

**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 13-12-010
(Filed December 30, 2013)

**COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E)
REGARDING PRELIMINARY SCOPING MEMO AND SCHEDULE**

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**I.
INTRODUCTION**

In accordance with the Rules of Practice and Procedure of the California Public Utilities Commission (the “Commission”) and the direction set forth in the *Order Instituting Rulemaking* (“OIR”) issued on December 30, 2013, establishing the 2014 long-term procurement plan (“LTPP”) proceeding, San Diego Gas & Electric Company (“SDG&E”) submits these comments concerning the Preliminary Scoping Memo and Schedule included in the OIR.

The OIR notes that the proceeding will “continue [the Commission’s] efforts to ensure a safe, reliable and cost-effective electricity supply in California through integration and refinement of a comprehensive set of procurement policies, practices and procedures underlying long-term procurement plans.”^{1/} The Preliminary Scoping Memo included in the OIR describes the issues to be considered in the proceeding and the timetable for addressing such issues. It separates issues into three main categories: (i) identifying Commission-jurisdictional needs for new resources to meet system or local resource adequacy (“RA”), operational flexibility, or other requirement and to consider authorization of IOU procurement to meet that need; (ii) updating and reviewing individual investor-owned utility (“IOU”) bundled procurement plans (“BPPs”)

^{1/} OIR, p. 2.

consistent with Public Utilities Code § 454.5;^{2/} and (iii) developing or refining procurement rules that were not resolved in R.12-03-014, and considering other emerging procurement topics not expressly covered in other rulemakings.^{3/}

The proposed procedural schedule would divide the local area and system planning process into two, sequential phases of one year each.^{4/} The first phase would consider overall need, but not how those needs would be filled; the second phase would authorize specific resources near the end of 2015 to fill any remaining needs. The proposed procedural schedule does not specifically address the timing of consideration of IOU BPPs or resolution of procurement oversight rules and policies. SDG&E notes that these two issue areas – BPPs and procurement rules/policies – have been addressed in separate phases in the past two LTPP cycles.

SDG&E generally agrees with the proceeding scope and schedule outlined in the Preliminary Scoping Memo, but notes the need for clarification of certain aspects of the procedural schedule and scope. Specifically, as discussed below, the final Scoping Memo should make clear that (i) there will be a separate track or phase of the proceeding dedicated to approval of the individual IOU BPPs, which will involve revisions to the BPPs designed to update data included in procurement tables and incorporate policy decisions made in other proceedings, and will not involve consideration of new policy issues or contested factual data, and therefore that evidentiary hearings will not be required; and (ii) policy issues related to implementation of greenhouse gas (“GHG”) requirements – other than GHG risk management, procurement and compliance costs – will be considered in the dedicated GHG proceeding, Rulemaking (“R.”) 11-03-012.

^{2/} All statutory references herein are to the Public Utilities Code unless otherwise noted.

^{3/} OIR, p. 8.

^{4/} *Id.* at p. 10.

II. DISCUSSION

A. Approval of IOU BPPs Should Occur in a Separate Phase/Track and Hearings are not Required

The OIR directs each IOU to “file proposed updates to its individual bundled plan consistent with guidance to be provided in the Scoping Memo and any related rulings or of policy decisions.”^{5/} Thus, consistent with this direction, the IOUs’ BPPs will be updated to (i) reflect Commission-mandated assumptions; and (ii) incorporate policy and rule determinations previously issued by the Commission in separate policy decisions (*e.g.*, 2012 LTPP Track 3 Decision). Consideration of the IOUs BPPs should not involve consideration of *new* policy issues. The Preliminary Scoping Memo separately describes a set of procurement rule and policy topics that the Commission intends to consider in the rulemaking;^{6/} these should be considered in a separate phase or track of the proceeding.

The BPP functions as a compilation of Commission rules and guidance on procurement topics and description of the IOUs’ procurement strategy within this framework. While the Commission’s resolution of new procurement policy issues, either in the LTPP or in separate dedicated proceeding(s), may ultimately impact the IOUs’ BPPs, it is preferable from a procedural standpoint to consider BPPs separately from the policy issues outlined in the OIR. Indeed, this is the approach the Commission has taken in recent LTPP cycles. This is because revision and approval of the BPP is a relatively straightforward updating process – more in the nature of a compliance filing – while consideration of procurement rules and policy issues can be highly contentious and typically involves time-consuming litigation. In past LTPP cycles, the Commission considered procurement rule and policy issues together with the IOUs’ draft BPPs;

^{5/} *Id.* at p. 13.

^{6/} *Id.* at pp. 11-13.

this significantly slowed the process involved in approving BPPs since it was necessary to litigate rule and policy issues in order to finalize the BPPs. The Commission should continue the more recent approach of considering the IOUs BPPs separately from resolution of rules and policy issues. This will help to ensure that approval of BPPs occurs in a timely manner. Thus, the final Scoping Memo should make clear that consideration of procurement rules and policies will occur in a separate phase/track from approval of BPPs.

The Scoping Memo should also state that while hearings may be required in the track/phase dedicated to resolving policy and rules issues, hearings will not be required for consideration of BPPs. Inasmuch as updates to the BPP in the instant proceeding will involve incorporation of prior Commission determinations and will be based upon Commission-mandated assumptions, it is reasonable to conclude that there will not be contested material facts necessitating evidentiary hearings. Indeed, holding evidentiary hearings would invite parties to mount collateral attacks on Commission decisions they view as unfavorable. Plainly, the BPP approval process should not be a forum for re-litigating Commission determinations made in other proceedings. Thus, the Scoping Memo should make this fact clear and should find that evidentiary hearings related to IOU BPPs are not necessary.

Finally, the Commission should follow the approach it has previously used and direct the IOUs to file their respective updated BPPs using the advice letter process. Similar to the effect of holding evidentiary hearings, requiring the IOUs to formally file their BPPs and seeking party comment invites re-litigation of issues that have been previously determined by the Commission. Given that the updates to the BPPs in the current LTPP cycle will merely incorporate recent Commission determinations and reflect Commission-mandated assumptions, the public interest is not served by imposition of burdensome filing requirements. Accordingly, the final Scoping

Memo should direct the IOUs to file their respective BPPs via the advice letter process. Should the Commission elect to adopt new procurement rules or policies (or modify existing rules/policies) in this LTPP cycle, such Commission determinations would be included in the *next* BPP update.

B. The Scoping Memo Should Clarify the Scope of GHG Issues to be Considered in the Proceeding

A joint ruling issued August 4, 2011 by the Administrative Law Judges (“ALJs”) assigned to the LTPP and GHG proceedings (“Joint Ruling”) noted the potential overlap between issues to be considered in the LTPP and GHG proceedings, and determined that issues specifically concerning GHG risk management, procurement and compliance costs, as described in the Joint Ruling, would be resolved in the LTPP proceeding.^{7/} This determination reflects the rationale that “the LTPP proceeding is the appropriate forum to address GHG-related procurement as procurement of GHG compliance products is a subset of procurement more generally, for which the LTPP serves as the venue for review and approval of the utilities’ procurement plans.”^{8/}

While the Joint Ruling was relatively specific regarding the scope of the GHG issues to be considered in the LTPP proceeding, the Preliminary Scoping Memo includes a potentially broader statement of the scope of GHG issues to be considered in the LTPP procurement rules and policies phase/track, stating that the scope includes “any GHG product procurement policies to facilitate the implementation of California Air Resources Board’s cap-and-trade program.”^{9/} The Preliminary Scoping Memo also notes, however, that issues being considered in the GHG

^{7/} *Joint Administrative Law Judges’ Ruling Clarifying Venue for Consideration of Costs Related to Procurement of Greenhouse Gas Allowances*, issued August 4, 2011 in R. 10-05-006 and R. 11-03-012, p. 4.

^{8/} *Id.* at p. 3.

^{9/} OIR, p. 6.

proceeding, R.11-03-012, are not in the scope of the instant proceeding.^{10/} The result may be confusion among parties as to the appropriate forum for raising GHG policy issues. Thus, the final Scoping Memo should note that policy issues related to implementation of GHG requirements will generally be resolved in the GHG proceeding, unless they relate directly to GHG risk management, procurement and/or compliance costs.

III. CONCLUSION

For the reasons set forth above, the Commission should adopt a final Scoping Memo consistent with the recommendations offered herein.

Respectfully submitted this 3rd day of February, 2014.

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^{10/} *Id.* at p. 14, Table 1.