

**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 12-03-014 (DMG)  
(Filed March 22, 2012)

**COMMENTS OF SIERRA CLUB CALIFORNIA  
ON THE PRELIMINARY SCOPING MEMO**

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In accordance with the Order Instituting Rulemaking (“OIR”), Sierra Club California (“Sierra Club”) respectfully submits the following comments on the Preliminary Scoping Memo.

**I. The State’s Energy and Environmental Law and Policies Should Be a Fundamental Component in Assessing Long-Term Procurement Needs and Plans.**

Sierra Club strongly supports the OIR’s general mandate that “[a]ll resource and procurement planning in this proceeding will be done in the context of the Energy Action Plan II (EAP II) and other state energy policies, such as AB 32 greenhouse gas, and once-through-cooling policies.”<sup>1</sup> The Commission’s decision in the 2006 LTPP proceeding (D.07-12-052) encapsulates the appropriate starting point for this proceeding. In that decision, the Commission held:

Going forward the utilities will be required to reflect in the design of their requests for offers (RFO) compliance with the preferred loading order and with GHG reductions goals and demonstrate how each application for fossil generation comports with these goals . . . . [W]e will require that subsequent LTPP filings for our regulated utilities not only conform to the energy and environmental policies in place, but aim for even higher levels of performance. We expect the utilities to show a commitment to not only meet the targets set by the Legislature and this Commission but to try on their own to integrate research and technology to strive to improve the environment, without compromising reliability or our obligations to ratepayers.<sup>2</sup>

The Scoping Memo should adhere to, and clearly reiterate, the Commission’s 2006 commitment to improving LTPPs by ensuring that they “not only conform to the energy and

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<sup>1</sup> OIR, p. 2 (footnotes omitted).

<sup>2</sup> D.07-12-052, at 3-4.

environmental policies in place, but aim for even higher levels of performance.” This proceeding should address the overarching and repeated failure of these plans to analyze “what types of resources the IOUs should use to fill their net short positions to best transition to the inevitably GHG-constrained world we are moving towards.”<sup>3</sup> Even worse, the plans have included litanies of reasons why the IOUs cannot meet even the required procurement targets for loading order priorities such as energy efficiency and combined heat and power (“CHP”), along with proposed alternative scenarios that plan for environmental policy failure. The Commission should reframe the purpose of the LTPP to include a benchmark of achieving excellence in addressing climate protection and other state environmental policy goals.

The Track II decision in the 2010 LTPP supports this approach by affirming the centrality of the loading order and the application of the loading order to all procurement decisions. That decision “expressly endorse[s] the general concept that the utility obligation to follow the loading order is ongoing. The loading order applies to all utility procurement, even if pre-set targets for certain preferred resources have been achieved.”<sup>4</sup> It further states “While hitting a target for energy efficiency or demand response may satisfy other obligations of the utility, that does not constitute a ceiling on those resources for purposes of procurement. . . . If the utilities can reasonably procure additional energy efficiency and demand response resources, they should do so. This approach also continues for each step down the loading order, including renewable and distributed generation.”<sup>5</sup>

Compliance with the loading order in the system and bundled plans should be intimately connected to the utilities greenhouse gas reductions and procurement plans. An analysis of the

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<sup>3</sup> D.07-12-052, p. 5.

<sup>4</sup> D.12-01-033, p. 21.

<sup>5</sup> *Id.*, p. 21-22.

emissions reductions that each of the IOUs can obtain from their portfolios is directly related to its compliance with the loading order. The Commission has adopted appropriate and positive policy related to the loading order, but the implementation of the system and bundled plans has not created the corresponding roadmap to ensuring compliance with the loading order.

Additionally, the least informative aspect of the long-term planning process has been the explanation of the how the system and bundled plans will provide compliance with the State's greenhouse reduction goals. At best, the plans state that the utilities will comply with AB 32 but the plans provide no explanation or analysis of how those reductions would be achieved. The plans should identify the sources of greenhouse gases and identify the possible methods for achieving emission reductions. The system and bundled plans should explain and graphically demonstrate how emissions reductions will occur. This analysis should incorporate implementation plans for compliance with the loading order. The Commission should require a standardized format for the greenhouse gas plans *and extensive qualitative and quantitative GHG data, scenarios and analysis to provide useful information about compliance.* This would also provide important information to the Air Resource Board regarding the State's progress towards its AB 32 mandate.

**II. The Scope of the Proceeding Should Be Better Defined and Reflect the Need to Revise Long-Term Procurement Planning**

**A. The Scoping Should Clearly Delineate How the Objectives of the State's Energy and Environmental Laws Will Inform the Proceeding.**

First, Sierra Club agrees with the OIR that this is a ratesetting proceeding that may require evidentiary hearings.<sup>6</sup> This should apply to the system plans as well as the bundled

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<sup>6</sup> OIR, p. 13. Note, "OIR" and "Preliminary Scoping Memo" are used interchangeably.

plans.<sup>7</sup> Additionally, Sierra Club agrees that the proceeding should address “the electricity system needs to: 1) integrate renewable resources; 2) support OTC policy implementation; 3) maintain local reliability; 4) respond to variations in load; and 5) meet GHG goals.”<sup>8</sup> However, the OIR further states that “[t]hese needs will be the primary drivers for any need for new resources identified in this proceeding. Furthermore, we may address or reassess assumptions from other proceedings to determine future need.”<sup>9</sup> Sierra Club cautions that the scoping memo should recognize that, as occurred in the 2010 proceeding, the outcome of this proceeding may be a decision that results in no new fossil fuel generating facilities being constructed. This result could occur if energy storage is incorporated into the procurement plans in addition to developing system-wide plans that are consistent with the policy goals of the State.

The OIR contains potentially conflicting direction regarding its scope. For example, the OIR states that assumptions from other proceedings may be addressed, but at the same time, the Commission proposes a Scoping Standard that would preclude issues already “considered” in other procurement-related dockets.<sup>10</sup> This preclusion standard is overly broad. To the extent that issues merely “considered” in these other proceedings remain unresolved and resolution is necessary to complete the tasks at hand, consideration of those issues in this proceeding is appropriate. Sierra Club therefore recommends editing the Scoping Standard to preclude re-litigation of issues that have already been “decided” in other proceedings.

The discussion of the Scoping Standard should further acknowledge that there are a number of relevant proceedings, agency rulemakings and legislative actions that may affect the

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<sup>7</sup> The OIR references evidentiary hearings for Track II , when no tracks have yet been proposed. This reference could imply that the Commission might not be equally open to evidentiary hearings for all potential tracks. However, this reference to Track II appears to be a mistake. (OIR, p. 13.)

<sup>8</sup> OIR, p. 7.

<sup>9</sup> OIR, p. 7 (footnote omitted).

<sup>10</sup> OIR, p. 11.

decisions in this proceeding. The Energy Storage proceeding is an obvious example. In fact, Energy Division staff recently stated in the Energy Storage proceeding that “Staff expects to coordinate with other on-going efforts in Resource Adequacy, Long-Term Procurement, and activities at the CAISO to ensure that storage is being considered in those efforts.”<sup>11</sup> Sierra Club is concerned that without clarification energy storage will not be considered in this proceeding despite Staff’s intention.

Sierra Club is similarly concerned about the Commission’s consideration of energy efficiency in this proceeding and requests clarification. In a footnote, the OIR states that “[w]e will not consider new energy efficiency (EE) goals in this proceeding. However, we may review the energy efficiency planning assumptions adopted in other proceedings for procurement purposes.”<sup>12</sup> The distinction between goals and assumptions is unclear. In addition, the OIR does not indicate one way or the other if the proceeding will consider the energy efficiency targets mandated by the Air Resources Board in its Scoping Plan for AB 32 implementation, particularly when goals and scenarios accepted in prior proceedings fail to comply with the Scoping Plan. Energy efficiency and other programs such as demand response should be resources that can be used as alternatives to new fossil procurement, and these programs should not be shunted aside to their own silos. The Scoping Memo should clearly identify all of the energy and environmental policies and targets relevant to system and bundled plans.

Sierra Club cautions the Commission that expanding the planning horizon from 10 years to 20 years could have unintended consequences, because many of the State’s energy and environmental policies only extend through 2020. Sierra Club is concerned that extending the planning process that far without corresponding legislative and policy direction on environment

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<sup>11</sup> CPUC Staff Response to Comments, p. 3 (April 3, 2012) R.10-12-007.

<sup>12</sup> OIR, p. 8 fn. 15.

and energy issues may produce anomalous results such as the need for new fossil fuel generation.<sup>13</sup> Sierra Club does support the OIR’s proposal to “consider additional scenarios to assess other cost-effective resource strategies to achieve GHG goals” including scenarios considering distributed generation.<sup>14</sup> Scenarios should also address the 20,000 MW of renewable energy that Governor Brown proposes to achieve in his Clean Energy Jobs Plans, as well as the potential to use additional energy efficiency to meet the GHG goals. These scenarios should be required to provide detailed analysis of unbundled costs for each GHG policy, rather than simply providing single line costs and rates for all combined resources

**B. The Scoping Memo Should Clarify Other Issues.**

Sierra Club requests clarification on the following issues:

The Scoping memo should further explain the purpose of the **Multi-year Flexible Capacity Procurement Rules**. Are these rules being proposed with the intention of keeping existing units on-line and/or are these rules designed to facilitate the construction of new generation? In either case, if no additional need is identified in the proceeding, these rules may be unnecessary. Alternatively, if a need is determined, it is crucial to make a clear distinction between insuring continued availability of an existing resource and authorizing construction of new power plants. Sierra Club recommends that these rules be addressed in a second phase after system need has been determined.

The intents of the **Procurement Rules to Comply with SB 695 on the Cost Allocation Methodology** should also be clarified. Will this only address cost for resource adequacy or will it include RPS, Energy Efficiency, Combined Heat and Power, and potential storage resources?

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<sup>13</sup> Sierra club notes that this outcome would be contrary to the Governor’s Executive Order that requires an 80% reduction of greenhouses gases by 2050, which is one of the only policies that exist beyond 2020. (See Executive Order s-3-05.)

<sup>14</sup> OIR, p. 8.

**C. The Scope of this Proceeding Should Include Combined Heat and Power.**

The Commission Decision 10-12-035 adopting the Settlement Agreement for CHP established MW targets for each IOU and provides for three program implementation periods with associated RFOs in each period. The decision states that “[t]he number of CHP RFOs during the Second Program Period will be established in the LTPP proceedings.”<sup>15</sup> The Commission should include this commitment to consider CHP RFOs as within the scope of the LTPP proceeding, in particular to insure that the RFOs achieve the MW targets in the context of meeting the IOU’s share of the CARB Scoping Plan target for CHP, and in the context of the cost allocation for resource adequacy.

**III. The Scoping Memo Should Acknowledge the Relevance of Location in these Planning Exercises**

The planning required to avoid a repeat of the deficiencies in past LTPPs will require consideration of the location of resources in preparing bundled as well as system plans. This would be a departure from past practices, but the replacement of once-through cooling resources, the reliance on distributed and central station renewables, the ability of location-specific energy efficiency and demand response programs to address need, and options for addressing particular need through transmission projects are all relevant and necessary to avoid over-procurement of fossil fuel resources and locking in portfolios inconsistent with State policies. The Scoping Memo should acknowledge that such local considerations, while they may have been side-stepped in the past, will need to be addressed in this proceeding, particularly if the justification for new procurement is going to be based upon location-specific criteria. In addition, the Scoping Memo should commit to applying the loading order in addressing local resource adequacy needs that are identified in this proceeding.

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<sup>15</sup> D 10-12-035, p. 16.

Furthermore, the Scoping Memo should include a procedure to address the effective load carrying capacity (“ELCC”) of distributed generation,<sup>16</sup> which in the preceding LTPP had been assigned a value of zero. This prior approach seems unreasonable and unfair to distributed generation, and potentially a waste of ratepayer funds if new procurement is authorized due to this valuation. Assigning reasonable ELCC to distributed generation becomes increasingly important, especially as the state ramps up this resource. Furthermore, Public Resources Code 399.26(d) requires the Commission to adopt ELCC values for wind and solar resources and “use those effective load carrying capacity values in establishing the contribution of wind and solar energy resources toward meeting the resource adequacy requirements established pursuant to Section 380.” This section requires this in order to “minimize the construction of fossil fuel electrical generation capacity to support the integration of intermittent renewable electrical generation into the electrical grid.”

#### **IV. The Scoping Plan Should Better Address Public Process and Transparency**

Sierra Club supports the OIR’s proposal to consider the system plans in 2012 and then the bundled plans in 2013.<sup>17</sup> This is a much better approach than addressing the plans in separate but relatively parallel tracks as the last proceeding did. The system plans should inform the bundled plans.

##### **A. The Schedule Should Accommodate Meaningful Public Participation.**

Sierra Club is concerned that the proposed schedule does not provide sufficient time for effective public participation. Sierra Club supports providing an opportunity for the parties to comment on the planning assumptions. Sierra Club notes that in the 2010 LTPP comments on planning assumptions were broken down into three separate rulings, apparently because of the

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<sup>16</sup> See Public Utilities Code § 399.26(d).

<sup>17</sup> OIR, p. 10. 14.

breadth of issues in the proceeding. If the Commission issues one ruling covering all issues, Sierra Club requests that sufficient time be allocated to cover the breadth of the planning assumptions.

The timing of the planning assumptions and the workshop on the results on the renewable integration modeling do not appear to provide an opportunity for meaningful comment from the parties. Most likely the Renewable Integration Model results workshop, estimated for mid-April, will occur before the comment periods on the planning assumptions end. Although the workshop on the Renewable Integration Model will provide valuable information about the status of CAISO's modeling, Sierra Club is concerned that the schedule only provides for comments and replies on the *results* of ISO's model. The current schedule makes it appear that there will only be one opportunity to comment on the results and then hearings will occur. If so, this would make discussion of planning assumptions a meaningless exercise.

As in the last proceeding, the Commission should have a procedure where it identifies the planning assumptions and scenarios that the CAISO will run. For example, the renewable integration modeling should contain scenarios for integration of renewables to be implemented in a manner that reduces greenhouse gas emissions by balancing different electricity technologies and product types, including distributed generation and storage.<sup>18</sup> Scenarios should compare optimization options for meeting this important objective of a balanced portfolio that reduces greenhouse gas emissions and air pollution. The schedule needs to include a second iteration of CAISO modeling runs that will be based on planning assumptions and scenarios vetted in this proceeding and identified by the ALJ. Once these assumptions and scenarios are run, the parties

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<sup>18</sup> See Public Utilities Code Section 399.11(b) (the legislature intended, *inter alia*, the RPS program to be met through the procurement of a "diversified and balanced energy generation portfolio," "[displacing fossil fuel consumption within the state," "[r]educing air pollution in the state," and "[m]eeting the state's climate change goals by reducing emissions of greenhouse gases associated with electrical generation.")

should also have at least one opportunity, if not a series of opportunities, for comment and reply. Sierra Club cautions that these modeling runs are complicated endeavors that will require time for the parties to prepare informed comments. The standard time frames for comment and will reply should be enlarged. Thus, Sierra Club requests that the schedule include more time for the parties to participate in the process.

**B. The Commission Should Address Public Accessibility to Procurement Review Groups.**

Sierra Club agrees that refinements to the Procurement Review Group (“PRG”) should be addressed in this proceeding. The scope of the proceeding should consider whether the current PRG process complies with California’s open meeting laws. The current form and operation of the PRGs appear inconsistent with California law which requires public agencies and their advisory bodies to conduct public meetings. The Bagley-Keene Act requires meetings of a state body to be open to the public and that public notification of meetings include a specific agenda.<sup>19</sup> The Public Utilities Code incorporates the requirements of the Bagley-Keene Act and reinforces the Commission’s duty to provide public meetings and public notice.<sup>20</sup> California’s Public Records Act (“PRA”) also favors public disclosure, and states that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.”<sup>21</sup> Yet, the PRG groups are limited to certain participants in the PUC process, and not generally open to the public.

Each PRG is an exclusive group of non-market participants and is in effect a substitute for an open and transparent procurement review process as required by law. While PRG members may have sufficient access and dialogue with the utilities, members of the public do

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<sup>19</sup> Gov. Code §§ 11125.7, 11125(b).

<sup>20</sup> Pub. Util. Code § 306(b).

<sup>21</sup> Gov. Code § 6250.

not. By holding confidential PRG meetings, the public is “denied the opportunity to learn about ongoing activities and challenges in real-time and instead [is] forced to review materials underlying the Advice Letter filings for the first time after the decisions ha[ve] been made and submitted for approval.”<sup>22</sup> Although Commission meetings are open to the public, the dialogue between the PRG and IOUs, in combination with the expedited review process, removes important decision making components of the IOUs’ procurement activity from the public realm.

The confidential nature, content, and results of PRG meetings appear to violate the Bagley-Keene Act.<sup>23</sup> For example, as advisory bodies to the Commission, PRGs are subject to the Bagley-Keene Act.<sup>24</sup> Since a PRG meeting is a state body pursuant to the Bagley-Keene Act, it can only conduct closed sessions in a method similar to the Commission. The Commission must generally open all meetings to the public pursuant to the Bagley-Keene Act, but it may meet in closed session “to deliberate on the institution of proceedings, or disciplinary actions against any person or entity,” or to discuss pending legal action with legal counsel.<sup>25</sup> Since the Commission is not expressly authorized to conduct closed sessions for reviewing IOU procurement activities, neither may a PRG.<sup>26</sup> This proceeding should explore how refinements to the form and operation of the PRGs can meet the requirements of the Bagley-Keene Act.

**C. The Scoping Memo Should Address How the Decisions in This Proceeding Will Comply With the California Environmental Quality Act.**

A fundamental goal of these procurement planning proceedings is to explicitly evaluate the trade-offs between cost, risk, reliability and environmental impact. The choices made will have environmental implications – this is one of the major purposes of the exercise. The

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<sup>22</sup> D.03-12-062, at 47 (quotation omitted).

<sup>23</sup> *Cf.* Gov. Code §§ 11123, 11126, 11132.

<sup>24</sup> *See* Gov. Code § 11121(c); Government Code section 11121(b) and (d) also make the Bagley-Keene Act applicable to PRGs.

<sup>25</sup> Gov. Code § 11126(d)(2).

<sup>26</sup> Sierra Club recognizes that provisions would need to be made for confidential information.

Scoping Memo, therefore, must explain how the Commission plans to comply with the California Environmental Quality Act, Pub. Res. Code § 21000 *et seq.* Linking implantation of the loading order to the IOUs' greenhouse gas reduction plans, and in particular relating these to the AB 32 Scoping Plan targets with explicit data and analysis in the plans, could provide a foundation for environmental review.

**V. Conclusion**

For the foregoing reasons, the Scoping Memo should include Sierra Club's recommendations.

Respectfully submitted,

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