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 ON TRACK I PROPOSED DECISION

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Pursuant to Article 14 of the Commission's Rules of Practice and Procedure, the California Environmental Justice Alliance (CEJA) submits these comments on the December 21, 2012 Proposed Decision (PD) of Administrative Law Judge (ALJ) Gamson distributed on December 24, 2012 in this proceeding.

CEJA urges the Commission to not require a minimum level of procurement of new fossil fuel resources. Not only would requiring minimum procurement be inconsistent with the loading order, but construction of these facilities will impede California's efforts to mitigate climate change. The severe impacts of climate change are already being felt in California and across the nation through storms such as Hurricane Sandy, but have not yet reached the truly catastrophic level scientists are predicting. Our current trajectory is towards catastrophic climate change and a hard to describe future marked by extreme heat-waves, declining global food stocks, loss of ecosystems and biodiversity, and life-threatening sea level rise.[1]

The new natural gas plants approved by the draft decision would be available to emit greenhouse gases (and smog precursors) for many decades, when an abundance of clean alternatives are sure to be available. Importantly, a report by the National Oceanic and Atmospheric Administration early this year found that leakage of methane related to natural gas may ultimately make natural gas facilities as or more harmful than coal facilities in the fight against climate change.[2] Requiring a minimum procurement of fossil fuel will be a step in the

[1] *See* CEJA Ex. 3 (J. May Opening Test.) at pp. 3-4; CEJA October 9, 2012 Comments at pp. 4-5; *see also* Turn Down the Heat, World Bank, November 2012, http://www.worldbank.org/en/news/2012/11/19/world-bank-flash-turn-down-heat-why-tackling-climate-change-matters-development.

[2] *See* J. Tollefson, Methane Leaks Erode the Green Credentials of Natural Gas, Nature January 2, 2013, *available at* http://www.nature.com/news/methane-leaks-erode-green-credentials-of-natural-gas-1.12123.

wrong direction. Preferred resources and transmission options should be exhausted before consideration of natural gas procurement.

DISCUSSION

Rule 14.3(c) provides that comments "shall focus on factual, legal or technical errors" in the Proposed Decision. These comments will discuss errors related to the local reliability need analysis, why other alternatives should be considered to address need pursuant to the loading order, and why environmental justice should be considered in the procurement process.

1. Demand Response Should Be Factored Into the Analysis.

The PD erroneously finds that "[t]he record does not provide a way to quantify any amount of locally-dispatchable demand response for the purposes of determining the [local capacity reliability] LCR need in this proceeding."[3] On the contrary, CEJA submitted evidence garnered from SCE showing that hundreds of MWs of locally-dispatchable demand response is currently available in SCE's local area. Specifically, CEJA submitted data collected by SCE's expert witness Silsbee, showing that there is currently 549.43 MW of DR in the Western LA Basin from three of SCE's many DR programs.[4] This data is further broken down by substation demonstrating exactly where the DR is currently located.[5] SCE's expert expects that this level of DR will remain on-line in the future.[6] Other parties submitted information showing that SCE's most recent load impact report is predicting approximately 937 MW of DR for 2014 for the Western LA Basin.[7] Thus, contrary to the PD's assertions, there is record evidence quantifying the amount of locally-dispatchable demand response in the Western LA Basin.

Consideration of this evidence would reduce the maximum need figure found in the PD by hundreds of MW. Although the actual level of DR in 2021 will undoubtedly be much higher than the current level of DR, at the very least, these figures provide the Commission with a

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[3] PD at p. 116, FOF 20.
[4] *See* CEJA x SCE Ex. 3, also attached to this comment as Exhibit 1; *see also* Tr. 1084:16 (Silsbee, SCE).
[5] *Id.*
[6] *See* Tr. 1084:4-8 (Silsbee, SCE).
[7] *See* DRA Ex. 6 (R. Fagan Reply Test.) at p. 8 (presenting values from SCE's most recent load impact final report); *see also* EnerNOC X SCE Ex. 1 (SCE Report on Interruptible Load Programs and Demand Response Programs).

starting point for a DR assumption. Relying on the current DR levels as a starting point is particularly reasonable because SCE, not CAISO, runs the vast majority of demand response programs in its territory, and SCE reasonably expects that this DR will continue to be available and likely increase in the upcoming years,[8] not disappear as the PD assumes.[9]

Recent SCE statements also demonstrate that DR resources are expected to continue to rise. In its application for approval of its Smart Grid Deployment plan, SCE estimates "1,900 MW of DR by 2014" and "1,000 MW of AMI-enabled DR by 2017."[10] In its 2012 *Summer Loads and Resources Assessment*, CAISO projected "[a]n estimated 2,296 MW of demand response and interruptible load programs will be available to deploy for summer 2012."[11]

Even CAISO admits that: "demand response can be a valuable asset."[12] Indeed, CAISO recommended utilization of demand response to meet the LA Basin summer peak this last summer, as well as "longer-term steps to increase available demand response system-wide."[13] As the Commission summarized: "[t]he CAISO expects that integrating DR into its wholesale markets will increase competition, promote efficiency and reduce costs."[14] Indeed, even FERC has recognized the importance of demand response stating that: "demand response has the potential to support system reliability and address resource adequacy and resource management challenges surrounding the unexpected loss of generation. *This is because demand response resources can provide quick balancing of the electricity grid.*"[15]

All DR can modify load, and a great portion of DR, including the AMI-enabled demand reduction, can also meet increased flexibility requirements, such as the ones CAISO proposes in

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[8] *See* Tr. 1084:4-8 (Silsbee, SCE).
[9] The PD states that there is some amount of DR "embedded in the CEC IEPR forecast." Tthe CEC explanation of its forecast however, states that "no demand response impacts are counted on the demand side." *See* CEJA x SCE Ex. 2.
[10] CEJA Ex. 1 (B. Powers Test.) at p. 12 (citing SCE Smart Grid Deployment Plan).
[11] CEJA Ex. 3 (J. May Opening Test.) at p. 21; CEJA Ex. 7 (J. May Selected Sources) at p. 88 (CAISO Briefing, Summer Loads and Resources Assessment).
[12] CAISO Ex. 6 (N. Millar Test.) at p. 12.
[13] CEJA Ex. 1 (B. Powers Test.) at p. 13 (citing CAISO's Briefing on Summer 2012 Operations Preparedness).
[14] D.12-04-045 at p. 13.
[15] Order No. 745, 134 FERC ¶ 61,187, at pp. 9-10 (March 15, 2011) (internal citations omitted) (emphasis added).

this proceeding.[16] Importantly, DR would be used as a load modifier on a 1-in-10 day, which is the type of extreme day that CAISO assumes. CAISO should not have it both ways: if CAISO models a 1-in-10 day, it should include resources that would likely be called upon on such a day, including DR.

The PD's position is also inconsistent with Commission policies and ignores the considerable DR program expenditures that the Commission has authorized. For instance, the Commission recently approved SCE's budget of over $196 million to develop and administer DR programs in its territory.[17] The Commission has reiterated that "EE and DR are considered the highest priority and should be employed first by a utility in making procurement decisions."[18] DR is also a significant aspect of the Commission's Smart Grid plans, which the Commission has authorized significant investments in.[19] The PD would essentially assume that these hundreds of millions in expenditures would result in *no* actual MW reduction in most of SCE's territory.

The PD is also inconsistent with FERC requirements to increase integration of demand response into the marketplace.[20] Over the past several years, FERC has issued a host of decisions aimed at integrating DR into the grid and eliminating barriers to DR being relied on as a resource on par with conventional generation. FERC Order 890-A required transmission providers to develop transmission planning process that treat all resources, including demand response, on a comparable basis.[21] FERC Order No. 719 requires balancing authorities to accept

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[16] *See* CEJA Ex. 1(B. Powers Test.) at p. 11; *see also* D.08-09-039 at p. 2 (finding millions of dollars in net benefits from SCE's Advanced Metering Infrastructure Project where SCE will install approximately 5.3 million new AMI-enabled electric meters); Resolution E-4527 (Sept. 27, 2012) (utilities shall begin accepting HAN activation requests from customers, which will allow customers to monitor their energy consumption measured by the smart meter and respond to load control signals).

[17] D.12-04-045 at p. 2, 196-198.

[18] D.07-12-052 at p. 12.

[19] *See* D.10-06-047 at p. 34 (also stating that demand response should be on equal footing with traditional generation resources).

[20] *See* Order No. 745, 134 FERC ¶ 61,187 (March 15, 2011). "Congress has recognized the importance of demand response by enacting national policy requiring its facilitation." *Id.* at p. 9 , citing Energy Policy Act of 2005, Pub. L. No. 109-58, § 1252(f), 119 Stat. 594, 965 (2005) ("It is the policy of the United States that . . . unnecessary barriers to demand response participation in energy, capacity, and ancillary service markets shall be eliminated.").

[21] Order No. 890 (Feb. 16, 2007).

bids from demand response resources in their markets for certain ancillary services on a basis comparable to other resources.[22] By not counting DR as a local resource, the PD hinders the ability of DR to effectively compete in the marketplace. Furthermore, the PD's attempt to hedge the availability of over 1,000 MW of DR[23] against EE and CHP is wrong. The level of DR is not related to the level of EE and CHP.

The PD's decision to not include any DR when assessing LCR need is unreasonable and inconsistent with current and increasing DR availability and state policy. Therefore, CEJA urges the Commission to consider the importance and availability of DR in evaluating LCR need. As CEJA stated in its Opening Brief, the DR value assumed should be at least 1,064 MW for the Western LA Basin.[24]

2. The PD Should Ensure Transmission Options That Lower LCR Need Are Considered.

The PD correctly found that "[i]t is possible or even likely that there are certain mitigation options for transmission constraints or certain transmission upgrades which were not fully considered by the ISO and which may become feasible."[25] Importantly, CAISO is continuing to consider potential transmission upgrades to mitigate potential transmission constraints in its current transmission planning cycle. As shown by its December 2012 presentation, CAISO is considering many upgrades for the SCE service territory.[26] The draft Transmission Plan is expected to be published at the end of January,[27] before SCE would begin its solicitation. If these elements lower LCR need, SCE should consider these in its solicitation.

SCE should also consider the transmission upgrades from its own internal evaluation. The PD correctly finds that "[i]t is also possible that certain transmission fixes may become

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[22] Order No. 719, 125 FERC ¶ 61,071 (Oct. 17, 2008).
[23] *See* CEJA Reply Br. at p. 2; CEJA Opening Br. at p. 35 (describing amount of DR available in SCE's LA Basin and Western LA Basin).
[24] *See* CEJA Opening Br. at p. 35; CEJA Reply Br. at p. 2.
[25] PD at p. 44.
[26] 2012/2013 Transmission Planning Process Stakeholder Meeting (Dec. 11-12, 2012) http://www.caiso.com/Documents/Presentation2012-2013TransmissionPlanningProcessStakeholderMeetingDec11-12_2012.pdf
[27] *Id.* at Slide 220

feasible and cost-effective, including the use of synchronous condensers, static var compensators and shunt capacitors, all of which SCE considers annually."[28] SCE itself has stated that it annually evaluates the transmission grid and "looks for feasible and cost-effective transmission fixes."[29]

Importantly, transmission upgrades could be more beneficial for reliability than adding new generation. For instance, CAISO stated that the 600 MW transfer proposal can reduce LCR need in the LA Basin by 2,000 to 3,000 MW.[30] CAISO is also investigating converting OTC sites to synchronous condensers, a process that was also used after the closure of the Hunter's Point Plant.[31] Transmission upgrades can cost less, come on-line faster, and be more beneficial for the environment than adding polluting fossil fuel facilities.

Although the PD states that the Commission "may be able to incorporate new information about transmission upgrades and new transmission capacity,"[32] it fails to state that this information should be examined to determine whether to lower the procurement authorization. The PD appears to contradict itself and not allow SCE any authority to consider how new planned transmission upgrades lower need, until the filing of an application.[33] Ignoring the potential transmission fixes could result in significant over-procurement. The PD should add the following ordering paragraph to ensure that this vital information is considered: "*SCE shall review the CAISO's new transmission plan and its annual transmission evaluation to determine whether the minimum procurement levels should be lowered.*"

3. The PD Should Ensure that Changes to OTC Facilities Are Considered.

The PD correctly acknowledges that the OTC retirement schedule could change and that "OTC plant owners [can] comply with one of the SWRCB tracks to avoid retirement."[34] The PD

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[28] PD at p. 44.
[29] *Id.* at p. 42 citing Tr. 778 (Cabell, SCE).
[30] Tr. 84: 16-20 (Sparks, CAISO).
[31] *See* CEJA Opening Br. at p. 31 citing Tr. 365:18-27 (Millar, CAISO).
[32] PD at p. 44.
[33] *See id.* at p. 122, COL 12 (stating that additional information about transmission alternatives should be considered when an application is filed); PD at p. 121, COL 7 (requiring SCE to procure a minimum of 1,050 MW).
[34] *Id.* at p. 42.

further states that "[i]f any extensions to OTC closure deadlines do occur, this can be taken into account in future procurement proceedings or in review of a procurement application by SCE."[35] Other parts of the PD seemingly contradict this and take away SCE's authority to consider this information by forcing SCE to procure a minimum MW in the RFO process. Similar to updated transmission information, the PD should expressly state that SCE should take this information into account, and that it should ensure that its procurement request reflects the updated information.

The PD also errs by not considering OTC plants that comply with the OTC policy without retiring as resources that meet procurement needs.[36] If an OTC facility proposes to comply with one of the Tracks, it should be allowed to bid into the RFO. An ordering paragraph should be included that specifically states that modified OTC facilities in compliance with the OTC policy should be evaluated to fill procurement needs. Existing sources are likely more cost-effective than new sources, and will be built on brown fields rather than green-fields.

4. A Minimum Level of Fossil Fuel Procurement Is Inconsistent with the Loading Order and Air Pollution Requirements.

a. The PD Fails to Ensure Loading Order Compliance By Requiring that the Bulk of Procured Resources Come From Conventional Generation.

The PD's requirement that SCE procure at least 1,000 MW of conventional gas-fired generation is patently inconsistent with the loading order.[37] As cited extensively in the PD itself, the loading order requires utilities to first procure all cost-effective energy efficiency, demand response, and other preferred resources.[38] Conventional generation can only be procured as a last resort.[39] By requiring at least 1,000 MW of procurement from conventional generation, the PD is precluding this level of need from first being met through preferred resources pursuant to the loading order.

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[35] *Id.*
[36] The PD treats these plants as information to be considered later.
[37] PD at p. 2.
[38] *See id.* at pp. 10-11 (discussing loading order requirements).
[39] *Id.* at p. 10.

It is erroneous to require a minimum level of fossil-fuel procurement given the PD's findings that resources such as demand response will continue to come online and provide additional LCR capacity.[40] While the PD does include language stating that the need assessment can continue to be revised as these resources become available, this is at odds with the express order to procure at least 1,000 MW of conventional generation.

The PD also errs by separately considering the uncertainties of each preferred resource, when it is the *combination* of all the preferred resources that virtually ensures that sufficient preferred resources will be available. CEJA's testimony demonstrates that the forecasted values of uncommitted EE, DR, DG, storage, and transmission fixes is significantly higher than necessary to provide reliability and mitigate CAISO's worst case scenario.[41]

The PD should be amended to not include any minimum level of fossil-fuel generation. All procurement should be conducted in a manner consistent with the loading order so as to best ensure that preferred resources are being given a chance to fill need, and conventional generation is only being used as a last resort. While there is additional need that could be filled with preferred resources, SCE will be required to ignore the loading order for the bulk of its procurement. The PD should be amended to not require any mandatory minimum procurement level of conventional generation. Pursuant to the loading order, preferred resources should first be given a chance to meet any need found.

b. The Proposed Decision's Mandate for SCE to Procure 1,000 MW of Fossil-Fuel Resources is Inconsistent with Air Pollution Requirements in Los Angeles.

The PD wrongly states that there should be a minimum MW of fossil fuel in an area that is currently not meeting protective air quality standards. Gas-fired power plants emit both small particulate matter (PM) and smog precursors, including nitrogen oxides (NOx), carbon monoxide (CO), and sulfur oxides (SOx).[42] The Los Angeles area is in violation of air quality standards for

[40] *See e.g.,* PD at p. 54 ("We agree with parties who contend that demand response resources are likely to be able to provide capabilities which should reduce LCR needs recommended by the ISO.").
[41] *See* CEJA Ex. 3 (J. May Test.) at p. 2 (summarizing resources available to mitigate need).
[42] *See id.* at pp. 3-4; CEJA Comments Related to the Loading Order (October 9, 2012) at pp. 11-12.

small particulate matter and extreme violation of ground-level ozone, or smog.[43] Los Angeles has some of the worst air quality in the country.[44] These levels are life threatening. Smog precursors and small particulate matter is known to increase asthma impacts and premature death.[45] The California Air Resource Board has found that almost 10,000 annual premature deaths can be attributed to small particulate matter,[46] with more concentrated risk in areas with higher levels such as Los Angeles.

Pollutants from fossil fuel power plants particularly are emitted at higher rates during startup and shutdown of operation.[47] For example, the Russell City Energy Center gas turbines are permitted to emit up to 16.5 pounds of NOx per hour during regular operation, but up to 480 pounds of NOx during a cold start.[48] New procured facilities will likely have increased startup and shutdown emission rates, which would further exacerbate the adverse public health impacts.

Under the federal Clean Air Act and the federal rules that apply in the South Coast Air Quality Management District new sources of these pollutants, including power plants, must offset new emissions with emission reduction credits.[49] While the California legislature ordered a consortium of state agencies to study ways to ensure that sufficient credits are available to meet the region's power needs, in three years, that working group has convened only one meeting and one workshop.[50] Regardless of these agencies' intent and efforts, the requirement to offset emissions is a federal requirement. Requiring SCE to procure a minimum amount of new gas-

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[43] 77 Fed.Reg. 10430, 10432 (Feb. 2012) ("The South Coast Air Basin is an extreme nonattainment area for ozone and a serious nonattainment area for PM10.").
Currently Designated Nonattainment Areas for All Criteria Pollutants,
http://www.epa.gov/oaqps001/greenbk/ancl.html (last visited January 11, 2013).
[44] CEJA Ex. 3 (J. May Open. Test.) at p. 3; *see also* American Lung Association, State of the Air 2012, Most Polluted Cities http://www.stateoftheair.org/2012/city-rankings/most-polluted-cities.html (ranking LA the worst in the country for ground level ozone).
[45] CEJA Ex. 3 (J. May Open. Test.) at pp. 3-4.
[46] *Id.* at p. 4; CEJA Ex. 7 (J. May Selected Sources) at p. 17 (Estimate of Premature Deaths Associated with Fine Particle Pollution (PM2.5) in California Using a U.S. Environmental Protection Agency Methodology).
[47] *See* Response to Megawatt Storage Farms Motion on Behalf of the California Environmental Justice Alliance and the Clean Coalition (October 22, 2012) at p. 6.
[48] Response to Megawatt Storage Farms Motion on Behalf of the California Environmental Justice Alliance and the Clean Coalition (October 22, 2012) at p. 6 (citing PSD Permit, Application No. 15487 at pp. 9-10).
[49] 42 U.S.C. § 7503; AQMD Rule 1303(b)(2)(A).
[50] Electrical System Reliability Needs of the South Coast Air Basin (AB 1318) Archive,
http://www.arb.ca.gov/energy/esr-sc/1318archive.htm (last visited 9 January 2013.)

fired generation is bad for public health and the environment and would likely unnecessarily set SCE up to fail.

c. The Proposed Decision Contains Conflicting Orders With Regard to Procurement and the Need to Assess Preferred Resource Availability.

The PD is unclear regarding SCE's obligations to assess preferred resource availability. For instance, the PD states that SCE is "required to determine the availability and cost-effectiveness of preferred resources, and energy storage resources, that can offer the necessary characteristics to meet or reduce LCR needs. . . To the extent such resources meet or reduce LCR needs, SCE should reduce procurement of non-preferred resources."[51] Further, the PD states that additional information regarding preferred resources can be considered when SCE files its application for approval of contracts.[52]

These provisions conflict with the direct order for SCE to procure 1,000 MW of fossil-fueled generation. It is unclear whether the provision requiring loading order compliance refers to all procurement or only the level of procurement not required to come from conventional generation. Further, it is unclear how additional information on preferred resources should be considered once SCE files an application for approval of a contract. Namely, would information demonstrating that additional cost-effective preferred resources are available lead to the Commission's denial of an application for a new fossil fuel facility?

Finally, the PD directs SCE to have "no provisions specifically or implicitly excluding any resource from the bidding process due to technology."[53] This directive again conflicts with decision language requiring procurement of at least 1,000 MW of conventional generation. The PD should be clarified by deleting language directing SCE to specifically procure a minimum of dirty, fossil fuel generation.

[51] PD at p. 122, COL 13.
[52] PD at p. 122, COL 12.
[53] PD at p. 121, COL 4.

5. Information Related to Demand Response, Transmission Upgrades, and OTC Revisions Can Be Submitted with the Bundled Procurement Plans.

As discussed above, further information related to demand response, transmission upgrades, and the OTC units could significantly impact the LCR need finding. The utilities' bundled procurement plans are tentatively scheduled to be filed in March 2013.[54] The Commission can use these bundled plans to update any assumptions regarding transmission fixes, OTC retirement schedules, demand response assumptions, and other resource assumptions. By relying on the newest data, the Commission can help inform the RFO process including reducing the need authorization if appropriate. The PD should add language stating that if the bundled plans reveal information demonstrating that other solutions to new generation has, or will, become available, the need authorization can be reduced accordingly.

In addition, a public process, with at least a Tier 3 advice letter, should be required when SCE submits its procurement plan.

6. The Proposed Decision Should Add Environmental Justice as a Required Element of SCE's RFO Process.

The decision should expressly require SCE to consider environmental justice in its RFO process, in addition to the multiple considerations outlined in the PD.[55] The Commission has previously found that "the IOUs need to provide greater weight [to issues] includ[ing] disproportionate resource sitings in low income and minority communities, and environmental impacts/benefits (including Greenfield vs. Brownfield development)."[56]

This is particularly important when ordering the development of multiple new power plants, all slated for SCE's local area. SCE's territory already has some of the country's worst air quality, which disproportionately impacts low-income and minority communities.[57] These

[54] Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, R.12-03-014 at p. 13 (May 17, 2012).
[55] PD at p. 87.
[56] D.07-12-052 at p. 157.
[57] *See* CEJA Ex. 3 at p. 3.

communities bear disproportionate health impacts from pollution exposure, and often have higher levels of diseases associated with that exposure such as asthma and lung cancer.[58]

Because new plants could likely be slated in areas already heavily impacted by power-plant pollution, environmental justice should be expressly included as a factor SCE needs to consider in its RFO process.

CONCLUSION

CEJA respectfully recommends that the Commission adopt the above recommendations related to the proposed PD.

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[58] *See id.* at p. 4 (CARB estimates approximately 10,000 premature deaths per year in California due to PM 2.5 exposure).