

**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)

**COMMENTS OF SIERRA CLUB CALIFORNIA ON TRACK 3 RULES**

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Dated: November 2, 2012

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In accordance with Administrative Law Judge’s Gamson’s (“ALJ”) October 4, 2012 email (“ALJ Oct. 4th email”), Sierra Club California (“Sierra Club”) respectfully submits the following comments on Track 3 Rules. Sierra Club notes, however, that the Commission has provided insufficient direction with respect to Track 3. The Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (“Scoping Memo”) lays out fifteen general topics related to the procurement rules. The Scoping Memo indicated that the Commission “intend[ed] to provide more detail” about Track 3 in a subsequent ruling,<sup>1</sup> but none has been provided. Nonetheless, Sierra Club provides the following comments on certain Track 3 topics listed in the Scoping Memo.

**I. The Commission Should Adopt Rules Related to the Utilities Securing Greenhouse Gas Emission Reductions.**

The Commission should adopt rule[s] to include a benchmark of achieving excellence in addressing climate protection and other state environmental policy goals. This falls within Topic No. 3: “Ensuring utilities reduce their need to procure GHG compliance instruments by pursuing cost-effective GHG emissions reductions on a portfolio-wide basis.”

Compliance with the loading order in the bundled plans should be intimately connected to the utilities greenhouse gas reductions on a portfolio wide basis. The Commission should

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<sup>1</sup> Scoping Memo, p. 11.

adopt rules to require bundled plans to explain and analyze how the plans will achieve greenhouse gas emission reductions on a portfolio basis. The plans should identify the sources of greenhouse gases and identify the possible methods for achieving emission reductions. The bundled plans should explain and graphically demonstrate how emissions reductions will occur. This analysis should also incorporate implementation plans for compliance with the loading order. The Commission should require a standardized format for the greenhouse gas plans *and extensive qualitative and quantitative GHG data, scenarios and analysis to provide useful information about compliance*. This would also provide important information to the Air Resource Board regarding the State’s progress towards its AB 32 mandate.<sup>2</sup>

Additionally, the consideration of greenhouse reductions on a portfolio basis should consider the environmental factors as well as cost-effectiveness. How utilities choose to make greenhouse gas reductions will have environmental implications. For example, emission reductions from the utility portfolios may reduce pollution more than compliance mechanisms, such as offsets, that are procured by utilities. The plans should explicitly evaluate the trade-offs between cost, risk, reliability and environmental impact. Linking implementation of the loading order to the IOUs’ greenhouse gas reduction plans, and in particular relating these to the AB 32 Scoping Plan targets with explicit data and analysis in the plans, could also provide a foundation for environmental review.

Previous decisions in the Long-Term Procurement Proceeding (“LTPP”) support this proposal. For example, the Commission’s decision in the 2006 LTPP proceeding (D.07-12-052) encapsulates the appropriate starting point for this topic. In that decision, the Commission held:

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<sup>2</sup> This point also relates to Topic No. 15.

Going forward the utilities will be required to reflect in the design of their requests for offers (RFO) compliance with the preferred loading order and with GHG reductions goals and demonstrate how each application for fossil generation comports with these goals . . . . [W]e will require that subsequent LTPP filings for our regulated utilities not only conform to the energy and environmental policies in place, but aim for even higher levels of performance. We expect the utilities to show a commitment to not only meet the targets set by the Legislature and this Commission but to try on their own to integrate research and technology to strive to improve the environment, without compromising reliability or our obligations to ratepayers.<sup>3</sup>

Similarly, the Track II decision in the 2010 LTPP affirms the centrality of the loading order and the application of the loading order to all procurement decisions. That decision “expressly endorse[s] the general concept that the utility obligation to follow the loading order is ongoing. The loading order applies to all utility procurement, even if pre-set targets for certain preferred resources have been achieved.”<sup>4</sup> It further states “While hitting a target for energy efficiency or demand response may satisfy other obligations of the utility, that does not constitute a ceiling on those resources for purposes of procurement. . . . If the utilities can reasonably procure additional energy efficiency and demand response resources, they should do so. This approach also continues for each step down the loading order, including renewable and distributed generation.”<sup>5</sup>

## **II. The Commission Must Ensure that the Procurement Review Groups Comply with the Bagley-Keene Act.**

The Commission should adopt rule[s] that apply the Bagley-Keene Act to Procurement Review Groups (“PRGs”). This falls within Topic No. 10: “Refinements to the Procurement Review Group (“PRG”).”

The current form and operation of the PRGs appear inconsistent with California law which requires public agencies and their advisory bodies to conduct public meetings. The

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<sup>3</sup> D.07-12-052, at 3-4.

<sup>4</sup> D.12-01-033, p. 21.

<sup>5</sup> *Id.*, p. 21-22.

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.<sup>6</sup> The Public Utilities Code incorporates the requirements of the Bagley-Keene Act and reinforces the Commission’s duty to provide public meetings and public notice.<sup>7</sup> California’s Public Records Act (“PRA”) also favors public disclosure, and states that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.”<sup>8</sup> Yet, the PRG groups are limited to certain participants in the PUC process, and not generally open to the public.

Each PRG is an exclusive group of non-market participants and is in effect a substitute for an open and transparent procurement review process as required by law. While PRG members may have sufficient access and dialogue with the utilities, members of the public do not. By holding confidential PRG meetings, the public is “denied the opportunity to learn about ongoing activities and challenges in real-time and instead [is] forced to review materials underlying the Advice Letter filings for the first time after the decisions ha[ve] been made and submitted for approval.”<sup>9</sup> Although Commission meetings are open to the public, the dialogue between the PRG and IOUs, in combination with the expedited review process, removes important decision making components of the IOUs’ procurement activity from the public realm.

The confidential nature, content, and results of PRG meetings appear to violate the Bagley-Keene Act.<sup>10</sup> For example, as advisory bodies to the Commission, PRGs are subject to the Bagley-Keene Act.<sup>11</sup> Since a PRG meeting is a state body pursuant to the Bagley-Keene Act, it can only conduct closed sessions in a method similar to the Commission. The

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<sup>6</sup> Gov. Code §§ 11125.7, 11125(b).

<sup>7</sup> Pub. Util. Code § 306(b).

<sup>8</sup> Gov. Code § 6250.

<sup>9</sup> D.03-12-062, at 47 (quotation omitted).

<sup>10</sup> *Cf.* Gov. Code §§ 11123, 11126, 11132.

<sup>11</sup> *See* Gov. Code § 11121(c); Government Code section 11121(b), (c) and (d) also make the Bagley-Keene Act applicable to PRGs.

Commission must generally open all meetings to the public pursuant to the Bagley-Keene Act, but it may meet in closed session “to deliberate on the institution of proceedings, or disciplinary actions against any person or entity,” or to discuss pending legal action with legal counsel.<sup>12</sup> Since the Commission is not expressly authorized to conduct closed sessions for reviewing IOU procurement activities, neither may a PRG.<sup>13</sup> Rules should be adopted that provide explicit standards for the PRGs to comply with the Bagley-Keene Act.

### CONCLUSION

For the foregoing reasons, the Commission should adopt Track 3 rules that conform with Sierra Club’s recommendations.

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<sup>12</sup> Gov. Code § 11126(d)(2).

<sup>13</sup> Sierra Club recognizes that provisions would need to be made for confidential information.