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 PROPOSED TRACKS I AND III DECISION OF ALJ ALLEN

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Pacific Environment respectfully submits these reply comments responding to the parties' March 12, 2012 comments on ALJ's Allen's Tracks I and III Proposed Decision (PD). Pacific Environment supports the PD's approval of the Track I settlement and its proposed process for evaluating contracts with Once-Through-Cooling (OTC) units, and Pacific Environment urges the Commission to reject parties' attempts to rewrite the PD's well-reasoned findings.

(1) The PD's Discussion of the Track I Settlement Is Necessary to Approve the Settlement.

Pursuant to Rule 12.1(d), the Commission must find that the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.[1] Attempts to modify the Commission's reasoning for approving the settlement in the PD should be denied since the Commission's reasoning is necessary under Rule 12.1(d). Although many other parties, including Southern California Edison (SCE) widely support the PD's approval of the settlement,[2] Pacific Gas & Electric (PG&E) attempts to rewrite the PD's approval of the settlement arguing that the PD somehow misstates the language of the settlement.[3] But, a closer look at the PD

[1] *See* Cal. Pub. Util. Commission Rules of Practice & Procedure, Rule 12.1(d) (stating "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.").
[2] *See* SCE Opening Comments on PD at p. 1; Vote Solar's Comments on PD at p. 1 ("Vote Solar believes that the PD accurately and appropriately reflects the multi-party settlement."); CAC Comments on PD at p. 1; Green Power Institute's Comments on PD at p. 1; DRA Comments at p. 1 (stating that DRA is generally supportive of PD and limiting comments to Track III issues); NRDC Comments at pp. 2-3; EPUC Comments at pp. 1-2
[3] *See* PG&E's Opening Comments on the PD at pp. 2-4; *see also* SDG&E's Opening Comments at p. 2.

shows no misstatement. Rather, the PD engages in the careful analysis required under Rule 12.1(d) of the Commission Rules Practice and Procedure for the Commission to approve a settlement.

To determine whether the settlement is reasonable in light of the whole record, the PD appropriately reviews the entire record. After reviewing the record, the PD rightly states that "[i]n looking at the whole record, it would be reasonable to find that there is no need for additional resources by 2020 at this time."[4] This critical conclusion supports the Commission's approval of the settlement's resolution of Track I issues. Importantly, the settlement, if approved, will resolve the Commission's consideration of whether, as part of this 2010 LTPP cycle, it should approve procurement of additional system or renewable integration resources for 2020.[5] Thus, before resolving that issue, the PD rightly determines whether resolution of that issue is appropriate in light of the record.

Moreover, the PD's evaluation of need in light of the record is also essential to show that the settlement is consistent with the law. To determine that the settlement is consistent with the law, the Commission has previously found that: "[a] settlement that implements or promotes state and Commission policy goals embodied in statutes or Commission decisions would be consistent with the law."[6] Section 454.5 of the Public Utilities Code requires the Commission to evaluate utility plans and ensure that its decision is supported and justified, complies with California's renewable and loading order requirements, and is just and reasonable. Thus, the PD's analysis of need comports with the Commission's responsibility under Section 454.5 to evaluate the plan and determine whether a decision to not authorize procurement at this time is supported, justified, and just and reasonable.

Further, the PD's finding that there is no need is important to find the settlement is in the public interest. By not procuring additional facilities at this time, ratepayers are benefiting by

[4] PD at p. 9.
[5] *Id.*
[6] D.10-12-035, at p. 26.

not having to fund the cost of unneeded facilities. Reducing or avoiding costs to ratepayers has been one previous factor the Commission has used in determining fairness.[7] Because the Commission is required to analyze whether a settlement is reasonable in light of the whole record, consistent with the law, and in the public interest, the Commission should reject the utilities' attempts to wordsmith its reasoning for approving the settlement. It is important for the Commission to abide by its requirements and describe why the settlement meets Rule 12.1(d).[8]

Importantly, the utilities do not say that the PD's conclusions are wrong. Notably, the settlement is consistent with the outcome of CAISO's modeling of the four primary cases based on the Commission's Standardized Planning Assumptions, which found no additional need.[9] CAISO's finding of no need is not surprising given California's extraordinary reserve margin. In fact, the Commission's load and resource tables show a projected reserve margin of over twice what is necessary in each of the three IOU territories in 2020.[10]

In addition, parties' attempts to rewrite the settlement by arguing that new facilities in SCE's territory are now needed for local reliability should be rejected.[11] As the PD rightly finds, the only issue related to local reliability that was left open by the settlement is the issue of SDG&E's request for local reliability procurement authority. That request has been transferred to proceeding A.11-05-023. PG&E and SCE agreed that no new capacity was needed for local reliability.[12] These issues are thus resolved in the settlement, and any future discussion of them should be part of the next long term procurement proceeding.

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[7] *See* D.06-07-032, at p. 9 ("Settlement Agreement will benefit the public since it reasonably balances competing issues and reaches a result whereby ratepayers will be paying less for energy.").
[8] *See Southern California Edison Co. v. Public Utilities Com.* (2006) 140 Cal.App.4th 1085, 1092 (the Commission needs to follow its own rules).
[9] *See* D.09-10-017, at pp. 8-9 (finding settlement reasonable when it was consistent with Commission findings regarding energy efficiency, demand response, and other resources in the 2006 LTPP).
[10] For the trajectory case, the L&R tables show reserve margins in 2020 of: 69.1% for PG&E, 47.7% for SCE, 37.7 % for SDG&E. *See* December 7, 2010 L&R Tables for R.10-05-006, *available here*: http://www.cpuc.ca.gov/NR/rdonlyres/6FA3AD5A-2CDE-4061-A341-E62FC69C09EF/0/2010LTPPPopulatedLRTableforSystemv12.xls
[11] *See, e.g.*, Gen-On Comments on PD at p. 3.
[12] Proposed Track I Settlement Agreement Between and Among the Parties, at p. 2 (Aug. 3, 2011).

(2) The PD's Advice Letter Process for OTC Units Reflects a Reasonable Way to Ensure Compliance with the OTC policy.

The PD reasonably balances the Statewide OTC policy with the utilities' need to contract with OTC facilities. Parties' attempts to eliminate the PD's reasonable OTC unit advice letter requirement should be rejected. The Statewide OTC policy directs the owners and operators of OTC facilities to comply with either of the plan's two compliance alternatives "*as soon as possible*, but not later than" their respective compliance dates.[13] No party in this proceeding disputes the propriety of the Statewide OTC Policy or its compliance deadlines.[14] Moreover, most of California's OTC units are aging, inefficient, and unreliable.[15]

The PD's requirement for utilities to submit an advice letter before contracting with OTC facilities is a reasonable requirement given the import of the OTC policy. Indeed, the Commission has relied on the advice letter process as "a streamlined process"[16] that would "not be burdensome to respondents."[17] Thus, the PD places workable requirements on long-term OTC contracting to further the Statewide OTC policy's requirement of phasing out or repowering OTC units "as soon as possible." This will ensure the Commission's ability to monitor consistency with the Statewide OTC policy.

(3) The PD Should Not Change Its Limitations of Procurement of Offsets. If Anything, the Limitations Should Be More Stringent, Not Less.

The PD imposes reasonable limitations on the utilities' procurement of offsets especially given the substantial risks, and potentially adverse environmental impacts associated with them. If anything, given these risks, the limitations on procurement of offsets could be more stringent, not less. The Commission should reject any attempt to change its reasonable limits on procurement of offsets including the prohibition of obtaining future offsets. Indeed, even the

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[13] *Statewide Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling*, State Water Board Res. No. 2010-0020 (Oct. 1, 2010) at p. 6 (emphasis added).
[14] *See e.g.,* Ex. 109 (PG&E Reply Test.), at pp. 1-3.
[15] *See* California Energy Commission, Comment to State Water Resources Control Board Concerning Its Coastal Power Plant Preliminary Draft Policy and Related Scoping Document (May 2008), at p. 2, *available at* http://www.energy.ca.gov/siting/documents/2008-05-20_CHAIRMAN_SWRCB.PDF
[16] D.07-07-027 at p. 18.
[17] Resolution E – 4137, 2008 WL 563350 at p. 16.

utilities realize that there need to be limits on offsets. For example, PG&E notably "does not oppose the prohibition in the PD on offset futures contracts."[18]

CONCLUSION

For the above reasons, Pacific Environment urges the Commission to reject attempts to change its well-reasoned analysis of the Track I settlement and its proposed requirements for OTC and offset transactions.

Respectfully submitted,

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[18] PG&E Comments to PD at p. 8.