

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
(Filed March 22, 2012)

**CALIFORNIA ENVIRONMENTAL JUSTICE ALLIANCE'S
COMMENTS ON THE PRELIMINARY SCOPING MEMO**

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The California Environmental Justice Alliance (CEJA) submits these comments on the Preliminary Scoping Memo in the Order Instituting Rulemaking (OIR), filed March 22, 2012. These comments are timely and served pursuant to the Preliminary Scoping Memo and the Commission's Rules of Practice and Procedure. These comments initially describe CEJA and its interest in this proceeding. Then, CEJA respectfully requests consideration of three issues in the 2012 LTPP that were not described in the OIR including: the mechanisms for considering all types of resources pursuant to the loading order, transparency in the procurement process, and the use and hiring of the independent evaluator. Finally, CEJA requests that any schedule in this proceeding allow enough time for parties to meaningfully participate.

I. Description of the California Environmental Justice Alliance

CEJA is an alliance of six grassroots environmental justice organizations situated throughout California. The organizational members of CEJA are: Asian Pacific Environmental Network, The Center for Community Action and Environmental Justice, Center on Race, Poverty & the Environment, Communities for a Better Environment, Environmental Health Coalition, and People Organizing to Demand Environmental and Economic Justice. CEJA has brought together these organizations to impact and change policy decisions throughout the state. Together, the six member organizations of CEJA are working to achieve environmental justice for low-income communities and communities of color throughout California. In particular,

CEJA is “pushing for policies at the federal, state, regional and local levels that protect public health and the environment.”¹ CEJA is also “working to ensure that California enacts statewide climate change policies that protect low-income communities and communities of color.”²

One of CEJA’s primary initiatives is its Green Zones Initiative, whose goal is “to transform overburdened neighborhoods into healthy, thriving ‘Green Zones.’”³ To transform the environmental justice communities into Green Zones, CEJA works to reduce existing pollution levels, institute community based land-use planning, support green community based development, and build community capacity and power.⁴ Related to this initiative, in January 2012, CEJA co-sponsored a stakeholder event to discuss renewable energy development in environmental justice communities.⁵

CEJA is participating in the 2012 Long Term Procurement Proceeding to urge the Commission to meet and exceed its renewable and environmental goals and to assure that its policies do not adversely impact environmental justice communities.

II. CEJA Requests that the Commission Consider Issues Related to Evaluating Loading Order in Procurement Decisions, Transparency and the Independent Evaluator in the 2012 LTPP.

The OIR states that other issues to be considered in the 2012 LTPP must “(1) Materially impact procurement policies, practices and /or procedures; (2) Be narrowly defined; and (3) Demonstrate consistency with one or more of the LTPP proceeding goals.”⁶ The OIR further provides that the 2012 LTPP intends to consider procurement rules not resolved in R.10-05-006.⁷ CEJA has identified three issues that meet these requirements, which are: (A) define

¹ California Environmental Justice Alliance, *About Us*, <http://caleja.org/about-us/>.

² California Environmental Justice Alliance, *Climate Justice*, <http://caleja.org/climate-justice/>.

³ California Environmental Justice Alliance, *Green Zones Initiative*, <http://caleja.org/green-zones-initiative/>.

⁴ *Id.*

⁵ See California Environmental Justice Alliance, *News*, <http://caleja.org/news/>

⁶ OIR at pp. 10-11.

⁷ OIR at p. 9.

procurement rules to assure fair competition among different resources pursuant to the loading order; (B) improve transparency in the procurement process; and (C) evaluate the role and use of the independent evaluator. All of these issues were discussed to some extent, but not resolved, in R.10-05-006. In addition, all of these issues are not squarely before the Commission in any other proceedings. Therefore, CEJA respectfully requests that these issues are considered in the 2012 LTPP.

(A) Procurement Rules Should Assure a Fair, Competitive Evaluation of Resources Pursuant to the Loading Order.

CEJA requests that the Commission evaluate how all types of resources can be fairly considered in procurement decisions pursuant to the loading order. In the 2010 LTPP, the Commission clarified that the “loading order applies to all utility procurement.”⁸ The Commission had “concerns regarding utility compliance with the loading order” as was also an issue cited in D.07-12-052, which found that the utilities were filling “their net short positions with conventional resources, rather than the preferred resources.”⁹ Due to these concerns, in the 2010 LTPP, the Commission directed the utilities to “procure additional energy efficiency and demand response resources to the extent they are feasibly available and cost effective.”¹⁰ The Commission further decided that “[t]his approach also continues for each step down the loading order, including renewable and distributed generation.”¹¹

To assure compliance with Commission’s loading order directive in D.12-01-033, other resources need to be able to compete and be considered in procurement requests. However, as Request for Offers (RFOs) are currently framed, other resources are at an inherent disadvantage.

⁸ D.12-01-033 at p. 20.

⁹ D.07-12-052 at p. 12, FOF 6 (citing in D.12-01-033 at pp. 21).

¹⁰ D.12-01-033 at p. 21.

¹¹ D.12-01-033 at p. 21-22.

For example, PG&E’s 2008 RFO requested offers that include characteristics specific to fossil fuel facilities stating:

PG&E prefers resources that have a relatively short startup time to full operation. For example, PG&E prefers resources that have start times of 30 minutes or less, or, in the case of resources offering daily cycling, start times of 60 minutes or less. Resources with longer start up times to full load, such as 4 hours or more, are less valuable. PG&E prefers resources that have the ability to turndown to a low minimum output level relative to their maximum output. The ability to change output quickly from maximum to minimum or minimum to maximum is also a valued attribute. For example, a ramp rate of at least 7% of full output per minute is desirable.¹²

Other resources such as energy efficiency and demand response do not have a ramp rate or specified “output” and cycling levels like natural gas facilities. Rather energy efficiency is a reduction of total load, and demand response is a reduction of peak load. Renewable energy and distributed generation resources similarly do not have all the characteristics specified under PG&E’s 2008 RFO. Specifications like the one above that are tailored to conventional generation do not allow other resources to fairly compete in RFOs.

Steps, like the ones CEJA is requesting, have been taken in other areas of the country to allow demand-side resources, such as energy efficiency, to compete directly with electric power plants. For example, PJM and New England ISO have begun holding auctions where demand-side resources compete directly with conventional generation.¹³ Notably, these auctions have

¹² See PG&E April 1, 2008 All Source Request for Offer at pp. 5-6, *available at* <http://www.pge.com/b2b/energysupply/wholesaleelectricssuppliersolicitation/allsourcerfo/>.

¹³ The Role of Forward Capacity Markets in Increasing Demand-Side and Other Low-Carbon Resources, The Regulatory Assistance Project, at p. 3 (May 2010) <http://www.raponline.org/document/download/id/91> (“Two organized markets in the US — PJM and ISO New England (ISO-NE) — now conduct forward capacity auctions that permit a wide range of demand-side resources to compete with supply-side resources in meeting the resource adequacy requirements of the region. The response of demand-side resources in the PJM and ISO-NE auctions is impressive and their participation is clearly demonstrating that reducing consumer demand for electricity is functionally equivalent to — and cheaper than — producing power from generating resources.”).

already been cited as reducing “the costs of meeting the region’s resource adequacy requirements.”¹⁴

The Commission has previously evaluated metrics to assure fair consideration of bids in competitive RFOs. In the 2010 LTPP, the Commission evaluated the metrics for considering utility-owned generation relative to generation owned by independent generators. In this LTPP, the Commission should determine metrics for comparing: energy conservation, energy efficiency, demand response, renewable resources, energy storage, and conventional generation in a competitive RFO. Without metrics that put the alternative resources on the same playing field as conventional generation, it is highly unlikely that the utilities will fully evaluate the potential of alternative resources pursuant to the loading order and Commission requirements.

(B) CEJA Recommends that the Commission Evaluate Ways to Improve Transparency in the Procurement Process.

CEJA requests that the Commission evaluate how to improve transparency in the procurement process. Senate Bill (SB) 1488 requires the Commission to ensure that its practices pursuant to Section 454.5 of the Public Utilities Code provide for “meaningful public participation and open decision-making.”¹⁵ Consistent with this requirement, the Commission has explicitly and repeatedly favored transparency in energy procurement procedures.¹⁶ Indeed, as the Commission recognized: “[i]n the absence of a fair and transparent evaluation process, it is

¹⁴ *Id. see also* Selling Energy Efficiency as a Resource, Lisa V. Wood, Electric Perspectives , at p. 8 (May/June 2009)

http://www.edisonfoundation.net/IEE/Documents/EE_at_Work_Elec_Persp_June09.pdf

¹⁵ 2004 Cal. Stats., Ch. 690, § 1 (Sept. 22, 2004).

¹⁶ *See, e.g.*, D.06-06-066, at p. 2 (“This decision implements Senate Bill (SB) No. 1448 ... (which) expresses a preference for open decision making, a policy directive we embrace.”); D. 07-12-052, at p. 155 (“The evaluation criteria used in competitive solicitations must be clear, transparent, and available to potential bidders”).

unlikely that ratepayers will benefit fully either from competition or from the utilities' participation in a hybrid market."¹⁷

Despite these requirements for transparency, much of the procurement process still takes place behind closed doors, which prevents meaningful participation from members of CEJA's six organizations and other interested community and public interest groups in the process. This lack of transparency also hinders the public and potential bidders from evaluating and participating in RFOs.¹⁸ Citing these types of issues, parties in the 2010 LTPP requested that the Commission increase transparency in the procurement process through several means. Parties suggested that the Commission should increase transparency in the Procurement Review Group (PRG) process and at the very least, make non-confidential PRG information publically available.¹⁹

Other parties also provided evidence of transparency issues with RFOs. For example, IEP stated that past RFOs, such as PG&E's 2008 LTRFO, were not sufficiently transparent to allow bidders to prudently prepare bids.²⁰ Improving transparency in RFO procedures will facilitate more effective and fairer results. In addition, transparency can also be improved by making the environmental evaluation of projects in the RFO process publicly available.²¹ The environmental evaluation of a project is an assessment of publicly available material, making its release unlikely to impact the competitive nature of a bid. In contrast, the environmental evaluation is most likely important information to surrounding communities.

¹⁷ D.07-12-052, at p. 155.

¹⁸ *See, e.g.*, R.10-05-006, Independent Energy Producers Opening Tracks I and III Brief at p. 8.

¹⁹ *See, e.g.*, R.10-05-006, Pacific Environment Opening Tracks I and III Brief at pp. 50-51

²⁰ IEP Opening Br. on Track III in R.10-05-006 at p. 11.

²¹ Communities for a Better Environment Tracks I and III Opening Brief (CBE Opening Br.) at p. 3.

Without sufficient transparency, the procurement process is not reflective of SB 1488's mandated "meaningful participation and open decision-making." CEJA thus requests that the Commission evaluate these transparency issues and concerns in the 2012 LTPP.

(C) CEJA Recommends that the Commission Evaluate the Hiring and Role of the Independent Evaluator.

CEJA requests that the Commission consider the role and hiring of the independent evaluator (IE) in the 2012 LTPP. The Commission has included IE oversight as part of the procurement process to ensure "a fair, competitive procurement process free of real or perceived conflicts of interest."²² An IE report on solicitations is intended to "serve as an independent check on the process and final selections."²³

It appears that despite a finding in the proposed decision that "it would be preferable for IEs to be hired by and report to the Commission, rather than utilities," the Commission likely will not institute this change, citing "practical and administrative hurdles to overcome" before such shift can be accomplished.²⁴ This shift needs to occur. IEs should be contracted through the Energy Division directly to limit the actual and perceived conflicts of interest, in line with the purpose of the IE program.²⁵ CEJA requests that the Commission resolve the "practical and administrative hurdles" in the 2012 LTPP to allow for energy division to contract with the IEs, if this issue is not resolved sooner.

In addition, CEJA requests that the Commission consider having IEs review loading order compliance. To effectively review RFOs, IEs should be able to consider the loading order and overall need in all the projects they oversee. Over-procurement of fossil fuel resources increases rates and crowds out preferred resources.²⁶ Evaluation of the loading order is

²² D.07-12-052 at p. 140.

²³ D.06-05-039, at p. 46 (analyzing D.04-12-048, at p. 136 ("[t]he IOU shall consult with its IE and PRG on the design, administration, and evaluation aspects of the RFO to ensure that the overall scope is not unnecessarily broad or otherwise too narrow.")).

²⁴ Track I and III Proposed Decision in R.10-05-006 at p. 64.

²⁵ D.07-12-052, at p. 140.

²⁶ Ex. 500 (R. Cox. Test.), at pp. 15-16.

necessary to assure that other resources are accorded a fair, competitive opportunity to participate in a solicitation and considered in the procurement process.

III. CEJA Requests that the Commission Assure that Parties Representing the Public Interest Can Fairly Participate in the Proceeding.

CEJA is very concerned about the proposed schedule, which suggests that there will not be adequate time for it to actively participate in the proceeding milestones outlined in the OIR. For example, the OIR states that the “Renewable Integration Model results workshop” will be scheduled sometime likely in mid-April.²⁷ To date, there have been no public opportunities to provide comments related to the renewable integration model in this 2012 LTPP cycle. This schedule suggests that the model results are already completed and that parties will not have an opportunity to provide comments that will be meaningfully considered in the models. Also, parties have not had an opportunity to suggest alternatives to be analyzed in the renewable integration model. For all of these reasons, CEJA supports DRA’s suggestion that the renewable integration issues not be resolved until all parties have had an opportunity to fully participate in the process.

Without changes like the ones that DRA is proposing, the proposed schedule, which appears to require that many important policy issues are decided after workshops and a brief comment period, does not give sufficient time to evaluate the myriad of important policy issues that must be addressed in this proceeding. It is extraordinarily difficult for public interest organizations, like CEJA, with limited staff and resources, to effectively participate in such aggressively expedited proceedings. At the very least, CEJA requests that the schedule include time for groups to propound and receive answers to data requests as well as time to analyze those data requests before submitting comments or testimony. In addition, CEJA requests that parties

²⁷ OIR at p. 14.

have an opportunity to evaluate models and inputs before decisions are made about results from those models.

IV. Conclusion

For the reasons stated above, CEJA respectfully requests that the Commission evaluate how to fairly consider all types of resources pursuant to the loading order, transparency in the procurement process, and the use and hiring of the independent evaluator in the 2012 LTPP. CEJA further requests that any schedule in this proceeding allow enough time for parties to meaningfully participate.

Respectfully submitted,

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