

APPENDIX A

**EXCERPTS FROM 6/13/2011
ADMINISTRATIVE LAW JUDGE'S
RULING ADDRESSING MOTION FOR
RECONSIDERATION, MOTION REGARDING
TRACK I SCHEDULE, AND RULES TRACK III ISSUES**



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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)

**ADMINISTRATIVE LAW JUDGE'S RULING ADDRESSING MOTION
FOR RECONSIDERATION, MOTION REGARDING TRACK I SCHEDULE,
AND RULES TRACK III ISSUES**

Summary

The *Motion of Pacific Gas and Electric Company, Southern California Edison and San Diego Gas & Electric Company for Reconsideration of ALJ's Ruling* is denied. The *Motion of the Division of Ratepayer Advocates Regarding Track I (System Planning) Schedule and Request for Order Shortening Time to Respond* is granted in part and denied in part. The testimony previously due on July 26, 2011 is now due on August 4, 2011. Additional detail regarding the process for addressing certain Rules Track III issues is provided.

Utilities' Motion for Reconsideration

Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE) and San Diego Gas & Electric Company (SDG&E) request reconsideration of the Administrative Law Judge's Ruling Granting Motion to Modify System Track I Schedule, issued May 31, 2011 (May 31 Ruling). The May 31 Ruling granted a motion by the three utilities and the California Independent System

Appendix B

Staff Proposal on Procurement Oversight Rules

Background

In D.07-12-052, the Commission encouraged the Energy Division to develop an “AB 57 Procurement Plan Implementation Manual” in collaboration with the IOUs and parties to the 2006 Long Term Procurement Plans (LTPP) proceeding.⁵ Development of the manual continued in Track III of the 2010 LTPP proceeding⁶, whereby a draft copy of the manual, referred to as the “Rulebook,” was circulated to parties. A workshop was held by Energy Division staff (Staff) on June 11, 2010 to further the development of the Rulebook. Parties submitted comments and reply comments on the Rulebook on June 21 and June 28, 2010, respectively.

In her June 2, 2010 Ruling in R.10-05-006, ALJ Kolakowski stated that the intent of the Rulebook is to develop a “clear compendium of current California Public Utilities Commission (CPUC) procurement requirements.” In comments filed on the Rulebook, the parties, with the exception of Southern California Edison, uniformly preferred the “compendium” characterization to mean that the Rulebook should serve as a non-enforceable, reference-only summary of existing Commission procurement rules derived from various decisions. The numerous arguments presented by parties in support of their non-enforceable, reference-only interpretation are varied and are already on record in their filed comments and replies, and so will not be repeated here. Energy Division staff, however, has consistently envisioned that the Rulebook should supersede existing decisions, in that the document would be treated as a General Order and will be fully enforceable. The Energy Division proposes that the Commission should adopt a Rulebook, or procurement manual, as a fully enforceable document.

⁵ R.06-02-013.

⁶ R.10-05-006.

Staff Proposal

Staff proposes that the attached procurement oversight rules, attached to this document as Attachment 1, should be adopted by the Commission in R.10-05-006 as a set of enforceable rules. These proposed rules spell out oversight responsibilities and authority by the Independent Evaluators (IEs), the Procurement Review Group (PRG), the Cost Allocation Mechanism (CAM) group, and the Energy Division. It also spells out Standards of Conduct (SOCs) applicable to the utilities and their employees in the course of their procurement activities. Most of the policy directives have been derived from past decisions and current practices. We have tried to clarify and elaborate on existing rules, with some minor changes that are designed to ensure that these oversight groups run smoothly and effectively.

The following is a brief summary of each of the four subsections in the proposed rules:

Section 1 deals with the selection and minimum qualifications of an IE, the oversight responsibilities of an IE.

Section 2 explains the rules related to participation, roles, and meeting protocols for the PRG.

Section 3 explains the rules related to participation, roles, and meeting protocols for the CAM Group.

Section 4 spells out the codes of conduct the IOUs and their staff are required to abide by in their procurement activities.

In places where the rules differ from prior Commission decisions due to operational and legal considerations, Staff proposes that the attached rules should prevail. At this time, Staff proposes to focus only on the Procurement Oversight and Advisory Requirement category in Track III of R.10-05-006. This is Section O in the original Rulebook.

Attachment 2, consisting of a separate matrix in Excel spreadsheet format, demonstrates the wording differences between the staff proposed rules and decision language, where applicable. As the matrix illustrates, most of

the differences between the language of the staff proposed rules and the decisions are minor. Only in a handful of cases do the staff-proposed rules consist of substantive changes from decision language. These substantive differences are summarized below:

1. New IE report filing requirement: For solicitations of products five years or greater in length, the IE report shall be filed with Energy Division and the PRG at least 7 calendar days before any IOU application is filed with the CPUC and the IE report should also be submitted as an attachment to the application.
2. New Reporting Requirement: In some circumstances, it may be necessary for an IE to produce two versions of an IE report: one public/redacted and another that is confidential. These two versions must be identical with the exception of redacting confidential information. There shall be no differences in the conclusions or non-confidential text.
3. New Procurement Review Group (PRG) protocol requirement: If an error is identified in PRG materials, a correction should be sent to the PRG members as soon as reasonably possible. PRG members may request a delay of the PRG meeting, if they believe that there is inadequate time to review the corrected materials.
4. New Procurement Review Group protocol requirement (underlined portion is new): The IOUs are to provide confidential meeting summaries to PRG members that include a list of attending PRG members (including the organizations represented), a summary of topics presented and discussed, and a list of information requested or offered to be supplied after the meeting, (and identify the requesting party). This meeting summary must be emailed to the PRG within 14 calendar days of the meeting.
5. New requirement on web-based PRG calendar (underlined portion is new): The IOUs are to individually set up and maintain a web-based PRG calendar that can be accessed and updated by the IOU. The IOUs are to provide the following information to the public through a web-based forum: date, meeting time and duration of the meeting; the individuals participating in the meeting and organization represented by the individual; and a list of non-confidential items discussed. This information shall be maintained

- on the web-based forum for at least 12 calendar months following the relevant PRG meeting, except in the case of materials related to RFOs or other applications to the Commission. Materials related to applications must be maintained until all applications (including any applications for rehearing, etc) related to those materials have been disposed by the Commission. Beyond the minimum retention time described above, this information can be moved to an archive page, which should still be publically accessible.
6. New PRG review requirement: Each IOU should confer with the PRG if material barriers to hedging arise. The PRG should discuss these barriers and potential actions that might be taken to eliminate them.
 7. Revised CAM group requirements: The proposal spells out the purpose and composition of the CAM group in greater detail than the decision language. It also spells out how often the CAM group should meet.
 8. Revised interview requirement of IEs (underlined portion is new): The IOU and PRG shall interview a subset of prospective candidates that the IOU, its PRG, and ED staff deem most suitable for the role. These interviews may be conducted by conference call and are subject to the PRG meeting protocols described above (2 (c)).
 9. Revised IE reevaluation period (underlined portion is new): An IE may remain in the IE pool for two years, after which he/she must go through a reevaluation process based upon the inclusion criteria (see Section 1 (b)) to assure continued compliance. The IOU may commence on the reevaluation of an IE no sooner than two months before the two year reevaluation period for that IE. The reevaluation process will involve additional reviews of the IE candidate by the PRG, IOU and ED staff including additional interviews, if necessary.

Attachment 1: Proposed Procurement Oversight Rules

SECTION 1: INDEPENDENT EVALUATOR OVERSIGHT

The role of an Independent Evaluator (IE) is to monitor the fair and unbiased nature of an Investor-Owned Utility (IOU)'s procurement solicitation process, including, but not limited to: all communications about the solicitation to market participants, the operation of the solicitation, and the selection and negotiation process. IEs provide an independent evaluation of the IOU's bid evaluation and selection process and help inform the Commission and the Procurement Review Group (PRG) about the process.

1 (a) General IE/ IE Reports Requirements

An IE shall be contracted with, by the IOU, and retained for all competitive solicitations that involve affiliate transactions, utility-owned bids, Power Purchase and Sale Agreements (PSA) bids, and all competitive Request for Offer (RFO)s seeking products two years or greater in duration regardless of the bidders. Competitive RFOs include RFOs issued to satisfy service area need and supply side resources not including Energy Efficiency and Demand Response.

Although the IE shall be under contract to the IOU, the IE shall respond to the requests and information requests of the PRG and Energy Division. Such communications may be directly between the Energy Division or PRG and the IE, without any involvement or knowledge of the IOU.

Alternatively, the Executive Director may hire contractors to perform IE tasks, with management oversight of the IEs to be provided by the Energy Division. Such costs, if any, shall not exceed a total annual amount of \$400,000, and the total shall be paid by Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company on a pro rata basis (i.e., 33.3% to each IOU) unless the contractor(s) perform work related to only a specific utility. SCE, PG&E and SDG&E are authorized to establish an LTPP Technical Assistance Memorandum Account (LTAMA) for the purpose of

recording such payments. PG&E, SCE, SDG&E are authorized to record these LTPP technical contractor costs into the LTAMA. These costs shall be recorded when paid, and each company may later apply for recovery in rates.

- For solicitations of products five years or greater in length, the IE report shall be filed with Energy Division and the PRG, at least seven calendar days before any IOU application is filed with the Commission and the IE report should also be submitted as an attachment to the application.
- For solicitations of products less than five years in length, the IE report shall be filed with the Quarterly Compliance Filing Report, using the long and short versions of the IE Report Template developed by Energy Division. The Quarterly Compliance Filing Report is a quarterly report filed by each IOU within thirty days of the end of each quarter, via Tier 2 Advice Letter, for all transactions executed in the previous quarter.
- The use of an IE is also required in resource solicitations where an IOU seeks authorization to allocate new generation costs in accordance with the mechanism set forth in D.06-07-029, and the IOUs must retain an IE to administer the Cost Allocation Mechanism energy auction.
- Prior to drafting RFO bid documents, each IOU must hold a meeting with the IE, PRG and Energy Division to outline its plans which must include quantities and types of products the IOU intends to solicit, category definitions if multiple bid categories are envisioned, any unique circumstances to be addressed in the RFO, and the plan should also solicit feedback. Then, the draft RFO bid documents are to be developed under the oversight of an IE. However, the IEs are not permitted to make binding decisions on behalf of the IOUs.
- IEs shall make periodic presentations regarding their findings to the IOU and to the PRG.
- Each IOU is to provide the name and information of the IE, the procurement solicitation(s) the IE has been used for and the amount of money involved in the procurement solicitation(s) be reported to the IOU's PRG before and after the solicitation takes place.

1 (b) IE Qualifications

An IE shall have the following minimum qualifications:

- A minimum criterion for independence is that the IE has no financial interest in any of the potential bidders, including the affiliate, or in the outcome of the process.
- The IE shall be able to make a determination that the Request for Proposal process is transparent and fair and that the Request for Proposal issuer's decision is not influenced by any affiliate relationships.
- IEs shall be available to testify as an expert witness in any associated Commission proceeding regarding upfront review of potential solicitation transactions.
- IEs shall have the following qualifications: (1) technical expertise germane to evaluating resource solicitation power products (i.e. they should not be general observers hoping to be educated on the job); (2) skilled in analyzing a range of power market derivatives (e.g. futures, contracts, options, swaps); (3) familiarity with the various standard contracts and industry practices; (4) experience analyzing the relative merits of various types of Power Purchase Agreements (PPAs); and (5) the ability to evaluate PPAs, PSAs and IOU-built projects on a side-by-side basis.
- IEs shall comply with the appropriate Fair Political Practices Commission guidelines in order to avoid conflicts of interest.
- The IOUs, in consultation with the PRG and Energy Division, shall develop comprehensive conflict of interest disclosure requirements for the IE. An IE may be disqualified from participating in an RFO process if there are particular egregious conflicts of interest that arise during the contract. The conflict of interest disclosure requirements shall be approved along with the standard contracts in the next Long Term Procurement Plan proceeding.

1 (c) IOU IE Pool Requirements

Each IOU, in conjunction with each respective PRG, shall develop a pool of at least three, but preferably more, IEs. Each IOU should develop and periodically add to its IE pool as follows:

- The IOU shall develop a list of prospective IEs via industry contacts, literature searches, PRG recommendations, and similar methods, solicit information from the prospective IEs and circulate the list of candidates and their “resumes” to the PRG and Energy Division staff for feedback.
- The IE expertise and qualifications provided in Section 1(b) represent the minimum necessary for an IE to be effective, and the IOU and the PRG should include any additional relevant information that it has gained through its experiences implementing the IE requirements.
- The IOU and PRG shall interview a subset of prospective candidates that the IOU, PRG, and Energy Division staff deem most suitable for the role. IOUs should arrange for the PRG to conduct interviews with candidate IEs in isolation from the contracting IOU.
- The PRG shall coordinate the development and submittal to the IOU its recommendations on each prospective candidate including the general consensus and any opposition to the consensus. The IOU shall submit a written list of qualified IEs to Energy Division to add to the contracting IOU’s pool. The list must contain the recommendations of the PRG that were submitted to the IOU. Energy Division will evaluate the proposed IE’s competencies as well as evaluating the IE’s independence including any conflicts of interest. Energy Division shall give final approval for inclusion of an IE in the IE pool by letter to the IOU. Energy Division will also have the right to final approval of the use of a particular IE for each RFO.
- Beyond the development of the initial IE pool, additional IE’s may be added to the pool by following the same procedures listed above.
- An IE may remain in the IE pool for two years, after which he/she must go through a reevaluation process based upon the inclusion criteria as defined in Section 1 (b) to assure continued compliance. The IOU may commence on the reevaluation of an IE no sooner than

two months before the two year reevaluation period for that IE. The reevaluation process will involve additional reviews of the IE candidate by the PRG, IOU and Energy Division staff including additional interviews, if necessary.

- The IOU shall develop a pro forma contract to be used each time it contracts with an IE. If deviations from the pro forma contract are necessary, the modifications must be fully supported when the IOU seeks final approval of the contract. This pro forma contract shall be submitted as part of the next Long Term Procurement Plan filing and will be subject to Commission approval.

1 (d) IE Report Requirements

In some circumstances, it may be necessary for an IE to produce two versions of an IE report: one public/redacted and another that is confidential. These two versions must be identical with the exception of redacting confidential information. There shall be no differences in the conclusions or non-confidential text.

SECTION 2: PROCUREMENT REVIEW GROUP

Each IOU is required to establish a Procurement Review Group (PRG) to review and make recommendations concerning proposed contracts and procurement processes on an expedited basis.

2 (a) PRG Participants

The PRG is to consist of 1) members from the Energy Division, who will be ex officio members of the PRG; 2) members from the Division of Ratepayer Advocates, who will be ex officio members of the PRG and 3) a limited number of members, who are non-market participants as defined in the Protective Order¹¹. The California Energy Commission and IOU are invited to participate in the PRG. The non-market participants are required to sign the appropriate non-disclosure agreement and should agree to review and make recommendations

¹¹ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/94608.pdf