

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 RELATED TO CERTAIN TRACK III ISSUES**

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The California Environmental Justice Alliance (CEJA) respectfully submits these comments on certain Track III issues that were identified in the May 17, 2012 Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge. CEJA is an alliance of six grassroots environmental justice organizations situated throughout California brought together to impact and change policy throughout the State.¹ These comments are timely and served pursuant to the email from the Administrative Law Judge dated October 4, 2012. In these comments, CEJA proposes certain rule changes that relate to the Track III issues identified in the May 17, 2012 Scoping Rule. These comments only discuss a few potential rule changes since CEJA was unclear what information the Commission was seeking at this stage. CEJA hopes there will be further opportunities beyond comments to discuss procurement rules in Track III.

(A) CEJA Recommends Improving Transparency in the Procurement Process.

The May 17, 2012 Scoping Memo identified several issues that directly impact the transparency in the procurement process including long-term contract solicitation rules and refinements to the Procurement Review Group and the independent evaluator.² In deciding rules related to these issues, CEJA respectfully requests that the Commission improve transparency by revising specific aspects of the solicitation and evaluation processes to ensure that relevant non-confidential information is provided to the public and potential bidders.

¹ 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.

² See May 17 2012 Scoping Memo in R.12-03-014 at pp. 12, nos. 10, 11, and 13.

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.”³ Consistent with this requirement, the Commission has explicitly and repeatedly favored transparency in energy procurement procedures.⁴ Indeed, as the Commission recognized: “[i]n the absence of a fair and transparent evaluation process, it is unlikely that ratepayers will benefit fully either from competition or from the utilities’ participation in a hybrid market.”⁵

Despite these requirements for transparency, the procurement process still largely takes place behind closed doors, which prevents meaningful participation from members of CEJA’s six organizations and other interested community groups. This lack of transparency also hinders the public and potential bidders from evaluating and participating in RFOs. Improving transparency in RFO procedures will facilitate better and fairer results.

To improve transparency in the process, CEJA recommends the Commission require at least the following categories of information be publicly available:

- 1) Clear information about RFO bid criteria and the evaluation process;
- 2) Non-confidential information presented to the Procurement Review Group; and
- 3) The environmental assessment of projects evaluated in the RFO process.

Parties in this proceeding and the last LTPP proceeding have cited concerns about these types of information not being available to the public.⁶

Initially, it is important to provide the public with clear information about the RFO design and evaluation process. Transparency of RFO design is necessary to put the public and potential bidders on notice of what need the utility is proposing to fill and how resources will be

³ 2004 Cal. Stats., Ch. 690, § 1 (Sept. 22, 2004).

⁴ *See, e.g.*, D.12-04-046 at pp. 63-64 (QCR audit reports should be made public); 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”).

⁵ D.07-12-052, at p. 155.

⁶ *See, e.g.*, CEJA’s Reply to Workshop Comments at pp. 1-2 (summarizing some parties concerns about transparency in the procurement process).

evaluated. This increased transparency would then allow the public to identify potential issues with the RFO design before significant time and resources are expended in the process.

The Commission should also require publication of non-confidential information from Procurement Review Group meetings. As currently designed, the structure of the Procurement Review Group prevents organizations that represent community members, such as the groups that form CEJA, from informing their membership about issues that may impact them. Problematically, all information exchanged in the procurement group meetings, even non-confidential information, is not available to the public. This presents a real conflict for groups whose mission includes informing their members of issues that concern their communities. In addition, only non-market parties with significant personnel, time, and resources have the capability of participating in a Procurement Review Group. One way to start remedying these issues is to, at the very least, make non-confidential information from Procurement Review Group meetings publicly available.

Transparency can also be improved by making the environmental evaluation of projects in the RFO process publicly available. 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. Indeed, the environmental evaluation is very important information to surrounding communities that may be impacted by the potential resource.

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 increase transparency in the solicitation and evaluation process.

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

CEJA respectfully requests that the Commission require the Energy Division, not the utilities, to hire the Independent Evaluator (IE). 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.”⁷ An IE report on solicitations is intended to “serve as an independent check on the process and final selections.”⁸ Importantly, the Commission has given IEs authority to oversee procurement during a phase in the process where the public and the Commission are not directly involved.⁹

Despite finding that “it would be preferable for IEs to be hired by and report to the Commission, rather than utilities,” the Commission did not institute this change in the 2010 LTPP, citing “practical and administrative hurdles to overcome” before such shift can be accomplished.¹⁰ This shift needs to occur. IEs should be contracted through the Energy Division directly to limit actual and perceived conflicts of interest, in line with the purpose of the IE program. CEJA requests that the Commission resolve the “practical and administrative hurdles” in this proceeding 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. Evaluation of the loading order is necessary to assure that other resources are accorded a fair, competitive opportunity to participate in a solicitation and considered in the procurement process.

(C) Utilities Should Evaluate GHG Reductions, and the Commission Should Enact Procedures to Ensure that Reductions Occur.

The May 17, 2012 Scoping Memo identifies the following issue for Track III: “[e]nsuring utilities reduce their need to procure GHG compliance instruments by pursuing cost-effective GHG emissions reductions on a portfolio-wide basis.”¹¹ Requiring that the utilities reduce their

⁷ D.07-12-052 at p. 140.

⁸ D.06-05-039 at p. 46.

⁹ The Energy Division is involved, but not the Commissioner’s offices.

¹⁰ D.12-04-046 at p. 68.

¹¹ May 17, 2012 Scoping Memo at p. 12, no. 3.

GHG emissions on a portfolio-wide basis is an essential step to both assuring that utilities are meeting AB 32 goals and reducing ratepayer risks.

As the California legislature found when it enacted AB 32, “global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California.”¹² To address this serious threat, AB 32 requires *actual* GHG emission reductions from sources such as utilities to achieve 1990 GHG levels by 2020.¹³ The first step to meet this requirement is an evaluation of how to reduce emissions. The Public Utilities Code further reinforces the need for utilities to evaluate potential GHG emission reductions mandating that, “in a long-term plan adopted by an electrical corporation. . . the electrical corporation shall adopt a strategy . . . to achieve efficiency in the use of fossil fuels and to address carbon emissions.”¹⁴ In addition, the way to best minimize risk to ratepayers is to invest in measures that actually reduce emissions rather than invest in a market that is considered speculative and potentially volatile.

Actual emission reductions are also a better, less risky way to meet the goals of AB 32 than offsets. CARB envisions that offsets may come from projects such as livestock manure projects, reducing ozone depleting substances, and forest projects.¹⁵ The GHG impact of these projects is controversial and has been challenged. Real questions have arisen as to whether these offsets should count as GHG reductions at all.¹⁶ To avoid relying on these risky and problematic offsets, utilities should evaluate how to reduce emissions so they do not need compliance products in the first place.

The initial step for ensuring that utilities reduce their need to procure GHG compliance instruments is requiring a thoughtful evaluation of potential emission reduction measures that the utility could undertake. After this evaluation, the potential emission reduction measures

¹² California Health and Safety Code § 38501(a).

¹³ Health and Safety Code § 38505(i); Health and Safety Code §38505(e) (“‘Direct emission reduction’ means a greenhouse gas emission reduction action made by greenhouse gas emission source at the source.”).

¹⁴ Cal. Pub. Util. Code § 635.

¹⁵ See 17 Cal. Admin. Code § 95973.

¹⁶ See *Citizens Climate Lobby vs. California Air Resources Board*, No. CGC-12-519554, Superior Court of California, San Francisco County (filed June 12, 2012).

identified could be evaluated for recovery of costs. If there is a mechanism for cost recovery, utilities will have an incentive to perform the evaluation and identify measures that could reduce emissions. Completing projects that result in direct emission reduction measures could lead to more GHG reductions than would be achieved under other AB 32 requirements, which would be beneficial to the environment and would limit the utilities' and the ratepayers' risk from purchasing compliance products on a speculative market.

(D) The Loading Order Should Be Applied to the Procurement of Flexible Resources.

The May 17, 2012 Scoping Memo states that rules related to “[f]lexible resources procurement and contract policies” will be considered in this proceeding.¹⁷ If there is a need for new flexible resources, the Commission should require consideration of preferred resources consistent with the loading order.

Importantly, there are alternatives to conventional generation that are practical options for providing flexible resources that should be considered before new natural gas. On June 4, 2012, the Commission hosted a workshop concerning analysis of flexibility needs for California’s grid.¹⁸ In that workshop, other resources, including energy storage, hydro resources, and “dispatchable dynamic support” were identified as potential alternative methods for meeting fast ramp requirements of flexibility.¹⁹ Additionally, energy efficiency and demand response were identified as potentially providing alternative energy that could free up existing resources already on the grid.²⁰ The workshop presentations also showed that procuring additional energy, even if it is not flexible, can free up additional flexible capacity. This is illustrated by the results of the all-gas and the high-DG scenario, which showed a higher flexibility need for the all-gas scenario.²¹ This flexibility difference is primarily due to more existing flexible resources that

¹⁷ May 17, 2012 Scoping Memo at p. 12, no. 1.

¹⁸ See Slides from CPUC June 4, 2012 Workshop on Operating Flexibility, *available at* <http://www.cpuc.ca.gov/NR/rdonlyres/32D2572E-7B0B-4DAD-8D99-AB13CBA1470F/0/201206OpFlexMeetingpresentationPDF.pdf>

¹⁹ *Id.* at Slide 130.

²⁰ *Id.* at Slide 130.

²¹ *Id.* at Slide 35.

were available at the time when the steep ramp occurs in the high-DG scenario, alleviating the need to add new flexible resources. This illustrates the importance of not pre-judging the ability of adding other preferred resources to the grid to help meet flexibility needs.

In addition to valid alternatives to fossil fuel resources for flexibility, relying on fossil fuel resources for providing flexibility seriously undercuts the pollution gains made by installing renewable resources in the first place. Adding fossil fuel resources for flexibility also undermines progress towards the State's GHG goals. For all of these reasons, it is essential that the Loading Order be applied to flexible resource evaluations, to give preference to clean resources first.

CONCLUSION

CEJA recommends the Commission make the procurement rule changes specified above.

Respectfully submitted,

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