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)

THE DIVISION OF RATEPAYER ADVOCATES' REPLY COMMENTS IN RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENT ON TRACK III RULES ISSUES

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I. INTRODUCTION

Pursuant to the March 21, 2013 Administrative Law Judge's Ruling Seeking Comment on Track III Rules Issues (Ruling) and Administrative Law Judge David Gamson's March 28, 2013 email message revising the date for comments in response to the Ruling, the Division of Ratepayer Advocates (DRA) submits the following reply comments in response to the opening comments of other parties. DRA's reply comments recommend that:

- The Commission should not further limit the investor-owned utilities'[1] (IOU) ability to forward procure greenhouse gas (GHG) compliance instruments, but should maintain the procurement limits established in the IOUs' GHG Procurement Plans;

- The Commission should not require the IOUs to limit their procurement options by designating a percentage of their load as short-term only market purchases in order reduce the potential for stranded costs associated with Community Choice Aggregation (CCA) departing load;

- The Commission should not require increased transparency into the IOUs' procurement plans to other IOUs and load-serving entities (LSE);

- Cost-effective energy storage should compete on a level playing field with other generation resources to meet specific needs or applications, but should not be treated as a preferred resource;

- The Commission should reject proposals to revise the bundled contract review process;

- The Commission should minimize the need for Cost Allocation Mechanism (CAM) resources by reducing load through the use of preferred resources like energy efficiency (EE) and demand response (DR) and by allowing CCAs to

[1] As used in DRA's comments, IOUs refers collectively to Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company (SCE).

- submit contracts to the Energy Division at the beginning of the long-term procurement planning (LTPP) process in order to reduce the need for new resources.

II. REPLIES TO COMMENTS ON TRACK III PROCUREMENT RULES AND QUESTIONS

1. Maximum and minimum limits on IOU forward purchasing of energy, capacity, fuel, and hedges.

a) Limits of forward purchasing of GHG Allowances

The California Environmental Justice Alliance (CEJA) recommends that the Commission only authorize a low or zero maximum limit on forward purchasing of GHG allowances, contending that forward purchasing of GHG compliance instruments is not a reliable way to meet the goals of Assembly Bill (AB) 32 and does not safeguard ratepayers.[2] The Commission should not adopt CEJA's recommendation to further limit the investor-owned utilities'[3] (IOU) ability to forward procure GHG compliance instruments, but should instead maintain the procurement limits established in the IOUs' GHG Procurement Plans.

CEJA claims that forward purchasing of GHG compliance instruments is not a reliable way to meet the goals of AB 32.[4] This assertion fails to recognize that the Cap-and-Trade program is one component of the overall AB 32 strategy to reduce GHG emissions to 1990 levels; other complementary programs include the Renewables Portfolio Standard (RPS), Energy Efficiency programs, and the California Solar Initiative (CSI).[5] The Cap-and-Trade program is the market-based component of the overall AB 32 strategy and as such, is designed to provide compliance entities flexibility in meeting their compliance obligations to the California Air Resources Board (CARB). The intent of the Cap-and-Trade program is to set a market price for GHG, which determines where additional, cost-effective GHG emissions reductions should

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[2] California Environmental Justice Alliance's Comments Related to Certain Track III Issues, April 26, 2013 (CEJA Comments), p. 2.

[3] As used in DRA's comments, IOUs refers collectively to Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company (SCE).

[4] CEJA Comments, pp. 3-4.

[5] California Air Resources Board (CARB), Climate Change Scoping Plan, December 2008, page 17. Available at: http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf

occur across various sectors of California's economy in order to reduce GHG emissions to 1990 levels by 2020 (AB 32 goal). In a sense, the Cap-and-Trade program acts as a backstop to ensure that the state meets the goals of AB 32.

DRA disagrees with CEJA's claim that forward purchasing of GHG compliance instruments does not safeguard ratepayers. It is inevitable that the IOUs will have direct compliance obligations to CARB under the Cap-and-Trade program as the conventional resources in the IOUs' portfolios emit GHGs. Using current information from resource portfolios and load projections, an IOU can forecast its compliance obligations under the Cap-and-Trade program. Just as with other commodities that the IOUs procure to serve load, it is reasonable to allow the IOUs the ability to forward procure a limited amount of GHG compliance instruments in order to hedge their ratepayer's exposure to the potentially rising and volatile costs of GHG compliance instruments. As CEJA points out in its opening comments, the IOUs risk penalties under the Cap-and-Trade program for under-procuring or could face the need for last minute purchases to meet compliance obligations, which could result in higher costs to ratepayers.[6]

DRA supports the current GHG procurement limits as established in the IOUs' GHG Procurement Plans. The limited authorization the IOUs currently have to forward procure GHG compliance instruments is reasonable and can safeguard ratepayers from the risk of volatile GHG market prices. Other compliance entities under the Cap-and-Trade program do not have CPUC-imposed procurement limits,[7] and the low or zero maximum limits proposed by CEJA would put the IOUs at a competitive disadvantage in the GHG market. If CEJA's recommendation were instituted, this could potentially result in increased Cap-and-Trade related compliance costs passed on to electricity ratepayers. Furthermore, the IOUs should be able to utilize the cost-containment mechanisms that are a part of the Cap-and-Trade program, such as banking across compliance periods, and using offsets for up to 8% of an entities' compliance obligation. These mechanisms are designed to give compliance entities flexibility in complying

[6] CEJA Opening Comments, p. 4, fn 18.

[7] CARB's Cap-and-Trade program does establish holding limits for all market participants to prevent entities from purchasing enough allowances to "corner" the market for GHG compliance instruments. These holding limits essentially serve as a limit on forward procurement that any one entity could undertake. In addition to CARB's holding limits, the IOUs have additional procurement limits established by the CPUC.

with the Cap-and-Trade program and are thus important to potentially safeguard ratepayers from increased Cap-and-Trade compliance costs.

CEJA is concerned that the risks associated with forward procurement of GHG compliance instruments and the use of GHG offsets does not align with the IOUs' incentives to pursue actual GHG emissions reductions.[8] DRA fully supports maintaining the incentive to achieve actual GHG emission reductions internally across the IOUs' portfolios, and believes that this incentive is set by the market price for GHG compliance instruments under the Cap-and-Trade program. DRA's recommendation for the IOUs to develop Marginal Abatement Cost (MAC) curves for all available GHG emissions reductions across their portfolios[9] would be a useful policy planning tool and could demonstrate to interested stakeholders that the IOUs are reducing their need to procure GHG compliance instruments by pursuing cost-effective emission reductions.

b) How may the Commission best balance issues regarding departing load in any future requirements for procurement?

Marin Energy Authority (MEA) recommends that the Commission "direct the IOUs to incorporate reasonable estimates for CCA departing load in their bundled procurement plants…."[10] DRA supports the use of accurate information that reflects reasonable estimates for CCA departing load, although DRA is unclear as to the amount of precision that would be gained by incorporating the draft and final CCA implementation plans, CCA resource plans, and annual load forecast prepared for the Resource Adequacy Compliance process into the planning process as MEA recommends.

In addition, MEA recommends that the IOUs "include a flexibility margin in [their] procurement by using short-term market purchases for a percentage of [their] projected bundled load (net of projected CCA load) so that additional CCA departing load can be accommodated without creation of new stranded costs."[11] DRA disagrees with this recommendation. The

[8] CEJA Opening Comments, pp. 2 – 4.

[9] The Division of Ratepayer Advocates' Opening Comments in Response to the Administrative Law Judge's Ruling Seeking Comment on Workshop Topics, November 2, 2012, pp. 2-6.

[10] Marin Energy Authority Comments on Track III Issues, April 26, 2012 (MEA Comments), p. 6.

[11] MEA Comments. p.7.

Commission should not require the IOUs to limit their procurement options by designating a percentage of their load as short-term only market purchases in order reduce the *potential* for stranded costs associated with CCA departing load. Such a requirement would disadvantage IOU bundled customers by placing unnecessary restrictions on the IOUs' procurement options.

2. Impacts of transparency on forward procurement

MEA recommends the Commission require "increased transparency in the IOU's procurement, noting that MEA's procurement information is "publicly available and transparent."[12] According to MEA, a benefit of such transparency is that IOUs and LSEs could "cross reference other entities' procurement to ensure the reasonableness of their own procurement."[13]

DRA respectfully disagrees that any benefits of allowing IOUs and LSEs to cross reference the procurement information of other entities would outweigh the potential cost to the IOUs' ratepayers of publicizing market sensitive information, including each IOU's overall level of procurement and contract terms and conditions. MEA's policy of making its procurement publicly information available appears consistent with its mission as a public entity committed to addressing:

> "climate change by reducing energy related greenhouse gas emissions and securing energy supply, price stability, energy efficiencies and local economic and workforce benefits. It is the intent of MEA to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar and wind energy production at competitive rates for customers."[14]

However, MEA's policy of disclosing its procurement information does not justify changing the current practice of protecting information that would place the IOUs at a competitive

[12] MEA Comments, p. 8.

[13] MEA Comments, p. 8.

[14] *See* http://marinenergyauthority.org/.

disadvantage during negotiations.[15] The Commission acknowledged in Decision (D.) 06-06-066 (as modified by D.07-05-032)[16] that a small LSE could disclose information without impacting the market, while a similar disclosure by a large IOU might have a very different effect. The Commission should therefore reject MEA's proposal to require increased transparency in the IOUs' procurement for the benefit of other IOUs and LSEs.

3. Long-term contract solicitation rules

The California Energy Storage Alliance (CESA) recommends that energy storage technology added to existing power plants be valued on a basis comparable to preferred resources.[17] DRA disagrees. Energy storage should not be considered a "preferred resource" in the Energy Action Plan or receive priority treatment in the loading order.[18] Designating energy storage as a preferred resource could imply ratepayer funded subsides for storage via minimum megawatts targets when the cost to benefit ratio is uncertain. Yet as Independent Energy Producers (IEP) notes, "[a]t its essence, storage is simply the capability of changing the delivery or energy from one time period to another," the benefit of which can be calculated based on market demand or market clearing prices.[19]

Rather than treating energy storage as on par with preferred resources, DRA instead supports an evaluation process that compares energy storage attributes with other supply side resources without designating it as a preferred resource or setting a capacity or megawatt target. By the same token, to the extent the current procurement process fails to consider all

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[15] Moreover, as several parties noted, it would require changes outside the scope of this proceeding to revise the protections for market sensitive information adopted in R.05-06-040. Comments of San Diego Gas & Electric Company in Response to Ruling Seeking Comment on Track III Rules Issues, April 26, 2013 (SDG&E Comments), pp. 3-7; Pacific Gas and Electric Company's Comments on Track III Rules Issues, April 26, 2013 (PG&E Comments), pp. 5-9; Southern California Edison Company's Comments On Administrative Law Judge's Ruling Seeking Comment on Track III Rules Issues, April 26, 2013 (SCE Comments), pp. 4-5.

[16] D.06-06-066 (as modified by D.07-05-032), pp. 70-71 The Commission compared the Modesto Irrigation District's customers (106,000) with SCE's customers (more than 13 million). According to MEA's Procurement Plan, it expects to have 125,000 customers starting in July 2013.

[17] Comments of the California Energy Storage Alliance on Administrative Law Judge's Ruling Seeking Comment on Track III issues, April 26, 2013 (CESA Comments) p.5.

[18] *California's Energy Leadership*, CPUC January 2010, p. 6. The various iterations of the Energy Action Plan appear on the CPUC's website: www.cpuc.ca.gov/PUC/energy/resources/Energy+Action+Plan

[19] IEP Comments, p. 4.

energy storage attributes, such as shorter lead times and fast ramping capabilities, the process should be modified so that storage competes fairly with other resources. Cost-effective energy storage should therefore compete on a level playing field with other generation resources to meet specific needs or applications.

4. Specification of the rules that, if followed, would allow the IOUs to execute bundled procurement contracts without additional review by the Commission

Numerous parties filed opening comments addressing the proposals to modify the existing contract review process for bundled procurement transactions.[20] Some parties, including DRA, assumed the proposed rule changes would constitute a decrease in the Commission's oversight of bundled procurement contracts and transactions.[21] PG&E, SCE, and SDG&E assumed the proposed changes would constitute additional oversight of bundled procurement contracts less than five years in length.[22] DRA interpreted the proposed rule changes as applying to contracts greater than five years in duration. Regardless of whether the party viewed the proposals as an increase or reduction of Commission oversight of bundled procurement transactions or applicable to short or long-term contracts, parties generally recommended rejection of the proposals.[23]

The IOUs argued that the proposed changes may be contrary to AB 57 and would create unnecessary administrative burden by requiring short-term, pre-approved contracts to be approved via an advice letter or application.[24] DRA agrees. The current approval method, which requires Commission oversight and approval for contracts greater than five years in duration, but

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[20] *See* CEJA Comments, pp. 9-10 ; DRA Comments, pp. 9-13; IEP Comments, pp. 6-9; MEA Comments, pp. 9-10; PG&E Comments, pp. 14-16; SCE Comments, pp. 11-15; SDG&E Comments, pp. 10-12; Opening Comments of Sierra Club California on Track III Rules Issues, April 26, 2012 (Sierra Club Comments), p. 14; Track III Comments of the Western Power Trading Forum, April 26, 2013 (WPTF Comments), p. 9.

[21] *See* CEJA Comments, p. 9; DRA Comments, p. 10; MEA Comments, p. 10; and Sierra Club Comments, p. 14.

[22] PG&E Comments, pp. 14 –15; SCE Comments, p. 11; SDG&E Comments, p. 11.

[23] However, several parties supported the 4aii proposal requiring bilateral contracts to seek Commission approval through a Tier III advice letter or application. Sierra Club Comments, p. 14; IEP Comments, p. 8; and WPTF Comments, p. 9.

[24] SCE Comments, p. 11; SDG&E Comments, p. 11; PG&E Comments, pp. 14 – 15.

does not require additional approval for contracts under five years in duration, is both adequate and reasonable. As SDG&E notes and DRA agrees, the benefits to ratepayers have not been identified to justify implementing changes to the bundled contract review process.[25]

The Ruling did not define the applicability and justification for the proposed changes to the bundled procurement contract review process. Parties responding to this question did not identify problems with the current contract review process that would warrant making such amendments. For these reasons the Commission should reject the proposals to revise the contract review process.

5. Changes to the Commission's adopted Cost Allocation Mechanism (CAM) per Senate Bill (SB) 695, SB 790, Decision 11-05-005 and relevant previous decisions.

a) How does the capacity allocation interact with other allocated costs such as energy efficiency and demand response funding?

PG&E "sees no interaction or cross over between the CAM cost/benefits and EE and DR program cost/benefits."[26] SDG&E points out that the "need for resources that are eligible for CAM treatment is identified *after* consideration of all cost effective EE and DR that can meet the need."[27] If the Commission assumes that preferred resources will materialize, then the determination of CAM need *after* consideration of EE and DR resources reduces the need for new CAM procurement, a benefit that flows to customers of the IOUs as well as CCAs and other LSEs.

MEA proposes two alternatives to rectify what it characterizes as a "one way street" regarding the allocation of costs pursuant to the Commission's adopted CAM per Senate Bill (SB) 695, SB 790, D.11-05-005 and relevant previous decisions. The first proposal is that each LSE must procure its own Resource Adequacy (RA) in accordance with Commission mandated requirements, and that an LSE would only be allowed to allocate costs to another LSE under "exigent circumstances."[28] This proposal overlooks the distinction between RA requirements,

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[25] SDG&E Comments, p. 11.

[26] PG&E Comments. p. 19.

[27] SDG&E Comments, p. 15.

[28] MEA Comments, p. 15.

which require LSEs to demonstrate that they meet Commission determined requirements for the subsequent year using existing resources, with the allocation of the cost of new resources, which happens in the biennial LTPP proceeding. Only by ensuring that new resources are built will California's long-term RA needs be met.

The second alternative MEA proposes is an "optional mechanism for CCAs who are willing to provide additional documentation to the Commission….so that CAM cost and capacity allocation could be offset by the CCA's own procured resources."[29] It is unclear how this "optional mechanism" would address the concerns raised by DRA and others in Track I of this proceeding, when MEA and others proposed a mechanism that would allow LSEs to opt out with RA contracts of five-years in length. It would therefore be premature to adopt this "optional mechanism." DRA supports minimizing the need for CAM resources by reducing load through the use of preferred resources like EE and DR and by allowing CCAs such as MEA to submit contracts to the Energy Division at the beginning of the LTPP process in order to reduce the need for new resources.

III. CONCLUSION

DRA respectfully requests that the Commission adopt the recommendations in DRA's opening and reply comments.

Respectfully submitted,

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[29] MEA Comments, p, 15.