

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  
REPLY COMMENTS RELATED TO CERTAIN TRACK III ISSUES**

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The California Environmental Justice Alliance (CEJA) respectfully submits these reply comments on certain Track III issues that were identified in the March 21, 2013 Administrative Law Judge's Ruling Seeking Comment on Track III Rules Issues (ALJ Ruling). CEJA is an alliance of six grassroots environmental justice organizations situated throughout California brought together to impact and change policy throughout the State.<sup>1</sup> These reply comments are timely and served pursuant to the March 28, 2013 email from the Administrative Law Judge. CEJA comments on the issues discussed in the ALJ Ruling in the order they were identified.

**Issue 1: Maximum and Minimum Limits on IOU Forward Purchasing of Energy, Capacity, Fuel, and Hedges**

***Consideration of Departing Load in Future Requirements for Procurement***

CEJA agrees with several parties that the Commission should require IOUs to make and incorporate reasonable estimates of departing load into their bundled procurement plan.<sup>2</sup> The Commission requires reasonable forecasts of other resources to make procurement decisions.<sup>3</sup> Failing to reasonably account for departing load will lead to overprocurement, which could saddle ratepayers and the environment with unneeded infrastructure and costs.

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<sup>1</sup> The organizational members of CEJA are: Asian Pacific Environmental Network, The Center for Community Action and Environmental Justice, Center on Race, Poverty & the Environment, Communities for a Better Environment, Environmental Health Coalition, and People Organizing to Demand Environmental and Economic Justice.

<sup>2</sup> All comments referred to in this brief were filed on April 26, 2013 in this proceeding unless otherwise noted. See Marin Energy Authority Track III Comments at p. 6; South San Joaquin Irrigation District Track III Comments at pp. 2-3; AREM/DACC Track III Comments at pp. 7-9.

<sup>3</sup> See, e.g., D.13-03-029 at p. 9 (it is "appropriate to take into account reasonable forecasts of uncommitted energy efficiency and demand response").

The rigid metrics that investor owned utilities (IOUs) utilize may not account for what departing load can reasonably be anticipated. Rather than adhere to predefined formula, the Commission should require that IOUs make reasonable forecasts of departing load based on available information.

Parties, such as the Marin Energy Authority, have suggested how to acquire the necessary information to incorporate reasonable estimates of departing load.<sup>4</sup> In addition to acquiring the necessary information, IOUs should include estimates of what increases to departing load can be reasonably expected to occur given the likely increase in development of CCAs and municipalities.<sup>5</sup> These types of suggestions should be considered as ways to develop more realistic forecasts of future needs and limit overprocurement and stranded assets.

CEJA also agrees with Sierra Club about the importance of requiring consideration of GHGs in IOU bundled plans.<sup>6</sup>

## **Issue 2: Impacts of Transparency on Forward Purchasing**

In its opening comments, CEJA urged the Commission to require further transparency within the procurement process to ensure the ability for meaningful public participation by communities affected by procurement.<sup>7</sup> Specifically, CEJA discussed three areas where the Commission may increase transparency by disclosing information to the public: 1) non-confidential information presented to the Procurement Review Group (PRG) meetings, 2) environmental assessments for bids in the RFO process; and 3) information about the RFO bid criteria and the evaluation process.<sup>8</sup> Several parties provided additional support for CEJA's requests. For instance, Sierra Club' comments demonstrate why the PRG process should be

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<sup>4</sup> Marin Energy Authority Track III Comments at p. 7.

<sup>5</sup> See South San Joaquin Irrigation District Track III Comments at pp. 1-6 (describing intent to expand service to include retail electric service); Marin Energy Authority at pp. 7-8 (suggesting that a specified percentage be set aside to account for future CCA activity).

<sup>6</sup> See Sierra Club Track III Comments at pp. 2-3.

<sup>7</sup> CEJA Track III Comments at p. 4.

<sup>8</sup> CEJA Track III Comments at pp. 4-5.

more transparent,<sup>9</sup> and the Independent Energy Producers discussed the import of making the RFO bid criteria and evaluation process public.<sup>10</sup> CEJA supports these positions.

The IOUs attempt to limit thoughtful consideration of these important transparency issues by arguing that the issues are not within the scope of the proceeding, and offering blanket objections to the release of bid and price information. Both of these assertions are inconsistent with Commission precedent and should be rejected.

***a) Transparency Issues Are in the Scope of the Proceeding.***

In attempt to limit meaningful evaluation of this important issue, PG&E and SDG&E argue that consideration of transparency issues is beyond the scope of this proceeding.<sup>11</sup> To support this argument, SDG&E erroneously relies on the Scoping Memo while PG&E generally asserts that transparency issues should be considered in a different proceeding.<sup>12</sup> PG&E and SDG&E are incorrect – the Commission can and should consider issues related to transparency within this Long Term Procurement Proceeding.

The Scoping Memo specifically states that the Commission intends to “consider what changes should be made to current procurement rules, as well as what new procurement rules should be adopted,” and that it would provide more detail in a future amended Scoping Memo or Ruling.<sup>13</sup> In addition, the Commission’s Order Instituting Rulemaking defines a general issue in the proceeding as: “[d]evelop or refine procurement rules that were not resolved in R.10-05-006, and consider other emerging procurement policy topics.”<sup>14</sup> Transparency issues fit within this general scope of procurement rules because rules related to transparency greatly impact procurement and the Commission’s and the public’s oversight of utility activities. In addition,

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<sup>9</sup> Sierra Club Track III Comments at pp. 5-11.

<sup>10</sup> Independent Energy Producers Track III Comments at p. 3 (“To improve the efficiency of procurement, the IOUs should clearly define the product they are seeking and should provide information about how certain characteristics of the product (or the developer, for *some bid elements like viability or security*) will be weighed in the evaluation process.”)

<sup>11</sup> PG&E Track III Comments at p. 5; SDG&E Track III Comments at p. 3.

<sup>12</sup> SDG&E Track III Comments at p. 3.

<sup>13</sup> R.12-03-014, May 17, 2012 Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge at p.11.

<sup>14</sup> R.12-03-014, March 27, 2012 Order Instituting Rulemaking at p. 5.

transparency issues related to procurement were asserted in R.10-05-006, and not resolved.<sup>15</sup> Moreover, Section 454.5, which is the statutory authority for this proceeding, requires the Commission to “adopt appropriate procedures” related to confidentiality.<sup>16</sup> For all of these reasons, transparency issues are properly part of this proceeding.

***b) Utilities Blanket Arguments to Maintain All Bid and Price Information as Confidential Should Be Rejected.***

The IOUs argue that all bid and price information should be retained as confidential citing undefined risks.<sup>17</sup> For example, PG&E argues that disclosing bid information is “*generally* not in the best interest of customers.”<sup>18</sup> PG&E also claims that in its experience bidders want bid information to be confidential because disclosure would disadvantage them in future solicitations.<sup>19</sup> The IOUs cite no specific evidence to support their claims that disclosure causes harm to customers. These types of generalized statements do not provide adequate support for shrouding this entire category of information in the veil of secrecy given the “presumption that information should be publicly disclosed and that any party seeking confidentiality bears a strong burden of proof.”<sup>20</sup>

Even if there were some merit to the IOUs’ concerns related to disclosure of bid and price information, several parties have described ways that this information could still be made public. For example, it could be aggregated, or the bid information could be anonymous.<sup>21</sup> The public interest in this information is great. As the City of San Francisco states: “the lack of transparency in the forward procurement process makes it more difficult for customer advocates

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<sup>15</sup> See, e.g., Pacific Environment Sept. 16, 2011 Track I and III Br. at pp. 36-53 (R.10-05-006); CBE Track I and III Sept. 16, 2011 Br. at p. 4 (R.10-05-006); IEP Sept. 16, 2011 Track I and III Br. at pp. 8-13 (R.10-05-006).

<sup>16</sup> Cal. Pub. Util. Code Section 454.5(g).

<sup>17</sup> PG&E Track III Comments at pp. 7-8; SCE Track III Comments at pp. 4-5; SDG&E Track III Comments at pp. 4-6.

<sup>18</sup> PG&E Track III Comments at p. 7 (emphasis added).

<sup>19</sup> PG&E Track III Comments at p. 8.

<sup>20</sup> D.06-06-066 at p. 2.

<sup>21</sup> See, e.g., TURN Track III Comments at p. 3; City of San Francisco Track III Comments at p. 2; Clean Coalition Track III Comments at p. 8.

and other potential intervenors to effectively monitor and participate in Commission proceedings to review the reasonableness of IOU proposed purchases and to oppose unduly expensive agreements.”<sup>22</sup> Indeed, even Calpine states that with a lag the information could be provided.<sup>23</sup>

### **Issue 3: Long-term Solicitation Rules – Existing Facilities Should Be Allowed to Bid Into New-Generation RFOs.**

In CEJA’s Opening Comments, CEJA urged the Commission to adopt a rule that explicitly indicates that existing power plants may bid upgrades or repowers into new-generation RFOs.<sup>24</sup> CEJA reasoned that upgrades or repowers of existing power plants can be less expensive for ratepayers and less damaging to the environment.<sup>25</sup> Upgrades to existing facilities can provide incremental capacity to meet unmet needs and facilitate the procurement of new preferred resources in the future by not relying on new facilities that will be around for decades.<sup>26</sup>

The majority of parties in the proceeding agree that upgrades and repowers of existing power plants should be considered in the RFO process.<sup>27</sup> This is a change that is currently needed as existing facilities are not treated on a level playing field with new facilities.<sup>28</sup> Contracts are necessary to ensure investment in the upgrades. As TAS Energy states: “a separate contract, or overlay contract must be offered to the entity bidding the retrofit/upgrade project for such investment from the existing site’s operating contract.”<sup>29</sup>

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<sup>22</sup> City of San Francisco Track III Comments at p. 2.

<sup>23</sup> Calpine Track III Comments at p. 8 (“With a suitable lag in place to address confidentiality concerns, information should be made available so that market participants could replicate the market valuation and other components of the analysis and ranking of offers....”).

<sup>24</sup> CEJA Track III Comments at p. 7.

<sup>25</sup> CEJA Track III Comments at p. 7.

<sup>26</sup> CEJA Track III Comments at pp. 7-8.

<sup>27</sup> *See, e.g.*, TURN Track III Comments at p. 5; DRA Track III Comments at p. 7; Sierra Club Track III Comments at p. 12; IEP Track III Comments at 3; TAS Energy Track III Comments at pp. 2-3;

<sup>28</sup> *See, e.g.*, Calpine Track III Comments at p. 3 (citing the Brattle Group Whitepaper). As Calpine describes: “By effecting dramatically different levels of compensation for what is essentially the same wholesale product (e.g., capacity), the disparate treatment between new and existing resources leads to excessive reliance on expensive new resources and under investment in and/or the premature retirement of existing resources.” *Id.*

<sup>29</sup> TAS Energy Track III Comments at p. 4.

Similarly, the majority of the parties also support allowing energy storage to bid in as a resource into RFOs. As DRA summarizes: “Energy storage arising from new investment should be valued as a new resource so that it can be bid into a long-term RFO, whether it is located at an existing facility site, or elsewhere.”<sup>30</sup>

#### **Issue 4: Modified Rules for Review of Bundled Plans**

CEJA’s Opening Comments urged the Commission to not reduce oversight of bundled procurement contracts through the proposed modification of the rules for review of bundled plans.<sup>31</sup> Although there was some confusion about the application of this question’s proposal, utilities, consumer advocates, and environmental groups opposed these changes.<sup>32</sup> In particular, DRA took a similar position to CEJA, stating: “the proposal would automatically approve procurement contracts except in limited circumstances when certain criteria trigger a review. DRA disagrees with this proposal to reduce the amount of oversight over individual procurement contracts in an apparent effort to streamline the contract approval process.”<sup>33</sup> Importantly, as DRA, and CEJA have pointed out, procurement has not always been reasonable and followed the Commission’s requirements.<sup>34</sup> Thus, Commission oversight of contracts should not be reduced.

#### **Issue 5: CAM Issues**

CEJA’s opening comments urged the Commission to consider how to limit saddling Community Choice Aggregators (CCAs) with the significant infrastructure costs that IOUs advocate for under the Cost Allocation Mechanism.<sup>35</sup> As the Commission has acknowledged, parties in this proceeding have “raised legitimate issues regarding the equity of the current CAM structure.”<sup>36</sup> CCAs play an essential role by expanding customer choice and reducing

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<sup>30</sup> DRA Track III Comments at p. 8.

<sup>31</sup> CEJA Track III Comments at p. 9.

<sup>32</sup> *See, e.g.*, PG&E Track III Comments at p. 14; SDG&E Track III Comments at p. 11; IEP Track III Comments at p. 6; DRA Track III Comments at p. 10; Sierra Club Track III Comments at p. 14.

<sup>33</sup> DRA Track III Comments at p. 10.

<sup>34</sup> *See* CEJA Track III Comments at p. 10; DRA Track III Comments at p. 10.

<sup>35</sup> CEJA Track III Comments at pp. 10-11.

<sup>36</sup> D.13-02-015 at p. 112; *see also* AREM/DACC Track III Comments at p 23 (citing the decision).

greenhouse gas emissions by relying on more renewable energy.<sup>37</sup> By blindly including CCAs in the CAM calculus, the Commission could be effectively shutting the door to CCAs.<sup>38</sup>

Several parties provide reasonable criteria for the Commission to consider when applying CAM. Initially, parties highlight the need for clear upfront criteria to determine whether resources are necessary for bundled or system need, and whether procurement benefits all customers consistent with the Public Utilities Code.<sup>39</sup> Clear and transparent criteria is essential to provide notice to providers of what costs might fall under CAM, and to help assure that procurement is not wrongly assumed to be subject to CAM even though the procurement fills a bundled need.<sup>40</sup>

In addition to providing clear criteria for the CAM determination, DRA provides guidelines for minimizing CAM procurement. Consistent with the loading order, DRA asserts the “the Commission should assume such preferred resources [EE and DR] will materialize to meet system and local area need, and direct the IOUs to develop their preferred resource programs in a manner that will produce those results.”<sup>41</sup> DRA also suggests that “Commission should direct the IOUs to work with CAISO to determine a priority-ordered listing of the most electricity beneficial locations for preferred resource deployment (supply or demand side) in a systemic way to maximize these resources’ ability to reduce system and local area need.”<sup>42</sup> This priority ordering should incorporate environmental justice considerations consistent with Section 399.13(b)(7) of the Public Utilities Code. Both of these suggestions are consistent with Commission policy and should be implemented as ways to limit CAM procurement specifically and all unnecessary procurement generally.

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<sup>37</sup> CEJA Track III Comments at p. 10.

<sup>38</sup> CEJA Track III Comments at pp. 10-11.

<sup>39</sup> See Cal. Pub. Util. Code Section 365(c)(2); AREM/DACC Track II Comments at pp. 11-12 (“there is no process for distinguishing between system and bundled resource needs”); Marin Energy Authority Track III Comments at pp. 11-13;

<sup>40</sup> See, e.g., Marin Energy Authority Track III Comments at p. 12 (“this lack of transparency creates significant procurement uncertainty for CCAs”).

<sup>41</sup> DRA Track III Comments at p. 14.

<sup>42</sup> DRA Track III Comments at pp. 14-15.



Furthermore, Marin Energy Authority recommends an advice letter process for allowing CCAs to demonstrate that they are offsetting a portion of the reliability needs.<sup>43</sup> This procedure would help ensure the ability of CCAs to make the procurement decisions consistent with Section 380(b)(4) of the Public Utilities Code, which provides that the Commission should “[m]aximize the ability of community choice aggregators to determine the generation resources used to serve their customers.”

#### **Issue 6: Energy Resource Recovery Account Compliance Filing Requirements**

CEJA’s Opening Comments urged the Commission to require consistency in the format for energy resource recovery account compliance reports among the three major IOUs to allow interested members of the public and regulators to easily review the information presented.<sup>44</sup> DRA raised similar concerns related to consistency and specified ways to make the reports more consistent.<sup>45</sup> The Commission should use these suggestions to develop a more consistent and standardized report.

In addition to the information included in DRA’s suggested format, the Commission should also require that the quarterly compliance reports include information on the three major electric IOUs’ loading order compliance. As CEJA’s Opening Comments discussed, this information is an important way to help assure that the loading order is being followed for bundled procurement.<sup>46</sup>

Furthermore, as CEJA’s Opening Comments assert, the Commission should continue requiring the quarterly compliance reports every quarter. Even the IOUs agree that the reports should continue to be required every quarter.<sup>47</sup>

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<sup>43</sup> Marin Energy Authority Track III Comments at pp. 18-19.

<sup>44</sup> CEJA Track III Comments at p. 11.

<sup>45</sup> DRA Track III Comments at p. 16.

<sup>46</sup> CEJA Track III Comments at p. 11-12.

<sup>47</sup> PG&E Track III Comments at p. 24; SCE Track III Comments at p. 22; SDG&E Track III Comments at pp. 17-18.

## **Issue 7: Proposed Refinements to the Independent Evaluator Program**

The ALJ Ruling contains a four-part proposal detailing potential changes to the Independent Evaluator (IE) program. As related to part (i), CEJA recommended that the rules for qualifying for the IE pool be modified to include qualifications to review other types of resources and environmental considerations including environmental justice.<sup>48</sup>

CEJA supported parts (ii) and (iii) of the proposal because of these proposals represent steps towards reducing potential conflicts in the process. Other parties took similar positions.<sup>49</sup> One issue that was raised related to part (iii) is that a random selection process may not result in someone qualified to review the particular project.<sup>50</sup> This issue can be resolved by only including qualified IEs in the random selection pool. Importantly, using a random selection process can help resolve some of the conflict of interest issues that are inherent in the process.

CEJA opposed part (iv) because of the potential for conflicts that arise after participating in the process for a number of years. DRA recognized the same issue with a longer time period.<sup>51</sup> Due to the potential additional conflict of interest issues, the Commission should not increase the amount of time that IEs are allowed to remain in the selection pool.

### **CONCLUSION**

CEJA recommends the Commission make the procurement rule changes specified above and in its April 26 Track III Comments.

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<sup>48</sup> CEJA Track III Comments at pp. 12-13.

<sup>49</sup> See IEP Track III Comments at pp. 9-10 (supporting ii and iii); DRA Track III Comments at p. 20 (supporting ii).

<sup>50</sup> See DRA Track III Comments at p. 20-21.

<sup>51</sup> DRA Track III Comments at p. 21.

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