

**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)

**REPLY COMMENTS OF SIERRA CLUB CALIFORNIA AND
CALIFORNIA ENVIRONMENTAL JUSTICE ALLIANCE ON TRACK 3 RULES**

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In accordance with Administrative Law Judge Gamson’s November 1, 2012 email, the California Environmental Justice Alliance (“CEJA”) and Sierra Club California (“Sierra Club”) respectfully and timely submit the following reply comments on Track 3 Rules. CEJA and Sierra Club reiterate their opposition to PG&E’s motion regarding delay of Track 3 rules and request that the Commission adopt the Track 3 rules changes proposed in their opening comments and those discussed herein.

DISCUSSION

I. The Commission Should Require Utilities to Evaluate Reducing GHG Emissions To Comply with AB 32 Requirements.

CEJA, Sierra Club, and the Division of Ratepayer Advocates (“DRA”) agree that utilities should evaluate greenhouse gas (“GHG”) emission reductions before buying AB 32 compliance products.¹ Environmental implications and long-term costs of GHG emissions should both be considered in assessing opportunities for potential GHG reductions. For example, there may be a reflexive tendency towards the purchase of GHG compliance products such as allowances. However, this presumption may overlook cost-effective on-site measures and the added value of potential co-benefits of reducing emissions from a utility’s portfolio. If these GHG emission reductions projects, when co-benefits are considered, are more cost-beneficial than purchasing compliance products, the utilities should perform these projects to achieve these reductions.

¹ See DRA Nov. 2, 2012 Track III Comments (“DRA’s Comments”), p. 1.

This encourages a system where there are more informed decisions about the beneficial results from the expenditure of resources.

Several reasons support this type of framework. The overall goal of AB 32 is to reduce California's statewide GHG emissions to levels equivalent to 1990 levels by 2020 to mitigate the catastrophic effects of climate change.² Reducing GHG emissions at the source is far less risky than purchasing compliance instruments on potentially speculative project in volatile markets. In the last LTPP, the utilities articulated their concerns about this speculative market. For example, SDG&E acknowledged that there is "currently unknown volatility in the market,"³ and SCE admitted that "the new GHG cap-and-trade market may be subject to very volatile market prices."⁴ Rather than investing year after year in a risky market, the utilities could incur a one-time definitive cost to implement projects that result in permanent GHG reductions, which allow them to reliably meet their continued GHG obligations. Utilities should evaluate their systems to determine how they can internally reduce GHG emissions before procuring GHG compliance products.

DRA recommends that the utilities develop a marginal cost abatement curve similar to ones developed for AB 32 analysis to initially determine the types of projects that may effectively reduce GHG emissions.⁵ CEJA and Sierra Club believe that this type of tool could be a valuable *first step* for evaluating potential emission reductions only if the curve includes a full evaluation of the long-term environmental costs and benefits of the project. This curve should not be the end of the analysis, since benefits are not simply a function of current marginal cost of abatement. For example, investment in certain emission reduction measures can lead to decreased future cost of measures. Also, some projects may involve more comprehensive actions which result in greater or more certain reductions, and these should not be rejected simply because they have an apparently higher marginal cost, especially if failing to carry out the

² Cal. Health and Safety Code § 38550.

³ SDG&E 2010 LTPP (R.10-05-006) Track III Test. (Ex. 313) p. 8.

⁴ SCE 2010 LTPP (R.10-05-006) Track III Test. (Ex. 210) p. 18.

⁵ DRA's Comments, pp. 1, 3.

project carries significant lost opportunity costs. Furthermore, environmental effects of projects, both positive and negative, may extend beyond the narrower consideration of GHGs alone, and these should be considered. After completing this curve, utilities should evaluate the specific potential opportunities within their system for reducing emissions, and utilities should be able to recover costs for projects that are deemed cost-beneficial when compared to the long-term environmental impacts and costs of not reducing the emissions.

SCE is the only utility that opposed internal evaluation of potential GHG reductions in its Track 3 comments. SCE initially argues that the LTPP is not the appropriate proceeding for considering the issue of whether the utilities should evaluate GHG reductions.⁶ To the contrary, the LTPP is the most appropriate proceeding because this is the proceeding in which the Commission is examining issues related to authorizing ratepayer funding for AB 32 compliance products.⁷ As discussed above, GHG emission reductions can be more cost-beneficial for ratepayers than compliance products, and therefore, the Commission should require evaluation of potential GHG reductions to ensure that potential ratepayer funding of compliance products is just and reasonable. Importantly, the Public Utilities Code mandates 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.”⁸ The Commission has the authority and the LTPP is the appropriate proceeding to require utilities to conduct that evaluation and strategy.

SCE further argues that the Commission should not impose “command-and-control GHG emissions reductions programs on IOUs in the LTPP.”⁹ This, however, is not what is being proposed. CEJA, Sierra Club, and DRA are requesting that the Commission require evaluation of potential GHG reduction opportunities, and based on the results of that analysis, that the

⁶ Southern California Edison Company's (U 338-E) Comments on Proposed Track 3 Procurement Rules (“SCE’s Comments”) p. 18.

⁷ See 2012 LTPP Order Instituting Rulemaking at p. 10 (stating that the 2012 LTPP issues include “[c]onsider[ation of] any GHG product procurement policies to facilitate the implementation of California Air Resource Board’s cap-and-trade program”).

⁸ Cal. Public Util. Code Section 635.

⁹ SCE Comments, p. 18.

utilities implement cost-beneficial measures rather than buy risky compliance products year after year. This is not a command-and-control mechanism, but rather a way to ensure just and reasonable rates in a way that is consistent with, and in furtherance of, the primary purpose of AB 32.

II. The Utilities' Attempts to Reduce Commission Oversight Should Be Rejected.

SCE proposes that the Commission reduce its oversight of transactions involving OTC facilities and the bundled procurement plans.¹⁰ In relation to the OTC facilities, SCE is asking for the same reduced level of oversight that was requested and rejected in the last LTPP.¹¹ The OTC policy requires that OTC facilities be retired “as soon as possible.”¹² To achieve the balance between contracting with these facilities, and consistency with the OTC policies’ ultimate purpose, the 2010 LTPP decision increased the level of oversight.¹³ This reasonable decision should not be modified.

SCE also proposes reducing the oversight of the utilities' bundled plans to Tier 2 advice letters. CEJA and Sierra Club strongly oppose this request. Importantly, SCE's change is inconsistent with Section 454.5 of the Public Utilities Code, which requires the Commission’s “review” and “adoption” of a utilities' bundled procurement plan.¹⁴ In addition, in the last LTPP proceeding, the utilities requested many changes to Commission oversight and transparency in their bundled procurement plan. For example, PG&E requested changing the level of review for bilateral contracts.¹⁵ This proposed change could have significantly impacted many parties. The Commission should reject SCE’s request to reduce its level of oversight given the importance of evaluating utility procurement plans, and the requirement of Section 454.5.

PG&E argues that the Commission’s oversight of GHG offsets should be drastically reduced in an attempt to raise the same issues that were decided in the last LTPP. PG&E’s

¹⁰ SCE Comments, pp. 9-13, 16.

¹¹ D.12-04-046, pp. 17-27.

¹² See http://www.swrcb.ca.gov/water_issues/programs/ocean/cwa316/docs/policy100110.pdf

¹³ D.12-04-046, pp. 17-27.

¹⁴ Cal. Public Util. Code Section 454.5.

¹⁵ See, e.g., D.12-01-033 at pp. 40; PG&E Track II Brief in R.10-05-006.

attempt to modify the Commission’s limits on offsets without any new justification should be rejected. For example, PG&E requests that “the Commission modify current procurement rules to allow utility procurement of offset credits that are developed by the utility, without need for a separate application.”¹⁶ This is in direct conflict with D.12-04-046, which states that:

[a]ll offsets must be CARB-certified, as at this time [the Commission does] not want the utilities guessing which offsets will ultimately be CARB-certified. This decision does not authorize the utilities to develop their own offset projects. To the extent any utility wishes to develop an offset project, it must seek authorization from this Commission via application.¹⁷

Nothing has changed since the rules have been adopted and no practical experience has been developed that would justify a rule change.

Furthermore, these oversight requirements are necessary because offset procurements are risky transactions that may not actually achieve emission reductions. In addition, as a study by the International Energy Agency that evaluated trading programs found: “extensive use of offsets in the short term could lock in investment in high-emissions infrastructure domestically, making the eventual transition to a low-carbon economy more difficult.”¹⁸ CEJA and Sierra Club oppose the use of offsets due to concerns such as these.

Similarly, PG&E provides no new justification for its request to “modify current GHG procurement rules by removing the restriction that requires all allowances and offset credit transactions to be concluded through an RFO or on an exchange.”¹⁹ The Commission adopted these rules to ensure that ratepayer interests were protected in these transactions.²⁰ PG&E’s

¹⁶ Comments of Pacific Gas and Electric Company (U 39 E) Regarding Track 3 Issues in the 2012 Long-Term Procurement Plan OIR (“PG&E Comments”), p. 3.

¹⁷ D.12-04-046, pp. 43-44.

¹⁸ *Reviewing Existing and Proposed Emissions Trading Systems*, Nov. 2010, International Energy Agency, http://www.iea.org/papers/2010/ets_paper2010.pdf (Ellerman, 2010; European Commission, 2010c). Offsets may also be more susceptible to fraud. *As Kyoto Expiration Nears, Emissions Trading Shown Ineffective*, by Hazel Henderson, Monday, May 23, 2011, Inter Press Service, Hazel Henderson, author, president of Ethical Markets Media (USA and Brazil), co-developed with the Calvert Group the Calvert-Henderson Quality of Life Indicators and co-authored "Qualitative Growth" (2009), Institute for Chartered Accountants of England and Wales, <http://www.globalissues.org/news/2011/05/23/9757>

¹⁹ PG&E Comments, p. 3.

²⁰ D.12-04-046, pp. 52-54.

argument, that these rules “unnecessarily increas[e] ratepayer expenses,”²¹ is simply an unsupported assertion. CEJA and Sierra Club urge the Commission to reject PG&E’s attempt to change rules based on nothing more than its desire to have a different result.

III. Track 3 Should Require More Transparency in the Procurement Process.

The proposals by Sierra Club and CEJA regarding transparency in the procurement process are consistent with each other and both should be adopted. Sierra Club urges the Commission to fulfill its legal obligation by applying the Bagley-Keane Act to the operation of the PRGs, which would increase public access and knowledge related to procurement decisions. CEJA makes a similar proposal regarding transparency and recommends the Commission require at least the following categories of information be made 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.²²

These proposals firmly rest in SB 1488’s mandate of “meaningful participation and open-decision making.”²³ CEJA explains that “[i]mproving transparency in RFO proceedings will facilitate better and fairer results”²⁴ by allowing greater participation by interested members of the public.

In addition, Sierra Club has supported the Commission’s proposal to reform the renewables procurement process to increase transparency (including supporting the Commission’s proposal for the IOU’s shortlists to be submitted via a Tier 3 Advice Letter) in R.11-05-005.²⁵ Sierra Club has also argued that certain reforms, including environmental

²¹ PG&E Comments, p. 3.

²² California Environmental Justice Alliance’s Comments Related to Certain Track III Issues., p. 2.

²³ *Id.*

²⁴ *Id.*, p. 3.

²⁵ Sierra Club’s Procurement Reform Comments on Commissioner Ferron’s October 5, 2012 Assigned Commissioner’s Ruling issuing Procurement Reform Proposals and Establishing a Schedule for Comments on Proposals., p. 2.

reforms, be incorporated into the procurement and procurement reform process for all contracts²⁶ and for improved notice for contract advice letters.²⁷

IV. The Commission Should Adopt DRA's Proposal Regarding IEs.

As a first step in improving the procurement process, the Commission should accept DRA's proposal regarding independent evaluators ("IEs"). DRA proposes a solution that directly addresses the concerns expressed in the 2010 LTPP decision regarding the potential problems with Energy Division directly paying for IEs.²⁸ DRA's new proposal, that Energy Division be empowered to choose each IE, is an important step in removing the conflict of interest where the IOUs both select and pay for the IEs. DRA's proposal is consistent with CEJA's request that the Commission find a solution to eliminate the conflict of interest presented by the current system for selecting and paying for IEs.

CONCLUSION

For the foregoing reasons, the Commission should adopt Track 3 rules that conform with the recommendations described above.

Respectfully submitted,

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²⁶ *Id.*, p. 1.

²⁷ *Id.*, p.12.

²⁸ DRA's Comments, p. 7.

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