

**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.

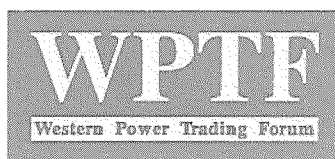
Filed Public Utilities Commission  
May 6, 2010 San Francisco, California  
Rulemaking 10-05-006

**REPLY COMMENTS OF THE WESTERN POWER TRADING FORUM  
ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE ALLEN**

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**I. Introduction and Summary**

These reply comments are submitted on behalf of the Western Power Trading Forum (“WPTF”) in accordance with the directive provided in the February 21, 2012 cover letter attached to the Proposed Decision of Administrative Law Judge (“ALJ”) Peter V. Allen (“PD”) and Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”). WPTF replies herein to the opening comments of Pacific Gas & Electric Company (“PG&E”), San Diego Gas & Electric Company (“SDG&E”), Southern California Edison Company (“SCE”), the California Independent System Operator Corporation (“CAISO”), the Division of Ratepayer Advocates (“DRA”) and the Independent Energy Producers Association (“IEP”).

**II. Reply Comments**

**A. The bid evaluation process comments by PG&E and SDG&E do not rebut the PD’s accurate conclusion that comparisons between UOG and PPA offers in an RFO are impractical and create a perception of bias.**

As a preliminary observation, Rule 14.3(c) states that, “Comments shall focus on factual, legal or technical errors in the proposed or alternate decision and in citing such errors shall make specific references to the record or applicable law. Comments which fail to do so will be

accorded no weight.” The comments by PG&E and SDG&E discussed below fail to meet that standard and should therefore largely be disregarded. SDG&E ignores the bias issue in its entirety. PG&E merely cites in passing the fact that D.07-12-052 also discussed the issue of bias and then appears to rhetorically suggest that having once addressed the issue, the Commission should never return to it again.

The fact is, however, that the long-term procurement plan (LTPP”) process has been the epitome of a work in progress. Decisions in the various successive dockets have tended to build upon their predecessors, constantly refining upon prior pronouncements and continually striving to make the procurement process more effective, more transparent, more competitive and more beneficial to ratepayers. The determination that there are fundamental differences between utility-owned generation (“UOG”) and Power Purchase Agreement (“PPA”) projects that make bid comparisons in a request for offers (“RFO”) impossible and create a real perception of bias when the investor-owned utilities (“IOUs”) evaluate their own UOG projects in competition with PPA proposals was thoroughly discussed in the proceeding and logically explained in the PD. That finding should not be disturbed and the PD should be approved as drafted in this regard.

**B. The PD should neither be revised to eliminate the Tier 3 advice letter process, as advocated by PG&E nor to eliminate the failed RFO requirement, as advocated by SDG&E.**

PG&E proposes that if the Commission decides to adopt a ban on UOG proposals in RFOs proposed in the PD, the requirement that the IOU first file a Tier 3 advice letter “setting forth the reasons why the RFO should be considered ‘failed’” should be eliminated. In its place, PG&E proposes that, “Rather than requiring a two-step process of filing a Tier 3 advice letter and then an application, the IOU should simply include in its application the information

demonstrating an RFO has failed.”<sup>1</sup> They further claim this requirement is unnecessary and will delay the development of a UOG project. WPTF strongly opposes this modification. An advice letter will look discretely at the validity of an IOU’s claim that an RFO has failed, and will permit interested parties to respond on what is in fact a very short time process, the usual 20-day protest period. Thereafter, if the facts are undisputable, the Energy Division would be able to turn out a draft resolution which would also have a 20-day comment period. From filing of the advice letter to a final Commission decision could take as little as 60-75 days.

By comparison, preparation of a full application, at ratepayer’s expense, of course, would take the utility far longer. Most importantly, the issue of whether there was actually a failed RFO could be lost in the shuffle and not given appropriate focus and attention. Put simply, the failed RFO issue should not become merely a minor procedural hurdle overcome with a few facile paragraphs in an application. Rather, it should be an important showing where a utility is required to demonstrate conclusively that the competitive market has failed to provide adequate options, thereby giving rise to a necessity for a UOG proposal. SDG&E goes even further, advocating complete elimination of the failed RFO requirement. For the reasons explained above, this should also be rejected. The failed RFO requirement represents an important new precondition to UOG proposals, which is entirely appropriate. If an IOU is proposing UOG in lieu of competitive market options, ratepayers will suffer and the Commission’s historic commitment to a “competitive market first”<sup>2</sup> will be severely undercut.

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<sup>1</sup> PG&E opening comments, at p. 12.

<sup>2</sup> D.07-12-052, *mimeo*, pp. 201, 209.

**C. The CAISO's comments urging a local requirements analysis by end of 2012 are reasonable and should be adopted.**

In its opening comments on the PD, CAISO points out that, as a signatory party to the settlement agreement on Track I issues, it supports approval of the settlement as proposed in the PD. However, it accurately notes the PD does “not accurately capture the parties’ agreement regarding system needs.”<sup>3</sup> It then notes that “all parties to this settlement agreed that continuing studies were needed and that a decision should on these additional studies should be issued by no later than December, 2012.”<sup>4</sup> WPTF concurs with this recommendation and urges the PD be modified accordingly.

**D. The Decision must enable IOUs to meet existing contractual obligations to provide GHG allowances or revenue to counterparties.**

SCE, PG&E and SDG&E propose increases to the PD’s procurement limit for GHG allowances. WPTF recognizes that some contracts call for IOUs to provide GHG allowances or revenue necessary to cover the compliance obligation of purchased generation. It is important that procurement limits for GHG compliance instruments provide the IOUs with sufficient flexibility to cover both their own compliance needs and GHG allowance cost recovery to independent power producers under existing contracts. We therefore support the proposal that procurement limits be set relative to the IOUs own compliance needs plus any contractual obligations related to generation currently under contract.

**E. The IOU proposal for bilateral procurement should be accepted and included in the IOUs’ reporting on GHG allowance costs for cost-recovery purposes.**

The PD would allow IOUs to procure GHG allowances bilaterally, but would require a competitive RFO process to ensure that such procurement is through reputable sellers and at

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<sup>3</sup> CAISO opening comments, at p. 2.

<sup>4</sup> Ibid., citing the Settlement Agreement, Section III.B.

reasonable prices. SCE, PG&E, SDG&E and DRA advocate eliminating this requirement on the grounds that it would unnecessarily restrict IOUs options for short-term procurement. SCE recommends instead that IOUs be allowed to directly purchase allowances bilaterally from pre-approved brokers and subject to the up-front standards and criteria for procurement established in the Bundled Procurement Plan adopted in D.12-01-033. DRA proposes establishment of a volume threshold for bilateral procurement, above which a competitive RFO would be required.

WPTF believes it is critical for IOUs to engage in bilateral transactions for price discovery and the formation of liquidity in this nascent market. Although GHG allowances will be available at quarterly auctions and on public exchanges, liquidity may be insufficient so IOUs will need the additional flexibility to acquire allowances bilaterally in order to manage risk effectively and keep overall compliance costs low. WPTF therefore supports the IOUs request to engage in bilateral transactions.

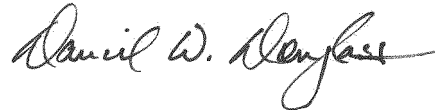
**F. Absent renegotiation, the Commission must provide a mechanism for cost recovery to long-term contract holders.**

In opening comments, WPTF requested the Commission include language in the final decision order that directs the IOUs to enter into renegotiation of contracts that do not provide for carbon-cost recovery, and, in the event that contracts are not successfully renegotiated within 60 days, formally initiates consideration of these contracts under proceeding R. 11-03-012. IEP made similar comments, but in recognition of the fact that this issue has already been deferred once, requested the Commission to reserve IOUs allowances or allowance revenue for transfer to the contract holders. WPTF agrees that this issue has been delayed too long, and supports IEP's request that the final decision also provide a mechanism for providing cost recovery to affected contract holders in the event that these contracts are not successfully renegotiated.

### III. Conclusion

WPTF thanks the Commission for its attention to these issues and asks that the PD be approved, subject to the limited modifications as discussed in its opening and reply comments.

Respectfully submitted,



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