

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)

**THE DIVISION OF RATEPAYER ADVOCATES' REPLY COMMENTS
ON THE PROPOSED DECISION ON
TRACK I AND TRACK III ISSUES**

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I. INTRODUCTION

Pursuant to Commission's Rules of Practice and Procedure 14.3, the Division of Ratepayer Advocates (DRA) respectfully submits the following reply opening comments on the Proposed Decision on System Track I and Rules Track III of the Long-Term Procurement Plan Proceeding and Approving Settlement (hereafter, the "PD").

II. DISCUSSION

A. **Apply the UOG Procurement Policy Framework to Both Fossil and Preferred Resources, Including Renewable Generation.**

Parties which oppose the PD's refinements to the UOG procurement policy framework have failed to help the Commission achieve this comparison based on a fair standard that can be applied consistently across all UOG procurement proposals.¹ The Commission should deny PG&E's recommendation that a utility's CPCN application include information demonstrating an RFO has failed, rather than having to make this showing in a separate Tier 3 Advice Letter.² From a procedural viewpoint, the Commission should first determine whether or not a utility has made a convincing showing that the RFO has failed prior to authorizing the utility to file its CPCN application. Contrary to PG&E's assertion, this would save resources and time. Moreover, DRA believes that as part of its showing in the Tier 3 Advice Letter, the utility should include a copy of the Independent Evaluator's Report which assessed the RFO and which provides an independent assessment of whether the RFO had failed or succeeded.

B. **The PD Should Allow for Continued Refinements to the CAISO's Report on Renewable Integration in the Next LTPP.**

California Wind Energy Association (CalWEA) comments that the CAISO, through its stakeholder process, has made improvements to its renewable integration modeling approach and the Commission should be flexible on the Settlement's March 31, 2012 deadline for the CAISO to submit its report in this proceeding or in the next LTPP.³ DRA agrees that renewable integration study is still a work in progress, and that this should not undermine approval of the Settlement Agreement. DRA recommends that the Commission urge the CAISO to discuss a draft of its report and the results of its model runs with stakeholders and make appropriate changes in the next LTPP cycle.

¹ See, for example, Opening Comments of SCE, pp. 13-14; SDG&E, pp. 5-8; and PG&E, pp. 10-12.

² PG&E Opening Comments, pp. 12-13.

³ CalWEA Opening Comments, p. 2.

C. Greenhouse Gas Product Procurement

1. The Commission can reassess the requirement that offset sellers assume the invalidation risk when there is market information on the price premium offset sellers will include for this risk.

SCE advocates to eliminate the requirement that offset sellers assume the risk of invalidated offsets.⁴ SCE claims that this requirement would transfer the benefits of purchasing greenhouse gas (GHG) offsets from the IOUs' bundled customers to third parties such as banks and traders who will purchase the GHG offsets and accept the risk of invalidation and increase prices accordingly.⁵ However, there is not currently a record to quantify SCE's claim. DRA recognizes that there will be a price premium for offsets associated with this requirement, however until there is market information to quantify this risk it makes sense for the Commission to protect ratepayers from the risk altogether. The IOUs could gather market information, through RFOs or through direct bilateral contract negotiations, on the price premium offset sellers are including for assuming the risk of invalidation. If it can be shown that the price premium associated with offset sellers assuming the risk of offset invalidation is greater than an IOU's projected costs would be for assuming this risk, then the Commission could reassess this requirement after the first year of GHG product procurement, as part of the next long term procurement plan proceeding. SCE's claim that the requirement for sellers to assume the risk of invalidation will hinder the development of a robust and liquid offset market⁶ is also unsupported.

2. The IOUs should be permitted to update their emissions forecasts as necessary.

SDG&E recommends that the PD be modified to permit the IOUs to update their emissions forecasts as necessary via a Tier 2 Advice Letter.⁷ PG&E recommends that an IOU should be allowed to update its forecasted need annually.⁸ DRA supports these recommendations, as this will ensure that the IOU's procurement limits most accurately include current data and reflect actual compliance obligations. As SDG&E points out, emissions

⁴ SCE Opening Comments, p. 11

⁵ SCE Opening Comments, p. 11.

⁶ SCE Opening Comments, p. 11.

⁷ SDG&E Opening Comments, p. 9.

⁸ PG&E Opening Comments, p. 7.

forecasts will fluctuate based on updated load forecasts, changes in resources, new hydro conditions, plant outages, and actual emissions data for prior months.⁹ Therefore, the IOUs should be able to revise their emissions forecasts as necessary.

3. The IOU's anticipated compliance obligations should include their contractual GHG obligations.

Calpine states that “the PD should be revised to clarify that, for purposes of calculating the quantity of compliance instruments that an IOU can procure, the IOU’s “anticipated compliance obligations” should include both its own compliance obligation and the compliance obligation of generators dispatched pursuant to contracts that provide for recovery of GHG compliance costs.”¹⁰ DRA agrees that the PD should explicitly recognize the IOU’s contractual GHG obligations as part of their GHG compliance instrument procurement limits, as the IOUs may need to procure GHG compliance instruments on behalf of generators with which they have this contractual agreement.

4. The IOUs should be permitted to sell GHG compliance instruments without a Tier 2 Advice Letter review in circumstances that have been pre-approved in their bundled procurement plans.

SDG&E recommends that the PD should be modified to permit the IOUs to lay out in their bundled plans circumstances in which it would sell allowances.¹¹ The PD recognizes that there may be situations in which it is beneficial to ratepayers and to the market for the IOUs to sell allowances.¹² However, to address concerns that GHG compliance instruments not be procured for speculation or other financial purposes, the PD requires the IOUs to file a Tier 2 Advice Letter prior to reselling GHG compliance instruments, specifying why an IOU is seeking to resell GHG compliance instruments, and why the sale is in the best interests of ratepayers.¹³

SDG&E states that the advice letter process is time-consuming and a poor fit with markets that can exhibit daily volatility, and that this requirement will deprive the IOUs of the ability to provide liquidity in case of temporary price spikes.¹⁴ SCE points out that this could

⁹ SDG&E Opening Comments, p. 11.

¹⁰ Calpine Corporation Opening Comments, p. 9.

¹¹ SDG&E Opening Comments, p. 11.

¹² PD, p. 52.

¹³ PD, pp. 52-53.

¹⁴ SDG&E Opening Comments, p. 11.

preclude the IOUs from selling GHG products, as purchasers are highly unlikely to hold offers open for months waiting for such approval.¹⁵ DRA agrees that there are circumstances in which it would be advantageous to ratepayers and the market in general for the IOUs to readily sell GHG compliance instruments and that the IOUs should have the flexibility to resell GHG compliance instruments in pre-approved circumstances.

DRA supports SDG&E's recommendation that the PD should be modified to permit the IOUs to define in their bundled plans circumstances in which it would sell allowances. Once approved, the IOUs would be allowed to sell GHG compliance instruments without a Tier 2 Advice Letter review in those circumstances. This will provide the Commission with the opportunity to review the specific parameters of circumstances in which the IOUs seek approval to resell GHG compliance instruments. Through this review, the Commission can ensure that sales in those circumstances will be in the best interest of ratepayers and are not for speculation or other financial purposes.

5. The IOUs should be permitted to procure GHG compliance instruments through bilateral transactions (including brokers) without utilizing a competitive RFO process in circumstances that have been pre-approved in their bundled procurement plans.

Several parties recommend eliminating or modifying the requirement that the IOUs must utilize a competitive RFO process before any bilateral transactions (including brokers) to allow for more procurement flexibility and to lower overall GHG compliance costs. SDG&E suggests that the RFO requirement should not be imposed for current compliance period compliance products.¹⁶ SCE recommends that the IOUs be allowed to use direct bilateral contracting subject to a "strong showing" requirement that these transactions represent a reasonable approximation of what a transparent market would produce.¹⁷ SCE argues that the Commission should treat brokered transactions for GHG compliance instruments exactly as it treats brokered transactions for power, natural gas, and SO₂ allowances under the IOU's bundled procurement plans.¹⁸ PG&E is unclear as to whether the PD permits bilateral transactions outside of the RFO process,

¹⁵ SCE Opening Comments, p. 10.

¹⁶ SDG&E Opening Comments, p. 11.

¹⁷ SCE Opening Comments, p. 8.

¹⁸ SCE Opening Comments, p. 9.

and recommends that the Commission allow direct bilateral transactions if such procurement is comparable to procurement through a Commission-approved exchange or recent RFOs.¹⁹ DRA also recommended in its opening comments that the Commission should allow the IOUs, in limited situations, to procure GHG compliance instruments through bilateral transactions (including brokers) without utilizing a competitive solicitation process, and that exchanges, RFOs, and ARB auction clearing prices could provide reasonable price benchmarks.²⁰

DRA recognizes that the Commission may want a level of oversight over new GHG compliance instruments that it does not require for other areas of energy procurement. DRA also wants the IOUs to procure GHG compliance instruments at the least cost to ratepayers, and this will likely require more flexibility than the PD currently allows for. The IOUs could define, in their bundled procurement plans, circumstances in which bilateral transactions are allowed outside of an RFO process and the Commission could review and pre-approve such circumstances if warranted. Similar to approving circumstances in which an IOU could resell GHG compliance instruments, this will provide the Commission with the opportunity to review the specific parameters of circumstances in which the IOUs seek to transact bilaterally outside of a competitive RFO. For instance, SDG&E's suggestion that the RFO requirement only be imposed for future compliance period compliance instruments could be considered as SDG&E submits an Advice Letter updating its bundled procurement plan to define circumstances in which bilateral transactions are approved. Likewise, DRA recommends that if an IOU is able to obtain lower prices for GHG compliance instruments through bilateral transactions outside of a competitive RFO process, then those transactions be authorized, so long as the sellers are subject to an IOUs credit and collateral requirements.

¹⁹ PG&E Opening Comments, pp. 9-10.

²⁰ DRA's Opening Comments, pp. 7-8.

Respectfully submitted,

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