("Sierra PPA").⁴ Thus, CalPeco's RPS procurement activities are dramatically more limited than the other California investor-owned utilities.

⁴ The Sierra PPA obligates Sierra to supply CalPeco's "full requirements" to serve CalPeco's customers, including 20% from RPS-eligible renewable sources. D.10-10-017, mimeo at 20.

II. Comments

A. The Proposed Decision Should Address CASMU Member-Specific Issues Associated With GHG Risk Management, Procurement and Compliance Costs

The CASMU members have not been participants in this proceeding because the Commission has allowed each entity to undertake resource planning through different mechanisms. For PacifiCorp, it substitutes its six-state Integrated Resource Planning (IRP) process for the development of a Long-Term Procurement Plan. BVES has been granted an exemption from the LTPP proceeding based upon, among other things, the disproportionate impact such participation would have on its customers.⁵ Similarly, CalPeco's predecessor, Sierra Pacific Power Company, was granted an exemption from the LTPP proceeding because "the preparation of a procurement plan would place an unnecessary cost" on its customers.⁶ The CASMU members received notice in Docket R.11-03-012, the *Order Instituting Rulemaking to Address Utility Cost and Revenue Issues Associated with Greenhouse Gas Emissions*, that issues related to greenhouse gas (GHG) risk management, procurement and compliance costs, would be addressed in the LTPP proceeding.⁷ Due to each CASMU member's unique position and their existing resource planning efforts, there are a number of ways, more fully described below, in which rules related to GHG risk management, procurement and compliance costs should be uniquely tailored to their status. As examples of issues that must be specifically addressed for its members, CASMU offers the following, non-exhaustive list:

- The Proposed Decision requires utilities that wish to procure authorized compliance instruments via bilateral transactions (including brokers) to utilize a

⁵ See Resolution E-4232, February 2009, exempting BVES from participating in the LTPP.

⁶ See D.04-02-044, at 5 (Findings of Fact 4).

⁷ Joint Administrative Law Judges' Ruling Clarifying Venue for Consideration of Costs Related to Procurement of Greenhouse Gas Allowances, R.10-05-006 and R.11-03-012 at 4 (August 4, 2011) posted at <http://docs.cpuc.ca.gov/efile/RULINGS/140759.pdf>.

competitive RFO process, consult with their procurement review group (PRG), apply their approved procurement credit and collateral requirements, and apply the applicable affiliate transactions rules.⁸ Utilities must also consult with their PRG prior to reselling GHG compliance instruments.⁹ None of the CASMU members have PRGs, and neither PacifiCorp nor CalPeco engages in competitive RFO processes similar to the other utilities.¹⁰ Accordingly, the Proposed Decision should be revised to exclude PacifiCorp, BVES and CalPeco from these requirements.

- The Proposed Decision requires the utilities to update their procurement plans with an estimated forecast of the amount of GHG compliance instruments that correspond with minimum and maximum procurement levels, based upon their current expected range of emissions compliance obligations.¹¹ Because none of the CASMU members develop a Long-Term Procurement Plan, the Proposed Decision should be revised to exclude PacifiCorp, BVES and CalPeco.
- The Proposed Decision requires that all GHG compliance instrument transactions should be reported at each utility's quarterly PRG meetings and Quarterly Compliance Reports. Because the CASMU members do not have PRGs nor are required to submit Quarterly Compliance Reports, the Proposed Decision should be revised to exclude PacifiCorp, BVES and CalPeco.
- The Proposed Decision requires utilities to include the cost for the GHG compliance instrument transactions in each utilities Energy Resource Recovery (ERRA) Cost filing. PacifiCorp and CalPeco do not have ERRA accounts and instead utilize Energy Cost Adjustment Clause (ECAC) mechanisms. BVES uses a Purchased Power Adjustment Clause (PPAC) mechanism. PacifiCorp has proposed in its most recent ECAC proceeding and in Docket R.11-03-012 to

⁸ Proposed Decision at 51.

⁹ *Id.* at 53.

¹⁰ BVES has utilized competitive RFOs on occasion, but not nearly as frequently as the large IOUs.

¹¹ *Id.* at 55.

utilize its ECAC for purposes of GHG compliance instrument transaction cost recovery.¹² Because of their different cost recovery mechanisms, these provisions should be revised for PacifiCorp, BVES and CalPeco.

The Proposed Decision is silent with respect to how the rules will apply to the CASMU members that, consistent with Section 454.5(i), are not participating parties in the LTPP proceeding. Therefore, the CASMU members respectfully request that the Proposed Decision be revised such that the decision ultimately adopted by the Commission acknowledges the GHG cost-related issues described here. In the alternative, the CASMU members request that the Commission resolves these issues in Docket R.11-03-012, or indicate where and how the CASMU member-specific issues related to GHG management, procurement and compliance costs will be addressed in a manner specific to their individual regulatory structures.

B. The Commission Should Provide Greater Clarity with Respect to Certain Matters Respecting Trading of Compliance Instruments

The Proposed Decision discusses the trading of futures and forwards related to GHG compliance instruments.¹³ Futures are exchange-traded instruments that generally cannot be lawfully traded except on a regulated futures exchange. The Proposed Decision correctly limits any utility purchase of futures to those that would be available on an exchange. However, although futures contracts may be taken to delivery, futures are generally entered into with the intent to be financially settled by an offsetting transaction, and so rarely “provide [the] actual compliance instruments in a relatively direct manner.”¹⁴ Forward contracts are generally

¹² On March 8, 2011, the CPUC issued D.12-03-022 in PacifiCorp’s ECAC docket, A.11-08-001, approving adoption of an AB 32 Implementation Cost Memorandum Account and deferring to some other proceeding a determination of the proper mechanism for recovering the AB 32-related costs. Accordingly, this docket should address the issue, or it must be addressed in the GHG docket as originally requested by PacifiCorp.

¹³ See Proposed Decision, page 49.

¹⁴ See Proposed Decision, page 49.

intended to be physically settled. *Commodity Futures Trading Comm’n v. Erskine*, 512 F.3d 309 (6th Cir. 2008), contains a useful discussion of the distinction between futures and forwards.

The Proposed Decision provides that “[a]ny allowance futures or forward contracts entered into by the utilities will count against the applicable quantity limitations.” Thus, if a utility utilizes futures contracts and then financially settles the futures contracts, as is typical practice, the utility transacts one contract to buy (or sell) when putting on the position and one contract to sell (or buy) when closing the position. The utility thus enters into two contracts and has no allowances to use for compliance purposes. In the case of a forward contract, if the seller defaults, the buyer will have undertaken a transaction but not received an allowance for compliance purposes. Therefore, the transaction limits in the Proposed Decision should not count where either a futures contract is transacted and there is no receipt of a compliance instrument, or a forward contract fails to provide the bargained-for compliance instrument.

Additionally, the Proposed Decision includes a sentence that begins by stating that “Given the risks inherent in offsets, the additional risk of purchasing other derivative products”¹⁵ This statement implies that offsets constitute a “derivative product.” Offsets are not derivatives; therefore, the CASMU members suggest that the sentence instead begin by stating that “Given the risks inherent in offsets, the additional risk of purchasing derivative products of offsets”

Finally, the Proposed Decision states that “[p]rior to purchasing greenhouse gas compliance instruments on an exchange, a utility must submit a Tier 2 advice letter.”¹⁶ The CASMU members respectfully request that this be clarified to indicate that the advice letter seeks permission for a utility to procure via a particular exchange and does not require an advice

¹⁵ *Id.* at 50.

¹⁶ *Id.* at 51.

letter for each utility purchase, as that would render the mechanism unusable.

C. CASMU Members Should Not Be Required to Modify Their Power Purchase Agreements

With respect to its discussion of the IEP Motion, the CASMU members respectfully request that the Commission clarify that the application of such language be limited to the three large utilities and exclude PacifiCorp, BVES and CalPeco. First, D.10-12-035, which adopted a settlement on certain QF pricing issues associated with the Commission's implementation of PURPA for the three large utilities, does not apply to the CASMU members. Second and as previously discussed, each CASMU member's approach to resource procurement is unique. In PacifiCorp's case, as a multi-jurisdictional utility where its California loads represents under 2% of its total system requirements, it does not follow the same resourcing process or structure applicable to the three large utilities where 100% of their loads are Commission-jurisdictional. BVES addresses its resource planning in its general rate case, and CalPeco has an existing full-requirements contract in place for its needs.

In this context, the Proposed Decision at pages 56-57 states:

There are, however, contracts with non-QF independent generators that are not covered by [D.10-12-035], and we do need to address this issue regarding those generators.

The Proposed Decision discusses comments raised in response to the IEP Motion and ultimately concludes with a directive on page 58:

[W]e direct the utilities to renegotiate the contracts at issue so that they reasonably address the allocation of AB 32 compliance costs If the contracts have not been renegotiated and submitted to the [CPUC] for approval 60 days from [now], the [CPUC] will address and resolve this issue in R.11-03-012.

The scope of which "contracts at issue" may need to be renegotiated is unclear from the text of the Proposed Decision. The CASMU members respectfully request that the directive not

apply to their contracts because of their unique resource planning and procurement processes when compared to the three large utilities.

The Commission did note in the Proposed Decision in footnote 19 on page 57 that:

SCE makes ... arguments that this Commission has no authority to even consider this issue. We note that other parties have not had an opportunity to respond to these arguments.

To the extent that the Proposed Decision is applicable to CASMU members and, with respect to this issue, the Proposed Decision refers to utility contracts for resources located outside of the state of California, the CASMU members join SCE in its objections to the Commission's authority regarding this issue.

III. Conclusion

The CASMU members appreciate this opportunity to submit comments in response to the Proposed Decision's treatment of GHG cost recovery issues and urge the Commission to revise the Proposed Decision as provided in Appendix A to allow them an opportunity to meaningfully address their distinct resource planning and procurement issues in proceedings more appropriate to each of them.

Dated: March 12, 2012

Respectfully submitted,



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Appendix A – Rule 14.3(b)
Proposed Findings of Fact and Conclusions of Law

Proposed Findings of Fact

1. Consistent with Public Utilities Code Section 454.5(i), D.03-07-011, Resolution E-4232, and D.04-02-044, PacifiCorp, Bear Valley Electric Service, and California Pacific Electric Company, collectively the small and multi-jurisdictional utilities (SMJUs), are exempt from participation in the Long-Term Procurement Plan dockets and are not required to submit procurement plans.

16. The rules relating to utility procurement of electricity, excluding procurement rules applicable to the small and multijurisdictional utilities, could benefit from continued adjustment and refinement.

Proposed Conclusions of Law

11. It is reasonable to adopt certain refinements and clarifications of the utilities' (excluding the rules applicable to small and multi-jurisdictional utilities) electric procurement rules.

VERIFICATION

I am the attorney for the respondent corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 12, 2012 at Sacramento, California.

A handwritten signature in cursive script that reads "Brian Biering".

Brian Biering