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)

REPLY COMMENTS OF L. JAN REID ON PROCUREMENT RULES

November 30, 2012

L. Jan Reid
3185 Gross Road
Santa Cruz, CA 95062
Tel/FAX (831) 476-5700
janreid@coastecon.com

TABLE OF CONTENTS

Page

I. Introduction

Pursuant to the November 1, 2012 email of Administrative Law Judge (ALJ) David Gamson, I submit these reply comments on procurement rules in the Long Term Procurement Plan (LTPP) proceeding. Reply comments are due on Friday, November 30, 2012. I will file and serve this pleading on the due date, intending that it be timely filed.

II. Summary and Recommendations

I have relied on state law and past Commission rulings in developing recommendations concerning the proposed changes to existing procurement rules. I recommend the following:[1]

1. The Commission should not adopt Procurement Rule Number 4 as proposed by The Alliance for Retail Energy Markets, the Direct Access Customer Coalition, and the Marin Energy Authority (collectively, ADM). (pp. 2-3)

2. The Commission should not order the Energy Division to hire the Independent Evaluators as recommended by the California Environmental Justice Alliance. (pp. 3-4)

3. The Commission should not fail to consider a Utility Owned Generation (UOG) project as recommended by The Independent Energy Producers Association (IEP). (pp. 4-6)

4. The Commission should not allow the Investor Owned Utilities (IOUs) to enter contracts with Once Through Cooling (OTC) facilities for any term of less than 5 years with-out pre-approval. (p. 7)

[1] Citations for these recommendations and proposed findings are given in parentheses at the end of each recommendation and finding.

III. Proposed Findings

My recommendations are based on the following proposed findings:

1. Once the loading order constraints are satisfied, the Commission must protect ratepayers from potentially unreasonable resource costs by ensuring that the IOUs procure cost-effective resources. (pp. 2-3)

2. UOG is typically not built by the IOUs but is built by turnkey developers who can compete for contracts in a competitive solicitation similar to the way in which some renewable developers compete for contracts in a renewable solicitation. (pp. 4-6)

3. Southern California Edison Company (SCE) does not explain how the Commission will determine that five-year OTC contracts are cost-effective for bundled and/or direct access ratepayers. (p. 7)

IV. Specification of Resources

The Alliance for Retail Energy Markets, the Direct Access Customer Coalition, and the Marin Energy Authority (collectively, ADM) has proposed that: (ADM Comments, Procurement Rule No. 4, p. 7)

> Each IOU's Bundled Procurement Plan shall specify the resources that it will procure or build to meet 100% of the identified unmet resource need. The IOU's unmet resource need shall be met by both existing and new generation resources with a priority given to demand response and energy efficiency, as required by [Public Utilities] P.U. Code Section 454.5(b)(9)(C).

I agree with ADM with respect to the priority for demand response and energy efficiency. The CPUC has recently found that: (D.12-01-033, slip op. at 17)

> The "loading order" established that the state, in meeting its energy needs, would invest first in energy efficiency and demand-side resources, followed by renewable resources, and only then in clean conventional electricity supply. (Energy Action Plan 2008 Update at 1.)

However, the Commission should not require the IOUs to procure energy from both existing and new fossil fuel resources. Once the loading order constraints are satisfied, the IOUs should procure energy from the most cost-effective resources, regardless of whether those generation resources are new or existing.

The Commission has an obligation under Public Utilities Code Section (PUC §) 451 to protect ratepayers and to ensure that rates are just and reasonable. Consistent with PUC § 451, the Commission must protect ratepayers from potentially unreasonable resource costs by ensuring that the IOUs procure the most cost-effective resources.

Therefore, I recommend that the Commission reject ADM's proposed Procurement Rule Number 4.

V. Independent Evaluators

The California Environmental Justice Alliance (CEJA) argues that:

> 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.

The Commission has addressed this issue twice before, in Decision (D.) 07-12-046 and in D.12-01-033. On both occasions, the Commission rejected the same suggestion currently put forth by CEJA.

CEJA's suggestion is a concept, not a proposal. A number of questions naturally arise concerning CEJA's suggestion. For example:

1. Does the Energy Division have available staff who have the appropriate experience necessary to manage the work of the IE?
2. How many person hours per month are required to manage the activities of the IE?

3. Will PRG members be allowed to contact the IE directly if the IE is hired and managed by the Energy Division?

4. Will the Commission have to hire additional staff to manage the work of the IE? If so, what will be the cost of these additional staff?

5. Since the Energy Division is directly accountable to a politically appointed body (the Commission), how will the Commission set up processes to ensure that the IE is insulated from political pressure?

Therefore, I recommend that the Commission reject CEJA's proposal.

VI. Utility Owned Generation (UOG)

The Independent Energy Producers Association (IEP) recommends that the Commission should extend the standard adopted in D.12-04-046 to renewable UOG proposals, with one refinement: a UOG project should be considered only if the "failed" RFO occurred within the six months preceding the UOG application." (IEP Comments, p. 4)

IEP is apparently in favor of markets when it affects their members but is opposed to "turnkey" markets for UOG. UOG is typically not built by the IOUs but is built by turnkey developers who can compete for contracts in a competitive solicitation similar to the way in which some IEP members compete for contracts in a standard renewable solicitation.

In 2007, Aglet Consumer Alliance testified that: (Rulemaking (R.) 06-02-013, Exhibit 52, March 2, 2007, p. 24)

> Long-term contracts (PPAs) and UOG are valuable in reducing the exercise of market power only if the contracts can be dispatched to meet customer load. Generators can default on contractual provisions or be unavailable due to planned or unplanned outages. In contrast, UOG is subject to outages but it does not default because it is owned by the utility. Additionally, the IOU can manage its UOG in order to minimize unplanned outages. Clearly, UOG is a better market power mitigation tool than long-term contracts with energy service providers.

Additionally, I am concerned that IEP's proposal will have the effect of banning UOG renewable projects. Six months is an inadequate amount of time for the utility to conduct a UOG turnkey solicitation, evaluate bids, make awards, and present an application to the Commission.

In 2006, the Commission approved "seven long-term agreements to procure 2,250 megawatts (MW) of new generation resources resulting from Pacific Gas and Electric Company's (PG&E) 2004 Long-Term Request for Offers (RFO)." (D.06-11-048, slip op. at 1) The Commission stated that: (D.06-11-048, slip op. at 2-3)

> PG&E conducted its all-source solicitation, receiving over 50 bids for projects totaling in excess of 12,000 MW. Of these, PG&E selected and seeks approval for five power purchase agreements (PPAs) with terms from 10 to 20 years, a Purchase and Sale Agreement (PSA) for the Colusa project that will be developed by a power plant developer and purchased and operated by PG&E after the plant is operable and has passed performance tests, and an Engineering, Procurement and Construction (EPC) contract for new generation at PG&E's Humboldt Power Plant (Humboldt) which, together, will result in the construction of 2,250 MW of new generation facilities in northern California.

The Commission noted that "PG&E first issued the RFO on November 2, 2004, but suspended it on January 7, 2005, in order to conform it to the requirements contained in D.04-12-048, and reissued it on March 18, 2005." (D.06-11-048, slip op. at 2, footnote 1) PG&E filed its application in April 2006, over two years after the RFO was initially issued.

It is clear that six months is an inadequate amount of time for the utility to conduct a UOG turnkey solicitation, evaluate bids, make awards, and present an application to the Commission.

If the Commission adopted IEP's proposal, the utility's risk would unreasonably increase because the utility would be subject to fines for not meeting its RPS goals. The utility could no longer mitigate this risk by contracting for utility owned generation. This increase in risk would be paid for by ratepayers via a utility's cost-of-capital case.

For the reasons given above, I recommend that the Commission reject IEP's proposal.

VII. The Bagley-Keene Act

The Sierra Club of California (SCC) argues that: (SCC Comments, pp. 3-4)

> The current form and operation of the [Procurement Review Groups] 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.

First of all, the SCC is a non-market participant and seems to be qualified to participate in the PRG. Instead of participating in the PRG process, SCC has constructed incorrect arguments concerning the PRG and the Bagley-Keene Act.

The PRGs are advisory groups to the IOUs, not to the Commission. It is my understanding that the IOUs have a number of advisory groups which are organized for different purposes. The PRG is simply another advisory group.

Although Energy Division staff participates in the PRG, these staff are not decision makers. Decision makers are not allowed to participate in the PRGs. Thus, the fact that Energy Division staff participate in the PRG is not relevant to the requirements of the Bagley-Keene Act.

Therefore, I recommend that the Commission reject SCC's recommendation concerning the PRG and the Bagley Keene Act.

VIII. Once Through Cooling (OTC)

Southern California Edison Company (SCE) recommends that "the Commission should reconsider current OTC contract requirements and allow the IOUs to enter contracts with OTC facilities for any term of less than 5 years without pre-approval, provided the contract term does not extend beyond the applicable SWRCB deadline." (SCE Comments, p. 13)

SCE does not explain how the Commission will satisfy the requirements of PUC § 451 or how it will determine that the OTC contracts are cost-effective for bundled and/or direct access ratepayers. Essentially, SCE is proposing that the IOUs be allowed to sign OTC contracts with a duration of five years or less regardless of the cost of those contracts.

Therefore, the Commission should reject SCE's recommendation concerning OTC contracts.

IX. Conclusion

The Commission should adopt Reid's recommendations for the reasons given herein.

* * *

Dated November 30, 2012, at Santa Cruz, California.

/s/

L. Jan Reid
3185 Gross Road
Santa Cruz, CA 95062
Tel/FAX (831) 476-5700
janreid@coastecon.com